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The evolution of land rights in Sub-Saharan Africa should not necessarily be viewed as a natural process, because some of the changes were the results of government intervention (either colonial or postcolonial). Such intervention is not always conducive to efficiency or equity – whereas market forces have tended to circumvent any restrictions that cause inefficiency. The issue is whether those market forces achieve the same efficiency that could have been obtained under a different institutional setup.

The evidence cited in this paper dispels some of the popular misconceptions about land rights in Sub-Saharan Africa. In many areas there has always been individual possession; in others, it is growing. Even where communal ownership was imposed, cultivation and possession remained with individual households, and an increasing range of rights to land were appropriated by individual households. Land sales and mortgaging by individuals are common in many areas where such transactions are not legally recognized.

The lesson from other parts of the world is that efficiency requires individual land rights to be recognized in a way that provides sufficient security (either in the form of long-term leases or land titles). The stage may not have been reached yet in parts of Sub-Saharan Africa. But in other parts (sometimes only a region within a country), the justification for a change in land arrangements already exists. In such cases, what is needed is a careful analysis of the benefits and costs of different systems (for example, title deeds, title registration and long-term leases), including equity considerations. The gain in efficiency may or may not outweigh the costs of introducing a new system.

Unfortunately, there is a shortage of rigorous quantitative research that would help to assess the costs and benefits of a policy change. Land is an attractive collateral, provided that the owner-borrower can assure the lender that the land can be transferred. Again, such an assurance is greatly enhanced by an effective system of land registration.

The importance of land rights to agricultural development is the starting point of the article. It then describes the evolution of land right systems in Sub-Saharan Africa, reviews the evidence from Africa on the implications of existing systems and discusses the policy options.

## OWNERSHIP SECURITY: THEORY AND EVIDENCE

The main (and obvious) effect of a lack of secure ownership is the uncertainty in a farmer's mind about the value of improvements made to the land. This uncertainty tends to increase as farming becomes more commercialized. There is ample evidence that the incidence of land disputes and land grabbing by larger or more powerful farmers increases as the potential return to land rises (Baron, 1978, p. 27; Clark, 1969; Feeny, 1982, p. 95; Kemp, 1981, p. 15; Tanabe, 1978; Tomosugi, 1980). Uncertainty regarding ownership will also tend to affect the sale and rent of land, which would otherwise allow land to be owned or used by those who are likely to put it to best use.

Many studies have also highlighted the role of secure legal ownership in providing farmers with access to cheaper, longer-term, and more extensive credit. A land title is often a prerequisite for commercial or official bank loans (Dorner and Saliba, 1981, p. 23; Sacay, 1973; U. Tun Wai, 1957). As noted by Binswanger and Rosenzweig (1986), land has several attributes that are desirable as collateral. Farmers without secure title have to rely more on informal lenders, who usually charge much higher interest rates than those in the formal market. In some areas of India, for example, lenders charged 8–16 per cent on secured loans, compared with 18–37.5 per cent on unsecured loans (Panandikar, 1956, p. 75). (However, as explained by Stiglitz and Weiss [1981], interest rates cannot be allowed to rise to equate supply and demand, and credit rationing is optimal.)

Titles may also increase the supply of all types of credit. The creditors have no legal rights to the land, but by holding the documents they prevent the owner from selling the land. They also restrict the owner's ability to borrow elsewhere and thereby incur excessive debt. As land value is related to its productivity, it follows that titled land is more valuable than untitled land.

Apart from these implications for productivity, the ownership systems also raise questions of equity. In some countries the procedures required to prove legal ownership are extremely complex and involve significant fees for lawyers, surveyors and government departments. Since these costs vary little according to the size of the farm, larger landowners are better placed to afford them. By the same token, wealthier farmers usually have better access to information about land law, administrative procedures and farm prices. They may therefore buy out poorer and less knowledgeable smallholders.

## LAND TENURE IN SUB-SAHARAN AFRICA

The systems of land tenure in Sub-Saharan Africa today can be understood only in their historical perspective.

*The precolonial era*

Much of what is known about tenure in this period is based on indirect evidence. Some general principles can be deduced from the literature (see Biebuyck, 1963;

Elias, 1956; Glazier, 1985; Hecht, 1982; Lewis, 1979; Maini, 1967; Meek, 1949; Snyder, 1981; and Thomson, 1976).

- The person who cleared land first was, in the absence of any more powerful claim, entitled to use it. The literature often refers to this person as the *maître du feu* (the master of fire, a reference to a common method of land clearing). Anybody who later tried to establish rights of use within the area already cleared and controlled had to seek permission from the *maître* (or his descendants, since rights were usually inherited by his progeny). Where there were no distinct lineages, permission had to be obtained from the chief (usually the village head). In such cases, the right to use land continued only so long as the farmer continued to live in the village head's jurisdiction and recognize his authority.
- When land was abundant, access to it was not difficult. It was obtained either by residence or by acquiring 'membership' in a group – which could be done by tracing real or fictional genealogies. The admission of outsiders, even slaves, was common (Barnes, 1954; Gluckman, 1941; Van Velsen, 1964). Thus ethnic identities, so important during the colonial age, were less clearly defined and far more flexible. Once the right to use land was admitted, it could be passed on as a legacy.
- The crucial element for the continued control and use of land was to have enough people, be they relatives or slaves, to work the land. Land was under group control and individuals used particular bits of it. These areas of control expanded and contracted with the rise and fall of leaders.
- Under such systems of land use, one person could cultivate crops, while, on the same land, another could have rights to trees; or land could be used by cultivators during the cropping season and by herders in the off-season or during fallow periods.

The system was somewhat different under Islamic Law (which, through conquest and influence, spread over Mali, Mauritania, Niger and Northern Nigeria in West Africa and to Somalia, Sudan and Zanzibar in the East). As with other indigenous systems, land belonged to the 'person who vivified it' (Anderson, 1954; Middleton 1961): the act of cultivation, or boring and enclosing underlying streams, gave the person doing so a right of ownership. But Islamic Law differed from other indigenous rules in two respects: first, once land had been appropriated, no use did not mean a loss of ownership, that could happen only through conquest or sale. Second, Islamic Law provided for defined rules of inheritance for both men and women, either as sharers or as residuaries (that is, after the sharers had received their specific shares of the property). In other indigenous systems, only patrilineal or matrilineal heirs could inherit rights. (In practice, though, under the Islamic system female entitlements to shares in land were usually bought by other heirs or residuaries.)

### *The colonial era*

During the twenty-five years between 1885 and 1910, the African claims of

nearly every major European nation – Britain, France, Germany, Portugal, and Belgium – were finally settled. The European powers were not troubled by considerations of ethnic homogeneity among the colonized; and as Hailey remarked, ‘the extent of the appropriation of indigenous lands had depended more on factors of climate or soil than on juridical arguments’ (1957, p. 686).

The colonial attitude toward Africans was influenced by theories of evolution. In British colonies, colonialists regarded Africans as being on a lower evolutionary rung – and thus at a stage where land ownership would vest in chiefs, not individuals, and all rights to land would flow from membership of the chief’s ethnic group. The French initially took the opposite view. They believed that only individual rights to land existed.

The respective philosophies of the colonizers initially influenced their systems of government. The British chose indirect rule through traditional leaders, who were free to make rules within their ‘spheres of competence’, including land rights. The French policy was to assimilate: it drew no distinction between a dependency and metropolitan France. ‘Native chiefs’ derived their powers from and were subject to the metropolitan government. Belgium merely stated that the Congo Free State was under the sovereignty of Belgium but with a separate legal personality and laws. For Portugal, the practice of Christianity became the test of its policy of assimilation. These original distinctions gradually blurred as the practicalities of government affected the approach of all the colonial powers.

In defining the concept of land ownership, the colonial powers drew a distinction between occupied lands (which were therefore owned) and unoccupied lands (vacant and ‘without a master’). The unoccupied lands were deemed open to settlement, as happened in Kenya, Zambia, and Zimbabwe; or to lease by foreign concessionaries, as, for instance, in the Côte d’Ivoire and Congo; or for use for other public purposes. These distinctions were much influenced by European conceptions of title and property.

The colonialists were completely ignorant of the systems of shifting cultivation and of transhumance that were prevalent in Sub-Saharan Africa. As a result, the land available to Africans shrunk, despite a few protests (particularly by French scholars). The consequences were disastrous for the African population, particularly in the British settler colonies where logic was strained to provide land and benefits for the settlers.

Even more influential was the colonial belief that all occupied land was held in ‘communal tenure’. This meant that individuals had only user rights to land, without the power to sell or mortgage it. ‘Ownership’ was vested in chiefs as trustees for existing and future generations. Yet the British were not entirely consistent. In Uganda, for instance, Sir Harry Johnson (who was later to settle claims in Malawi, then Nyasaland) decided that the Ganda chiefs had absolute title to land. He thereby created a new system of tenure: ‘mailo’. The French, far more consistent, recognized individual title only if the applicant went through the complex procedures of titling and registration; few did so. The Belgians tried for decades to discover what lands were used by, and needed for, subsistence cultivation by the Africans.

The logical consequence of insisting on communal tenure and the trusteeship of chiefs was to raise the status of chiefs. Where there were none, chiefs were

appointed. In some cases, as among the Ashanti, failing rulers were propped up and the development of individual right to property was stifled. And chiefs were quick to exploit their position to establish or strengthen their control over land.

What the colonial powers did was to pacify a continent. No longer was war a means of acquiring land and labour. Colonialism also brought with it some improvements to sanitation and public health, which helped to increase the longevity of the African population. When, in the last decades of colonial rule, the conquest of malaria and control of the tsetse fly opened new areas for settlement and cultivation, faster population growth reduced the amount of cultivable land per caput. It became correspondingly more important to acquire land rather than labour.

Only in the twilight of colonialism was a feverish attempt made to introduce individual land titling, and then only in some colonies. By then, it was too late.

Interestingly, the introduction of individual titles in Kenya was justified by the need to promote economic development. The colonialists' earlier fears for example, that in India individual titles had allegedly led owners to mortgage and sell their lands to moneylenders resulting in widespread indebtedness and landlessness, no longer seemed to matter. The Swynnerton Plan for Kenya expressly recognized that some landlessness could be a consequence of introducing individual titles, but that this increase in landlessness was a necessary price to pay for development and that the more progressive farmers would survive (Glazier, 1985). This theme has been reaffirmed in subsequent five-year plans in Kenya.

African approaches to land tenure can be divided into three main types:

- (a) Countries that allow the acquisition of individual title: Côte d'Ivoire (without any restrictions on the power of the title-holder); Kenya and Malawi (with restrictions on the title-holder).
- (b) Countries that recognize different types of tenure: Senegal and Sudan (both individual title and nationalization of non-titled lands); Botswana, Ghana, Lesotho, Liberia, Mali, Sierra Leone, Swaziland, Uganda and Zimbabwe (individual title, indigenous systems and public lands); and Cameroon (individual, group indigenous systems and public lands).
- (c) Countries that vest title to land in the state, so that individuals have rights only of use and occupancy: Ethiopia, Mauritania, Nigeria, Tanzania, Zaire and Zambia.

This classification needs to be qualified. First, there is an overlap between the countries in (b) and (c): where indigenous systems are recognized in group (b), this usually means that the individuals or groups covered by those systems have rights only of occupancy and use. In that sense, they share the approach of countries in (c); examples are Botswana and Zimbabwe. (A similar practice applies in Senegal and Sudan where, with the nationalization of untitled land, the government recognizes only user rights of occupants.) Second, in Malawi, indigenous systems are recognized for untitled land. Third, in Ghana, rights of sale of land under indigenous systems of tenure are vested in chiefs – the approach first introduced by the British. Fourth, in all the examples it is assumed that the state holds paramount title to land. The classification above is not, of course,

immutable. For example, both Mauritania and Sudan have passed legislation recognizing Islamic law as the governing framework of the nation. This is a contradiction in terms, since Islamic law recognizes individual title to land, the power to bequeath and sell land and the power to make gifts of property, while Sudan still maintains the ideology of state ownership of land. In Mauritania, where the state grew out of conquest, land title is arguably vested in the state.

### *Land as a commodity*

The most important factors contributing to the development of a land market are the growth of population, the use of new technology and inputs, the development of markets for products, the growth of communications and the rise of alternative uses for land. These influences are not easily separable. However, as Cohen (1980) points out, there has been a tendency to concentrate on the analytically clearest factor, population growth.

In the African context, three studies are worth noting. Lunning (1965) studied land transactions in Nigeria. He classified the seven methods by which land could be acquired: inheritance, gift, purchase, pledge, loan, lease and share cropping. Lunning found that there was 'to a certain extent, a relationship between density of population and the occurrence of sales but it does not explain all differences . . . . In some ways, acreage of farm land available per head of population should be a more reliable 'yard-stick' (p. 79). In villages the explanation was the development of the road system and the greater accessibility to markets, which appeared to be related to a greater occurrence in sale transactions of land. Villages off the beaten track have a far greater incidence of customary transactions as inheritance and loan . . . . Nearness to markets and subsequently easier accessibility to capital may be reasons for a greater incidence of pledging'. Lunning concluded that increasing demand for land had a decisive impact on land tenure patterns. The four factors he identified as being the most important were population growth; the introduction of cash crops; infrastructural development and distance to major markets. But, he added 'none of these factors can be singled out as having had a singular influence on the demand; a number of them are usually involved' (p. 178).

A similar picture emerged from Netting's study (1965) of the Kofyar hill farmers on the Jos Plateau in Nigeria. The Kofyar farmed intensively on the plateau, with strict rules of inheritance and individual ownership of plots. On the hillsides, agriculture was shifting, and nobody had rights of access to a specific plot. When Kofyar were studied again in the 1980s they were farming the plains intensively and had developed a market in land: both changes had been assisted by the development of infrastructure and access to markets for their produce (Netting, 1985).

Other factors that encourage the development of a land market include proximity to means of communication, such as a new road (Cobb *et al.*, 1980; Haswell, 1975; Lunning, 1965) or the main railway line (Bruce and Dörner, 1982). Proximity to urban centres is also important: the possibility of alternative uses increases the value of land and turns it into a tradable commodity. An estimated 80,000 to 100,000 hectares of land are annually converted from

agricultural to urban use in Sub-Saharan Africa (Hamer, 1986). Hill's (1963) study of cocoa farmers in Ghana seemed to indicate that the cultivation of a cash crop is related to the development of a land market.

Finally, restrictions on mobility, particularly during the colonial regimes in some cases, resulted in the development of a land market much earlier than if people had been allowed to migrate to other less populated areas. An outstanding example was the development of a land market among the Kikuyu in Kenya (who lost most of their lands to settlers) long before such a market had developed, say, among their neighbours, the Mbeere.

### *Household appropriation of land*

With the development of a land market, is there also a corresponding increase in individual tenure? Over time, more of these rights are transferred from large social groups to smaller groups and eventually to households. Land rights may be viewed as a bundle of distinct privileges. Over time more of these rights are transferred from large social groups to smaller groups and eventually to households.

The pattern of this transfer appears to rest on a principle that is well known in Hindu law: where a farmer has acquired land with the help of common resources of his kin group, he has less individual control than if he has acquired the land from his own earnings and employs labour (paid in cash or kind). In all these examples, however, sales of land increase and so does the power of households (Haswell, 1975; Hecht, 1985).

The first rule of indigenous tenure is that a person is entitled to undisturbed possession of some allotted land as long as it is being used. The period of use varies according to the type of crops grown, so farmers often lengthen the period of use by planting trees. Thus, in Cameroon, for instance, the main purpose of planting cocoa and coffee is to retain undisturbed possession of the land so long as the trees survive (Levin, 1976). Tree planting in Côte d'Ivoire and Zanzibar serves a similar purpose (Koby, 1979; Middleton, 1961). This gradual process of appropriation begins with the best land – the valley bottoms (as in Tanzania and Zambia), the oualo, fadama, and swamplands (in the Gambia, Nigeria, and Senegal). Because they retain some moisture, these lands allow cash crops to be grown in the off-season.

Over time, the rights of 'outsiders' – the navettane in the Gambia and Senegal – are increasingly restricted. At first, they are allowed access to marginal land. But as land values rise, other rights of outsiders are curtailed. They can no longer become members of the group, so cannot gain access to land (Haswell, 1963; Hecht, 1982). Restrictions are placed on the types of crops that tenants or 'stranger farmers' can cultivate. For instance, in Ghana and Cameroon, tenants are not allowed to plant cash crops (Adegboye, 1974; Dravi 1984); in Zanzibar, they are not allowed to plant trees, particularly the valuable kola tree (Middleton, 1961). The basis for the restrictions is to deny tenants the opportunity of claiming title to land by virtue of their length of possession.



## IMPLICATIONS

As colonial views of land law have been carried through into today's independent countries, the land market in Africa remains distorted. In some areas only rights of use and occupancy of land are recognized by the state. In others, some of the rights of ownership – to transfer, mortgage, or lease land – have been fettered. This section discusses the implications of such distortions.

*The divorce of law from reality*

When the legal system decrees that land cannot be sold or can be transferred only with bureaucratic (and frequently arbitrary) approval, law becomes divorced from reality. Land continues to be sold or pledged, but in an informal market. The only result is that these sales or pledges are unenforceable in a court, so prices contain risk premiums that cause a deviation between the social value of land and its market value. Land sales may be disguised as the sale of trees or houses, as in Malawi (Ibik, 1971); or as a pledge, with the pledgee paying an amount equivalent to the purchase price of the land so as to avoid getting the permission of the village headman, as in Nigeria (Lunning, 1965).

During the colonial period the clearest examples of these market distortions came from West Africa, where the production of commercial crops (initially oil palm) had led to the development of a land market even before colonialism began.

This inability to accept evidence of land sales, blurred by preconceptions of what 'native' groups could actually do, afflicted other land commissions as well. In Kenya, the Carter Commission ignored evidence that land had been traded by Kikuyu and that, in the Kiambu region in particular, sales were common (Sorrenson, 1967). In Tanzania, the cultivation of marketable crops and land sales were common among the Arusha, Sumbaa, Hayya, and Chagga; the Sumbaa did not even require the consent of kin to the sale (Hailey, 1957, p. 782). Sales among the Sukuma in Tanzania began before the German occupation in 1891, but were stopped by the Germans (Malcolm, 1953, p. 12). In Malawi, the Land Commission in 1921 did not accept evidence that in the Marimba and West Nyasa districts there were both land sales and individual titles to land.

Independence has not put a stop to land transactions. In Tanzania, Pitblado (1981) reports that in one village in the North Mkata Plain, some 16 per cent of land was acquired by purchase; in another, the figure was 36 per cent. In Lesotho, where land cannot be legally sold (and where urban and rural lands have equal value in the eyes of the law), Mosaase (1984) notes that as a result of land scarcity 'a clandestine land market had developed and the indiscriminate selling of arable land for residential and commercial sites has become uncontrollable' (p. 90). In Mali, land is inalienable in theory. In practice, though, sales of less fertile lands to stranger farmers take place, even though it is difficult to obtain data on such sales. In Niger, sales of land are increasing, although indigenous rules say that land cannot be sold (University of Arizona, 1979). Ega's survey (1979) of three villages in Zaria, Nigeria, showed that 18 per cent of those surveyed had obtained their lands by purchase. He notes that 'there is a significant prevalence of illegal

commercial transactions in land and considerable mobility of land. In particular, purchase has become an important means of acquiring land' (p. 291). Of the Volta region of Ghana, Nkunya (1974) says that 'outright purchase . . . is becoming more and more common these days' (p. 4). Even in areas where sales are recognised by law, cumbersome legal procedures mean that many transfers are not registered and the official record does not reflect reality.

### *Access to credit with land as collateral*

The widespread prohibition against mortgaging land does not stop land being used as collateral in informal transactions. The prohibition serves only to make the occupant more dependent on state largess or on the informal market where interest rates are much higher (Watts, 1983). As Woodman (1967) demonstrates, lending practices increasingly take on the colour of formal legal requirements (with witnesses to transactions and documents).

### *The potential for increased inequality*

Increased inequality, the fear of which is often cited as a reason for prohibiting land sales and mortgaging, could in fact be an important consequence of the prohibition. Inequality also arises where governments recognize sales only by people from a particular group (chiefs, for instance) or where transactions in land involve complex procedures with uncertain results. During the colonial period, the insistence that chiefs were trustees of the land encouraged them to use their office to their own advantage (Fallers, 1955; Glazier, 1985; Goody, 1980).

Inequality is a consequence of prohibition for two other reasons. First, those who know the law (usually the wealthier and better-off) can use the system to their own advantage. Second, they are protected in land transactions because their status ensures that no action would be taken to dispossess them (see Bates, 1981, pp. 53–61). And in Ghana, 'many chiefs have benefited as a result of their control over land . . . to acquire bank notes, tractors.... Where benefits did accrue to chiefs, they were not redistributed within the chiefs' communities, with the result that the chiefs have become economically quite distinct from their subjects. At the same time, the institution of chiefs has been reinforced at a regional level by this new wealth of its officeholders (Shepherd, 1981, p. 177; see also Goody, 1980). Similar consequences have occurred in Botswana (Lawry, 1983; Peters 1983).

In their studies of land adjudication in Kenya, in the Embu District and among the Mbeere, Haugerund (1983), Brokensha and Riley (1980), Glazier (1985) and Njeru (1978) found that it was the influential people (including the chief) and the civil servants who used their knowledge of the law to acquire land, at the expense of the poorer and less knowledgeable. Glazier (1985) shows that the chiefs take advantage of laws requiring proofs of genealogy and residence to expand the numbers of their kin, so that more land would be granted to them. Burial sites are also scattered as evidence of prior occupation (Glazier, 1984; West 1972). In Nigeria, occupancy certificates under the Land Use Decree of 1978 were granted according to occupation and income. Koehn (1983) concludes that 'most appli-

cants for statutory rights of occupancy are prominent businessmen and senior civil servants' (p. 476).

The advantages of knowledge (and literacy) tend to favour the urban dweller. In Senegal, for example, under the Law on National Domain of 1964, residents were allowed to establish title and request registration within six months from the date of passage of the law. However, 'rural people, including those of the river basin, were generally unaware of this, and were not notified to present claims. Then all non-deeded lands became part of the National Domain' (USAID-RBDO 1982, p. 115). Women, too, have often been excluded from owning land: examples include the Tonga of Zambia (Colson, 1963; Spring, 1985), Nigeria (Spiro, 1985), Kenya (Pala, 1978), and Senegal (Gladwin *et al.*, 1987). And nomadic farmers have been affected – not only during the colonial era, when administrations regarded 'unoccupied' lands as being land without title (Baker, 1975). After independence, the nationalization of unregistered land has resulted in nomads losing their traditional routes. In Mauritania, Niger, Senegal and Sudan, they have only a licence (which can be withdrawn) to pass over transhuman routes, but no easement (which is both recognized in law and enforceable).

### *Insecurity and uncertainty*

Uncertainty is an obvious consequence of any transfer that is formally illegal, both because it is not clear that the seller has the right to transfer land and because the buyer fears government action to cancel the transaction. In some areas the insecurity arises 'not so much in fear of interference (with possession) by members of (the cultivator's) own community but from the apprehension that the government may, for its own purposes – such as the need of land for public use or for alienation to colonists – disturb him in the possession of his holding' (Hailey, 1957, p. 807). Thus, in Côte d'Ivoire, it is fear of expropriation by government that makes a farmer plant more coffee and cocoa, so widely spaced that the returns are 'inefficient' and ten hectares produce what could have been obtained from three hectares of closely spaced trees.

Another barrier to greater productivity is the application of indigenous rules on tenure. They provide for an individual household to be granted as much land as it needs for subsistence; this rule prevails, for instance, in Lesotho (Hamnet, 1975). Families are naturally inhibited in producing a surplus. If they do, they face additional pressure to redistribute the surplus – pressure that is 'usually sufficiently great to inhibit both general economic development and rigid patterns of stratification' (Cheater, 1984, p. xiv; see also Richards *et al.*, 1973).

The rule that a person in possession of property has only a right of occupation, not genuine ownership, is not conducive to productivity. This is largely a matter of inference, for there are no detailed studies of the link. However, the final report of the Tanzania National Agricultural Policy Task Force (1982) notes that the present system of land ownership by villages (with individual residents having mere rights of use) has the following constraints:

- reluctance to invest in the cultivated area for long-term improvement of the land;
- unwillingness to expand crop acreage for fear of being identified as a person opposed to collective farming;
- the issuing of short-term leases discourages long-term investments, leading to mining of the land;
- scaring off potential investors in agriculture due to uncertainty over ownership of land (pp. 27–8).

### *Titles to land and security*

The term 'security' is often misunderstood in the literature. When it refers to the ability to use land for a certain period and for a defined purpose without disturbance, security of possession is usually ensured under indigenous systems.

At times, even an officially granted occupation certificate can be valuable property. Seidman (1975) notes that possession of such a certificate in Nigeria confers private economic advantages: 'major financial institutions treat these certificates as a necessary collateral against various types of loans, including bank mortgages, and commercial agricultural credit. Therefore, holders of statutory titles can gain access to domestic money markets and secure loans at favourable terms which can be utilized for private capital accumulation and 'investment' ensured under indigenous systems. It is clear that in most Sub-Saharan African societies, land under cultivation by an allottee cannot be taken away. Eckert (1980) notes that in Lesotho the average period of landholding is eighteen years which, adds Doggett (1980) is 'more than that prevailing in the United States' (p. 20).

The situation, however, is entirely different when security is defined as the ability of an occupant to undertake land transactions that would best suit his interests – for example, to offer land as collateral for a loan. Transactions in the informal market become problematic when there is a question of selling the property (Haugerud, 1983) or borrowing from commercial lenders (Abasiokong, 1981; Haswell, 1975).

While the evidence seems generally to favour the conclusion that titled land opens up the commercial money market, it is scanty on the question of whether titling in Africa leads to higher productivity. Studies from other parts of the world, however, suggest that this is indeed what happens. In Costa Rica, Salas *et al.* (1970) found positive correlations between the degree of ownership security and farm investment per unit of land. Data from three states in Brazil in 1978 show that capital per hectare is substantially higher on titled farms than on undocumented or encroached land (Villamizar, 1984). The analysis was done for different farm sizes, and within most groups the link applied.

There are few quantitative studies of the economic effect of secure ownership in Sub-Saharan Africa. Most are based on preconceived notions of the necessity for land titling. For example, Ike (1977) took data from western Nigeria and tested the hypothesis that a freehold system was inherently superior to communal land tenure. He concluded that his hypothesis was proved by the higher average incomes of freeholders. But he provided no information on how he selected the

sample, nor any data indicating that the study was controlled for differential access to inputs and extension, quality of land and access to labour. Perhaps only two studies examine the consequences of granting individual title in a thorough and revealing way: Richards *et al.* (1973) in Uganda, and Cheater (1984) in Zimbabwe.

Richards *et al.* (1973) tried to establish which factors tended to induce a switch from subsistence cultivation to commercial agriculture. The area for study was Buganda in Uganda, where in 1900 the British had granted absolute title to land to the king, his kinsfolk, and other senior officials (mailo tenure, as it came to be known). Richards and others point out that Buganda had several advantages not enjoyed by many other areas: a developed transport system, immigrant labour (especially in the first four decades of this century) and towns in the midst of the farmland providing a ready demand for food. Fifty-eight per cent of the farmers in the sample had bought their land.

Cheater (1984) studied African Purchase farmers in Msengezi, west of the Zimbabwean capital of Harare. African Purchase farmers were those who, after the Carter Commission's recommendations in 1925, were allowed to buy land in areas designated as African Purchase areas. Although it was suggested that these farmers should ultimately obtain freehold title, there were initially many restrictions (for example, a prohibition against subletting and a restriction of rights of residence to family members and hired labour). Furthermore, all transfers 'were to be subject to government approval, whether or not title had been granted' (p. 6). Some 69 per cent of the sample farmers were monogamous. Although the farmers were not entirely free of social obligations to their kin – they let some kinsfolk live with them – it was clearly understood that this residence was only temporary (except in the case of a mother or eldest son). In fact, the relatives were often evicted, unlike in the communal lands where such residents were permanent fixtures.

## CONCLUSION

In poor, but uncrowded rural societies, land rights are typically defined for groups rather than individuals. Within the groups, individual or family rights rest on elaborate traditions and customs. Such customs enforce group control over the use and disposition of land. Furthermore, to minimize social friction and ensure the group's survival, the entitlement of individuals to specific tracts of land is transitory. As a result, some efficiency is lost, since people lack incentives to improve the land. But these losses are small as long as land is abundant and farming methods primitive.

The evolution of permanent and enforceable land rights is closely related to increases in population density, advances in farming technology and the emergence of agricultural markets. As land becomes scarce, societies can no longer rely on long fallow periods to maintain land fertility. They must adopt fertility-restoring technologies, which require investment of capital and effort – and thus also require incentives for farmers to change their practices. One such incentive is the right to cultivate land continuously and to bequeath or sell it. One nearly universal development is a unified system of land documentation and registra-

tion, giving a land owner proof of ownership. If the registration system is effective and if the state can protect the owner from encroachments or substantiated challenges to his land, then the system will indeed enhance security of ownership.

Land rights link up with another feature of agricultural development, the emergence of rural credit markets. Credit transactions often require some form of collateral. Land is an attractive collateral, provided that the owner-borrower can assure the lender that the land can be transferred. Again, such an assurance is greatly enhanced by an effective system of land registration.

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## DISCUSSION OPENING – GEORGE BENNEH

I would like first to congratulate Dr. Noronha for being able to cover most of the salient features of the land tenure systems in Sub-Saharan Africa in a few pages. It must have been a difficult assignment for him, given the complexity and the dynamic nature of the tenure situation in that area. Although literature on the subject is growing, as evidenced by the author's own excellent review on the subject in 1985, unfortunately, as he points out in this paper, there is no rigorous quantitative research that would help to assess the costs and benefits of a policy change. Furthermore, results of field research on land tenure in Africa suggest that, on the whole, legislation on land tenure often lags behind actual practice in the field, since in a dynamic agrarian situation new tenure arrangements are evolved in response to factors of change such as population pressure, migration of farmers, cultivation of new crops and markets forces. In this respect I find Dr. Noronha's paper rather inadequate on the dynamics of change in the informal sector. A vast majority of African small-scale farmers operate independently of national land laws. The results of a FAO commissioned eight country study (Ghana, Niger, Togo, Kenya, Lesotho, Madagascar, Cameroon, and Burkina Faso) indicated two important trends in the land tenure situation in Sub-Saharan Africa which are not discussed in this paper. These are:

- 1 That the most dynamic area in Africa tenure is the growing reliance of farmers on forms of indirect tenures such as share cropping. For most regions this is just about the only avenue to land if one leaves one's natal community as a migrant to seek land elsewhere.
- 2 Customary rules of inheritance provide an important access to land and this has had the consequent effect of fragmentation of holdings.

The author appears to oversimplify the position of chiefs with regard to land ownership and administration in one region. There is a need to draw a distinction between a chief's position in a centralized traditional state and that of a non-centralized or acephalous society. In the former states, such as Ashanti, in

Ghana: Mossi of Burkina Faso: Benin of Nigeria, where processes of state formation were more advanced before colonization, a separation developed between communal and state interests in land. On the other hand in the non-centralized communities land was not subject to political control but to the local social control. The latter was the predominant form in Sub-Saharan Africa.

The paper also does not consider land tenure problems related to the pastoral utilization of land and the use of land by sedentary farmers in the ecological zones where animal production is predominant, such as the Sahel region of West Africa.

In spite of these obvious omissions, which may be explained by constraints imposed by the length of the paper, the paper addresses some of the most important issues on the subject. I would like to focus on a few of these for discussion:

- (a) Does the communal tenure system in all its manifestations constitute a barrier to private investment and agricultural expansion?
- (b) The question of the relationship between customary tenure, security of tenure and access to credit.
- (c) The question of land tenure reform. Communal tenure as a barrier to private investment and agricultural expansion.

There is overwhelming evidence to suggest that communal tenure need not be a barrier to private investment in the agricultural sector. Historically capitalist farming has occurred in many parts of Africa despite the existence of the so-called communal land tenure. On the basis of studies in six African countries Uchendu argues that the expansion of commercial production and market orientations in areas initially marked by various types of corporate or communal land tenure leads to simplification of traditional tenure arrangements and the rise of individualized rights in land. The impact of cocoa cultivation on customary tenure in Ghana is well documented. The same is true for coffee growers of Ivory Coast, and oil palm tree and Kola growers in Nigeria. All this was not determined by any clear land policy on the part of the colonial government. It was rather a spontaneous response by cultivators and landowners under changed circumstances. It would therefore seem that, contrary to conventional wisdom, capitalist small holder farming is not contingent on individual land title but rather on use rights entrenched by custom. This would put primacy on use over property rights in rural Africa.

#### *Customary tenure, security of title and access to credit*

There is no clear evidence yet that African cultivators have suffered from insecurity of tenure or eviction from land under cultivation. The World Bank is sponsoring a three-country multidisciplinary study to illicit information on the relationship between security of tenure, access to credit and productivity in Ghana, Rwanda and Kenya. I am the co-ordinator for the Ghana case study. While the results of the studies are awaited, it may be said that a member of a land holding group enjoys security of tenure since he holds in perpetuity any land he claims for himself. The system does not deny him the incentive he needs to

improve his land because it is based on a principle which guarantees him the right to enjoy the fruits of his labour and pass on any improvements he makes to his heirs. It is in respect of indirect tenures, such as share cropping, where sometimes there are grey areas of uncertainty with regard to rights enjoyed by tenants.

The argument that security of tenure will enable the farmer to use his plot of land as collateral has been made on the assumption that there is a vigorous land market in the region. This is not the case in many parts of rural Africa. Financial institutions and private money lenders have long accepted cocoa, coffee or oil palm fields or plots of land in large urban centres as collateral for loans because they could always dispose of them in an open market. As the experience of the Nyeri District of Kenya where farmers possess freehold title shows, the original hope that the commercial banks would become an even larger source of credit to African farmers, has not by and large been borne out. This has been confirmed by a recent study by Okoth-Ogendo who observes that the expected broad spectrum effect of tenure reform especially in the area of credit, did not materialize. Far from generating credit for agriculture, the reforms led mainly to the impoverishment of this sector and the capitalisation at its expense of industry and other service sectors.

More promising solutions to the problems of agricultural credit faced by small scale farmers include the organization of farmers' associations, the establishment of rural banks and the use of supervised credit systems under which the farmers could receive credit in the form of inputs. Title registration would, however, solve problems of land boundary disputes in Africa.

The paper classifies three approaches to land tenure reform. But perhaps, a slightly more interesting question is, what evidence do we have that land tenure reform has led to the desired objectives in the agricultural sector in the continent?

Let me end my brief comments on the note struck by Noronha in his introduction on the need for field research. As one observer remarked, there is more than one drought in Africa. Africa's other drought is lack of reliable data. We have yet to understand adequately the diversity of spontaneous as well as directed changes in land tenure and land use practices in Africa. This calls for multidisciplinary field research on the subject. The temptation to substitute economic and legal logic for first hand experience must be resisted. It is this tendency which accounts for some of the past failures of agricultural projects in Africa. Once again I do congratulate Dr. Noronha for raising some pertinent issues on the subject for discussion.

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