# *LTC Paper*

## Security of Tenure and Land Registration in Africa:

## Literature Review and Synthesis

by


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with

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## PREFACE

In 1984, the Land Tenure Center embarked on a project to evaluate the experiences with land registration and tenure reform in Africa. Had African states been able, through tenure reform and land registration, to provide greater security of tenure than was available through customary tenure systems? This literature review is one product of that four-year project on security of tenure and land registration, carried out under LTC's Cooperative Agreement (ACCESS I) with USAID's Bureau of Science and Technology. It was undertaken by Dr. Carol Dickerman with the assistance of several LTC staff and research assistants. The literature proved far more extensive than anticipated. While most of these annotations were completed in the first year of the project, additional titles have been added as the project moved into its field-research phase in Senegal, Uganda, Kenya, and Somalia. Simultaneously, a critical examination of the economic literature on these issues, by Professor Richard Barrows and Dr. Michael Roth, is being issued. These publications will be followed later this year by the four country reports and a final report.

Over four hundred items are annotated here, organized by country and indexed by subject matter and author. In spite of the number, a large part of the African literature is not included; this review focuses on the literature about tenure reform, and the annotations do not include the ethnographic and other analyses of customary land tenure systems. Each country section is not simply a collection of disconnected annotations but relates the items to one another, indicating how our current state of knowledge has developed. Stu-dents of tenure reform in Africa have often in the past been overwhelmed by the sheer extent of the literature. This review and synthesis should vastly simplify their task. Dr. Dickerman's introduction examines the motives behind and impacts of tenure reform and land registration in Africa with a breadth of coverage which our earlier command of the literature had not allowed.

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John W. Bruce, Project Coordinator Security of Tenure/Land Registration

# INTRODUCTION

**by Carol Dickerman**

In recent years there has been renewed attention on the parts of international development agencies to land registration in Africa. Organizations such as the U.S. Agency for International Development (USAID) and the World Bank have become increasingly interested in the effects that registration of individual titles to rural land may have on agricultural development. Their interest in registration in many ways complements that of a number of countries in Africa which since independence have sought to formulate coherent national land-use policies. Governments in Uganda, Senegal, and Zambia, to name just a few, have been concerned to regulate landholding and monitor development within the country through the registration of rights to land. For both groups registration has been the means to establish a formal, written record of rights to land. The kinds of rights to land to be established by the process, however, have not been identical. Donor agencies have focused their attention on the creation of individual freehold title, emphasizing the heightened security of holding, marketability, and access to credit under such tenure. National governments, on the other hand, have been more concerned to see that land is used productively rather than merely accumulated for purposes of prestige or inheritance or as a hedge against inflation, and for this reason have tended to favor granting more circumscribed rights such as leaseholds or rights of occupancy.

This renewed concern with land registration has generated interest in earlier programs of registration in sub-Saharan Africa and their effects. USAID has funded a program of comparative research by the Land Tenure Center, University of Wisconsin-Madison, and affiliated local research institutions in Senegal, Somalia, Swaziland, and Uganda. This research is assessing the impact on production and other development of a variety of attempts by the nation-state to take over from traditional land-tenure systems the provision and protection of titles. This literature review and synthesis have been prepared as part of that effort. The World Bank's Economic Research Service has been pursuing a similar program of comparative research, funded in part by USAID, in Ghana, Rwanda, and Kenya. Preliminary results are now becoming available from both these efforts and will soon increase very substantially our knowledge, especially on a quantitative level, of tenure and development relationships in Africa.

The literature review which follows is an attempt to gather in one place data about the diverse efforts at land registration and to describe briefly for each country the various registration programs that have taken place (if any), why they were undertaken, and what subsequent studies of these programs have found. Among other things, it will be seen that the intended benefits, and beneficiaries, of

land registration have changed over the century or so since the first systems were put **in place. In** addition to these variations over time, there are also differences among Anglophone, Francophone, and Lusophone countries, differences that not only influenced the structure of registration systems established during the colonial era, but also continue to inform the kinds of registration systems adopted today.

**A Historical Perspective**

The earliest facilities for.the registration of land were established in West Africa in the second half of the nineteenth century. In Lagos (1883), Liberia (c. 1861), and Sierra Leone (1857?), provision was made for the registration of transactions in land. These three early registration systems were systems for the registration of deeds rather than titles, and thus what was recorded was the document evidencing the transaction of a particular piece of real property rather than ownership of the land itself. (Under a title registration system, registration clears and legally confirms the title acquired in a transaction or by inheritance; deeds registration has no such effect, though order of registration may determine which of two inconsistent deeds is enforced.) Deeds registration was, of course, the norm rather than the exception during the nineteenth century, but over the years, in Africa as elsewhere, it has presented various problems, especially when transactions have gone unregistered (as indeed has often been the case). Later attempts to modify the system of deeds registration in these three countries have focused on the need to convert to registration of title.

A second feature of these three registries, unusual in light of later colonial experience with registration, is that they were intended primarily for the recording of African rights to land. Al-most all land registration systems introduced in colonial Africa before 1950--Uganda is a notable exception--were primarily intended to secure European rights to land; in these three areas, in contrast, registered property was largely African-owned. This is not as anomalous **as** it might seem, however: Liberia, Sierra Leone, and Lagos all had significant nonindigenous African populations, foreigners whose rights to property were not governed by the customary tenure systems. There was thus a need to institute a formal system for the protection of rights to land held by these newcomers, and the result was the introduction of deed registration.

Some of the registration systems instituted in the following decades, though, did not follow this pattern of registration of deeds, but rather introduced the notion of registration of title, adapting a system first instituted by Robert Torrens in Australia in the mid-1800s. The Torrens system has clear advantages over deed registration, most notably in the creation of a land register which provides an authoritative record of landownership and thus facilitates the cheap and expeditious transfer of land without the need for professional legal assistance. Registration of title, to the extent that land was formally registered, soon became the norm in both Anglophone and Francophone colonial Africa.

That the English should apply to African colonies a model from Australia is not unexpected, but that the French should be as quick to introduce such a system, especially given that it has no metropolitan precedent, is rather surprising. Although none of the sources that we read for this literature review gives an explanation for the early introduction of the Torrens system in French Equatorial and French West Africa (A.E.F. and A.O.F.) as well as in the Belgian Congo, it is possible to speculate that French application of the Torrens system was a product of, on the one hand, experience with attempts to acquire land for settlers in Algeria in the 1830s and elsewhere in North Africa and, on the other, awareness of continental European land-registration systems (in a number of German states, Switzerland, Austria, and Hungary) which, like the Torrens system, were systems of title registration.

In Algeria, after a decade of various, rather unsuccessful efforts to make land available to settlers from France, in 1841, the administration put forth the principle that the state had the power to dispossess indigenous landowners from their land on grounds of "public interest" and then to allocate the expropriated lands to colons. Land adjudged to be vacant similarly became part of the state's domain and could then be ceded to European settlers. The 1841 legislation which asserted this principle accomplished two goals. First, it provided the state with a mechanism for acquiring land to attract European settlers, seen to be a necessary condition for the development of Algeria but a problem that had not been solved in the first decade of French occupation. And, second, by acting as intermediary in the transfer of land from indigenous landholders to settlers, the state was able to validate and guarantee the title, a situation *which* permitted settlers to secure loans and, at least in theory, provided the necessary conditions for the development of the land. By the time the French began to establish a formal protector-ate in Tunisia in the 1880s, the Algerian solution of title registration backed by the authority of the state would have already proven its value, and as a result a system closely modeled on Torrens was introduced in Tunisia. It was the Tunisian system that was then applied to French West and Equatorial Africa in the late 1890s and early 1900s.[1]

Until the 1950s, registration of land in most African colonies, whether Francophone or Anglophone, was limited largely to Europeans and done on a one-off, voluntary basis rather than as a compulsory and systematic program. Only a tiny fraction of the total land in sub-Saharan Africa was actually registered, and those parcels of land that were brought on to the registers were generally of one of two kinds: landholdings in urban areas or, in the rural areas, large

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1. For a history of French land policy in Algeria, see John Ruedy, Land Policy in Colonial Algeria; The Origins of the Rural Public Domain (Berkeley: University of California Press, 1967). Discussion of French colonial land laws is found in P. Dareste, Traite de Droit Coloniale, 2 vols. (Paris: n.p., 1932), in the chapter entitled "Propriete," in vol. 2.

plantation tracts or concessions held by European individuals and companies. In some colonies there were actual laws prohibiting Africans from owning and registering land in certain areas (for example, in A.E.F. prior to 1920, in the Belgian Congo and Ruanda-Urundi until the late 1950s, and in the settler colonies of Kenya and Southern Rhodesia), but in most cases it was a question of economics: few Africans were sufficiently well-off to afford either the cost of purchasing such land or the expense of registration.

There are, however, a few important exceptions to this picture: in Uganda, Madagascar, the Sudan, and what was then Southern Rhodesia. These exceptions not only serve as illustrations of the conditions under which it was considered appropriate to register African-held lands throughout most of the colonial period but also provide valuable evidence of the some of the effects of registration over long periods of time. In Uganda, for instance, registration was introduced in the Kingdom of Buganda as a result of the 1900 Buganda Agreement. It was largely motivated by the need to restore stability in a kingdom that had been bitterly divided by civil war and to shore up the position of the kabaka or king. The principal motivation was thus political rather than economic, and the agreement provided for the allocation of large tracts of land (up to 8 square miles in area and hence the name mailo land) to members of the royal family, nobles, and 1,000 chiefs and leading private citizens. In Madagascar, systematic registration of land in the central high-land area around Antananarivo was carried out beginning in 1929. In both cases, the land registered, though only a fraction of the total land areas of the colonies, was centrally located and considered to be of crucial importance in the administration and development of the colony.

The need to ensure political stability also contributed to the program of land registration carried out in the irrigated areas of land along the Nile in northern Sudan in the early years of the British occupation. Comprising only 1 percent of the land in Sudan, the areas registered were, nevertheless, the most valuable in the country, and the British authorities felt it necessary to emphasize that security had returned to the region after the chaos of the Mandist state. As in Uganda and Madagascar, the program of registration was compulsory and systematic--in contrast to the deed registers in Anglophone West Africa--and all land not occupied, and thus not registered, was declared state or crown land. Political considerations were obviously central to the program of registration, and most scholars have chosen to emphasize this line of reasoning, but at least one author has argued that one must also consider the economic benefits to the colonial administration, not the least of which was the subsequent establishment of commercial cotton production on land found to be unoccupied and thus the property of the crown.

In Southern Rhodesia as well, political considerations underlay the establishment beginning in 1930 of what were called Native Purchase Areas, rural areas where Africans might purchase registered freehold land. Creation of these areas was the result of a compromise whose principal goal was to assure Europeans exclusive access

to freehold agricultural land in the most productive areas of the country by providing separate locales outside the European areas where Africans might purchase land. But in contrast to Sudan, Uganda, and Madagascar, the land set aside for the Native Purchase Areas was hardly central and was, moreover, only marginally fertile and inadequately endowed with infrastructure such as roads and marketing facilities.

These four programs of systematic registration were unusual, and it was only in the years after World ,War II that colonial authorities, in East Africa in particular, began to interest themselves in registration of agricultural land as an instrument in the promotion of agricultural and industrial development. The perception held by many in the East African colonial administration that African society was disintegrating and that longstanding customs were changing provided the incentive for the consideration of new ideas and innovative solutions, while the Mau Mau crisis and subsequent declaration of the emergency in Kenya in 1952 introduced a note of urgency. The East Africa Royal Commission, appointed in 1953 to consider the social and economic problems confronting the region, offered a number of wide-ranging proposals for development, changes which it hoped would launch an agrarian and industrial revolution in Kenya, Uganda, and Tanganyika. With regard to agricultural development, the commission recommended that wide-scale programs of individualization and registration of title be carried out in selected areas (EA1).[2] Registration of individual title would, it believed, provide greater security to landholders, enhance the freedom to transfer land, and serve as the basis for a system of agricultural credit, all of which were crucial for a transition from subsistence to commercial production

These recommendations, strengthened by the proposals of the Swynnerton Plan (subtitled "A Plan to Intensify the Development of African Agriculture"), were put into effect in the mid-1950s in Kenya with the introduction of a broad program of land registration in the Kikuyu areas of central Kenya. Land consolidation to counter fragmentation of holdings had not been a part of earlier registration efforts in Africa but figured prominently in the early years of the Kenya program. The program was far from being merely economic in its goals, however. A central objective was the creation of a class of African freeholders, yeoman farmers who would have a stake in the system of property and the governments which sustained it. In the Kikuyu areas of Kenya, the Mau Mau crisis made the changes instituted very much a part of the system of rewards and punishments carried out by the administration in the emergency; political considerations were no more absent from this program of land registration than they had been from earlier ones. It is significant that in much of the literature the program is referred to as a land reform, an accurate description of the far-reaching goals it was hoped to achieve through consolidation and registration.

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2. Reference numbers are to citations in the literature review which follows.

Kenya, of course, is no longer under British rule, having become independent in 1963. Nevertheless, the economic arguments for the registration of land made by the East Africa Royal Commission remain influential. The registration program begun in the 1950s in Central Province, which initially was very unpopular, has won wide acceptance and continues, expanding into other areas of the country and broadening its scope to include group ranches held by the Masai. Kenya, in fact, has more registered land than any half-dozen countries in Africa, with over 6,000,000 hectares registered; the breadth and depth of published material on the effects of registration of land in Kenya are a reflection of this..

In the first two decades after independence, the Seychelles and Malawi followed the course recommended by the East Africa Royal Commission. They were exceptions to the general trend during this period, however. Elsewhere in the continent, most countries instead looked to other models of land tenure, preferring either to emphasize cooperative and state-administered forms of production or to monitor land use through development requirements and more restricted forms of title such as leaseholds and certificates of right. Nigeria, for example, since 1978 has elected to monitor land holdings and land use through the issuance of certificates of occupation and by limiting the amount of land any one individual may hold. In Senegal, national domain laws passed in 1964 and 1972 empower local councils to draw up registers of land which record land allocations from the state to individuals. Similarly, in Zambia and Uganda, legislation in the mid-1970s converts all freehold titles (including mailo in the case of Uganda) to long-term or indefinite leaseholds.

In these reforms, as with freehold registration, titles were individualized in the sense that the customary landholding community was cut from the picture leaving just the individual and the state. The movement away from freehold title after independence, therefore, should not be seen as a rejection of individualization of title by national governments in Africa, but rather as a desire to introduce other forms of tenure more appropriate for centrally managed economies, the implementation of which frequently requires registration. Conversion to leaseholds or the issuance of certificates of rights, for example, requires the maintenance of registers for recording landholdings and land rights, whether those rights are held by the individual or a group (such as a family or a commercial association), whether of customary origin or introduced by written legislation. Registration must be seen as a means of introducing tenure reform; for this reason the literature from Zambia, Uganda, Senegal, Ghana, and Nigeria, among other countries, provides valuable information about how the tool of registration can be used for tenure conversion to a range of rights.

The ends that registration has been intended to serve have changed over the years, and, at least in the rhetoric of registration, the economic goals of agricultural development have tended to predominate, almost but not entirely replacing objectives more strictly political--though of course the two cannot be separated altogether. Within individual countries these changes in the purposes of registration remain in evidence in different patterns of

registered titles, and few governments have sought to establish a single uniform system of land tenure throughout their countries. The section which follows describes the land registration systems in specific countries and is intended both to demonstrate how varied the picture is from one country to another and to provide a context for a broad overview of registration programs in Africa and their goals and results, both planned and unplanned.

## **The Variety of** Registration Programs

Kenya. Land registration has been more extensive in Kenya than in any other country in Africa, an ongoing project in the different regions of the country (and under different political regimes) over the past thirty years. The result is that over 6,000,000 hectares of land have been registered. General objectives of registration are to enhance tenure security, eliminate boundary disputes, and increase farmer incentives and ability to obtain credit and invest in agriculture. Land registration is also supposed to create conditions favorable to the emergence of a land market, which will permit land to pass into the hands of more efficient producers, the ultimate goal of which is increased agricultural productivity (K10).

There have been three major registration programs in Kenya: a program begun in the 1950s in the Kikuyu areas during the Mau Mau Emergency and later extended into other areas of the country (K1-K9); a second initiated at independence in the [White] Highlands, an important component of which focused on the subdivision and re-settlement of a number of the large, formerly European-held farms (K36); and a third project to register group title to ranches for the Masai (K37-K44). Registration in the Kikuyu areas involved both consolidation and adjudication of holdings, and its goals were both political and economic, intended to deal with serious problems of fragmentation of holdings, increased disputes, and inadequate levels of agricultural production in the reserve areas while at the same time fostering the development of a class of African smallholder farmers whose economic and political interests would lie in support for the government.

Subsequent expansion of the program into other areas of the country, where fragmentation is not as great a problem, has lessened the need for consolidation of holdings; and although the political imperatives behind the scheme in its first years are less urgent, the government of independent Kenya remains committed to agricultural production based on a system of individual freehold tenure (K10). Recent actions by the government, however, in particular the 1981 Magistrate's Jurisdiction (Amendment) Act, which confers on panels of elders jurisdiction over certain kinds of land disputes, appear to be a retreat from the principles of formal statutory property law (K46-K48).

**Uganda.** The system of land tenure introduced in Buganda in the early part of the century is the oldest program of systematic registration of individual freehold in sub-Saharan Africa as well as one

of the most extensive, covering almost 9,000 square miles of the most productive agricultural land in the central area of the country. As mentioned earlier, political considerations were paramount in the introduction of the system of **mailo** land tenure, but over the years the system has evolved in interesting and unforeseen ways. Undoubtedly the most important change is that the original, large allocations have been broken into smaller units as sales and successions have occurred, and the original 4,000 owners have increased exponentially (Ul, U2, U5). This was for many years the most productive agricultural area of the country (until the recent disruptions of civil war) as well as the site of the most active land market. Opinion is divided over the extent to which this is due to the mailo system itself or to a fortunate combination of fertile soils and central location (U16-U18).

A second program of freehold registration was carried out in the southwest area of the country in Kigezi District in the late 1950s and into the 1960s, where fragmentation was extreme and numbers of land disputes were increasing (U21-U23). The registration more closely resembled that done in the Kikuyu areas of Kenya, requiring in some areas both consolidation and adjudication of smallholders' lands, than what had been done in Buganda earlier in the century. In contrast to the Kenyan program, though, the country was not in turmoil with the political problems that the Kenyan colonial administration was confronting. The Kigezi project was very consciously an application of the economic recommendations of the East Africa Royal Commission. In some areas reception of the project was enthusiastic, while in others suspicion and hostility forced its suspension (U24).

In addition to the freehold and mailo land titles, there has also been in operation for a number of years in Uganda a system for obtaining leasehold titles on public (formerly crown) land. Under this system, an individual may apply for and obtain leasehold title to land which he already occupies under customary tenure or which is vacant. Increased numbers of leasehold titles have been granted in recent years, including a number for commercial ranches in the Ankole area of the country (U27). A provisional lease is granted initially and can be converted to a full lease for fifty years only upon fulfillment of specific development conditions.

The 1976 Land Reform Decree, enacted during Idi Amin's regime and still in effect, is an attempt to bring the areas of freehold registration into line with the leasehold system in the rest of the country and requires the conversion of all freehold and mailo titles to 99-year leaseholds. Although there is some disagreement as to Amin's purpose in announcing the decree, it seems clear that, among other things, it is intended to ensure that freehold and, especially, **mailo** land owners develop their holdings rather than leave the land idle. The law has not been applied, however, and although its provisions state that freehold and mailo land are henceforth to be administered as public land, transactions continue to occur and be registered without regard to the law. At the present time, the Government of Uganda is giving careful consideration to whether or not the decree should be implemented and what, if any, changes need to be made in the law as it now reads (U32).

**Sudan.** The Sudan has been a laboratory of tenure experimentation, much of it unsuccessful. This tenure experimentation has occurred in three distinct land-use niches: the irrigated smallholdings along the Nile, the large irrigated cotton-production enterprises based on tenancies on state land, and the mechanized rain-fed sorghum production in the central plains, also based on tenancies on state land.

Individual tenure has long been established in irrigated smallholdings along the Nile in northern Sudan, from the reception of Islamic law beginning in the thirteenth century (SU1, SU2). At the very beginning of the Anglo-Egyptian Condominium (1899), the British initiated a program of "land settlements" for this area, the first systematic and compulsory demarcation and adjudication of landholdings in sub-Saharan Africa. Title registration on the Torrens model but using English "general boundaries" was implemented (SU5). The British appear to have been motivated by a desire to strengthen political stability by confirming land titles disrupted during the Mandist period (SU1, SU2), to identify large areas of land available for large-scale cotton production (SU10),[3] and to establish a basis for taxation (SU7). By 1903, some 30,000 plots had been surveyed and registered.

Leasehold registration has been used extensively in the Sudan, first (1913) in the context of large-scale irrigated cotton production. The Sudan Gezira Scheme set a high water mark for scrupulousness in colonial land acquisition in Africa. The land rights were formally adjudicated, registered, and acquired with compensation before the irrigation project began. Some local leaders seem to have profited by treating as personally owned the land which they administered for their communities (SU10). The tenure offered to cultivators in the vast government scheme was an annual tenancy, with land shifted among tenants in a rotation pattern and husbandry of the compulsory cotton crop tightly controlled. The tenancies could not be sold or leased, but widespread cultivation by "agents" of the owners developed. While the scheme was very successful in its first decades, there has apparently been a collapse of incentives due to overmanagement and a command cultivation system. Reforms, including tenure reform, have been discussed for some years. Aside from an end to shifting of parcels among tenants, the tenure arrangements remain substantially as they were (SU11).

Finally, leasehold tenure has been introduced as the tenure regime for mechanized farming in rain-fed agriculture. Experiments in sorghum cultivation in the east-central Sudan in the 1950s led to major World Bank loans for expansion in 1968 and 1971 (SU12). The central plains were among the lands which became government owned in 1970, when all lands not registered were deemed by the Unregistered

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3. A fuller exploration of this motive has recently become available. See Chapter 1 of Susan Lee Grabler, "From Concessionaire to Shaykh: The Shaping of Colonial Economic Policy in Sudan, 1898-1930," Ph.D. dissertation (history), University of Wisconsin-Madison, 1986.

Land Act to belong to the government. By 1986, the Mechanized Farming Corporation (MFC) had 3.6 million feddans out on leasehold in farms of 1,000 to 1,500 feddans, almost entirely in sorghum and sesame production. The system now covers substantial areas in west-central as well as east-central Sudan. Leaseholders are largely from national and provincial governments and commercial elites. Traditional users have lost land. While an attempt has been made in some locales to accommodate local farmers within the new scheme of things by providing them with opportunities for mechanized cultivation through government tractor pools, no similar effort has been made for pastoralists (SU12, SU13).

Leases are for fifteen years and specify required rotation, farming practices, and construction of a windbreak around the farm. But these requirements are usually ignored. Over the past decade, it has become clear that the mechanized farmers have been mining the soil and causing serious environmental degradation. When after seven or eight years the fertility begins to decline, they abandon the leaseholds and initiate unauthorized cultivation elsewhere. A pattern of uncontrolled mechanized shifting cultivation has developed. In the eastern Sudan, 10-15 percent of the land originally bought under mechanized cultivation has been abandoned. Desertification has begun in these areas (SU13).

The Sudan's experience with planned tenure change sounds several cautionary notes. In freehold titling and registration, up-to-date maintenance of the registers is highly problematic given the failure of many proprietors to register transfers. At high person/land ratios, inheritance systems may result in undivided co-ownership among heirs, and this will undermine the potential of a titling and registration system to facilitate land transfers. In the context of large irrigated schemes on state land, overmanagement and command cultivation enforced through threat of loss of annual leaseholds undermine incentives and lead to declining yields. In the rain-fed central plains, use of leasehold tenure to create land access for expanded commercial production through mechanized cultivation was a short-term production success. But it brought an end to sustainable patterns of land use by local people, replacing them with a mechanized shifting cultivation which has degraded the land and helped initiate desertification in some regions.

**Senegal.** Land registration based on the Torrens system was introduced in Senegal (as elsewhere in French West Africa) during the early years of the colonial period. Registration of land held by individuals subject to French civil law or obtained as a concession from the state was obligatory; for individuals still subject to customary law, registration of land was optional; but once registered, it was henceforth subject to French civil law procedure in all matters except inheritance. And after the initial registration had occurred, all subsequent transactions with regard to that piece of land had to be recorded. Registration was thus available to Europeans and Africans alike, but in practice most of the titled land was held by Europeans and located in the urban areas, principally Dakar and Saint Louis. Some rural land held by Africans was

registered, mainly in the Kaolack area of the Peanut Basin, where land was both very productive and the subject of increasing numbers of disputes.

Enactment of the **1964 Loi relative au domaine national and** further legislation in 1972 have meant the end of new registration as understood under the French legal system (S1). Instead, all land not in the public domain nor previously registered becomes national domain and is the property of the state. This land is to be classified as **zones urbaines, zones classées, zones de** terroir, and **zones pionnières** and its development carefully monitored. Rural councils are to be appointed to replace traditional authorities with responsibility for land allocation and supervision of use and are empowered to draw up registries of land **(livrets fonciers)** in which occupation rights will be recorded. Application of the laws has been gradual on a region-by-region basis, first in the Cap Vert area around Dakar, then in the Peanut Basin, and by 1980 in the Casamance and Fleuve regions as well (S3-S5, S8-S10). So far, however, introduction of the **livrets fonciers** has been the exception rather than the rule for most of the country.

**Somalia.** The situation with regard to land registration in Somalia is both complicated and confused, the result in part of a divided colonial experience (with both Italian and British administrations) as well as of a lack of consistent application of policy by the national government (SO1). A shortage of primary and secondary documents discussing land tenure makes the situation more problematic yet.

In the southern area of the country, subject to Italian colonial rule, land registration was introduced with a view to fostering colonization; in the rural areas it was principally the well-irrigated (and hence potentially productive) land along the Shebelli River that was registered and held by European colonists. One estimate (SO1) is that about 10 percent of the land in present-day Somalia has been registered, though this must be considered only a very rough figure since government records are rather unreliable.

In the years since independence, government policy has fluctuated, with an early emphasis on cooperative production now giving way to encouragement of more individual forms of production and tenure. Despite this important shift, a common goal of both policies has been to substitute the central power of the state, over land as other matters, for local clan authorities. The present land tenure system is based on Law no. 73 of 1975 (SO2), which declares that all land is the property of the state and permits individuals and families to register only one piece of land. The titles they receive are in the form of long-term (fifty-year), renewable leases; in return, leaseholders must develop the land within two years or risk forfeiting it. Transferability of the land is heavily restricted: it cannot be sold, rented, or sublet. The law has not been implemented to any systematic degree, however, and this has meant that in reality the land tenure system is neither as centralized nor as restrictive as the law provides. Interest in the potential of irrigated agriculture along the Jubba and Shebelli rivers on the part of

both international donor agencies and the national government has recently renewed concern over the land tenure system and the need for tenure security (SO4).

**Malawi.** British colonial law in Malawi allowed for deeds registration of land, a policy benefiting Europeans owning land in urban areas and large agricultural plantations and estates. Since independence Malawi has followed a somewhat unusual course in sub-Saharan Africa with regard to land registration, electing to institute a system of private, individual title (both freehold and lease-hold) rather than to declare,all land state-owned. In 1967, the colonial laws were superseded by a series of enactments which, among other things, provided for registration of title and the conversion of customary tenure to private individual tenure. Central to this new legislation was a perceived need for a tenure system that would encourage more efficient methods of agricultural production and provide land titles which could be used to obtain credit. Expectations of the changes that the laws would introduce ran high at the time, and President Banda predicted that they would revolutionize agriculture and make Malawi a wealthy country.

The legislation for conversion of customary tenure to individual freehold has been applied in only a limited fashion and apparently has not met with a high level of acceptance from peasant farmers (MW5, MW7, MW8). In the Lilongwe area of central Malawi, protest against the provisions of the law and its rather disorderly application have been such as to result in its being transformed to alter almost completely its original intent. What was to have been individual title has now become family title, with family units being constituted in often idiosyncratic ways. Moreover, demarcation and allocation have given rise to a number of disputes, and local authorities have been reluctant to reconsider and overturn the original rulings. One author (MW7), in fact, has suggested that it would have been better to defer application of the legislation rather than attempt to enforce its provisions prematurely.

Ivory Coast. Like Senegal, Ivory Coast was part of French West Africa during the colonial period and thus subject to the same laws regarding land registration. Laws enacted early in the century defined as state domain all land that was vacant and "sans maitre." This land the state in turn could sell or grant to individuals. The legislation also allowed for the registration of these and other holdings, in both urban and rural areas, with the result that it was largely French-held land that was brought onto the register. Pro-tests in the 1930s that some of the best agricultural land was being permanently alienatea to foreigners led to the state's granting twenty-five year, renewable leases rather than full ownership.

It is this system of land registration inherited from the colonial administration, supplemented by several later enactments, that remains in effect in Ivory Coast today. Although soon after independence a high level commission was appointed to prepare a uniform land code for the entire country, the code it drew up has never been promulgated (IC4). Land registration remains an expensive and

time-consuming process, and only a small fraction of rural land, estimated at between 1 and 5 percent of the total area of the country, has actually been registered. In recent years, increasing scarcity of land and rising numbers of disputes have accelerated the pace of registration, especially in the southern forest areas. Ivory Coast is unusual, however, in having made few changes in the land registration system in effect at independence.

## The Range of Land Registration Situations: Some Generalizations

As the specific cases discussed above demonstrate, the range of situations **in** which land registration has been introduced varies widely, not only from country to country but also within individual countries. Moreover, the form that registration itself takes is not uniform. Registration may be either voluntary and sporadic or compulsory and systematic. In most of Anglophone West Africa during the colonial period, registration was voluntary, a decision that rested with the landowner. Those who elected to do so were most often foreigners, whose property rights were generally not secured by the customary system of land tenure. In contrast, the registration carried out in the Sudan, Uganda, Kenya, and Madagascar, to name the most important instances, was compulsory and systematic, carried out for all the land in a given area. Systematic registration is more labor-efficient and hence less expensive, but much of the cost of registration in such involuntary exercises must be borne by the government rather than the individual. Land records are also less likely to be kept up to date after compulsory registration has taken place because individual landholders, who did not make the decision themselves to register the land, may fail to understand the need to register subsequent transactions and successions. On the other hand, sporadic registration has often involved land-grabbing because surrounding rights holders are not having their land registered and may not be consulted.

Another distinction is between title and deed registration. A title register is an official, authoritative record of the rights in defined units of land. The register is "at all times the final authority and the State accepts responsibility for the validity of transactions, which are effected by making an entry in the register. . . . Dealing in land becomes, in theory at least, as quick, cheap and certain as dealing in goods; indeed registration of title offers a system of conveyancing which is complete in itself and, insofar as it dispenses with the need for investigation of title, it dispenses with the need for a skilled conveyancer."[4] The register is organized by parcel, **is** based on a registry map, and provides three kinds of basic information for each parcel: an unambiguous definition of the parcel of land, the name and address of the owner, and

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4. S. Rowton Simpson, Land Law and Registration (Cambridge: Cambridge University Press, 1976), p. 16.

the particulars of any interest held by someone other than the owner which affects the parcel. A deeds register, on the other hand, is a record of documents (sales, successions, mortgages, and the like) which affect interests in land. The register is kept according to the names of the parties or chronologically, and there may be separate registers for mortgages and successions.

In contrast to a title register, a deed register cannot prove title but is merely a record of transactions, the most recent of which takes priority. For this reason it does not provide an authoritative record of land rights as a title register does. It is, however, far easier and cheaper to institute and, provided transactions are consistently registered, can become increasingly reliable over time. The earliest land registries in sub-Saharan Africa were deeds registries, established in Sierra Leone, Liberia, and Nigeria, but they have not become widely used within the countries themselves nor have there been many imitators elsewhere. Since 1900, new land registries have more often been for titles rather than deeds, and in Nigeria in the 1950s, careful consideration was given to converting the existing deeds registers to a title register.

Nor is registration limited to the recording of individual freehold rights; the names of multiple owners can be entered on the register. In Nigeria, Ghana, and Sierra Leone, for example, land can be registered as family land, property held jointly by various members of an extended family, and the names of the various family members and their rights entered into the register. What has occurred is that an African customary form of landholding has been grafted onto a European system for the securing of those rights.

A similar hybrid has been introduced in Kenya, among other places, where a need to safeguard the rights of Masai to grazing land has led to the registration of group ranching rights. Registration of multiple owners can, of course, present problems when joint owners disagree as to the disposition of the land or when a few seek to manipulate the situation to their own benefit while excluding the other registered owners. Even determining which names should be entered on the register and if all possess equal rights can be a hazardous undertaking. Despite these problems, though, registration of multiple owners can be an important means of safeguarding property rights when land is held by more than one individual and in common property situations.

Another aspect of the flexibility of registration is the range of land rights that can be secured with it. In addition to freehold and leasehold titles, registers can be established to record subsidiary rights such as rights of occupancy, land interests that are more restricted than freehold, for example, but which nevertheless ascribe to the landholder specific rights over the land. Like registration of family and group rights to land, this is an adaptation of a European process to an African situation. Nigeria and Senegal both have introduced systems for the registration of occupation rights to land in recent years, and their reasons for doing so are similar. Both hope to introduce a certain uniformity of land rights for the entire country while permitting the national government to monitor and control the uses to which land is put, something that would not be

possible under freehold. Establishment of such a system is also part of the process of centralization with regard to not only economic development but also political authority in that customary leaders' discretionary powers in land allocation and other activities are severely curtailed.

## Land Registration: Objectives and Experiences

**Given such** a range of land registration systems throughout the continent, can any generalizations be made as to when it is appropriate to implement land registration? Ignoring for the moment the early programs of land registration in Uganda, Sudan, and Madagascar, undertaken in response to specific political situations, and concentrating instead on the more recent programs of land registration initiated since 1945, it is possible to see that there are common conditions to which systematic registration of land is seen as a suitable response. A number of experts (Al2, A17, A19, A20, EA1, EA2, K10, U2) have emphasized that for systematic registration to be a worthwhile enterprise, the population density and agricultural productivity of the targeted area must be sufficiently high to justify the cost of the project. In addition, a significant proportion of agricultural production should be market oriented.

The presence of negative factors as well often provides the incentive for registration. The two most commonly cited are large numbers of land disputes and fragmentation--although some experts have argued that the latter should be dealt with through market forces. When fragmentation is a problem, land registration must be preceaed by a program of consolidation, in which scattered holdings are exchanged between owners (A21, EA2, K10, U8). The new holdings that result are unified, with the benefit to the farmer of larger fields within a smaller radius of his residence. The land registration programs in Kikuyuland in Kenya and the pilot scheme in Kigezi District in Uganda both were accompanied by consolidation schemes. Increasing numbers of land disputes have also provided the impetus for land registration and are often seen as indications that the customary system of land tenure has broken down and is no longer able to resolve questions of ownership and boundaries (A20, A21, EA1, GH2, K1). Ironically, announcement of registration may touch off yet more disputes as individuals rush to make their claims known in anticipation of the adjudication process (K23, K33, MW7, S3, SO4).

Other motivations for undertaking registration involve the attainment of certain goals for which the customary system is, for one reason or another, seen as inappropriate. Perhaps the most commonly cited flaw of customary land tenure systems is that they do not provide adequate security of tenure for landholders (A4, Al2, A15, EA1, ET3). Recent studies have in fact shown that this is not necessarily so or may be only a temporary condition in the evolution of the customary system, but what is important for our purposes is that customary systems have often been perceived to be inherently lacking in security of tenure and registration of land as freehold or leasehold seen to be the means to remedy the problem. With the increased

security of tenure brought by registration, the reasoning goes, landowners will be more willing to make investments in the land, investments whose benefit they can be sure of reaping. Moreover, possession of a title will permit a farmer to turn to institutional lenders such as banks for loans that will be used for more expensive investments and innovations and result in increased agricultural production (A2, A8, A10, EA1, K10).

Another deficiency commonly attributed to customary land tenure systems is that specific kinds of transactions, most notably land sales, are often forbidden, and that as a result there is no land market. Here too the charge underrepresents the flexibility of the customary system, but once again registration is seen to be the remedy. With registration, it is argued, land can be freely exchanged by owners who no longer are constrained by customary rules and authorities (A2, A3, Al2, EA1, EA3). With the establishment of a market in land, with economics rather than kinship or ethnicity the guiding principle of access to land, it will ultimately be possible to concentrate holdings in the hands of the most efficient and innovative producers. Some, in fact, have seen this as more of a disadvantage than an advantage, fearing that creation of a land market will lead to displacement of poorer farmers and a rising incidence of landlessness (A14, EA2, U26).

Registration of land has often accompanied the initiation of certain kinds of special, often large-scale agricultural projects. Settlement and irrigation schemes, for example, may require resources and supervision that are beyond the capacity of local authorities--indeed, the beneficiaries may not be indigenous people at all. It is often rights of occupation or leaseholds that are registered in these circumstances rather than the less circumscribed freehold. Landholders are frequently subject to restrictions on transferability and regulations *governing* land use in these situations, and the registration may serve more for administrative purposes (for example, enforcement of regulations) than for increasing economic initiative. A similar desire to monitor land use and development has often lain behind registration of leasehold titles, a form of title that a number of countries have made increasing use of since independence, as well as rights of occupation. Although leaseholds do not of them-selves necessarily carry development conditions, the fact that such conditions have been written in where leaseholds have been introduced in Africa is *significant.* The interest in regulating development can be seen to have several purposes: to avoid permanently alienating large tracts of land (as often happened under colonial rule), to compel individuals to put their holdings to productive use, and to direct development in ways consistent with national objectives. Conditions that demand development of land are also intended to dampen land speculation, which has become increasingly evident in many African countries.

Registration programs, then, have been instituted to accomplish a wide variety of goals, from correcting conditions detrimental to

agricultural production to permitting greater opportunity for development, from increasing individual initiative to limiting it. What have been the results, both foreseen and unforeseen, of registration projects? What do the studies summarized in this literature review show? The quick answer is that results of registration projects have been disappointing, that **in** general they have either not achieved what had been predicted **or** achieved it to a lesser degree than expected **or,** in some cases, have had undesirable consequences.

**Land Markets and Security of Tenure.** Failure to fulfill expectations **is in** part due to erroneous assumptions about the workings of the customary land tenure system and the benefits of registration. The greater security of tenure that registration of title is thought to convey **is** to some extent a reaction to the notion that customary systems lack security, something that--at least as a generalization--has been increasingly called into question. Similarly, it has been shown that in many customary tenure systems, well-developed local markets in land rights already exist. Perhaps most disappointing are the expectations concerning credit. Registration has not proven to be the catalyst for securing credit for smallholders (A5, K35, K41, MW8, SO4, U23). Large holders remain relatively well positioned for access to credit, and their preferred status is often the product of other conditions beyond possession of a registered title, such as reliable income streams. It has become increasingly apparent that registration alone is not enough to induce banks and other such institutions to lend to smallholders; it is often necessary to establish other programs, including ones to provide short-term credit exclusively for smallholders, which most often make no use of col-lateral **in** land.

Land **Disputes.** With regard to land disputes, predictions have to some degree been fulfilled. In many areas their numbers have decreased as a result of registration, but this may be only a temporary phenomenon. There is some evidence from Kenya that the incidence of disputes may rise again as it becomes apparent that registration cannot satisfy conflicting expectations it has raised (K24, K26, K28, K33). And in at least one region (in Nyanza Province in Kenya), registration has also changed the nature of the disputes themselves. One author (K33) has noted that whereas before registration disputes were most often over boundaries, now ownership itself is at issue. A change of this kind **is** significant because these are often more intractable disputes than ones over boundaries and frequently are the product of two systems of land tenure and land rights coming squarely into confrontation with each other.

**Fragmentation.** Registration has also failed to eliminate problems of recurring fragmentation of holdings. Although consolidation radically reduced the number of separate fields a farmer was likely to have, the effect was only temporary. Research among the Embu in Kenya (K25) has found that no sooner had the program come to a conclusion than fragmentation was once again taking place despite legal restrictions against it, the reason being that the social and

agricultural causes of fragmentation remained. Farmers continued to need fields in separate micro-environments, not only for growing different crops but also as insurance against vicissitudes of the weather. Moreover, consolidation and registration did little to alter the cultural values about inheritance of land (K26, K29, K35, **K42,** MW8). The belief that land should be divided equally among all the sons in a family (or, even more critically for land fragmentation, among all the children) continued to be strongly held in many areas, and subdivision occurred despite restrictions against dividing parcels into smaller, subeconomic holdings. What has often happened when there are restrictions against subdivision--as there were in the Purchase Areas of Zimbabwe; for example--is that they continue to occur on an informal basis (ZI9). Prohibitions against subdivision or against the creation of subeconomically sized parcels do not necessarily end practices thought to deter agricultural development but instead mean that they will go unrecorded in the land registers.

Recording of Transactions. Nor have land transfers themselves been brought under the aegis of the new statutory system. In virtually every area in which land registration has been carried out, from Uganda in the early part to the century to the most recent and extensive programs in Kenya, land continues to change hands without the appropriate notations being made in the register (K22, K25, K26, K29, K30, K33, SU4, U2, U21). In some cases this is due to a desire to avoid the charges for making the necessary changes in the record or to get around the legal restrictions on minimal parcel size, but in other cases it may be due more to a lack of awareness. The result is that land registers soon become out of date as many transactions remain unrecorded. This is true for outright sales of land as well as for subdivisions (which are legal in most places) and successions. The formal record of landownership generated by the registration process has not been accepted as the necessary authority for verification of land rights, and other community structures continue to exercise a greater authority (S5). Kenya's recent legislation re-confirming the power of panels of elders to arbitrate in certain kinds of land disputes underscores and even strengthens the continued authority of traditional bodies (K46-K48).

**Rural Inequalities.** Perhaps the most severe criticism that has been made of registration of individual rights to land is that it has exacerbated rural inequalities (605, BO7, BO9, NI24-NI27, K33-K35, Rl, U23, U27, U31, among others). This is obviously true in areas where registration is voluntary rather than systematic and it is the landowner rather than the state who must pay the costs of registration. Only those who already have a high level of income can afford the necessary costs; these individuals then are, as a result of registration, positioned to take advantage of some of the benefits such as access to credit that may accrue from possession of a title. Individual title may also help to break down, or at least accelerate the demise of, the old systems of patron-client ties, in which the wealthier and more influential members of the community feel obligated to act or intercede on behalf of the less fortunate.

But rural inequalities are also widened by systematic programs of registration. In many instances under customary tenure systems, access to land may be derived through another individual such as a family head. Registration of individual freehold title, with its granting of almost complete discretionary power over the land to a particular individual, ignores these lesser rights and absolves the titleholder of the legal obligation to respect these customary rights (809, K26, K28, K30). Land can be transferred or mortgaged without the approval of those whose names do not appear on the title, individuals whose consent would be required under the customary system. The land market promoted by registration may also contribute to widening rural inequalities as Wealthier individuals buy up fragments of land made available for sale by those in need of cash, giving rise to a situation in which those with small holdings leave themselves with even less while the land-rich become yet richer. Some authors, in fact, see these problems as sufficiently severe to charge that registration, rather than creating greater security of tenure, actually decreases it (K26, K33, U31, ZA7).

Problems of widening rural inequalities are created even when it is group titles that are being registered rather than individual ones. Among the Masai in Kenya, establishment of group ranches has excluded those who, though outside the Masai group, had economic and social ties to the Masai that often came into play in times of disaster or during certain seasons of the year (K38, K39, K42). Similarly, in Botswana delineation of areas for large ranches under leasehold from the government has led to the eviction of groups such as hunter-gatherers whose customary land rights, because seasonal, have often been ignored (BO9, B011). In some instances individuals or groups who cannot substantiate their rights to land to the satisfaction of officials become squatters in the eyes of the law and thus easily turned off the land.

**Women's** Rights. Because it is almost always the male head of family who becomes the titleholder of record in registration programs for individual freehold, women's use rights, often secondary and derived through marriage or kinship, have frequently been ignored and gone unrecorded (K30-K33, K35). This can become a serious problem when men sell off land without consulting their wives, as they are able to do under freehold, or when divorces occur. In these situations, registration of individual freehold rights can lead to women's being deprived of access to land to feed themselves and their children. This problem may be most common and severe over the short and medium term. Registration in and of itself, of course, does not preclude women's purchasing and registering land in their own names; indeed, it sometimes allows them to own land in their own right for the first time (K24). Their weak economic position often does preclude their purchasing and registering land, a situation that a few are overcoming and that others may manage to get the better of over the long term.

Although some of the problems outlined above may be avoided by the substitution of leasehold or occupancy rights for freehold, many

of the difficulties, particularly with regard to inequalities, remain and are even enlarged. Where land speculation is actually dampened by provision of these kinds of titles, other disadvantages emerge. When access to leases or occupancy certificates is through the government, wealthy and influential individuals are more likely to be in a position to obtain the necessary documents than less favored men and women. High-placed officials in the civil service and military, for example, are well situated through their positions and their circle of contacts as well as their place of residence, often in the capital, to guide their applications successfully through the bureaucratic maze (NI26, NI27,•Rl, U27, U31). In addition, the fact that annual rents on leases are often low and seldom (never?) revised to reflect changes in land values during the period of the lease further privileges the fortunate. Other problems with leaseholds may emerge in those cases where permanent leases are contingent upon meeting specific development conditions; enforcement of such requirements is often difficult and may involve highly subjective judgments, decisions easily influenced by wealthy and powerful leaseholders.

Registration of use rights in settlement projects has not proven to be a panacea either. Often these rights are left ill-defined, and few have a clear understanding as to their transferability or even their heritability (SU13, SW3, SW5, SW6, U32). In such cases rights are a great deal less secure than under customary systems. These kinds of schemes have also suffered from failures in implementation: often the resources and services that have been planned to accompany the new projects have failed to be initiated and what has been provided has quickly deteriorated through lack of maintenance and awareness of what may be necessary (C3, U32). Disappointing results such as these are akin to problems with access to credit in other registration programs: registration and title are no guarantee of success but merely the necessary foundation. Without ancillary services and programs, the desired end will likely fail to materialize.

## The Question of Registration: Two Opposing **Views**

The record of registration programs to date has been disappointing, and there are no projects that have been singled out as entirely successful or have been held up as models for emulation. For many proponents of land registration, however, this can be seen to be the function of failures in execution rather than inherent flaws. J.C.D. Lawrance, for many years chief land tenure expert in Britain's Ministry of Overseas Development, has deeper and wider experience of land registration than any other individual today and has written extensively about programs all over the world. He remains an

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5. The complete list of writings of J.C.D. Lawrance and H.W.O. Okoth-Ogendo included in this literature review can be found in the Author Index at the end of the volume.

enthusiastic proponent of land registration. Although he would be the first to acknowledge that it should not be undertaken everywhere and in every situation, he argues that there are certain conditions under which land registration is an appropriate undertaking, and his arguments are worth repeating.

Writing about the registration projects in Kenya, Lawrance enumerates four criteria which, he believes, should serve to indicate whether or not registration ought to be undertaken. First, are there improvements in agricultural production to be gained as a result of registration? Lawrance notes that registration by itself is not sufficient to bring about an increase in production but must be accompanied by programs of agricultural extension and credit. Second, is there evidence of a genuine demand for registration among the people whose land will be affected? Without their cooperation, a registration program can easily become excessively expensive. Third, will greater security of tenure result? Lawrance acknowledges that for some, individuals who cannot establish their rights to land at the time of adjudication, registration will result in landlessness and strongly recommends that alternative accommodations be made available to these people. Otherwise, the social problems which are created outweigh any advantages to be derived from consolidation and registration. And finally, what are the costs of carrying out a program of registration? Land registration is inevitably an expensive process, but careful planning and management of staff and equipment can keep costs down.

What Lawrance is recommending, then, is that registration be undertaken selectively. That is, that the best approach is a gradualist one, in which selected districts are registered as conditions become favorable. That is not to say, however, that it should be done on a voluntary basis. Lawrance favors systematic registration, with most of the costs of registration borne by the government rather than the individual. Because the benefits of registration are usually not immediately apparent to the landowner, he suggests that fees not be collected from titleholders until such time as possession of a title brings some advantage to the landowner. At the time the land is sold, for example, fees for registration of the transaction should be collected.

The benefits of registration that Lawrance enumerates are those discussed earlier in this introduction: access to credit, security of tenure, reduced litigation, development of land markets, and cash-cropping. In the case of the Central Province area of Kenya, where registration was begun in the 1950s, local conditions made registration all the more timely. The customary system of land tenure among the Kikuyu had begun to break down and assertion of individual rights to ownership of land was becoming more common. A further complication was the high incidence of fragmentation of holdings, requiring that a program of consolidation accompany registration.

Lawrance is far too experienced an observer to depict registration as an instantaneous cure for ills of customary land tenure systems. While he clearly believes that the benefits of land registration outweigh any disadvantages, he acknowledges that registration does away with the automatic access to land provided under most

customary systems. In addition, he insists that registration in and of itself is not adequate and that if agricultural production is to be increased, programs of agricultural extension and credit must also be established.

A number of writers have criticized individual programs of land registration, questioning either their goals or the extent to which they have actually achieved what was planned, and their studies add up to an extensive body of literature disputing the efficacy of registration. Few, though, have taken as broad a perspective as H.W.O. Okoth-Ogendo, professor and former dean of law at the University of Nairobi, who must be considered the leading critic of land registration. Okoth-Ogendo agrees that land reform may convey certain advantages, admitting that initially it may have a positive impact on agricultural planning, but any benefit in terms of agricultural production, he believes, is outweighed by distinct disadvantages: the redistribution of political power, the emergence of economic disparities, and a disequilibrium of socio-cultural institutions. In addition, failure to establish follow-up programs of extension and credit, a not uncommon occurrence, has meant that projected in-creases in agricultural production often do not materialize. Even when credit is available to smallholders, he points out, there is no guarantee that loans will be invested in agriculture--in practice, many choose to use the money for nonagricultural, off-farm enter-pr ises.

Formal legal structures, he argues, have little impact on a farmer's decision-making processes, and thus the changes introduced by land registration do little to alter perceptions about land rights and values. Rather, the social, economic, and political functions of customary tenure arrangements continue to influence production decisions. Moreover, as the example of Kenya shows, supervisory bodies such as local land boards often continue to settle land disputes according to older norms of social justice rather than in response to the demands of economic efficiency, a fact which inhibits the growth of a land market and at the same time creates conflicts between local authorities and national institutions.

This is not to argue, however, that registration changes nothing. Okoth-Ogendo contends that the new system goes beyond merely perpetuating inequalities between the large and small farm sectors of the economy by also creating new forms of stratification and status differentials within the latter. Individualization of title provides the landowner with certain exclusive powers over the land that may be exercised at the expense of those whose use and cultivation rights are ignored by registration--women and children, for example. The new patterns of land distribution also support the rise of a new, rural landowning class which exercises increased political influence gained at the expense of traditional authorities. Registration of individual title, which introduces legal and political changes, thus accelerates the destruction of customary structures and authority already begun in the colonial era. In summary, Okoth-Ogendo's opposition to land registration centers on its failure in practice to achieve the desired objectives of increased agricultural production

while at the same time producing unforeseen and undesirable social and political consequences.

Lawrance and Okoth-Ogendo represent the two opposing schools of thought about registration of land, the one advocating it for its positive effects on agricultural development, the other rejecting it for the distortions it introduces in rural society. Between them lie a large number of authors who have carried out specific studies which have looked at registration projects in the different countries in Africa, described them, and analyzed their impact. As this introduction has attempted to show, the kinds of situations in which registration has been undertaken have varied widely, and the expectations have also differed. Nevertheless, as can be seen in literature review which follows, there are important similarities that emerge.

## The Literature Review: An Introduction

The literature review begins with a general section on land registration, followed by two sections on registration in East Africa and Francophone Africa, and finally by separate sections on registration for each country in sub-Saharan Africa. The sections on East Africa and Francophone Africa are not strictly comparable, as the section titles themselves imply. This is in part due to differences in administration during the colonial period by the two powers. The British approach was highly empirical, and there was almost never an attempt to formulate a uniform policy for all of the colonies. This was especially true in West Africa where, though similar policies might be adopted in two or more colonies, there was no obligation on the part of colonial authorities to do so nor any guarantee that they would be applied at a similar point in time. In East Africa, where British colonial rule was imposed at a later date, policies differed also, but there were often attempts, such as the East Africa Royal Commission in the 1950s, to consider jointly common problems and to recommend courses of development for the different colonies. Hence a section on literature for East Africa but none for West Africa; there is no comparable body of literature for West Africa.

French colonial Africa was organized into two administrative groupings, Afrique Orientale Frangaise (A.O.F.) or French West Africa and Afrique Equator Tale Fr Française (A.E.F.) or French Equatorial Africa. Administration of these two regions was highly centralized, and policy was generally uniform, formulated on a regional basis and very often identical for both regions. This was true, for example, with regard to land, and this is reflected in our organization of the literature review with a single section for all of Francophone Africa. The result of such an approach to colonial ad-ministration, moreover, is that it is only since independence that national differences in land policy have begun to emerge.

Differences between the British and French are also expressed, interestingly enough, in the literature itself, which very much reflects the academic style of each of these former colonizing countries. The French-language material is often highly abstract, de-scribing the theoretical underpinnings of land policy and law and specific provisions of legislation with little reference to its application and day-to-day workings. It is almost impossible to find studies of the actual effects of policy changes or even to know if particular pieces of legislation have actually been implemented. The English-language material, by way of contrast, is very empirical in approach, and a great deal of the literature focuses on research that has been carried out to ascertain what the impact of the various policies has been. This is nowhere more the case than in Kenya, where micro-study after micro-study of the effects of the land registration in different areas of the country have been done. Because of these differences between French- and English-language materials, it is difficult, if not impossible, to draw comparisons between the effects of registration in Francophone and Anglophone Africa; the studies that would enable even tentative generalizations to be made have not been carried out.

These differences can be seen in the sections for individual countries that form the core of this literature review. There is a great deal more literature on registration in Anglophone countries. Not only has land registration been more extensive in these countries, but it has also been more widely studied and reported on. A quick survey of the summary paragraphs at the beginning of each country's section reveals this, as does the length of each section. These introductory summaries are also useful guides to the various kinds of land registration that have taken place in individual countries, the dates of the programs, and (where available) the amount of land that has been registered.

Within each individual section; the discussion of the literature is organized in such a way as to provide a logical progression from general surveys and overviews of programs and policies within a given country, to material discussing the earliest registration programs, to studies of the latest. We felt that such an organization would present a coherent picture of changes in attitudes and objectives better than a strictly alphabetical ordering. Our objective has been a literature synthesis rather than a set of annotations. Author and subject indexes at the end of the volume are intended to provide the reader with access to works by specific authors and with similar themes and to draw together material from different countries.

## AFRICA: GENERAL CITATIONS

The bulk of general material on Africa is conceptual in nature, most often a discussion of the disadvantages and advantages of title registration. Due to the varied nature of this conceptual material, this general section is arranged alphabetically, except where topical connections can be made. Articles dedicated to economic analysis and technical aspects of registration can be found near the end of this general section.

The following is a discussion of the history of the Torrens system:

**A1 Arter, F.W. "A Review of the Torrens System and Some Aspects of Title Survey." Australian Surveyor (June 1960): 108-118.**

**Arter** begins by explaining the significance of a title and continues by relating the experience of implementation of title registration in Australia and the problems encountered. The author explores the concept of "limited title," whereby the government accepts claims to land pending further evidence, but allows transactions only with title. Arter concludes with his views on the technical needs of boundary survey.

Starting with a list of benefits derived from cadastral survey and titling,

**A2 Austin,** Jan. **"Developing Cadastral Systems." Urban Edge [World Bank], vol. 9, no. 6 (1985), pp. 1-6.**

includes among them better tax assessment, increased efficiency of land markets, increased ease of assembling land for development programs, more incentive to improve housing, and better access to credit. Austin suggests that designing land information systems requires identifying specific needs of an area, real goals that avoid costly implementation mistakes, and simple procedures understandable by those required to register land. She further states that compulsory registration is necessary, as is recognition of existing tenures and customary transfer rights, and suggests the utilization of pilot projects.

To avoid common pitfalls encountered in the implementation process, Austin recommends that costs of surveying be tied to land value (that is, not exceed a certain small percentage), while appropriate relative accuracy be emphasized by tying parcels to their immediate surroundings rather than to remote points.

Baron, in:

**A3 Baron,** Don. Land Reform in sub-Saharan **Africa: An Anno**tated **Bibliography. Washington, DC: USAID, 1979.**

sees consolidation and registration as a solution to uncertainty and fragmentation in current landholding systems. Citing excessive transaction costs due to group rights and judicial reliance on biased oral evidence as impediments to investment, Baron writes that registration will furnish "secure and enforceable rights to all who own interests in land, and ensure that all conveyances of land can be accomplished quickly, efficiently, and at low cost." It does so by encouraging successful farmers to expand their operations by acquiring additional land. However, the author concedes the need to guard against the creation of a land monopoly in the hands of a few.

The bibliography is a list of articles which address this subject, many of which are included elsewhere in this literature review.

Another author attempts to summarize the various explanations of what customary land tenure systems are and wny they inhibit agricultural development.

**A4** Baron, Don. **"A Survey of Land Reform Problems in** sub-**Saharan** Africa." **Washington,** DC: U.S. Department of Agriculture [?], 1977.

This paper discusses the various features of customary land tenure systems, especially in their relation to bush-fallow cultivation. Impediments to agricultural development include the restrictions on alienation, which have negative ramifications on the securing of loans and investment. At the same time, however, the author does not believe that those who have asserted that "stranger" farmers lack tenure security have proven their case. Lastly, an absence of clearly defined property rights and laws leads to inefficient land allocation and reduced value of any investment made in the land. Exacerbating this problem is the lack of written records and the "excessive" discretionary powers accorded administrators and courts in land matters.

Baron disagrees with the assessment that costs of registration of individual land rights often exceed the benefits of increased investment, increases inequality of land distribution, and eliminates peasants' rights to at least a subsistence living. Instead, he sees registration as a way of reducing costs and litigation, while increasing efficiency. Baron asserts that the primary fault of customary tenure is that it separates ownership (group) from control (individual/family) of the land.

In contrast to Baron is the following:

A5 Gershenberg, Irving. "Customary Land Tenure as a Constraint on Agricultural Development: **A Re-Evaluation.**" East African Journal of Rural Development, vol. 4, no. 1 (1971), pp. **51-62.**

Gershenberg states that the emphasis on customary tenure as an impediment to agricultural development is misguided and counterproductive for African social, political, and economic well-being. He begins his analysis of the pros and cons of individual title with the question of security, arguing that customary tenure does provide security, including inheritance rights. In discussing credit, he claims that there has been an underestimation of Africans' disposition to save and invest, pointing to Kenya's development of smallholder coffee-growing. Further, according to the author, banks are reluctant to accept land as loan collateral because it does not easily convert to cash. Instead, other sourcess of credit could be used, such as cooperative lending institutions.

Concerning the problem of fragmentation, Gershenberg presents several points. First, fragmentation most often results from ecological considerations and patterns of inheritance. Secondly, the operation of larger farms requires more than just a larger area made available through titling and subsequent sales. Lastly, the author believes that titling is not necessary to remedy fragmentation as long as there exist means of transferring or leasing land.

Gershenberg concludes that: (1) changing land tenure is insufficient to promote agricultural development, in as much as there is further need for agricultural research, greater effective demand, alternative employment opportunities, and improved domestic terms of trade; (2) lack of administrative capability augurs against a radical move away from customary tenure concepts; and (3) it is therefore most promising to rely on customary land tenure as much as possible.

The following article deals specifically with land records themselves :

**A6 Barr,** MacDonald. "Comparison Among Land Records of the European Colonies and Other, Improved **Systems** Used in Developing Countries." Report prepared for the Water and Urban Development Department of the World Bank. Washington, DC, 1985.

Among the functions of land records Barr lists the determination of current rights, improving tax collection, regulation of land development and use, management of public services, and protection of customary rights. He also describes the contributions of Spanish-, English-, and French-speaking colonizers to developing country land systems, including a useful, succinct summary table of the level of registration/titling each group brought to its colonies. This is accompanied by a brief summary of developing countries which purport to use some form of titling or registration.

Binns also considers the role of lana records:

A7 Binns, Bernard O. Cadastral Surveys and Records of Rights in Land. FAO Agricultural Studies, no. 18. Rome: Food and Agriculture **Organization,** 1953.

The first sections describe the history of mapping and cadastral systems, and the use of air photos. Binns states that a register of rights need not be based on individual ownership, and that such a variation could therefore reduce opposition to registration. In his discussion on adjudication, he suggests that initial efforts be aimed at registering occupation under a "presumptive title" for either individuals or groups. This would then be replaced by a more definitive title at a later time. Advantages of registration are seen to be its description of the exact disposition of land, protection for all classes of landholders, and facilitation of land transactions. Binns also stresses the necessity of preparation and maintenance of the record of rights.

The following article is devoted primarily to a discussion of the pros and cons of title registration:

A8 Henssen, J.L.G. **"The Requirements** and Significance of Land Registration and a Cadastre in Developing Countries." Apeldoorn, The Netherlands: International Office of Cadastre **and** Land Records, **1982.**

Henssen lists security of tenure, better credit access, reduced litigation, and increased tax revenue as the primary advantages of registration. Freezing customary land tenure at one point in time, excessive government intervention, expense, and the lack of trained personnel are all listed as disadvantages. Henssen includes as a disadvantage fear by the wealthy that their holdings would be subject to public scrutiny with the advent of registration. The author also explains the difference between deeds and title registration as well as the legal basis necessary for titling.

Kitay is concerned with the difficulty faced by governments of many developing countries in acquiring land for public services:

A9 Kitay, Michael. "Land Financing by International Donor Agencies: Problems **and Prospects." Paper** presented at the Ninth **EAROPH** International Congress, Hong Kong, Au-gust **1984.** Washington, DC, **USAID.**

The author talks about the potential role that aid and personnel donor agencies may play in the acquisition of land for public purposes. He sees only a limited role at present, but one tnat is likely to grow as the problem becomes increasingly acute.

In aadition to listing perceived advantages of registration, Larsson discusses the influence of registration on customary land tenure in:

**A10 Larsson, Gerhard.** "Land Registration as Part of a Land-Reform Program." **Paper presented** at the Seminar on Prob-lems of Land Tenure in African Development, Leiden, 13-17 December 1971. Leiden, Afrika-Studiecentrum.

The advantages include increased security, reduced litigation, cheaper transaction costs, increased credit access, expanded taxation, and better regulation and planning of land use. According to Larsson, registration does not change ownership, but only registers it (this can include group ownership). He further states that registration could accelerate trends toward individual ownership, while suppressing rights that are weak, without legal support, or unpleasant to the majority. Conceding that adjudication is heavily influenced by politics, the author nevertheless supports implementation of compulsory and systematic registration on the grounds that in the long-run the cost per unit is low and that simple methods of aerial surveying may be employed to overcome the obstacle of initial survey costs. '

Lawrance uses customary land tenure as a foil in his discussion:

All Lawrance, J.C.D. "Land Systems and Land Reform." Paper presented to the Seminar on **Land** Administration and the **Development** of **African** Resources **at Ibadan,** 1972. Paper No. 5.1. Ibadan, U.N. Economic Commission for Africa.

Lawrance believes that most African land tenure problems stem from the continuing existence of customary land tenure systems, which has resulted in dual legal systems, fragmentation, and few written records for the majority of landholdings. Lawrance urges unifying land law via statutory regulation and suggests the need to have State or private interests take over unutilized land. He also calls for natural resource development tailored to farming needs.

A 1970 article discusses these same ideas:

Al2 . "The Role of Registration of Title in the Evolution of Customary Tenures and its Effect on Societies in Africa." Paper presented **at** the Seminar on Cadastre, Addis Ababa, **25** November-9 December 1970. Addis Ababa, U.N. Economic Commission for Africa.

The uncertainty of customary tenure is seen to be best addressed through the introduction of title registration, which would nevertheless have to be kept simple and easily understandable to succeed. The author further suggests that registration be used only when the economic advantages justify it. In addition, to be practical, such a system must also provide reasonable support for the registrants, possess adequate staff and equipment, realistically look at potential expenses, and closely define those areas to be registered.

Lawrance also outlines both the pros and cons of registration, with the pros including the standard benefits of credit access, security, reduced litigation, development of land markets, and cash-cropping. Disadvantages include possible perpetuation of unsatisfactory ownership patterns, no automatic access to land, loss of community influence and lowered status of customary land law.

Makings begins with a discussion of the problems of customary land law similarly covered by Lawrance and others, but then moves on to analyze the limitations of freehold.

**A13 Makings, S.M. Agricultural Problems of Developing Countries in Africa. Lusaka: Oxford University Press, 1967.**

Based on the assumption that the role of the state is to intervene in land tenure to promote conservation and the welfare of all sectors of a community, Makings first contrasts customary land tenure's right of access and freehold's exclusiveness. The security of subsistence users is also compared to the freehold security for market-oriented production. The author suggests that fragmentation could worsen under the early stages of freehold as farmers buy land wnen and where available. He proposes that leasehold might be a more effective way to promote agricultural development.

Makings lists three requirements of transitional tenure change: it must be suited to the requirements of those with interests in land, it should facilitate agricultural development, and it must be amenable to reasonable administrative control. He believes that this can be accomplished by promoting individual security for cropland while building on the communal interests in land for general agricultural development. This dual system of land tenure would be under local authorities with clearly defined powers. Functions of these local authorities would include: vested control over land in their area subject to customary control, registration of cropland and grazing rights and the maintenance of the register, participation in all transactions involving land rights, power to act for the benefit of the community in regard to the development of land not subject to crop user rights, and full participation in local land development and planning.

A very different perspective is presented in:

A14 Machyo, R. Chango. Land Ownership and Economic Progress. London: Africana Study Group, 1963.

Machyo is opposed to individual ownership and titling, which he sees as a method for the continuation of metropolitan control over now-independent colonies. The author begins with a description of European concepts of land holding which is followed by a discussion of African land tenure systems. The arguments for title registration are given, but the author emphasizes the problems of sucn a system. He says that fragmented land holdings are often based on micro-environmental differences, while also stating that individualized land ownership will tend to increase fragmentation, not reduce it. In addition, Machyo believes that individual title will increase unemployment, the possible result of peasants' being dispossessed from their lands for indebtedness (debts they are able to contract as a result of using their registered land as col-lateral). Individual ownership is rejected by the author as a system that would destroy community integrity and introduce class distinctions.

Machyo suggests other options (small peasant farms, capitalist farms, state farms, and collective farms), as well as the criteria for choosing: economic efficiency, employment, social value, overall economic development,

and living standards. He supports a combination of tenures which utilizes both communal and individual land ownership and farming.

The uncertainty "inherent" in customary tenures is explained **in:**

**A15 Mifsud, F. Montanaro. "Some Legal Aspects of African Land Reform." Paper presented at the International Seminar on Land Taxation, Land Tenure, Land Reform in Developing Countries,** 17-21 October **1966.** Hartford, CT, Uni**versity of Hartford.**

Mifsud sees the uncertainty as a function of conflict between different community land tenure systems. There is also tension between codified and customary tenure. Taking a more conciliatory stance than other authors, Mifsud believes that groups could be incorporated and given title, although a limit on group size would need to be established to prevent impediments to alienation. Additionally, adjudication need not be total, but should be sufficiently systematic to avoid problems. As does Lawrance, the author suggests that registration be implemented only in areas where land has become part of an exchange economy. Finally, Mifsud discusses consolidation and the potential of taxation from "vacant" lands.

Reiterating his argument above in:

**A16 Mifsud,** Frank **M. Customary Land Law in** Africa. Rome: **Food and Agriculture Organization, 1967.**

Mifsud continues his discussion on adjudication of rights. Citing examples from various countries, he suggests that registration be performed by local residents on the spot, be written, and systematic (ideally). The author concludes that because the trend to "individualization" is a general one, legislation should recognize it while also leaving room for other solutions.

Another paper follows this same line of reasoning:

**A17 Pohoryles, A., and A. Szaskin. "Land Tenure and Its Effect on Economic Growth." Paper no. 3. Jerusalem: Land Use Research Institute, Tel Aviv University, 1973.**

Tne authors discuss how customary land tenure patterns are affected by commercial agriculture, drawing on examples from Ghana and the Ivory Coast. They then go on to explore the effects of agrarian reform on both private and public land ownership with particular reference to Ethiopia, Kenya, and Ghana.

While listing the pros and cons of customary land tenure and individual title, the authors also suggest that group ownership could reduce fragmentation. Private ownership may produce an absentee owner class, necessitate registration which is slow and expensive, and result in land left idle for speculation purposes. The authors conclude that the introduction of individual titling depends on: (1) a relatively dense population, (2) the existence

of commercial cropping, (3) a higher rate of permanent land rights, and (4) the consent of the populace for land reform. The appendix is a useful typology of land ownership with clear and concise definitions of the different ways land is held.

Set in a much more general framework of land reform is the following:

**A18 West,** Henry W. **"Conceptions_ of Land Reform." Cambridge Course in Development. Cambridge: Department of Land Economy, University of Cambridge, 1974.**

West breaks agricultural development into two basic orientations: technical improvements designed to increase productivity, and technical reform that incorporates structural/social reforms. West also differentiates between the various terms of land reform, agrarian reform, redistribution, and so on.

The author describes two schools of land reform: the radicalist and the gradualist. Radicalist action relies on confiscation, nationalization, and collectivization of production. Application varies widely, as evidenced by the examples of Israel, the USSR, China, and Tanzania. Gradualists, however, strive to maintain property rights, while making selective use of consolidation, cooperative promotion, land market regulation, and stringent rules of expropriation. West prefers the latter approach, citing its greater flexibility, and stating that such efforts "should invariably be accompanied by land registration."

West evaluates both the radicalist and gradualist approaches vis-a-vis employment opportunities, production, wealth and income distribution, rural/urban equality, promotion of secondary industry, and the character of rural society.

In a second document, West presents his views on the relative merits of title registration:

**A19 West,** Henry **W. "Land** Registration and Land Records: Their Role in Development." Teaching Forum, Land and Water Economics and Policies, **no.** 1 (1972).

The collection of revenue and the confirmation of landholders' proprietary rights are listed as the primary purposes of registration. The benefits of registration are seen to be the same as those suggested by Lawrance and others. West then outlines possible survey techniques, with ground survey being very time-consuming, photogrammetrical methods dependent on expensive machinery and air-visible boundary features, but with orthophoto maps promising a cheaper and faster method.

The important considerations in registration programs are: (1) when and how registration should be introduced, (2) what the unit of record should be, (3) what data should be recorded, (4) whether boundaries should be fixed or general, and (5) whether or not there should be public access to registry information.

Simpson also talks about the functions **of registration in:**

**A20 Simpson, S.R. "Objects and Purposes of Land Registration." Paper presented at the Seminar on Cadastre, Addis Ababa, 25 November-9 December 1970. Addis Ababa, U.N. Economic Commission for Africa.**

Simpson first discusses the nature of land ownership, with security of tenure possible "whether there is documentary evidence to prove it or not." He writes that registration only becomes desirable when social and economic pressures reduce the ability of another system to safeguard rights and it ceases to command respect within the community. Transition is made most difficult on the question of deciding who has what rights on a parcel of land. A brief comparison of deeds and title registration is also provided.

A more extensive work, written from a legal viewpoint, but with clear definitions in a layman's terms, is:

A21 . Land Law and Registration. Cambridge: Cambridge **University** Press, **1976.**

Although most chapters deal at least in part with issues of registration, certain chapters are of particular interest. Chapter 2 presents the overall framework of the special processes needed for dealing in land. Private conveyancing without recourse to any public documents, deeds registration, and title registration are compared. Chapters 3 and 4 show the historical evolution of registration in England and different forms of English conveyancing, while Chapter 5 provides a history of the Torrens system and its application outside Australia (in the U.S., Canada, France and its colonies). A comparison of the English and Torrens systems centers around: the form of the register, public access to the register, caveats, qualified titles, and sealing a deed of transfer. Simpson illustrates deeds registration in Chapter 6 through examples from the U.S., England, Scotland, and South Africa.

The role of title registration in regard to customary land tenures is discussed in Chapter 12. After describing and defining the concepts of customary land tenures, Simpson says that title registration may be necessary to replace customary tenure when socio-economic conditions change too quickly for these customary tenures to evolve. Espousing similar views on the preconditions for successful registration as Lawrance in his 1970 piece (see Al2, above), the author goes on to list three problems inherent in registering customary land holdings: unused land, group ownership, and customary land on the register. Potential negative effects of registering customary land include the perpetuation of current landholding patterns, loss of land due to indebtedness, elimination of automatic entitlement to land, and loss of community influence.

Chapter 13 offers a discussion of multiple ownership, fragmentation, and consolidation. After defining these terms, Simpson then talks of their causes and possible "cures." Cures for multiple ownership include partition, appointment of trustees, incorporation of co-owners, and compulsory sale of uneconomic shares. Concerning fragmentation, the author discusses the British enclosure

movement, as well as modern efforts at consolidation, which follows a three-step process: a plan of proprietary units and owners, classification and valuation, and a plan and schedule of proposed new parcels. Ways to prevent fragmentation are also presented.

Actual adjudication procedures are covered in Chapter 15 and revolve around the legal basis of registration; selection of adjudication areas; participants, appeals and rectification; and possible combination with consolidation. Chapter 21 provides examples of laws used to set up title registration systems in Kenya, Lagos, Seychelles, Sarawak, Malawi, Ethiopia, and Malaysia.

Many of these same ideas are presented in an abbreviated form in:

A22 Simpson, S.R. "Adjudication of Title and First Registration." "Systematic Adjudication." "Land Law and Registration." Presented in the land registration course at Marlborough House, October **1964-March** 1965. Mimeographed.

A very different perspective is contained in the following:

A23 Thome, Joseph R. "Are Titling Programs **Always** Good?" Paper presented at **the International Workshop** on Land Tenure Administration, Salvador, **Bahia, Brazil,** 20-24 August 1984.

Thome states that the emphasis of titling programs tends to be on functional and technical aspects without recognition of the socio-political issues. He says that titling does not necessarily benefit everyone. Instead, it can dispossess smallholders, or titles may not be available to smallholders due to the cost and complexity of the process. Indeed, the assumption that titling enhances credit access may be invalid. If titling does take place, the author suggests the following: use simple administrative procedures with few documents, institute legal services for peasants, and provide for an adequate level of credit, technical, and other services to allow smallholders to compete with larger, established farmers.

Two articles attempt to analyze from an economic perspective the alternatives in tenure schemes:

A24 Hoy, M., and Emmanuel Jimenez. **"Analytical** Issues in Urban Land Tenure in Developing Countries." Research Report (draft), October 1984.

This article examines the alternatives in urban tenure schemes and the government's role (especially pertaining to squatters) and aims to identify factors that influence government decisions on eviction and whether these are counterproductive. After a description of the model and its assumptions, the authors conclude that transfer of property rights to land may lead to either

more or less efficient use of land, and therefore government decisions to evict depend on high potential development value of the land, low costs of eviction, and the irrelevancy of squatter well-being.

The second analysis focuses on squatters in Devco, Philippines, and attempts to measure tenure security:

**A25 Jimenez, Emmanuel. "Tenure Security and Urban Squatting." Report No. UDD-46. Washington, DC: The World Bank, 1984.**

The bulk of this article is devoted to an explanation of the assumptions and the model used in the analysis. The conclusion is drawn that formal sector unit-dwelling prices are 18-58% greater than equivalents in the informal sec-tor, with price differentials greater for lower income groups and larger house-holds. Jimenez states that this type of analysis could be used to design and price urban development projects which grant tenure security to beneficiaries.

A more technical discussion of registration is found in:

**A26 Morgan,** J.F. "The **Western Australian Land Information System: Digital and Numeric Capture of the Cadastral Sub-System." Paper presented at the Conference of Commonwealth Surveyors, Paper no.** J.4, 1983. Mimeographed.

This paper describes the implementation of a computer-based land information system in Australia. Digitalizing existing maps is preferred over ground survey for cost-effectiveness (18 versus 137 man-years of labor). Actual surveying is reserved for future land transactions required to update the system. The paper includes a short section on the computer hardware used and the processes involved.

The use of aerial photogrammetric methods is discussed in:

**A27 United** Nations Centre for Human Settlement (Habitat). **"Aerial** Photography and Self-Help **Surveys." UNCHS** Technical Notes no. 2. Nairobi, n.d.

The paper focuses on a low-cost, low-technology approach to mapping used in a project in the Philippines. The technique involves the use of a regular 35 millimeter single reflex camera mounted in a crop-dusting plane flown at an altitude of 800 meters. Adequate resolution was obtained to combine the results with a detailed questionnaire on land tenure patterns, buildings, businesses, waste disposal methods, and water supply.

The potential contribution and relative cost of microcomputers as the basis of a land registration system is the focus of:

A28 Greenwood, D.W. "Cheap Microcomputers and Land Registration Systems." FAO Workshop on Land Tenure and Rural Development, Tonga, April **1984.** Lae, Papua New Guinea: Papua New Guinea University of Technology.

The following article, although not specifically dealing with registration, makes some interesting observations about the role of technology which can be extrapolated to the discussion on titling and registration systems.

**A29** Barnes, Grenville. "The Challenge of the Third World." Proceedings of the Colloquium on Survey and Mapping Education, June 1985. Frederickton, Canada: University of New Brunswick.

The following two articles appear to be of value but could not be obtained:

A30 Allott, Anthony. "Theoretical and Practical Limitations to Registration of Title in Tropical Africa." Paper presented at the Seminar on Problems of Land Tenure in African Development, December 1971. Leiden: Afrika-Studiecentrum, 1971.

A31 Warren, D.E. "Method of Survey Suitable for Registration Purposes." Paper presented at the Seminar on Cadastre, Addis Ababa, November-December 1970. Report no. E/CN.14/ CART/259. U.N. Economic Commission for Africa.

## FRANCOPHONE AFRICA

Under colonial rule, much of Francophone Africa was subject to a relatively uniform application of land laws that included stipulations for registering and titling land. Relevant laws include those in 1896, 1906, 1932, and 1955. Although most countries promulgated their own legislation following independence, many of these newer laws retain the major elements of the colonial land laws they re-place.

There have been several reviews of the imposed French system of land law, including:

FRi Dowson, Ernest, and V.L.O. Sheppard. Land Registration. London: **Her Majesty's Stationery** Office, **1956.**

Pages 186-191 are devoted to a discussion of registration as reflected in the law of July 1906 and its July 1932 amendment. Based on the Torrens system, these laws established registration offices and registries to keep separate files on each parcel of land, recording all real rights as well as related deeds and transactions. Furthermore, registration of customary rights is allowed with adjudication; registered land "abandoned" for longer than thirty years is declared "vacant"; and registration is optional except in two cases: the alienation of State land and first transfers of customary rights to con-tract rights. In addition, registration confers upon the title holder definitive and unattackable rights and all rights of alienation, and is final and not subject to reversion to previous holding rights.

General works dealing with French colonial land law include:

FR2 Doublier, Roger. La proprieté foncière en A.O.F. Dakar: Imprimerie du Gouvernement Générale, 1957.

Doublier describes from a legal perspective the various aspects of regis-tration in French West Africa. Detailed are the administrative procedures, who must/may register, and judicial recourse. Additionally, the principles and effects of registration are considered, the latter in relation to and with customary tenures.

A particularly useful work, also written from a legal perspec-tive, is:

FR3 Gasse, Victor. Les régimes fonciers africains et malgache. Paris: Librairie Générale de Droit et de Jurisprudence, 1971.

Gasse provides a thorough history of the introduction of French law with reference to a number of countries: Cameroon, CAR, Congo, Chad, Ivory Coast, Gabon, Burkina Faso, Morocco, Niger, Togo, Tunisia, and Madagascar. (The large section on Madagascar is separate.) Gasse covers registration and its procedures, as well as its legal effects.

Similarly:

**FR4 Angladette, A. "French Territories in Africa." Land Tenure Symposium, Amsterdam, 26-28 October 1950. Leiden: Universitaire** pers Leiden, 1951.

Angladette uses various countries to illustrate French land law implementation. He emphasizes, however, the evolution of de jure tenure as it relates to the concepts of State land, public land, and private land. He notes that there were only 24,000 titles for private land (207,000 ha.) by 1948.

Many of these same points are discussed in the following:

FR5 Salacuse, Jeswald. **French Speaking Africa.** Vol. 1. Char- **lottesville,** NC: Michie Company, **1975.**

Bachelet also deals with the key provisions of land legislation:

**FR6** Bachelet, Michel. Systèmes fonciers et réformes agraires en Afrique Noire. Paris: Librairie Générale de Droit et **de Jurisprudence, 1968.**

Bachelet attempts to show (pp. 189-201), how these laws were adapted to Africa. He further relates registration and titling to collective rights, as well as discussing adjudication procedures and the importance of an accurate register and surveying.

Another section deals with the concepts of both collective and individual land tenure by exploring their origins and evolution. Finally, the author weighs the advantages and disadvantages of individualisation, concluding that its adoption must depend on the degree to which farmers have entered the market economy and the strength of existing land control measures and authorities in a community.

A final group of documents places greater emphasis on post-independence trends vis-a-vis French-derived land law.

FR7 Christodoulou, D. Report **of the** Development Center on **Land** Policy for West **African** Countries. Rome: Food and Agriculture Organization, **1964.**

A discussion of registration is nestled within a more general consideration of the importance of land tenure in Africa. The author states that

registration is good only if it can be successfully implemented. Partial success results only in greater confusion. He sees a need for provision for "family" title that specifies who is empowered to deal with the land. However, the author recognizes the difficulty involved in clearly defining existing rights. Lastly, Christodoulou believes that "security of tenure" is a question of fact, whereas "proof of title" is a question of evidence that is necessary in changing the existing land situation.

A general overview is presented in:

FR8 Ofori, Issac M. "Agricultural Development and Land Tenure in Africa: The West African Experience." In Land Tenure and Small Farmer in Asia, edited by Jan **Bay-**Petersen, pp. 55-65. Taiwan: Food and Fertilizer Technology Center, 1983.

Ofori discusses the general principles of West African land tenure, current pressures on these tenures, and potential ways these may adjust. He advocates registration of titles as a means of alleviating insecurity of customary land holding and facilitating land classification. He also suggests incorporating some form of title for group representatives in future legislation.

Kouassigan likewise presents an overview, albeit a more critical one, of French land law.

FR9 Kouassigan, Guy Adjété. "Agrarian Reform and Institutional Innovation in the Reconstruction and Development of Agriculture in French-Speaking Africa." Seminar Pa-per. Madison: University of Wisconsin, Land Tenure Center, 1977.

Kouassigan points to the failure of French land law as reflected in the scant 3 percent of land registered at independence in Senegal. He then traces the evolution of land reform in independent Francophone Africa, which attempted to reorient significantly the legacy of French land law. His focus is on Senegal and Togo.

Using Ivory Coast, Senegal, and Cameroon, Verdier makes a similar analysis:

FR10 Verdier, R. "Evolution et réformes foncières de 1'Afrique Noire Francophone." Journal of African Law 15 (1971): 85-101.

A comparison between Niger and Nigeria is presented in:

FR11 Adegboye, R.O. "Land Tenure in Some Parts of West Africa." Ibadan: University of Ibadan, Department of Agricultural Economics and Extension, n.d.

## EAST AFRICA

This section reviews literature that covers land administration and registration in East Africa as a whole or that is theoretical and provides examples from more than one country. We discovered only three publications, all of them from before 1970. Two are products of the colonial period and deal with issues of land reform and British colonial attitudes toward and attempts to modify or regulate land administration prior to decolonization. In these publications we see the roots of land policies that emerged after independence in East Africa, and particularly in Kenya and Uganda (but see also under Malawi). The third publication, a collection of essays, was the product of a conference on land law reform held in Kampala in the late 1960s. The papers in this collection reflect a "modernist" approach to land law, being highly critical of customary and indigenous tenure institutions and recommending the imposition of individual title. More recent articles on land administration and registration, unfortunately, deal exclusively with particular countries, limited regions, or ethnic groups and lack the broader focus of the earlier literature.

A very influential British Command Paper, covering Kenya, Tanganyika, and Uganda, examines the social and economic situation of Africans in East Africa. This paper reviews British colonial land policy and recommends future courses of action in East Africa. These recommendations continued to shape land policy in East Africa (especially in Kenya) after independence as well.

**EA1 Great Britain. East Africa Royal Commission, 1953-1955. Report. Command paper, Cmd. 9475. London: H.M.S.O., 1955.**

This report, the product of two years' investigation and research in Kenya, Tanganyika, and Uganda, examines the social and economic situation of Africans in East Africa and recommends future directions for development and improvement of their position. Of particular interest is Chapter 23, "Tenure and Disposition of Land," which discusses and makes broad recommendations with regard to land policy for East Africa as a whole. The value of this chapter lies less in its description of specific tenure situations than in its recommendations, the assumptions of which guided the program of consolidation and registration shortly to be implemented in Kenya's Central Province.

The authors believe that customary tenure systems are by their nature resistant to change and tnat, because local customary authorities no longer exercise control over them as they once did in the past, these systems are often unable to provide adequate security of tenure. Although the authors do not believe it appropriate to impose individual tenure throughout the region, they recommend that laws be implemented which allow for the registration of

exclusive individual ownership of land and provide for its orderly transfer. Such a system would permit a more productive, rational use of land and increase agricultural output. Moreover, adjudication and registration need not proceed district by district, but rather in its early stages could be made available to individual progressive African farmers, who then would serve as models and thus stimulate local support for a more systematic adjudication. The greater financial costs of proceeding in this fashion would be outweighed by the popular acceptance of adjudication and registration that the authors believe would ensue.

Adjudication and registration should be carried out so as to eliminate land fragmentation, and regulations could be implemented which would prevent the registration of sub-economic parcels in the future and thus the recurrence of the problem could be avoided. [See the section on Kenya below for subsequent studies that describe the recurrence of land fragmentation.] At the same time that fragmentation is eliminated, however, registration of individual title also introduces the possibility of chronic rural indebtedness resulting in the eventual transfer of land into the hands of a money-lending, non-farming class. Therefore, although credit must be made available to progressive African farmers, restrictions must be imposed to prevent landholders from mortgaging for purposes other than that of improving the land.

In response to the recommendations regarding land tenure contained in the report of the East Africa Royal Commission, colonial officials from Kenya, Uganda, Tanganyika, Northern and Southern Rhodesia, and Nyasaland met to discuss the implications of land registration in their areas, the situations under which it might be implemented, and the process by which such programs might be carried out. Their proposals are contained in the following:

EA2 "African Land Tenure: Report of the Conference on Afri**can Land Tenure in** East and Central Africa, February, 1956." Journal of African Administration, **vol.** 8, no. 4, special supplement (October 1956).

Although conference participants recognize that African land tenure systems are not inflexible and immutable, they believe that trends toward individualization of title in some areas of Africa point to the need for registration of holdings, a step which will allow governments to guide and control the process of change. Conditions under which registration becomes an appropriate step include: excessive land litigation, fragmentation of holdings, increasing land transactions, changes in land use patterns, emergence of an exchange economy, and availability of agricultural credit. The participants also point out, however, that registration should be carried out only as it becomes appropriate and warn that governments must guard against it resulting in indebtedness on the part of the land holder and against excessive concentration of large amounts in the hands of a few. The process of registration should include consolidation of fragmented holdings where necessary and provide for the demarcation of holdings with permanent identifiable boundaries on the ground. To be effective, registration must be undertaken with the participation of local authorities and an informed public, and its continuation can only be insured if records and conveyancing procedures are simple, accessible, and, in the case of the latter, cheap.

Over a decade later, the need for appropriate systems of land tenure concerned African civil servants and professionals much as they had colonial officials earlier. At a conference on land law reform held in Kampala in the late 1960s, East Africans from Kenya, Uganda, and Tanzania, and with a wide range of technical expertise, presented papers and discussed the problems and need for land law reform and proposals as to how it might be implemented.

**EA3 Obol-Ochola,** James, ed. **Land Law Reform in East Africa; Papers delivered** to **a seminar organized** bz the Milton **Obote Foundation, Adult Education Center. Kampala: Milton Obote Foundation, 1969.**

This collection of papers covers land tenure and land law in Uganda, Kenya, and Tanzania. The first chapter presents a historical discussion of customary land tenure in East Africa up to the time this report was written. Most of the other articles discuss current problems with customary tenure and with the laws regulating land. Many papers advocate "modernization" of the tenure system, positing that communal tenure is part of the old, inappropriate system that inhibits socio-economic development. Individual title and private property, on the other hand, modeled on Western concepts, are viewed as more advanced and appropriate to agricultural development. Several chapters are especially useful:

The third chapter in the collection is a discussion of private tenure in Tanganyika. Although there is no mention of registration, there are comments on rights of occupancy for private, individual tenure during colonial occupation.

The fourth chapter discusses briefly the Registration of Titles Act that British colonial administration applied to the three territories of Kenya, Tanganyika and Uganda. The law stipulated that all transactions must be registered and that registration would be conclusive evidence of title.

Chapter 11 focuses on registration laws in Kenya from 1908 to 1968. The evolution of tenure laws and problems and mistakes in their implementation are covered. The author proposes unification of all tenure laws in Kenya, suggesting the abolition of the separate systems of customary and received law. A more detailed discussion of registration laws in Kenya can be found in Chapter 12. (Chapters 2 and 13 pertain to land registration in Uganda and are discussed **in** the separate section on that country.)

In the conclusion to this collection, Obol-Ochola attempts to draw together some of the important observations of the papers and suggestions for land tenure reform. There are a number of suggestions regarding registration of land, the most important being that (1) programs of land consolidation and registration should be pursued in areas that are densely populated; (2) in areas that are not densely populated leases should be granted for the development of virgin land; (3) the East African courts should abandon their conservative attitudes toward customary land tenure and recognize the evolutionary emergence of individual, private rights; and (4) dual systems of land rights should be incorporated into one system of laws.

Obol-Ochola underlines the participants' call for the unification of land laws in East Africa; he also emphasizes that alienation of land should be encouraged as this would maximize land use and socio-economic development. It is also suggested that fragmentation can be resolved by consolidation and registration of holdings.

## ANGOLA

The customary tenure systems of Angola vary among the different ethnic groups. Nevertheless they all share the notion of land being owned communally rather than individually. There has been no registration of these lands.

During the colonial period the Portuguese government's main aim was to encourage Portuguese settlement of the colonies. In order to encourage this migration, legislation regarding land ownership was passed in 1901, 1919, 1933, 1954, and 1961. The law of 9 May 1901, established that all land which was not private property was state domain and could be granted to settlers. The status of Africans was not clear. The decree issued in 1919 tried to solve the problem of African land use by alloting specific areas for the exclusive use of Africans. Individual rights were granted to Africans in these areas but they did not hold legal titles for the land. The constitution of 1933 stated that the colonies were overseas provinces of Portugal and that land in these overseas provinces was divided into public domain of the Portuguese state, private property and vacant lands. Public domain lands were the continental shelf, the subsoil, natural wealth, and specific areas reserved for such purposes as conservation, scientific exploration, settlement, and occupation by Africans. Vacant lands were defined as lands that were neither public domain nor private property. Again the state could grant land to settlers from the public domain. The Natives Statute of 1954 stated that Africans who accepted Portuguese civil law and culture (assimilated) could acquire full rights of ownership. The decree of 1961 did not change the principles involved but did try to solve some land problems. The decree distinguished between two categories of land rights: one applying to Portuguese citizens and African "Assimilados," and another applying to "Natives." The Portuguese would be given concessions which would grant them the right to use land permanently for agricultural purposes. They would pay rent for a particular time period (usually five years) and then receive full title.

From these laws it is clear that the Portuguese did show some concern for the rights of Africans but their main concern was to encourage Portuguese immigration. Nevertheless, concessions amounted to a small portion of the land and many Africans continued to hold land under customary land tenure rights throughout the colonial period. Also, despite the concern reflected in the legislation, nothing has been written in Portuguese or any other language which discusses the problem of registration.

At independence all land, with the exception of some foreign investments, was nationalized. The new government immediately began to administer the ex-Portuguese plantations as state farms. The state, however, did not intervene in the traditional sector because of their military and political concerns. Most post-independence literature about Angola also addresses these concerns rather than tenure issues.

## BENIN

Land titling and registration take place in Benin only to facilitate the consolidation and availability of land for government-sponsored cooperatives. In the regions of Mono, Atlantique, and Oueme, 50,000 hectares had been consolidated and titled as of 1973. There are no published materials which analyze the effects of titling or discuss current status.

Although giving no analysis on its impact, Moise Mensah provides the only concrete examples of registration and titling in:

B1 **Mensah,** Moise C. **"An Experience** in **Group** Farming in Dahomey: The Rural **Development Cooperatives." N.p.,** 1975.

This paper is primarily a description of the operation and rationale behind the institution of rural development cooperatives; it also discusses the land tenure arrangements for these cooperatives, which involved the survey, consolidation, and titling of land affected (see pp. 5-6).

Based on the authority of Law 61-26 (1961), the process of land acquisition began with the government choosing an area for the development of oil-palm or improved food crop production. The landowners in the area were required to allow the cooperative the use of the land for a lease period of fifty years, during which time the owner would receive a small annual rent. To ensure the return of the land to the landowner upon dissolution of the cooperative, titles were issued. However, co-op profits were allocated on the basis of labor provided, not land. In this way, the landless could participate on an equal basis with landowners. Mensah further states that although initial opposition by landowners in affected areas was heavy, governmental pressure somewhat subdued such opposition.

As of 1973, in the Mono, Atlantique, and Oueme regions, these co-ops had 15,000 members working 28,000 hectares of oil-palm plantations and an additional 24,000 hectares of annual food crops.

Corroborating the discussion of registration procedure is:

**B2** Food **and Agriculture Organization.** Comité **Special pour la** Réforme **Agraire. "Note** sur **la** reforme **agraire au Dahomey."** Rome, n.d.

This paper describes the process of land acquisition by rural development coops, a process entailing survey, consolidation, and titling. In addition, FAO offers the explanation that the government established these coops because landowners in the southern oil-palm region did not offer enough security to those working the land to facilitate development.

A 13-page appendix on traditional forms of land transactions is also included.

A slightly different view is given by:

**B3 Moussemkou, Nadjimou. "Le regime foncier en République du Dahomey." Paper presented at the UN Seminar on Cadastral Surveying and Urban Mapping in The Federal Republic of Germany, 24 June-5 July 1974.**

The author states that registration occurs mainly in the urban areas since rural lands are difficult to value and very fragmented, and also be-cause rural inhabitants are suspicious of titling for tax reasons.

Without offering much in the way of analysis, the author extols the value of titling and registration as a means of ensuring the security of access to land that would facilitate the adoption of improved techniques necessary to increase agricultural propduction.

## BOTSWANA

Registered rural land in Botswana is of two principal kinds, freehold and leasehold. Freehold areas, about which comparatively little has been written, are those land areas, amounting to some 7,500 square miles before independence, which were originally allocated for European settlement during the time of the Bechuanaland Protectorate. There are six such areas: the Gaborone-Lobatse Block, the Tuli Block, the Tati Block, the Ghanzi and Xanagas Blocks, and the Molopo Farms. The first three areas are in the eastern part of the country, while the last, which started off in the colonial period as Colonial Development Corporation ranches, is in the south along the Molopo River. Ghanzi and Xanagas Farms are in the extreme western part of the country, bordering on Namibia. These farm blocks began as isolated settlements of Afrikaans-speaking farmers but now are neither as remote as they once were nor exclusively owned by Afrikaaners. Much of the freehold area around Gaborone, originally part of the Gaborone-Lobatse Block, has been converted into State land and absorbed into the expansion of the capital. There is also less freehold land in the Tati Block than there once was: some land has been returned to communal use, and in the area around Francistown 13,000 hectares have recently been acquired by the Department of Surveys and Lands for future urban expansion. In the Molopo Farms Block the southern area remains divided into freehold farms, while in the northern part, the farms have been held as leaseholds since the 1960s. The areas of freehold farms which remain in the Tati, Gaborone-Lobatse, Molopo, and Tuli Blocks specialize in beef production (as do the leasehold farms in Molopo) and are relatively close to the rail line; they have generally been more prosperous than Ghanzi or Xanagas Farms, and their success in the past has been in part due to economic links with South Africa and what is now Zimbabwe.

Another area of leasehold farms is the Barolong Farms area, in the southeastern part of the country. The leaseholds were originally granted in the late 1890s to Barolong royalty and headmen. In recent years the Barolong Farms area has had especially high agricultural yields, and its success, and the causes of it, have generated considerable interest and some controversy as well.

Leasehold is the preferred form of tenure innovation today in Botswana. While the colonial government favored freehold tenure as the means of placing land in private hands, the government of independent Botswana, not wishing to alienate land on a permanent basis, has preferred to grant leasehold tenure in both the urban and rural areas. The Tribal Land Act of 1968 makes provision for granting common law leases for purposes of industrial and commercial development in the tribal land areas. More relevant for the purposes of agriculture is the Tribal Grazing Land Policy (TGLP), drawn up in 1975, which follows this same approach in directing Land Boards to

designate areas for commercial livestock development for allocation to individuals and groups of individuals on a leasehold basis. There is as yet no authority for use of long-term leaseholds for commercial cultivation.

There has been little systematic study of agricultural development in the freehold farm areas, and most of the information avail-able is found in the context of broader analyses. One such study is the Russells' anthropological work in the Ghanzi Farms community.

B01 Russell, Margo, and Martin Russell. **Afrikaners of the Kalahari; White Minority in a Black State. Cambridge: Cambridge University Press, 1979.**

**Based on** fieldwork carried out in the mid-1970s, Margo and Martin Russell's study describes the Afrikaner farming community in the Ghanzi region in northwestern Botswana. Their principal aim is to analyze the changes that have taken place since independence within a group that has long maintained an isolated, separate existence from other groups, both racial and political. Their concern is largely with social change, and thus the information they present with regard to freehold tenure and agricultural change is provided largely as background. Nevertheless, their study is useful for its description of a specific agricultural community in Botswana in which land is held in freehold.

The first Afrikaner families to settle in Ghanzi arrived in 1898 and were given very generous allocations of land by the government of the Protectorate of Bechuanaland, as Botswana was then called. Each family (there were 41 in all) received use rights to 5,000 morgen (4,250 hectares) of Crown land in exchange for an annual rent. The original notion was that after 30 years these use rights would be replaced by freehold title, but few of the settlers actually arranged for the conversion, with the result that by the 1930s, the "majority of the farms remained Crown land, leased to a small shifting group of struggling, rent-evading stock keepers" (p. 122).

In the 1950s, in an attempt to force a more intensive pattern of land use and commercialization of production, the decision was made by the government to fence off, survey, and issue freehold title to the land, the rationale being that with title holders would have access to credit and be able to use this new security to capitalize production. In 1959, when applications for freehold title were first distributed, the two most important qualifications for selection were race and residence, with long-time Afrikaner settlers being given preference over newer arrivals. Of the 87 original applications, 19 were refused, apparently on the basis of a lack of either capital or farming experience. Conditions for approval and continued possession of the freehold title included adequate fencing and stocking, the existence of boreholes, and the reduction of farmers' households to appropriate levels ("appropriate," apparently, as determined by British colonial officials). Farmers who failed to meet these requirements forfeited their title, a condition that was rescinded in 1964.

Although the Ghanzi settlement is scarcely larger than it was at the beginning of the century, it is clearly a more prosperous area than in the past and far better integrated into the regional economy. The role of

freehold in creating this new affluence, however, is probably less important than the world-wide rise in beef prices. But what the British regulations accompanying the conversion to freehold have accomplished is to give white Afrikaner farmers a headstart in the scramble for freehold land tenure. In Ghanzi, the result has been to drive away all but the landowning few, who, despite independence in 1966 and the occasional sale of a farm to a non-white, are still predominantly Afrikaners. In addition, a certain number of the farms have been acquired by non-resident South African entrepreneurs and companies. Commercialization of production has brought new social relations and tensions; conflicts between employer and worker have replaced the uneasy truce that once existed between Bushmen hunters and Afrikaner cattlemen.

The Tati Block, in the northeastern part of the country, is an area of mixed land tenure, and this combination of freehold and communal tenure forms has created some difficulties. Originally claimed by the British South Africa Company at the end of the nineteenth century, the land was partitioned into areas of contrasting land use over the next several decades: some of it was sold off as freehold farms, other parts designated as areas of communal holdings for Africans (known at the time as Native Reserves), and still other areas leased out by the Company, mostly to Africans who could not get land in the overcrowded Reserves. Throughout the colonial period overcrowding and overstocking in the Reserves remained an unresolved problem. Although the Reserves no longer exist in the strict sense of the term, communal and freehold areas continue to exist side by side in what is now known as the Northeast District.

The following report, which focuses on the communal rather than the freehold areas of Northeast District, alludes to some of the conflicts and disputes that can arise when the two kinds of tenure are interspersed:

BO2 Fortmann, Louise et al. A Study of Local Institutions and Resource Management in the North-East District CFDA. Gaborone: Applied Research Unit, Ministry of Local Government and Lands, March 1983.

Since the 1930s the communal areas of Tati District (now Northeast District) have been overpopulated and overstocked, while the freehold farms, for the most part, have had to support fewer individuals and smaller livestock herds. As a result, much of the pasture land in the communal areas has been overgrazed, a stark contrast to the more than adequate pasture available on many of the freehold farms. This difference in carrying capacity is at the heart of the conflicts between the two tenure areas, and the situation is made all the more apparent to residents of the communal areas by the fact that the freehold and communal areas are interspersed and share many boundaries. The grass actually is greener on the freehold side of the fence.

Because grazing is generally better on the freehold farms, stock owners from the communal areas often let their animals wander onto the farms, and may even cut the fence to permit them to do so. In a number of areas free-hold farm owners have taken to holding the trespassing animals until their

owners pay a fine. In addition, they sometimes return the favor by letting their own animals onto the communal grazing areas thus saving their pasture. Grass is also needed in the communal areas as thatching, and because so little is available, residents often turn to the freehold farms for it. This too is a source of conflict: what is a free good in the communal areas must be paid for on the freehold farms, and some farm owners refuse make the grass available in any case. A third source of tension between the two areas is the pattern of interspersion, in which communal areas may be bounded on two or three sides by freehold farms. Such a settlement pattern, for example, prevents communal areas from expanding as their populations increase and cannot provide adequate grazing land for cattle. Instead, residents may be forced to rent pasture from freehold farm owners.

These conflicts between the two areas are longstanding and tend to worsen in times of drought. The problems are due less to the fact that one area is registered and held outright (and the other not) than to the fact that communal areas have many owners and support larger populations than do the freehold farms.

A description of present-day conditions in the Tuli Block of freehold farms is found in the following article:

**BO3 Mazonde, Isaac.** "Tuli **Block Farms: Stars that** No Longer **Shine."** Kutlwano, July **1985,** pp. 20-21.

Mazonde writes that the farmers in the Tuli Block, once a prosperous area of arable farming, are now abandoning agriculture and turning to live-stock production. The result is that farms are becoming overgrazed and that yields of such important crops as cotton have fallen dramatically in the past few years.

A number of factors are responsible for this shift, only some of which are related to the land tenure situation. As freehold farms, there are virtually no restrictions on their transferrability, and at independence many white owners, uncertain about the future, acted quickly to realize what profits they could. In many instances, farms were subdivided into smaller units, often without the riverfront footage that had been crucial for agricultural irrigation in the past. Many of the buyers were without the agricultural or managerial experience that had been accumulated by the white owners, and as a result yields fell. Recent drought has accelerated this decline, as has the lack of an adequate marketing network for vegetables in Botswana. Another factor in this shift has been the government's emphasis on production in the communal areas, intended to reverse the focus of the colonial years. And finally, there has been the favorable trade in beef with the EEC countries which has made cattle more profitable than crops.

Mazonde suggests that more assistance be made available to freehold farmers, who will, he believes, soon be forced to return to crop production as soaring farm prices (up from P20 per hectare in 1966 to P50 in 1984) bring pressure for smaller farm units and more intensive land use.

Another area in which land has long been registered and held on an individual basis is the Barolong Farms, first divided up into

leaseholds in 1892. Colonial policy was to grant white settlers freehold title, but Africans, in those few instances in which they were granted registered title, received leaseholds. Barolong Farms is now held up as an example of agricultural success and there have been a number of studies that have analyzed the basis for this prosperity. The oiiginal study of land tenure in the Barolong Farms, unfortunately unavailable to us, was done by Isaac Schapera for the Protectorate of Bechuanaland in 1943:

**B04 Schapera,** Isaac. Report **on** the Land-tenure System of the Barolong Farms in the **Bechuanaland** Protectorate. 1943. Reprinted by the School of African Studies, University of **Cape** Town.

John Comaroff has also studied the Barolong Farms area extensively and formed very strong ideas about the course of its development. In the following paper, he analyzes the impact of leasehold tenure and the economic and social changes that have come about in the ensuing years.

BO5 Comaroff, John L. "Class and Culture in a Peasant Economy: The Transformation of Land Tenure in Barolong." In Land Reform in the Making; Tradition, Public Policy and **Ideology in Botswana, edited** by **Richard** P. Werbner, pp. 85-113. London: Rex Collings, 1982.

Comaroff's chapter traces the changing patterns of land tenure and land use over a period of 90 years and shows how the interaction of indigenous customs and economic and political change has resulted in a system of individual land rights and in wiaening class divisions between large landowners, small holders, and the landless.

Barolong Farms is an area of 430 square miles in the southeastern area of Botswana which was first divided up into individual leaseholds in 1892. Of the 41 farms that resulted, 25 were allocated to senior Barolong royalty, 9 went to headmen of large wards in Mafikeng, and 3 were made out in the name of wards rather than persons. Comaroff emphasizes that it was individual, and not group, rights that were granted, with the leasehold to last for the lifetime of the recipient; among the rights granted the leaseholder were the freedom to farm, graze, and build on the land and the right, with the consent of the chief, to alienate the land to a fellow Morolong. Leaseholders were required to pay an annual rent of El 10s and could not be absent from their farms for longer than 12 months at a time. What was not clear was whether the leasehold could be inherited or if it could be sold to a non-Morolong.

Over the years, certain de facto rights of the leaseholder came into existence, rights which enabled the holder to act as though he owned the land. Once the allocations were made, they were never voluntarily alienated. As a rule, at the death of the leaseholder rights to the land were passed to the eldest son or closest lineal descendant, and the land was regarded as the personal property of the leaseholder. Although in theory the Barolong chief had the right to reallocate the lease to wnomever he chose, in actuality he declined to interfere in the process and no new certificates of occupation

were ever issued. The relationship between the leaseholder and the indigenous residents was never specified, either on the original certificate of occupation or subsequently, but over time certain powers accrued to the leaseholders. Perhaps most important was that they could sublease the land as they wished, even to whites, and might chose who might live on their land, claim rent from them, and act as headmen. Until the 1960s, however, few leaseholders exercised close control over the people on their land or derived substantial income from it. By the time of independence (in 1966), each farm was occupied by 40-250 people organized by family groups and farming roughly adjacent fields. Because the amount of land and the returns from it were adequate, there was little supervision of individual farms and few disputes.

Recent economic and political developments have altered this pattern, and rising land values and numbers of share-cropping arrangements have led to increasing notions of class and of affinities within these classes. The peasantry are more and more vulnerable to expropriation of their land (presumably by the leaseholders) and to being closed off from boreholes. For the wealthy, on the other hand, economic opportunities have increased as demand for various services and specialized pieces of equipment has risen. The most important factor in this course of events has been the passage of the Tribal Land Act in 1968, a piece of legislation which, by its arrogating to Land Boards responsibility for the allocation of land, has enabled the commercial farming class to consolidate its powers and promoted polarization in Barolong. (Comaroff unfortunately does not specify what has happened to the leaseholds and whether they remain in force or have reverted to another form of tenure.) The Land Board, originally under the chairmanship of the Barolong chief, is dominated by large landholders drawn from the commercial agricultural sector who are able to use the powers of the board to secure rights to large tracts of land for themselves and their associates. In addition, landholders now act as though they own the land outright, and land has been transformed into a readily negotiable resource that can be deployed for profit, a far cry from the old tenet that access to land is the right of every citizen. As Comaroff writes, "Albeit unwittingly, the Act imparted legitimacy to this transformation: by failing to envisage the implications of land scarcity or the ambiguities of the policy in which it was grounded, its architects gave state sanction to, and ready means for, the realisation of the peasant-capitalist formation--and, with it, the destruction of precisely those customary arrangements which were ostensibly to be protected" (p. 111).
(Note: Another version of this paper appeared with the same title in the Journal of African Law 24 (1980) : 85-113.)

Not all researchers agree with Comaroff's views on the role of land tenure in agricultural development in the Barolong Farms area. A different perspective is outlined in the following report:

**BO6 Staps, Joep. Barolong Farms** Geographical Structures and **Land Use** Policies; A Need for Realism. Good Hope, Botswana, December 1981.

Although Staps agrees that agricultural production levels in the Barolong Farms have been impressively high, he does not believe that yields have

been as high as some experts, including Comaroff, accept. Moreover, he insists that social and geographical factors rather than favorable physical conditions have been behind this success.

Perhaps the most critical factor is the unusual settlement pattern in the area, which dates from 1933. Before then, agriculture had been characterized by a pattern of seasonal migration. This pattern had ended in 1933, when an outbreak of hoof-and-mouth disease had caused farmers to live closer to their fields and grazing areas. The. new dispersed settlement pattern proved more efficient. And because farmers were more scattered than before, after 1948 it became the practice for farmers to control the timing of plowing and planting on an individual basis rather than to wait until the chief gave the signal for all to begin. In addition, the Barolong farmers had the example of the Boer farms in front of them, which provided experience of good agricultural practices.

Recent developments, however, call into question whether the Barolong Farms will continue to be as productive. The land shortage has created conflicts between agricultural and grazing activities, a problem which Staps considers can only be solved by giving priority to agriculture. Another change which may threaten the high levels of production is the fact that the chief has recently reorganized the area into 5 wards; this new structure may change the settlement pattern once again as people begin to live in villages at greater distances from their fields. If this were to happen, Staps believes that agricultural production may fall.

A further look at Barolong agriculture and the implications of the different interpretations of Comaroff and Staps is provided in the following collection:

B07 Ntseane, Peggy, Deepa Narayan-Parker, Paul Heisey, and John Comaroff. Barolong Agriculture Reconsidered: Agriculture and Planning in the Southern District Communal First Development Area. Gaborone: Applied Research Unit, Ministry of Government and Lands, 1983.

The first two papers in the collection, those of Ntseane and Narayan-Parker, present the results of surveys done in 1981 in the Southern District; Ntseane discusses the findings of an extensive study carried out in Kgoro village in Barolong Farms, while Narayan-Parker compares data from two Barolong villages with data from two nearby Ngwaketse villages. Ntseane's findings support Comaroff's contention that one cannot lump small traditional farmers into a single category, but must rather consider a range of sub-groups, each with different sets of needs and constraints that must be taken into account in planning programs. Narayan-Parker's comparison shows that the causes of Barolong agricultural success are difficult to pinpoint. Her data underscore the contention that agriculture is a more important activity in Barolong than elsewhere, but fail to discern its basis.

The papers by Heisey and Comaroff are more analytical in their focus and contribute to the debate about the causes and implications of Barolong agricultural success. Heisey does not focus on the extent to which the land tenure system has led to Barolong's prosperity, but rather questions whether there has actually been as much agricultural growth in Barolong Farms as claimed. For him, the important questions are: How different are the

Barolong Farms? and Should they be held up as an example for the rest of Botswana, or does the success raise issues of social equity and employment opportunities that cannot be ignored? Heisey contends that there may be less of an agricultural miracle than Comaroff asserts and suggests that there is a need to investigate investment patterns of Barolong farmers. He argues that the single most important factor in raising agricultural production is timely access to draught power. The most successful farmers are those who are able to invest in implements, and access to the necessary capital and income, often acquired off-farm, has provided the opportunity for the fortunate few. Like Ntseane, Heisey insists that development programs must take into account the often varying needs and capacities of the different levels of farmers and make an effort to see that they benefit the smaller as well as the larger farmers.

Comaroff's paper is a rejoinder to both Staps and Heisey, and he argues that it is inappropriate to hold Barolong Farms up as an example that can be replicated elsewhere. Barolong Farms' agricultural success is the product of a complex interaction between external causes and internal structures, and one cannot focus on the surface indicators while ignoring the structural dynamics. Nor can one label the changes that have occurred as "modernization" or "development"; Comaroff insists that to do so distorts the reality of has happened. He also stands by the figures on agricultural production in the 1970s presented in his earlier paper (see BO5, above) on Barolong Farms. Subsequent events have led to a fall in production levels as successful farmers have diversified and invested in extra-agricultural enterprises. This leads Comaroff to argue that the changes in Barolong agriculture fall into two distinct phases. In the initial phase, which occurred in the 1960s and 1970s, improved techniques and opportunities were apparently (his emphasis) open to all and resulted in substantial increases in agricultural productivity. These increases in production, however, were accompanied by several less desirable results, including uneven capital accumulation and fragmentation of the peasantry, scarcity of previously abundant resources (such as land), and privatization and commercialization of exchange relations (including land transactions). A second stage, which has occurred since Comaroff's initial research in the mid-1970s, is marked by increasing socio-economic polarization among the population, with the wealthier individuals consolidating their positions and moving their accumulated wealth into other, non-agricultural enterprises. Lower levels of production currently found in Barolong Farms are the expression of this diversification (pp. 124-125). Comaroff thus argues that what has occurred in Barolong cannot and should not be held up as an example for agricultural development elsewhere in the country.

Since independence (in 1966), Government policy has been to extend leaseholds to other rural areas in order to encourage development rather than to create additional freehold. The following White Paper discusses the need for creation of individual tenure in the grazing areas and outlines the new Tribal Grazing Land Policy to be **adopted.**

**BO8 Botswana. National Policy on** Tribal **Grazing Land. Government Paper No. 2 of** 1975. Gaborone, July 1975.

The Government's Tribal Grazing Land Policy (TGLP) represents an attempt to deal with problems of overstocked and overgrazed communal lands, widening disparities in rural incomes, and inequitable distribution of resources such as water while at the same encouraging commercial livestock production and keeping to Government policy of not creating additional freehold land. The TGLP rests on the argument that when land is held communally there is little or no incentive for individual livestock owners to conserve resources, an assumption known as the "tragedy of the commons" theory. The only way to break this cycle of ever declining yields and worsening range quality, the TGLP reasons, is through the establishment of a new system of land allocation and management.

At the center of this new policy are the Tribal Land Boards, which are to undertake systematic surveys of the land and water resources under their supervision and divide them into three zones: Commercial Farming Areas (CFAs), Communal Grazing Areas, and Reserved Areas. The last are to be set aside for future needs, while the communal areas are, for all intents and purposes, those already in use as such. Commercial Farming Areas are to be established in those remaining areas suitable for development as grazing areas but not already in use or significantly populated. The CFAs are then to be allocated by the Land Boards to groups or individuals with adequate resources of livestock and capital for commercial development. Leases on these lands are to be for fifty years, long enough to allow the leaseholders to recover their investment and obtain a reasonable profit. They are also to be inheritable, renewable, and, to a limited extent, transferrable; the land may also be subdivided or sublet, subject to Land Board approval.

The policy envisions that by guaranteeing certain groups or individuals exclusive rights to particular tracts of land, these individuals will not only conserve the land, but even improve it through construction of fencing and piped water systems. At the same time, the policy hopes to remove from the communal areas those individuals whose larger herds and better resources have put them in a more favorable position than the average stockholder and who have been most likely to benefit disproportionately from resources in-tended to for the entire community. In this way, it is hoped that communal grazing lands will be made more communal than at present and that, by the removal of the largest stockholders (and their herds), land now overgrazed will be rehabilitated.

Reaction to the TGLP, with its emphasis on commercial development through privatization of land holdings, has been mixed. A particularly interesting and thoughtful analysis of the implications of the TGLP is the following essay by Robert Hitchcock, employed as a rural sociologist by the Government of Botswana at the time.

**B09 Hitchcock,** Robert K. "Tradition, Social Justice and Land Reform in Central Botswana." In Land Reform in the Making; **Tradition,** Public Policy and Ideology in Botswana, edited by Richard P. Werbner, pp. 1-34. London: Rex Collings, 1982.

Hitchcock outlines some of the goals of the TGLP and then moves on to discuss the extent to which they are realistic and the range of unforeseen

consequences he believes the policy will have. Especially useful is his summary of the TGLP is a table giving the location and extent of the areas designated as commercial development areas under the policy (p. 15). These are:

| DISTRICT AND SIZE | COMMERCIAL AREA AND SIZE | NUMBER OF BOREHOLE |
|---|---|---|
| Southern 28,470 $km^2$ | Central Ngwaketse 3,39'2 $km^2$ | 12 |
| | Western Ngwaketse 1,482 $km^2$ | 30 |
| Kgalagadi 110,110 $km^2$ | various areas 4,992 $km^2$ | |
| Kweneng 35,890 $km^2$ | Western Kweneng 3,904 $km^2$ | 29 |
| | North-East Kweneng 1,920 $km^2$ | 3 |
| Ngamiland 109,337 $km^2$ | Hainaveld 4,544 $km^2$ | 34 |
| Central 147,730 $km^2$ | Lepasha 768 $km^2$ | 12 |
| | Western Sandveld | 100 |
| | 13,000 $km^2$ | |

The stated goals of TGLP fall into three categories: economic, ecological, and social, but in each category, Hitchcock believes, planners have exaggerated or misinterpreted what the results will be. Although it has been claimed that the new commercial ranches that will be created will be more profitable, Hitchcock is of the opinion that the potential profits have been overestimated. So too have been the ecological benefits that are expected from the TGLP. According to the author, the customary system of communal grazing was not as damaging to the environment as has been charged, and the old system, in fact, did have mechanisms for controlling the numbers of cattle and the location of cattle posts. Moreover, fencing in the commercial areas will reduce mobility of herds, an important means of control-ling livestock densities in the past.

Even more far-reaching are the social consequences of the TGLP, which Hitchcock expects will go beyond simple commercialization of the cattle industry. Although the policy makes provision for compensation for cattle owners who will be moved out of the commercial areas, it both underestimates the size of this population and fails to provide for individuals who have no livestock. Hitchcock agrees with the comment of the Ngwato Board that "asking people to move out of commercial areas . . . has become notoriously

known as the Government's way of removing the poor from the rich man's land" (p. 16), and his prediction is that the policy may lead to the creation of a substantial number of landless people in Botswana. Communal areas will become even more crowded as livestock owners are moved into them from the commercial **areas.** Even more severe are the consequences of the policy for hunter-gatherers, such as the Sarwa, whose nomadism, it has been decided, precludes their laying claim or possessing rights to specific areas of land. (Hitchcock argues that this is false, and. that there is the concept of territoriality among such groups.)

Nor is it likely that establishment of the ranches will increase employment opportunities. Citing evidence from the Ghanzi ranches (see Russell and Russell, BO1, above) and other areas of commercialized production, Hitchcock asserts that employment of local residents will actually fall as employers bring in skilled workers from outside the area. Other, less formal relations between local residents and ranch owners (such as tenancies or exchanges of a client-patron nature) will also be reduced, and he foresees that these contracts will become increasingly monetarized as owners themselves face the need to raise cash for various fees such as annual rents. (Annual rental fees are actually rather low, approximately 256 Pula, about $300 in 1982, for a 6,400-hectare ranch.) Again referring to evidence from the Ghanzi ranches, Hitchcock suggests that a class of squatters is likely to be created, an underclass with neither land, livestock, or skills. In addition, he predicts that the commercialization of stock-raising will bring about changes in diet (with milk becoming a less common element of people's diets), in transportation and land cultivation (as cattle are less often used to pull carts or for draught), and in social mobility (with labor more often paid in cash than in cattle, as in the past, and serving to limit an individual's chance to build up a herd). Hitchcock's conclusion is that the TGLP is based on a mirage that the Kalahari is a vast area of open spaces, of great ranges ready for commercial development and virtually empty of people, and this misconception is at the root of the many problems he believes the TGLP will create in the future.

Hitchcock's expectations (and warnings) regarding the TGLP are especially interesting in light of the following study done in 1980 of commercial ranches in the Ngwaketse First Development Area in Southern District.

BO10 Botswana. Commission of Inquiry into the Allocation of Ngwaketse First Development Area Ranches. Report of the Commission of Inquiry... and Government's Decision on the Recommendations of the Commission. Gaborone, December 1981.

The Commission's mandate was to inquire into the allocation and operations of commercial ranches in the Ngwaketse First Development Area, as provided for in the Tribal Grazing Land Policy. In its investigations it looked into the allocation, ownership, infrastructure (including boreholes and fencing), and stock levels of fifteen ranches first established in March 1979.

Of the fifteen ranches, three could not be allocated because there were already a number of people living on the land and having claim to it. For

the allocation of the twelve remaining ranches, preference was given to applications according to the following priorities: (1) first claim went to an individual who already had an established borehole and was ranching the surrounding land; (2) second preference was to be given to an individual who had already been granted the right to drill a borehole prior to TGLP but had not as yet done so successfully; (3) third priority was to go to people who had applied for a place to drill a borehole but who had not yet been granted such a place; and (4) fourth claim was to go to individuals who had grouped themselves into syndicates. The Commission, in looking over the original applications and the records of the allocation procedure, noted that many of the files were incomplete or incorrectly filled in and that the assets of the applicants had only been partially verified. Later investigation by the Commission revealed that only **six** of the applicants had probably held the requisite 350 livestock units at the time of application and that several had misrepresented ownership of other assets (such as vehicles and savings) as well. In addition, the Commission noted that none of the borehole owners had made claims to land at the Allocation Hearing, leading them to conclude that borehole owners had been notified privately in advance of the hearing that they would be allocated ranches. The allocation process was thus flawed and failed to follow the rules that had been laid down.

One individual's name recurred often in the Commission's investigations. This was a brother of the president, who himself was allocated a ranch; who also had several employees who had grouped themselves together to apply for and receive ranches; who entered into an agreement with the local chief to develop a ranch allocated to the chief (who had neither the time, funds, or livestock himself); who found a driller and organized borehole drilling, formed a fencing team and organized fencing, and devised a method for cutting boundaries; and who acted as a loan bank for poorer recipients. Although the Commission is quite lenient in its evaluation of this individual's role, concluding that the development of the various farms would not be as far ahead without his assistance, it is also clear that this one person stands in a position to benefit disproportionately from the allocations. To date, however, his relationship to some of the other, less well-off ranchers is very much one of patron and client.

Hitchcock asserts that this kind of interaction is likely to decline, but at least between the better-off and poorer leaseholders it has actually been strengthened. Some of Hitchcock's other, more dire predictions concerning relations between the leaseholders and the landless do not appear to have been fulfilled as yet, although it may well be too soon to judge. A more general discussion of the results of the TGLP is found in the following thesis.

B011 Mathuba, Botshelo M. "**Customary** and Modern Land Tenure Systems in Botswana." M.A. thesis, University of Wisconsin-Madison, 1982.

Mathuba provides an overview of what has occurred around the country in the implementation of the TGLP and makes suggestions for needed changes in the policy (pp. 166-80). As with the study of Southern District (see B010, above), her findings are especially valuable in light of Hitchcock's reservations about TGLP.

As originally proposed in the TGLP, some 900 commercial ranches were to be established around Botswana, covering roughly 10 percent of the country. By the end of 1980, however, progress had been much slower than expected: only 250 ranches had been demarcated, and of these only 110 had been allocated. The slow progress is due to several factors. As Hitchcock predicted, it has been found that areas to be zoned for commercial ranches are not as underpopulated as originally assumed; individuals had drilled boreholes in these areas in the past and were grazing their herds there. On the one hand, this has meant that more occupants of the areas will have to be moved and compensated for their losses than originally anticipated; alternative grazing land and service centers will also have to be provided for them. On the other, it has meant that fewer large herd owners have been moved out of the communal areas onto commercial ranches. Because TGLP regulations state that first preference in allocating ranches is to be given to the borehole owners, there have been fewer ranches than anticipated to be to allocated to individuals not already resident. Another complication that may prove especially problematic in the future is that in some instances the zoning process has set aside too little land for the expansion of neighboring villages. Traditional rights to cutting grass, grazing, and hunting in what are now commercial areas--which would have acted to relieve pressure on land in the past--will be extinguished. (For a similar set of problems with freehold areas, see Fortmann, in BO2, above.)

Implementation of the TGLP has also raisea new questions about the distribution of the benefits of the policy. Cattle ownership is highly skewed, with (not surprisingly) the largest herds held by the wealthiest individuals. Because rents for the ranches are set at very low levels, it is these individuals who will benefit disproportionately from the new policy rather than the country as a whole. Other problems have occurred because those remaining in the communal areas have been reluctant to accept the limits placed on herd size. The communal areas are thus less likely to recover quickly from the effects of overgrazing than had been planned. Another factor that has pre-vented the reduction of herds in the communal areas is that in many areas land boards have reluctant to allocate individuals more than one ranch, regardless of how large their herds may be. The result is that those individuals whose herds exceed the carrying capacity of the new ranches may leave their excess livestock in the communal areas, which remain as overstocked as ever.

Mathuba stresses that the process of consultation between policy planners and local inhabitants must continue and that there must be monitoring of income distribution and conservation. She also recommends several changes in the TGLP. Perhaps most crucial is the need to dezone some areas set aside for commercial development with the object of providing additional land for future village expansion. Rent levels for the commercial ranches should also be raised to economic levels with the goal of distributing the benefits of TGLP more equitably. And finally, Mathuba suggests that the Ministry of Agriculture be allocated the necessary funding and staff to supervise the ranching operations more closely to encourage conservation and prevent these areas from becoming overgrazed like the communal areas.

A very critical assessment of the TGLP is provided in the following evaluation of the 1981 World Bank-financed livestock project

in Botswana, which has provided large amounts of credit to TGLP leaseholders through the National Development Bank. The authors' judgment on the TGLP is a very harsh one, in regards to both the general objectives of the policy and its implementation--indeed, their report was considered sufficiently sensitive that its findings were not made public until they were leaked to and published by the newspapers.

**BO12 Bekure,** Solomon, and **Neville** Dyson-Hudson. The Opera**tion and Viability of the Second Livestock Development Project (1497-BT): Selected Issues. Gaborone: Ministry of Agriculture, 1982.**

According to Bekure and Dyson-Hudson, the TGLP is a package of conflicting goals which contains few hints as to which objectives are to receive priority over the others. While it makes explicit the right of each citizen to adequate land to support himself and his family, it also insists that wealthier citizens must be given incentives in the form of exclusive rights to land to encourage their investment in commercial livestock production. In order to induce owners of large herds to remove their livestock from the overgrazed communal ranges, these individuals are to be allocated leases to newly demarcated commercial ranches. The amount of land that can be allocated to any one individual is not unlimited, however, and thus will not necessarily be sufficient for the largest herds. Moreover, commercial ranches apparently will not receive priority in land allocation and are to be demarcated in those areas not allocated for communal use or as reserved areas. Perhaps the most unrealistic aspect of the policy, according to the authors, is the assumption that there are significant areas of uninhabitated land that can be set aside for commercial ranching. (One estimate is that 10-20,000 people were dispossessed by the demarcation of the first 300 ranches.) As the authors remark, "The whole is at best a complicated balancing act which is dubious as a proposal for even one given point in time" (p. 3).

While the District Land Boards, charged with supervising the demarcation and allocation of the ranches, have responded in different ways to the challenge of implementing the TGLP in their particular jurisdictions, the authors found that several features were common to all their operations. First, because of a lack of experience, they have moved slowly. Second, their responsibilities have been poorly coordinated by the Ministry of Local Government and Lands (MLGL), which has failed to provide adequate direction for them. There is a critical need for the MLGL to formulate a clear national policy with regard to land issues, to set priorities for the Land Boards to follow, and to act upon the thorny issues of the need for higher rents and the enforcement of herd size limits. Finally, the often-voiced apprehension that Land Boards would act almost exclusively in the interests of the elite has not been borne out; their operations have not been dominated by either local or national elites, but have proven responsive to popular interests. The central problem, the authors charge, is that the TGLP is an impossible plan.

Bekure and Dyson-Hudson accept that commercial ranching can be a viable proposition but only if certain conditions are met. Herd sizes need to be kept large enough for there to be economies of scale. In addition, there will need to be better herd and range management practices instituted. At

the present time, though, few possess the appropriate experience and the offtake rates are astonishing low. The annual rate in the 1970s was less than 10 percent, a disproportionate fraction of which came from freehold farms. In fact, the authors point out, herd size and offtake rate are **inversely** correlated outside the freehold farm areas, and their prediction is that unless this is changed, commercial ranch areas may soon be as degraded **as the communal areas.** (This statistic may be somewhat deceptive--freehold farm owners often buy cattle from the communal and TGLP areas which they then fatten up and sell to the Botswana Meat Corporation; these cattle are counted as part of the offtake for the freehold farms and thus artifically inflate the freehold farm offtake rate.)

A comparison of agricultural production between the communal areas and the registered areas (held as freehold or leasehold) in Botswana is found in the following study carried out by the Ministry of Agriculture:

BO13 Litschauer, John G., and William F. **Kelly. Traditional versus** Commercial **Agriculture** in **Botswana. Gaborone:** Ministry of Agriculture, Planning and Statistics, June **1981.**

Litschauer and Kelly compared yields for both crop and livestock production between the commercial and traditional agriculture sectors and found that the commercial farms were significantly larger and more efficient in all areas of production. Not only were cropped areas and livestock herds larger on the commercial farms (as is to be expected given their larger sizes), but also they were more productive per hectare. The authors attribute these differences to several factors: better land, use of irrigation, use of fertilizers, year-round agricultural techniques (including fall plowing), and greater availability of capital, leading them to conclude that the commercial farms are more technically efficient--but they are also careful to point out that this does not necessarily mean that commercial farms are more economically efficient. The data to support or refute this conclusion are not available. Unfortunately, their study does not consider land tenure as an independent variable or draw any conclusions about its effects on production or even on access to capital.

A Presidential Commission was appointed in 1983 to look into land tenure issues throughout the country; the following report presents its findings and recommendations:

**BO14** Botswana. Presidential Commission **on Land** Tenure. Re-port of the Commission.... Gaborone: Government Print**er,** December 1983.

Within a broad mandate to study land tenure systems throughout Botswana and to make recommendations for their modification, the Commission on Land Tenure focused on several aspects of the TGLP and recommended changes for its improvement. Although the Commission felt that it was too soon to evaluate

the long-term impact of TGLP, it noted, as other critics had done, that the amount of unused land that could be zoned for commercial use had been over-estimated and that the reduction in herd size in the communal areas that planners had predicted had not as yet occurred. This continuing overstocking was in part due to the fact that some TGLP ranchers continued to graze their herds on communal lands. To alleviate these problems, the Commission recommended that there be careful monitoring of the situation and that the Minis-try of Local Government and Lands and the Ministry of Agriculture develop means for the progressive restriction of TGLP ranch herds to the ranches. It also suggested that there be a rigorous enforcement of conservation measures in all grazing areas regardless of tenure type.

As regards freehold land, the Commission recommended that the Government continue to purchase freehold land as it becomes available with the goal of converting it to tribal land--something it has already done in North East and South East Districts which has served to alleviate land shortage in those areas.

The following White Paper contains Government's response to the Commission's report and the adjustments it intends to make in light of the Commissions recommendations.

**BO15 Botswana. National Policy on Land Tenure. Government Paper No. 1 of 1985. Gaborone: Government Printer, April 1985.**

The Government agreed that overstocking was a continuing problem and accepted the Commission's proposal for careful land use planning and rigorous enforcement of conservation measures in all areas. It also agreed to the desirability of continuing to purchase freehold areas for conversion to tribal land as these areas became available.

In 1980 the Ministry of Local Government and Lands, in an attempt to create a record of land holdings while avoiding the expenses of formal legal registration and the requirement of specialized personnel, carried out a rough land inventory in several localities around the country, including the Tati Siding/Shashe Bridge area south of Francistown. The following report describes and evaluates the project in that **area:**

BO16 **Botswana. Ministry** of Local **Government and Lands. Ap**plied Research Unit. **Evaluation** of **the** Tati Siding/ Shashe Bridge Land Registration Project. Gaborone, December 1982.

Two factors were behind the project: the rising incidence of disputes over boundaries of arable land and the increasing numbers of immigrants (that is, individuals from outside the Tati Siding/Shashe Bridge area) who sought to have land allocated to them. It was hoped that the project would enable disputes to be settled easily, produce an inventory of land holdings from which a land use plan might be prepared, and establish a formal record of

holdings so that immigration and settlement of newcomers could be monitored and controlled by the Tati Land Board.

Surveying participants in the project two years later, the Applied Research Unit of the Ministry of Local Government and Lands found that there had been inadequate publicity and preparation before implementation of the project and that many people remained unclear as to what had occurred and how they might benefit. A sample of 28 participants in the area revealed that 75 percent did not know about the project. And while most agreed that it was beneficial to have boundaries clearly identified and marked, many complained that they could not extend their lands and that they had not been given notice by the Land Boards. The report also noted that it was too soon to measure if patterns of investment or inheritance had altered as a result of the project and that there was no correlation between knowledge of the project and investment patterns as yet. In its recommendations it suggested that in future both the Land Board members and the general public be educated as to the goals of the project and its procedures. In addition, and perhaps even more crucial, it recommended that the land registration and land allocation processes be coordinated. As it stands now, a new record of holdings has been created which is poorly understood and which will be virtually impossible to maintain in the future.

## BURKINA FASO

Although there is no system of registered individual freehold in Burkina Faso, a new decree, enacted in 1985, indicates the intention **on** the part of the government to create a national system of permits and rights to land as part of the establishment of a system of land-use planning for the entire country. All land in Burkina is State land (as decreed in 1984), and while the new proclamation in no way negates this principle, it provides for national- and regional-level land surveys to be carried out, management plans drawn up, and titles and occupation permits issued to individuals and groups. The decree outlines several different rights of occupation for which application may be made. Among them are a permis **d'occupation,** which grants temporary rights to an individual who wishes to use to land for "une activité lucrative"; a permit to occupy urban land **(permis urbain d'habiter),** which conveys permanent right to land on which an individual may build housing for himself and his family; and a **permis d'exploitation,** giving permanent right to rural land or, more generally, to land to be used for profitable activities. From the language of the decree, the urban right appears to be an individual one, while rural land rights may be granted to either individuals or groups. Allocation committees are to be established at all levels to manage the process and to rule on disputes. (See Decree No. 85-404-CNR/PRES; for the complete text, see the Journal officiel du Burkina Faso, 22 August 1985.)

The decree thus calls for the implementation of a system of written permits and titles, and although the thrust of the legislation is on the drawing up of plans for rational management of pastoral, agricultural, irrigated, and urban lands, a written record of land rights, accorded to both individuals and groups, will also be created. To what extent such an ambitious program can ever be implemented, however, is an unanswered question. Before the coup which overthrew President Sankara, the World Bank had been consulting with members of the government and was considering carrying out a program of demarcation of rural plots. (Also under consideration was a separate project to register urban land, beginning first in Ouagadougou and Bobo-Dioulasso.) By working with village officials and by keeping other expenses to a minimum, the Bank hoped that the project might be done rather cheaply. It had apparently not yet decided if a formal land register would be one of the results of the program (although the decree discusses the procedures for the maintenance of one). President Sankara had declared that the demarcation was to be done rapidly throughout the entire country, in a nine-month period, but Bank officials remained skeptical. These projects are now up in the air with a new government in power--as indeed are the laws themselves.

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## BURUNDI

Although registered land is no longer limited to urban areas or to land owned by Europeans as it was during the colonial period, it still remains relatively rare in Burundi. Registered rural land is largely limited to those holdings purchased by members of the urban elite, and there have been no studies of either the frequency or effects on production of registration. The new 1986 Code foncier du Burundi emphasizes the state's recognition of individual registered land rights and implies that the state will push for further registration of rural lands by its provisions for the establishment of new local land registries outside the capital. [The new code has been published in the Bulletin officiel du Burundi, v. 25, nos. 7-9 (September 1986), pp. 125-69.]

**A** thoughtful and lengthy discussion of the suitability of land registration for Burundi is found in the following:

**BU1 Nimpagaritse, Didace-Olivier. "Organisation foncière et disparité des statuts immobiliers au Burundi." 2 vols.** Doctor **of** Laws thesis, **Université Libre de Bruxelles, 1983.**

Although Nimpargaritse's thesis was written before the passage of the most recent land legislation, the points he makes with regard to the application of written land law and the implementation of a country-wide program of land registration remain relevant. Nimpagaritse does not favor replacing customary land law with a European-derived written code, maintaining that despite obvious changes that have taken place in the customary system in the twentieth system, it remains flexible and continues to provide landholders with quite adequate security of tenure. Implementation of a national program of land registration would not only prove both expensive and time-consuming, but might also bring unwanted changes in landholding patterns. Registration of individual rights, with its requirement that individual holdings be legally defined, Nimpagaritse suggests, even in areas where de facto individualization of holdings is already prevalent, may actually serve to increase problems of sub-economic holdings and militate against the adoption of more efficient agricultural practices. It may also act to increase rather than lessen the number of land disputes.

Nimpagaritse argues that it is not enough for the government to legislate changes in the land tenure system to achieve the desired ends. People must be willing to adopt the new system, and the necessary costs and complexities of land registration are likely to discourage them from doing so. Moreover, a certificate of registration is unlikely to confer additional legitimacy of title to a rural population that is largely illiterate and poor. Nimpagaritse also questions the ability of the state to provide the necessary manpower, facilities, and equipment either to carry out the initial surveying and registration operation or to maintain the necessary records subsequently. If the

maintenance of records of births, marriages, and deaths provides any gauge, it is highly unlikely that the government will be able to maintain accurate, up-to-date registers of land transactions.

## CAMEROON

Two laws govern the process of land registration in independent Cameroon: the law of 9 January 1963, which establishes the registration system and outlines the conditions under which land may be acquired by individuals in definitive concession from the state, and the law of 7 July 1966 (and its amendments), which lays out the procedure for registration of title. A substantial proportion of lands registered by private individuals is in the cities, while the government has used registered land for resettlement projects in Margui-Wandala Department, near Nkondjock, Mbongo/Eseka, and Goura. Between 1974 and 1979, 8,949 parcels of land were registered, with Douala accounting for half this figure (figures are from C5, below). There is, however, no publication which specifies how much land in which locations has been registered or discusses what the effects have been.

Written from a legal perspective, and listing no specific examples of registration or titling:

**Cl Melone, Stanislas. La parentè et la terre dans la strat-giè du dèveloppement. Paris: Editions Klincksieck,** 1972.

Melone traces the history and structure of both legal and customary land tenure in Cameroon. On pages 169-178, he discusses the effects of the law of 7 July 1966, a law intended to simplify land registration procedures. In essence, registration is made primarily a matter of administration, thus according a more active role for the state. In addition, holders of traditional tenure (for example, members of lineages) can more easily obtain "definitive and irrefutable" title to their land.

One step in the registration procedure includes the compilation of a file which records current land use, location and limits of land, names of neighbors with adjacent land, names of all persons who helped bring the land into production, and other contracts affecting the land. Other procedural steps include a demarcation of borders as agreed upon by all interested parties, and filing with the Prefect. Problems that arise are to be settled by a tribunal composed of members of the various ethnic groups in the area.

Finally, Melone touches on the lack of sufficient personnel to administer this system, as well as unresolved legal questions, which include the problem of different members of a lineage claiming the same parcel of land.

In contrast to Melone is the following article:

C2 Dikoume, Cosme, and Philippe Lippens. "Les problèmes fonciers au Cameroun Oriental." Douala: Institut Panafricain pour le Développement, 1970.

Written by a sociologist and a lawyer, the article begins with a discussion of traditional tenures. The authors state their view that the law of **9** January **1963** was a justification to mount resettlement programs by creating national lands through the appropriation of "unused" land, which could then be given to settlers under a "personal and definitive" title after a stipulated time period.

The following settlement projects involving titling are cited:

**1)** Department of Margui-Wandala: 46,000 Kirdi people moved from mountains to the **plains_(1960-1969);**
**2)** Bamilike area, Nkondjock region: 714 families moved and installed (by **1969);**
3) Mbongo and Eseka: law used to establish large oil-palm plantations.

Lastly, reference is made to the law of 30 November 1966 that bars registration in the name of the collectivity (that is, ethnic groups).

Case 1 above is expanded upon by Hoben **in:**

C3 **Hoben, Allan.** "Social Soundness **Analysis** of the West Benoue Integrated Rural Development Proposal, and Suggestions for Alternative Interventions in **Margui-Wandala."** Washington, DC: **USAID,** 1976.

In his broader analysis, the author notes on pages 41-43 a resettlement project in northern Cameroon involving land titling. Located at Mokyo, 20 kilometers north of Maroua, this project encompassed 2,200 hectares and 2,200 people, who were relocated from the mountains to the west. Rectangular plots of 4 hectares each were marked, numbered, and registered to settler farmers. By 1967, 594 households had been settled in the area. However, by 1976, official support had ended, services were deteriorating, and some settlers had already returned to their home villages. No further mention is made of the status of the titled land.

Yet another specific example is the project discussed in:

C4 Cameroon, United Republic of. Ministry of Social Affairs. "Programme for Socio-Economic Development Through Assistance to Young Farmers in the Mbam Department." Yaounde, **November** 1977.

In this project, young farmers are to be settled with the aim of improving cultivation techniques. Located in Goura and Mont-Tama in the Ntui arrondissement, land in the project is to be given to each farmer through "permanent and hereditary" title in two stages. For the first five years, the farmer receives a provisional title. After this time, if all conditions of occupancy are met, the title becomes permanent.

No indication is given as to whether this project has moved out of the planning stages.

On a country-wide scale, Tah presents total figures for land registered through 1979:

**C5 Tah, Zachariah Ngoh. "The Effects of the Cameroon 1974 Land Ordinances." Ph.D. dissertation, American University, 1980.**

Despite the author's weak methodology and the fact that he does not analyze the effects of registration itself, Tah makes some interesting comparisons between registrants and non-registrants. Within a non-randomly selected sample of fifty people, the eight who had registered land were generally literate, aware of the registration ordinances, and tended to register primarily homes and businesses in urban areas. (These tables can be found on pp. 138-40.)

The author found that only about 20 percent of the general population had knowledge of land ordinances, though registrants represent only 0.338 percent of Cameroon's population. During the 1974-79 period, 8,949 people registered land, with the following breakdown by region:

| AREA | CASES |
|---|---|
| Ebolowa | 244 |
| Yaounde | 767 |
| East Bertoua | 246 |
| Nkongsamba | 952 |
| Douala | 4373 |
| Bafoussam | 1972 |
| Garoua | 123 |
| Bamenda | 100 |
| Buea | 172 |
| TOTAL | 8,949 |

However, the author provides no information on parcel sizes, and the trends indicated by the respondents cannot be easily extrapolated to the general population of registrants.

Other, less useful documents include:

C6 Lawrance, J.C.D. "Report on a Visit to the Federal Republic of Cameroon." International Office of Cadastre and Land Records. London: Ministry of **Overseas** Development Administration, 1970.

Lawrance distinguishes between the registration of deeds in anglophone Cameroon and the registration of titles found in the francophone sections and argues that deed registration only registers transactions in land without establishing the legal right of the interested parties to the land affected. [Unification of the two sections of Cameroon has rendered this moot since 1970 as legal codes were unified at the same time.]

A brief synopsis of advantages of title registration is given, and these include: clearer legal definition of **parcels;** quicker, **easier, and** cheaper

land transactions; and decreased litigation. General procedures for registration are adjudication of existing rights, boundary survey, registration and control of dealings in land.

A similar discussion centering on colonial era laws is presented in:

**C7 Angladette, A. "Note sur les conditions, modalités et effets comparés des règimes de 1'immatriculation des immeubles et constatation des'droits fonciers des indigènes dans les territoires tropicaux de 1'Union Frangaise." Land Tenure Symposium, Amsterdam, 26-28 October 1950. Leiden: Universitaire per Leiden, 1951.**

Angladette discusses the legal aspects of the outmoded dichotomy between land registration and "verification" of land rights (the latter accorded indigenous populations). He outlines basic statutes important to both of these concepts, with a brief mention given the Cameroonian law of 21 July 1932, which was the basis of land registration in Cameroon and stated the guarantees explicit in registered land.

Registration is contrasted with the verification of rights (constatation). This verification was an intermediate step between outright registration and traditional rights to land. Verification served to legitimize traditional land rights and was intended to facilitate agricultural development through increased security in the holding of land. [Please note that laws in 1963, 1966, and 1980 have superseded this old legislation.]

## CENTRAL AFRICAN REPUBLIC (CAR)

There is no registered land in rural areas of the Central African Republic, although apparently land may be held in fee simple in the capital of Bangui. All land in the country has been declared State land. In the past several years, there has been increasing emphasis on liberalization of the economy,' •on limiting the role of the government in the country's economy and, in the agricultural sector, focusing less attention on cooperative production. This new economic outlook, however, does not include plans to register holdings.

## 53 **CHAD**

A codified system of land registration and titling exists in Chad, but no indication is given in the literature of either the practical application of the system or specific examples of registration and titling. In fact, there is only one article that mentions the registration system:

**CH1** Ramba, Elie. "Brief Notes on the **System** of **Land** Tenure in the Republic of Chad." Paper presented at the Seminar on Cadastre, Addis **Ababa, 25 November-9 December** 1970. Addis **Ababa,** U.N. Economic Commission for Africa.

This four-page document briefly describes the de jure system of land tenure, which encompasses both public and private lands, the latter being divided into urban and rural lands. Urban land may not be transferred without being surveyed first.

The system for registering lands is outlined. Applications for registration require a survey, with counterclaimants allotted six months to dispute the registration claim. The registration procedure follows a five-step process: (1) recording of the claim in the Land Registry, (2) publication of the claim in an official journal, (3) verification of the claim by the Cadastral Department, (4) demarcation of the boundaries, with a two-month grace period allowed for counterclaims, and (5) granting of title after settlement of disputes or expiration of the grace period.

No information is provided on the extent, or specific instances, of registration.

## CONGO

Although **a** legal system existed for registering and titling land prior to 1979, no mention is made in the literature of specific instances of registration during this period. A new constitution established in 1979 abolished registration and titling as legal procedures.

The situation prior to 1979 is discussed in:

**COl Salacuse, Jeswald W. An Introduction to Law in French Speaking Africa. Charlottesville, VA: Michie Company, 1969.**

The author describes Congolese land law as a dual system whereby unoccupied lands belong to the state, while occupied lands continue under customary rights and usage (pp. 409-502). This system is based on the constitution of 1967, which further states that only registered lands have legal effect. Al-though indigenous peoples were allowed to register their land after 1953, no specific numerical or locational information is given.

It should be noted that the Constitution of 1979 abolished all land titles and customary rights, vesting total control of land in the hands of the state while allowing "each citizen to freely dispose of the product of the earth, fruit of his or her own work." [See James Riddell and Carol Dickerman, "Congo," Country Profiles of Land Tenure: Africa 1986 (Madison: Land Tenure Center, University of Wisconsin, 1986), pp. 42-46.]

Along the same lines, but much less informative, is:

CO2 Ondima, Antoine. "Proceeds on the Cadastral Activities in the Popular Republic of Congo." Paper presented at the Workshop on **Cadastral Surveying, Mapping** and Land **Information, Hanover, Germany,** 1978.

In this brief, six-page paper, Ondima mentions that urban and rural property are demarcated by the Cadastral Service at the request of applicants. However, due to budget constraints and lack of trained personnel, no systematic and organized program for registration exists. As stated above, this system was legally abolished in 1979.

## ETHIOPIA

The creation and recording of rights in land by the national state is a major theme in the history of imperial Ethiopia. Charters recording grants of land and taxation rights to both individuals and institutions such as monasteries date back to at least the sixth century. Tenure patterns varied. considerably between the older, communal tenure provinces of the north; Eritrea, with its colonial experience; and the south, where conquest and incorporation into the empire brought with it the introduction of individual titles. The tenure innovations from before 1960 have generally been swept away by subsequent changes, but they are still have relevance as models of tenure reform. This introductory note reviews them briefly before providing annotations for material from the post-1960 period.

**In** the north, priests had long recorded the land transactions within their peasant communities in the end pages of the gospel of the parish church. Grants of rights to the churches themselves were similarly recorded. In the imperial treasury at Aksum, records of imperial land grants were conserved, records which while of great historical interest did not constitute a systematic cadastre. The 1960 Ethiopian Civil Code attempted to provide a fuller legal and institutional basis for communal ownership, but the provisions of the Code were never implemented and were swept away by the 1974 land nationalization.

In Eritrea, land registration was introduced by the Italian colonial regime as a part of its plans for settlement of Italian colonists. The pattern of alienation to the Crown of "unused" land and the subsequent creation of freeholds and concessions for colonists through Crown grants is similar to the pattern in British settler colonies. Perhaps 1 percent of the land was titled to Italian settlers, though a larger amount had become Crown land. These settler tenures survived Eritrea's 1962 incorporation into Ethiopia but were abolished in the Dergue's 1974 nationalization of all land in the country.

In the south, imperial land grants to officers and soldiers in the army of conquest in the late nineteenth and early twentieth centuries created a system of individual tenure. Such land was taxed, and it was established quite early that it could be sold. In 1907, the Emperor Menelik II initiated a systematic cadastre for his new capital of Addis Ababa and introduced land survey for tax-assessment purposes into the southern provinces. Imperial land records had always had taxation as their principal purpose, and Ethiopia in the earlier part of this century had a remarkably complex system of taxation. The obligations in kind originally associated with quasi-feudal tenures were gradually commuted to taxes payable in cash, and tax receipts were treated as critical evidence of land rights. The 1931 Constitution gave imperial recognition to full individual owner-ship of land in the south. Under the 1960 Civil Code, payment of

the land tax for fifteen consecutive years conferred title (Article 1168). This provision was applicable only in the individual tenure areas of the southern provinces, but even in the communal tenure areas receipts for the agricultural income tax--which in practice was assessed upon landholdings, like a land tax--were treated as the best evidence of land rights.

In the post-1960 period, issues of tenure security and of records of rights in land have been discussed in two very different contexts: a set of reforms considered but never enacted by government during the last decade of imperial rule, and the radical reforms which followed the 1974 revolution. The annotations here focus heavily on this most recent literature, but the older sources can be approached through:

**ET1 Pankhurst, Richard. State and Land in Ethiopian History. Addis Ababa: Haile Selassie I University and Oxford University Press, 1966.**

This volume digests a very substantial and complex literature on the evolution of quasi-feudal tenure forms in imperial Ethiopia, from the origins of the Axumite State in the first century, A.D., into the reign of Haile Selassie in the first half of this century. It reviews the patterns of military colonization of southern Ethiopia at the turn of the century and the creation there of the large estates for former soldiers and farmed by the conquered local inhabitants. The author provides the decree for the cadastre of Addis Ababa and sample deeds, and examines the development of land taxation and land survey for assessment in the south. The Italian land expropriations in Eritrea are reviewed, but the book closes with the Italian occupation of Ethiopia in 1932.

The annotations which follow focus on more recent developments and examine the literature on tenure reform and economic development from 1960 onward. The first significant attempt to alter existing tenure patterns was in that year through the chapter of the new Civil Code on ownership of land by agricultural communities. Though these provisions were never implemented and are now no longer in force, they provide an unusual model of tenure reform. The communal systems, the reform model, and the discussions leading to enactment of the chapter are carefully reviewed and analyzed **in:**

**ET2 Billilign Mandefro. "Agricultural Communities and the Civil Code." Journal of Ethiopian Law, vol. 6 (1969), pp. 145-199.**

The Civil Code of 1960 provided for the first time a full legal regime for private ownership of property as it had evolved in southern Ethiopia. The model was drawn from European Civil Law, and included provision in Title X for a deeds registry. The Code provisions in this regard legitimized and served as the capstone for the tenurial evolution which had occurred; the deed registry provisions were never implemented, the regime continuing instead to rely

upon land **tax** records as proof of ownership. The Code also attempted to pro-vide **a** legal regime for the communal ownership areas of northern Ethiopia, where land was held by descent or village communities but farmed individually by households, a regime for communal tenure which would be equally useful for pastoralist communities which utilized pastures as commons. Chapter 2 of Title IX of the Code vested ownership in the existing communities which traditionally exercised it. The communities were given legal personality. The communities could sell, mortgage or pledge land, though this required approval by the Ministry of the Interior, a provision whose intent was to protect communities from ill-considered sales to speculators. Among the members of the communities, tenure relations were to, be- spelled out in charters enacted by the community, which were expected to reflect the customary law of the particular community. If the community failed to draw up a charter, the Bureau of Agricultural Communities of the Ministry of Interior was empowered to do so if so requested by a member of the community. It was the charters which would have spelled out the relative extent of household and community land use. The Bureau was never created, nor were any charters prepared. The author suggests that the Ministry may simply never have understood the provisions. It remains an interesting model not only for the legal structure proposed for the communal tenure areas but for the approach to unification of a dualistic tenure system: land in Ethiopia would have become uniformly privately owned by communities in the north and individuals in the south.

In the period from 1960 to the overthrow of the imperial government in 1974, discussions of tenure reform were largely within a framework established by the report of a land policy project developed by the Ministry of Agriculture and FAO advisors. The consultants' influential report to government was published as:

ET3 Lawrance, J.C.D., **and H.S. Mann. "F.A.O. Land Policy Project (Ethiopia)." Ethiopian Observer, vol. 9 (1966), pp. 286-336.**

The report deals with several broad topics: creation of a land reform agency, cadastral survey, land registration, tenancy reform, communal land tenure, and land taxation. The section on cadastral survey sets out an English "general boundaries" approach utilizing aerial photomaps as a basis for systematic demarcation of holdings and adjudication of titles. The section on land registration proposes replacement of the deeds registration provisions of the Civil Code with title registration, under which registration clears defective titles and the state in effect guarantees the titles shown on the register. The model proposed is quite similar to that of Kenya, and indeed they both derive from the gradual refinement of cadastre and registration models by Simpson, Lawrance, and other experts associated with the British Ministry of Overseas Development and the Ministry's Directorate of Overseas Surveys. The authors of the report suggest that this model be applied not only in the south but to individual holdings in the north, in a process of tenure individualization like that in Kenya. They urge individualization of the communal tenure systems on grounds of insecurity of tenure resulting in lack of incentive to improve land, fragmentation of farms, lack of continuity in farming, and restricted access to agricultural credit. The authors outline a law for

individualization of tenure through adjudication by parish committiees, and urge consolidation of holdings as an element in the program.

As a result of this report, usually referred to as the "Lawrance and Mann Report," a Ministry of Land Reform and Administration was created. It finalized and presented to the Council of Ministers legislation to implement the tenancy reform proposal, the land taxation proposal, and the cadastral survey/land registration proposal. No provisions were included in the registration proposal for individualization of land tenure in the -north. The text was ambiguous: it would be applied gradually to selected adjudication areas. While the Ministry declared its intention to apply it first in the individual tenure provinces of Shewa and Arussi, there was nothing to exclude the possibility of later application to the communal tenure areas. The proposed legislation on cadastral survey and land registration was provided with an extended exegesis by the Ministry of Land Reform and Administration:

**ET4 Ethiopia. Ministry of Land Reform and Administration. A Proclamation to Provide for the** Registration of **Immoveable** Property. Addis **Ababa, 1968.**

The lengthy exegesis which precedes the text of the proposed law states the case for the reform. It cites insecurity of tenure, low incentives for investment in agriculture, difficulties in the use of land as collateral to secure credit, and a high level of land disputes as problems which would be ameliorated by the proposed legislation. It criticizes the deed registry provisions of the Civil Code, noting that registration under such a system has no effect upon the validity of the transaction registered. The paper contains a description of the system provided by the proposed law, which covers cadastral survey, adjudication, and registration in a single text. It provides a budget estimate of 13 million Ethiopian dollars (then about 7 million U.S. dollars) for registration over a five-year period of a little over 600,000 holdings. A staff is proposed which would increase from 100 to 400 over the five years.

The justification for the proposed legislation was further developed in a series of papers presented to a seminar on agrarian reform organized by the Ministry of Land Reform and Administration, shortly after the presentation of the proposal to the Council of Ministers:

**ET5 Ethiopia. Ministry of Land Reform and Administration. Seminar Proceedings on Agrarian Reform, 25th November-5th December, 1969. Addis Ababa: Berhanenna Selam,** 1971.

This volume contains four relevant articles: "The Need for Cadastral Survey," by Mekbib Mamo (pp. 149-152) ;"The Need for Registration of Title," John Bruce (pp. 153-164); "Adjudication," by J.C.D. Lawrance (pp. 165-172); and "Legal Aspects of Agricultural Land Disputes," by Alemante (ebre-Selassie (pp. 218-234). The last item provides empirical evidence on land disputes

based on studies carried out by the Ministry in Yerer and Kereyu Awrajas **in** Shewa Province, and Chercher Awraja in Hararghe Province. Disputes over owner-ship and boundaries are reviewed and registration of title is suggested as an effective solution. The primary value of the other articles is the evidence of the thinking in the Ministry at the time of the seminar. Bruce notes the continuing uncertainty as regards registration in the communal tenure areas and suggests that survey, adjudication, and registration of titles could be utilized either to implement an individualization program such as that pro-posed by Lawrance and Mann or for registration of the ownership of land by the agricultural communities recognized as the owners of the land by Title **IX** of the Civil Code.

In the event, the Ethiopian attempt at reform of land tenure proved an elaborate near miss. No part of the legislative program which grew out of the Lawrence and Mann report was ever enacted, and Ethiopian land policy swung onto a radically different tack with the 1974 revolution. Ottaway's characterization of the Dergue's socialist land-reform proclamation of 1974 is apt: "The system created by the land reform proclamation is incomplete and, more seriously, contains some major ambiguities. The most serious of these is that it nationalizes all land but foresees individual exploitation of it, hence distribution of land to individual farmers."* While the Dergue has aspired to collectivize agriculture on a large scale, it has been unable to do so. Planning documents call for collectivization of over 50 percent of cultivated area and production by 1994, but the figures for 1984/85 were only 1.4 percent collectivized (ET7, below). The pattern of household landholdings continues to predominate. As in the case of ujamaa in Tanzania, researchers and commentators have tended to focus upon collectivization initiatives and their problems. The research to date has provided only a few insights into the degree of security of tenure enjoyed by farm households within the framework of the peasant associations. In theory, such a framework could provide considerable security of tenure and even transactions in use rights. For this information one must turn to microstudies, reviewed below. They suggest continuing instability of landholdings, due to both the adjustments made in particular associations in the years following the reform and the continuing uncertainty created by the regime's commitment to collectivization.

ET6 **Dessalegn Rahmato. Agrarian** Reform **in Ethiopia. Uppsala: Scandinavian** Institute **of African** Studies, **1984.**

This study examines the experience with land redistribution in four **weredas,** one each in the provinces of Gojjam, Wellega, Keffa, and Sidamo. It finds that some of the localities have had as many as four successive land redistributions since 1975, others as few as two redistributions. The author

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* Marina Ottaway, "Land Reform and Peasant Associations: A Preliminary Analysis," Rural Africana, vol. 28 (1975), p. 51.

emphasizes that these redistributions were not arbitrary but in persistent pur- suit of what was seen by these peasant associations as the overriding objective of the reform: an end to landlessness. He shows how redistribution must be a continuing process to accommodate new households as they are formed by marriage or immigration into an area and to accommodate changes in the capacity of particular households to cultivate in a situation in which inheritance and trans-actions are not permitted to meet these needs. He notes that fragmentation of household holdings continues to be a problem because land distributions by peasant associations are responsive to the demands of each household to have a piece of each type **of land.**

**E7** Alula **Abate,** and **Tesfaye** Teklu. "Land Reform and Peasant Associations in **Ethiopia--Case** Studies **of** Two Widely Dif- ferent Regions." Northeast African Studies, vol. 2, no. 2 (1980), pp. 1-51.

The authors examine the experience of two weredas, Shashemane in Shewa Province, a previously individual tenure area, and Agew Meder in Gojjam, a previously communal tenure area. In the Shashemane area, there has been considerable diversity of experience in different associations: some have elected to merge holdings and farm collectively, others have approved existing holdings but made periodic adjustments to accommodate landless households, and yet others have engaged in general reapportionment of holdings. Some redistribution has been occasioned by attempts of government to equalize average holdings as among peasant associations; these were created hurriedly and usually on the basis of pre-existing communities with quite different land/person ratios. The authors note that such adjustments have not been popular. In Agew Meder, as in communal tenure areas generally, the reform legislation did not mandate land redistribution, instead encouraging collectivization of production. The authors found, however, that redistribution had occurred. The reform legislation at the outset accomplished some redistribution of land used, if not land owned, by its outlawing tenancy arrangements. In the local circumstances (and in those of the communal tenure areas generally), this meant that wealthier farmers with draft animals could no longer rent in land from households which lacked plow oxen. Further redistribution occurred in 1978 to eliminate the holding of land by one farmer in several different peasant associations, a holdover from the rist form of communal tenure, under which a farmer might hold land in several parishes. By 1979, further redistribution was necessitated by a government requirement that each peasant association set aside some land for collective farming. Dislocations appear to have been more extensive than would have been anticipated from the provisions of the land-reform proclamation on communal areas.

In the past five years, the Dergue has pursued a controversial program of villagization reminiscent of Tanzania's ujamaa program. A recent study considers the impact of villagization on tenure security and production:

**ET8 Cohen, John M., and Nils-Ivor Isaksson. "Villagization in Ethiopia's Arsi Region." Journal of Modern African Studies, vol. 25, no. 3 (1987), pp. 435-464.**

The authors found little evidence of generalized land redistribution in connection with recent villagization efforts. They note (p. 465) : "Reallocation of land occurred during the campaign when someone's fields or pasture were taken for the village site, or when peasants were moved from lowland to highland farms, or when PCs [peasant cooperatives] were expanded. But those who lost holdings were given other land to continue farming individually. Still, given the stated long-term objectives of the Government, villagization must be seen as a step towards establishing large-scale PC-based group farms." They are doubtful that collectivization, given its very limited scale, has had an impact on aggregate production levels. [They note a similar conclusion in a paper which is not available to the annotator: Angela Roberts, "Report on Villagization in Oxfam America Assisted Project Areas in Hararghe Province, Ethiopia" (Addis Ababa: Oxfam America, 1986).] The villagization process it-self, the authors conclude, may have efficiencies in provision of services, but it increases distances between farmer residences and their parcels and is likely to have negative environmental consequences because it tends to intensify land use in the immediate vicinity of villages. [This is a condensed and more readily available version of the 1987 Cohen and Isaksson report for the Swedish International Development Agency (SIDA).]

It is possible that some causes of insecurity are on the wane. For instance, the cases of loss of land due to adjustments in the territory of associations and the absorption of landless former ten-ants would appear to have been temporary phenomena. But the absorption of new households will continue to be an issue (the extent to which it creates insecurity will depend to an important extent upon how it is managed), and the prospect of the further taking of peas-ant holdings for collective farming operations continues to create insecurity. There are so far no signs of liberalization measures, for example, the creation of transferable long-term use rights, such as those being introduced in China and other more mature socialist systems.

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## GABON

Under the Gabonese system of land registration and titling, 2,900 titles were issued up to 1970, although no breakdown is given in the published literature on location of the parcels involved.

Providing specific information and outlining the system of land registration in Gabon as of 1970 is:

G1 **Minko,** Henri. "Le **regime foncier de la** République **Gabonaise,** 1'immatriculation." **Revue Juridique et Politique, Independance et Cooperation, no. 4 (1970), pp. 695-698.**

**According to** the author, customary rights in land are not legally recognized, only state and private property. The procedure for registering property is as follows:

1) Request by land user for registration and publication of request in official journal to elicit counterclaims.
2) Survey of property conducted after two months have elapsed with all interested parties present.
3) Results of survey published in official journal.
4) Legal tribunal issues authorization to register (ordonnance d'immatriculation) to the land registry after two months if no objections made.
5) Title is provisional until parcels are developed, and becomes definitive only after two years in urban areas and five years in rural areas.

Under this procedure, 2,900 land titles had been processed by 1970, although no breakdown on location is provided.

Less useful is:

G2 **Mouity,** Albert. "Report on Cadastre in Gabon." Paper presented at the **Seminar** on **Cadastre,** Addis **Ababa,** 25 **November-9** December 1970. **Addis Ababa,** U.N. Economic Commission for Africa.

Mouity states tnat surveying property boundaries is best suited for the urban areas since low population densities in rural areas do not warrant the expense necessary to carry out surveys. The state of the Survey Department is also described.

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## GAMBIA

Registration and titling occur predominantly in the major urban areas of Banjul and Kombo St. Mary, with leasehold the most common form of title. In both citations -below, the authors are of the opinion that titling is not a necessary precondition to developing agriculture in Gambia.

This argument is laid down in:

**GA1 Dunsmore, J.R., G.D.N. Lowe,** and I.P. Anderson. The **Agricultural Development of The Gambia: An Agricultural, Environmental, and Socio-Economic Analysis. Land Resources Study, no. 22. Surrey: Land Resources Division, Ministry of Overseas Development, 1976.**

Lowe, on pp. 281-301, provides a good, succinct discussion of land tenure and practices in the Gambia and their relation to agricultural development. Within this discussion, the author mentions that only in Banjul and Kombo St. Mary is land registered and titled, but no indication is given as to the number of these parcels.

This study concludes with a short argument to the effect that although some registration for demarcation purposes might be necessary in development projects, general titling would be counterproductive due to its limited usefulness in securing credit, its administrative requirements, and potential village opposition.

A more comprehensive discussion of Gambian land law, practices, and registration occurs in:

**GA2** Davey, T.L., **John Bruce, and Michael Hoffman. National Land Administration in The Gambia. Charlotte, NC: ECOS International, 1986.**

Three current laws regulating land are discussed, the first being The Lands (Banjul and Kombo St. Mary) Act, which empowers the Minister of Lands to make "grants" of various interests in land (including freehold and leasehold titles) in Banjul and Kombo St. Mary. This law further deals with those who occupy land without a grant and governmental acquisition of land for the public good.

Covering all land outside the two urban areas, The Lands (Provinces) Act allows for leases of up to 50 years in length--although in fact these leases are usually of shorter duration (21 years). The Land Registration Act states that all instruments and wills concerning land are to be entered in a registry which is indexed under the titleholders' names.

The authors present a number of findings and recommendations, among them the fact that rural areas still practice customary land tenure, while Banjul

and Kombo St. Mary exhibit mixed systems of land administration. In the latter, an estimated 18,000 parcels continue under customary "title," although it has theoretically been abolished. In addition, these areas are estimated to have 6,000 leasehold titles and 2,500 freehold titles formally recognized. While fee simple title is not seen to be necessary for development, the authors see no reason to abolish those freehold titles already in place.

Davey et al. also believe that current leasehold length of 21 years is too short and that the rents charged are too low. They recommend that the lease period be lengthened to **99** years and rents pegged to an annually re-evaluated economic value of the land. In addition, instituting the use of Parcel Identification Numbers to replace indexing by name would facilitate land transactions.

It is also recommended that new enabling legislation be used to convert all other land (except freehold) to new, no-rent 99-year leases to be held by either individuals or groups. A new Land Board would be able to grant titles (except freehold) on behalf of the Minister, while a new Division of Lands and Survey, overseen by a Director-General, would consolidate currently dispersed land administration reponsibilities. This department would be comprised of Survey, Lands and Valuations, and Lands Registry sections.

Lastly, a need is expressed for a new "Law of Property Act" to replace current law, which is based on 1866 English legislation.

## GHANA

Ghana has long had one of the most active land markets in West Africa, with substantial numbers of transactions occurring as early as the late 1800s. Despite the frequency with which transactions occur and the existence in the colonial period of laws permitting registration of land, there was little push for land registration until the 1950s, and customary procedures for transferring land and demarcating boundaries have continued to predominate in the rural areas. Not surprisingly, what interest in registration and titling there has been occurs in the southern cocoa-growing areas, with specific examples found in the Kumasi region. In one area, 16,000 acres of cocoa-producing farms were surveyed and registered.

Recent legislation, however, has the prospect of introducing far-reaching change with regard to land inheritance and registration -- although the laws have yet to be actually implemented. The Land Title Registration Law of 1986 provides for the establishment of a system of compulsory title registration in which a hierarchy of customary interests in land is to be registered. A second set of laws, enacted in July 1985, "westernizes" the inheritance of property by postulating the nuclear family as the primary economic unit.

This new legislation for title registration is reported in:

GH1 "Land Title Registration Law Published." People's Daily **Graphic (Accra), 24 July 1986.**

The article discusses the enactment of compulsory registration of land throughout Ghana, a program which is to be implemented in stages starting with greater Accra and designated agricultural areas. The article goes on to say that the now-superseded law, the 1962 Land Registry Act, has resulted in three problems: high litigation due to the absence of documentary proof of land transactions, absence of accurate maps and plans, and a lack of prescribed forms to follow in land transactions. Farmers have encountered a number of problems associated with agricultural tenancies and credit facilities in many parts of the country. In the case of "stranger" farmers, for example, there has been an increasing tendency to challenge their rights to land, either after the death of the allocating chief, or after the farmer has started cultivation.

The article points out that she new law concerns only proprietary title rights while remaining silent on the question of use title rights. In addition, the problems and expense involved in carrying out the law seem to portend a slow process.

A thoughtful consideration of the provisions of the 1986 Land Title Registration Law and its potential impact is provided in the following article by Gordon Woodman:

**GH2 Woodman, Gordon R. "Land Title Registration without Prejudice: The Ghana Land Title Registration Law, 1986." Journal of African Law 31 (1987): 119-135.**

**Woodman's** discussion of the new law and the extent to which it will introduce change into customary land practices is very useful not only for its analysis of this particular piece of legislation but also for its consideration of the reasoning behind land registration in general. Using the principles enunciated in Simpson's Land Law and Registration (see A21, above) as his measuring stick, Woodman focuses on the extent to which provisions of the 1986 Law will (and will not) establish a system of registration comparable to those elsewhere.

Woodman begins his article with the important point that land registration is not the same thing as tenure reform, though the two have often occurred in close association. Indeed, this new legislation is not intended to introduce reform, but rather to resolve problems of uncertainty in the customary land systems. In providing for the registration of interests in land, the law seeks to clarify who holds these rights and the extent of the areas held; it does not seek to introduce change in the nature of the rights themselves.

At the core of the law is a list of categories of "registrable interests" held by "proprietors of land." This hierarchy of interests includes (in descending order): allodial rights held by a stool or sub-stool, user rights commonly designated as "customary law freehold," leasehold rights, and customary tenancy arrangements such as sharecropping. In providing for the registration of these various interests, the law diverges from Simpson's model of land registration systems in several important ways. First, the new Ghanaian system is not based on the notion of a single "owner," but rather "contemplates an unlimited number of instances of ownership . . . in interests in each parcel" (p. 126). Second, in providing for the registration of these interests, the law seeks to rectify uncertainties regarding the facts of land ownership; it does not aim at removing uncertainties as to the laws of ownership, which is properly done by codification. Woodman points out that "the 'definitions' of registrable interests . . . are designed merely to indicate the categories into which particular existing interests fall. The detailed substance of any such interest will continue to be governed by the general law outside the statute" (p. 127). Third, although legislative endorsement of the continuance of existing practice (which the 1986 Law is) may in a purely formal sense replace its authoritative base, it need effect no other change whatever. Related to this is the fact that despite introduction of a new system of conveyancing, it has not entirely replaced customary law in this respect. Fourth, the law cannot be seen as furthering the goal of a free land market in that it expressly states that nothing in it is "to permit 'any land transaction which is for-bidden by express provisions of any other law'" (p. 130). And finally, the 1986 Law goes against much of commonly held wisdom in that it does not embrace a commitment to modernization or, as mentioned above, to tenure reform.

Woodman has written this article soon after passage of the law, and he has few comments to make on its future implementation or effects. He does note, however, "enactment of the statute is not a guarantee that government will provide the administrative impetus and logistical support needed" (p. 133). Similarly, institution of a land registration system said to be "compulsory" will not ensure that rights-holders will have the knowledge or the incentive to see that their interests are recorded or, once recorded, that subsequent

dispositions are entered into the record. All that can be said is that in enacting the legislation, the government of Ghana has chosen to give priority to this particular project. But, Woodman emphasizes, "the Law in providing these opportunities contains no bias for development in any particular development [sic], nor does it increase the eligibility of any one route. It has been designed to function without prejudice" (p. 135).

The 1985 inheritance laws have very important implications for land titling and are the subject of the following report:

**GH3** Tipple, A. **Graham.** "Revolution in Property Rights." West Africa, 27 **January** 1986, pp. 178-79.

**In** this brief article, the author describes the four laws and their potential effects. These laws are the Intestate Succession Law, the Customary Marriage and Divorce (Registration) Law, the Administration of Estate (Amendment) Law, and the Head of Family (Accountability) Law; their collective goal is to bring law on succession into line with changes which are perceived to be taking place in the Ghanaian family system. While the laws do not affect stool or skin property, or lands specifically designated as family land, they are based on the assumption that the nuclear family, rather than the extended family, is now the prime economic unit in Ghana. Under the Head of Family (Accountability) Law, all property held by a head of household must be registered, with the goal of assuring the spouse and children a share of the property upon the household head's death. These laws are intended to obviate the problem of having the extended family or lineage exclude the immediate family from enjoying the benefits of property acquired by the joint effort of the household. Tipple examines some problems that may ensue from the assumption that the nuclear family has become the main unit in Ghana, notably the tendency to discourage traditional support mechanisms and the probability of increased court litigations. (These 1985 laws have been published for the Government of Ghana by the Ghana Publishing Corporation Assembly Press.)

Previous efforts to enact title legislation and the need for the establishment of a nationally consistent system of land records are emphasized in the following collection of papers from a workshop held in 1980 at the University of Science and Technology in Kumasi. An especially interesting theme that recurs in a number of the papers and in the recommendations is that lesser rights in land must be protected and, to the extent possible, made registrable.

**GH4** Amissah, **Sam** B., ed. Papers Submitted **at** the Seminar on Title Registration, Land Resource Management and Land Use Policy. Kumasi: Land Administration Research Centre, University of Science and Technology, August 1980.

The purpose of the workshop was to develop guidelines for the formulation of land policies, and the participants included chiefs, legal practitioners, professionals, researchers, and project managers. This volume contains the papers, summaries of workshop discussions, and recommendations that it produced.

Of particular interest in the context of this literature review is the keynote address by George Benneh, Minister of Lands, Natural Resources, Fuel and Power. In it he emphasizes the need for title registration to be implemented through-out the country, beginning first in Accra and then in the regional capitals and eventually extended to the rest of the country. This new system he envisions will not simply be for individual title, but will also permit registration of title in the names of families and corporate bodies.

Other useful papers are contained in the section, "Title Registration, the Constitution, and Land Matters." J.C.D. Lawrance's paper is a valuable overview of land registration legislation and systems, and in it he highlights some of the differences between the various systems elsewhere in Africa. He also includes a thoughtful discussion of what will be required in terms of money and personnel for the establishment of an accurate and accessible land information system. B.T. Acromond provides a summary of earlier legislation dealing with land registration, from the 1895 Land Registry Ordinance, which established a deeds register for the Colony and Ashanti areas only, to the 1962 Land Registry Act, which sought to extend deed registration to other areas of the country. These earlier efforts were unsatisfactory, however, and Acromond, like other workshop participants, stresses the need for a system of title rather than deed registration as well as for adequate numbers of trained personnel and for registration to be compulsory rather than voluntary or sporadic. Other papers in this section also call for the implementation of a compulsory system of title registration, insisting that such a system is necessary to secure large-scale agricultural development (see, e.g., p. 100) and to reduce the all-too-frequent expenses of litigation. This section concludes with a brief summary (pp. 133-135) of recommendations drawn up in discussions. These recommendations include: (1) legislation is needed to protect the rights of lesser, non-registrable interests (such as short-term leases); (2) registration should be made compulsory and systematic in each area; and (3) the new Land Registry must be staffed by adequate numbers of trained personnel and operate efficiently.

The need to protect subsidiary interests in land is also emphasized in Appendix B, "Proposals for Implementing Title Registration in Ghana," by A.K. Mensah-Brown, although his suggestions in this regard are less all-encompassing than others'. Rather than register all interests, Mensah-Brown believes that it will be adequate to register only the major ones. He proposes a hierarchy of registrable interests, from the allodial title, to customary freehold, leaseholds of more than five years, and, at the bottom, shorter-term interests in land worth over 100,000 cedis.

An earlier discussion of the evolution of registration and title **in Ghana is:**

**GH5 Bentsi-Enchill, Kwamena. Ghana Land Law. London:** Sweet & **Maxwell, 1964.**

Bentsi-Enchill reviews Ghanaian land law up to 1964, detailing the history of land titling in Ghana from the pre-colonial era to the present, while also including a conceptual discussion of titling which clearly defines relevant concepts. The author further explains the legal position of customary tenures, with references to specific court cases.

On pp. 310-346, the machinery for assuming titles is outlined. In addition to explaining the actual system of registration, the discussion includes the reasoning behind, and problems with, registration of deeds. Among these, the author cites the inability of the Deeds Registry to ensure clear titles as a major weakness of the system. Throughout, court cases involving land disputes are interwoven to substantiate the author's points. Little is mentioned concerning the social and economic impacts of registration and titling.

Although titling and registration primarily occur in Southern Ghana, where cocoa-growing is a lucrative activity, the only specific instance of registration noted is a compulsory land registration imposed in Kumasi in the colonial era.

Dadson also discusses the evolution of Ghanaian land tenure in:

**GH 6 Dadson,** J.A. **Land Tenure Reform;** Background to Agricul- **tural Policy in Ghana. Accra: Liberty Press, 1969.**

**Dadson summarizes** current problems and concerns of the land tenure systems as well as the major points in favor of the individualization of tenure.

**A** different approach land titling is presented in:

**GH7 Ofori, I.M. "Man-Land Relations in Transformation from Agrarian to Urban Development." Paper presented at Seminar on the Problems of Land Tenure in African Development, 13-17 December 1971. Leiden: Afrika-Studiecentrum.**

Ofori begins by defining African concepts of landholding, and discusses erroneous colonial assumptions about customary land tenure and the problems this made for the implementation of titling systems.

Outlining the process of registration is:

**GH8** Osei, A.H. "The System of Registration in **Ghana."** Paper presented **at** the Seminar **on Cadastre, Addis Ababa,** 25 November-9 December 1970. Addis **Ababa:** U.N. Economic Commission for Africa.

Osei briefly describes the different tenure forms and land transactions in Ghana. Being neither systematic nor comprehensive, registration is essentially optional. The procedure involves an application to the Lands Department, which is checked for encumbrances before being sent to the Minister for approval. The final step entails the acceptance by the Deed Registry.

Osei highlights three weaknesses of the system: (1) it does not prevent multiple registrations of the same land; (2) it does not guarantee title; and (3) land is not checked to insure the accuracy of the applicant's description.

Methods of land acquisition and their impact on town planning are examined by Sagoe in:

**GH9 Sagoe,** K.A. **"Land Problems in Urbanisation Programmes in Ghana." Paper presented at the Seminar on Land Administration and the Development of African Resources, Ibadan, 1972.**

Although stating that registration and titling could facilitate town planning, the author also sees similar problems with the current procedures, as outlined by Osei above.

In addition to the above articles, which focus on legal procedures, there is a body of literature that describes both specific examples of registration and titling as well as customary means of alienating and demarcating land. The Kumasi area registration, mentioned above by Bentsi-Enchill, is treated by several authors.

**GH10 Ahene, Anno Nyako. "Ashanti Land Tenure--Its Evolution and Future." Paper presented in Interdisciplinary Course 471 at the University of Wisconsin-Madison, 1977.**

Ahene outlines the system of land registration and states that there were up to 50 applications for title per month in the Kumasi Lands Department in 1975. Several reasons for this response are given, including increasing economic values of land, as well as the need for secure title to guarantee compensation in event of state acquisition. Further, Ahene claims that registered interest in land has become acceptable loan collateral, while also serving to avoid litigation and family disputes in transfers, gifts, and circumventing matrilineal systems of inheritance.

The system of land sales in the Kumasi area is presented in:

**GH11** Benneh, George. "Land Tenure **and Land** Reform in **Ghana."** **FAO** Committee on **Agrarian** Reform. Legon: Food and Agriculture Organization, 1970.

Benneh describes an indigenous system of land demarcation and sale practiced by Krobo farmers. Individual farmers formed groups of varying sizes called "huza" (companies), with a leader chosen to negotiate a land purchase with neighboring Akim chiefs. Natural landmarks for the parcel as a whole were agreed upon as boundary demarcation. Each member received long strips of land sized according to his contribution towards the purchase price, and these individual parcels were marked by planting trees on the edges. According to the author, each individual exercised complete control over the disposal or use of his plot(s). [The Hunter article (see GH13, below) shows this system to exist elsewhere, although not to the same extent as in the Krobo (Suhum town) area.]

The paper below concurs in the description given of the "Huza System" by Benneh:

**GH12** Dumor, **E.E.K. "The Huza as an Indigenous Co-operative Institution and Agricultural Extension Work in Somanya District." Paper presented at the Ghana Sociological Association Conference, Kumasi, 1975.**

**Dumor** argues that despite the individual ownership of parcels, sufficient cooperation remains that could be advantageously used for promoting agricultural development. According to the author, benefits of this system of tenure include its potential for "block" farm development, the continued possibility of using different ecological niches to produce various crops, and the fact that the average holding size is 10 acres (a size found on only 18 percent of Ghanaian farms). No analysis of impacts to date is provided.

The most detailed view of the settlement pattern in a registered area is provided in:

**GH13 Hunter, John** M. **"Cocoa Migration and Patterns of Land Ownership in the Densu Valley near Suhum, Ghana." In People and Land in Africa South of the Sahara, edited by R. Prothero Mansell, pp. 85-109. New York: Oxford University Press, 1972.**

Hunter traces the history of migration associated with the opening of new cocoa-growing areas, drawing on data collected from a registration program carried out by the Department of Agriculture and from his own survey and interviewing conducted in the area in 1960. (The purpose of the registration program was to facilitate the payment of grants to farmers to replace diseased cocoa trees.) In the Suhum area, 39 miles north-northwest of Accra, 179 blocks of land were surveyed, comprising 5,605 separately registered farms on 16,297 acres. A detailed breakdown of registered parcels and their locations is presented on p. 92, while land use patterns (food production only, food and cocoa, etc.) are shown on p. 95.

The registration project has provided Hunter with accurate information about land acquisition and parcel shapes, but is not the actual focus of his research. Hunter thus describes the process of land acquisition by immigrant farmers, who now own 78% of the land in the area, in the fifty or so years before registration and the ways in which the land is divided among the new owners. Stranger farmers frequently form themselves into companies for the purposes of purchasing land in an area, and then divide the land between them-selves according to how many shares each member has subscribed to. The result is a very interesting pattern of farm shapes which contrasts with those of the indigenous people of the area. Whereas the purchased land tends to be farmed in long, thin strips, the indigenous lands almost always present a patchy mosaic pattern.

Customary procedure for alienating and demarcating land is also described in:

**GH14 Nukunya, G.R. "Land Tenure and Inheritance in Anloga." Technical Publication Series, no. 30. Legon: Institute of Statistical, Social, and Economic Research, 1972.**

**Currently, licensed** letters are sent to the Commissioner of Oaths to lend legal credence to these customary practices. Nukunya states that sales of land and of commercially valuable trees on that land are often done in separate agreements.

**A** similar description of land.transactions at an earlier date **is given in:**

**GH15 Pogucki, R.J.H. Land Tenure in Ghana. Vol.** 2. **Accra: Government Printer, Lands Department, 1957. Reissued 1968.**

The impact of proposed land tenure reforms in Northern Ghana is the subject of a more recent article by:

**GH16 Sheppard,** Andrew. "Doubts about **Land Tenure Reform." West Africa, 3 April 1978, pp. 646-647.**

Sheppard writes that the limbo of land administration between customary land tenure and a "modern land tenure system" has led to undesirable results. First, there has been an accumulation of large tracts of rice land in the hands of a few, with little benefit accruing to the communities from which the lands were taken. Also, soil "mining" has decreased soil fertility in some areas.

Sheppard also points out that by August 1977, only 80 farmers had registered their farms (in the Dagbon region), and that none of these 80 were small "peasant" farmers.

Of use in tracking the actual numbers of land transactions is the following:

**GH17 Ghana.** Land and Concessions Bulletin, **no.** 3. Accra: **Government** Printer, 1972.

The Bulletin was a regularly publisned gazette listing instruments registered during the preceding month at the land registry in Kumasi and included leases, mortgages, and sales. However, there is no indication whether this document is still being published.

An item that appears useful, but which the reviewer was unable to obtain, is:

**GH18 Hannigan, A.St.J. "The Question of Notice Under the Ghanaian System of Registration of Deeds." University of Ghana Law Journal, vol. 3, no.** 1 **(1966),** pp. 27-36.

In Ofori's bibliography,* the following publications of the Land Administration Research Center of the University of Science and Technology in Kumasi are listed and described:

> Agbosu, L.K., "The Machinery of Title Registration in Kumasi," which delineates the history and objectives of title registration in Kumasi, as well as the types of instruments registered, land subject to registration, procedures, and people's reactions.
>
> _____, "Towards a Workable System of Title Registration for Land in Ghana," which outlines defects in land legislation passed in Ghana since 1843, while also providing suggestions on how an effective system of title registration might be implemented in Ghana.
>
> Dey, J.K., "The Problems of Land Registration in Ghana Through the Eyes of a Surveyor or a Map-Maker," which highlights the problems experienced in the use of surveying and mapping for conveyancing and land administration in the Lands Department.
>
> _____, "Land Registration Problems in Ghana," a summary of the progress made towards the State guarentee of title in Ghana.
>
> LARC Working Party, "The Feasibility of Introducing a Pilot Project for Establishing a Register of Title to Land in Africa," a discussion of the feasibility of implementing a pilot program for establishing a register to land in Accra.
>
> 011ennu, N.A, "Proprietary Rights and Registration of Land Holdings," Paper presented at the LARC Seminar on Land and Economic Development, Kumasi, 22-26 September 1975, Kumasi, University of Science and Technology.

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* Patrick E. Ofori, Land in Africa: Its Administration, Law, Tenure and Use, A Select Bibliography (Nendeln: Kto Press, 1978).

## GUINEA

There is no literature which discusses registered land in Guinea, although the process of registration itself is not unknown. Under French colonial rule, which lasted until 1958, it was possible to register land in both urban and rural areas. In the latter areas, it **was** most often large plantations that were registered, and the titles were, as a rule, in foreign hands. Sekou Toure, who presided over Guinea from 1958 to 1984, attempted to reverse this process and to enforce state ownership of land. Legislation provided that those working on the land might be granted subsidiary leasehold rights--although to what extent this actually occurred is not clear. Since Touré's death, the government has begun to follow a program which calls for a lessening of the public sector's role in the economy and increasing privatization. This new emphasis, however, does not apparently extend to a program of land registration.

## 81 **GUINEA-BISSAU**

In contrast to its other two colonies of Angola and Mozambique, Portugal did not use Guinea-Bissau as a settler colony and thus land use in large portions of the country remained relatively undisturbed. One of the results of this lack of intervention is that land registration has never been introduced in the country. The customary tenure systems establish that land is held collectively rather than individually. All legislation concerning land rights which the Portuguese goverment passed during the twentieth century theoretically applied to Guinea-Bissau as well as to the other two colonies, but since there were very few settlers, very few concessions were made.

After independence all land was nationalized. The new government's strategy has been to create producers' cooperatives. This strategy is to proceed slowly because the government believes that peasants should not be forced to adopt measures which are not familiar to them. Hence most of the people still hold land under customary systems. For this reason, there is no literature on land registration in Guinea-Bissau.

## IVORY COAST

Although there exists a system of titling in Ivory Coast, the state prefers to limit the duration of titles to E5-year, renewable leases. Titling is accomplished in stages, each step being provisional on development of the parcel. Despite the disagreement on the efficacy of such a system, over 30,000 titles had been granted by 1970, most of them in urban areas.

A general description of the legal process required for registration is provided in:

IC1 Bènetère, J.J. "Land Ownership in Developing Countries." **World Agriculture, vol.** E6, no. E/3 (1977), pp. 4-7.

**By law, 99 percent of** the **land in** the Ivory Coast is "common" land belonging to the state, even though traditional users still occupy and work the land. To register land, one must first acquire an occupation permit or a provisional lease, which requires the user to develop the land within 5 years. At that time, a permanent grant or hereditary lease is given, guaranteeing the rights to that land for E5 years. Full ownership and title are theoretically possible, but rarely granted as the state prefers to maintain allocative control.

According to Bénetiere, few people have been interested in following this procedure.

Another explanation of the system is provided by Ley, in:

**ICE Ley, Albert. "L'Evolution du droit foncier ivoirien depuis l'indépendance du 7 août 1960." Paper presented at an International Congress at Montreux, Switzerland. Apeldoorn, Holland: Office International du Cadastre et du Régime Foncier, 1981.**

Ley delves into the historical antecedents of state policy on registration and titling. He follows developments through various laws, most of which he believes to be attempts to reduce litigation and regularize the Lands Registry. Ley believes that state title to the country's land is retained as a means of discouraging speculation.

An earlier discussion of his views is contained in:

IC3 Ley, Albert. "Conservation fonciere et ordinateur (1'ex-rrience ivoirienne)." Revue Juridique et Politique, **dependance,** et **Coopération,** vol. **E4,** no. 4 (1970), pp. 719-722.

Ley states that contrary to Bénetiere's statements, demands for the provisional titles increased until 1970, by which time there were 30,000 titles already granted. Ley also mentions the utility of using computers as a means of easing the problems of a registration system.

The historical background to state policy on land registration and policy are laid out in great detail in the following book by Ley:

IC4 Ley, Albert. Le Regime Domanial et Foncier et le Déve-loppement Economique de la Côte d'Ivoire. Paris: Libra-rie Generale de Droit et de Jurisprudence, 197E.

Ley focuses on administrative and legal issues rather than on more concrete results or implications of policy for agricultural development, and the book is most valuable for its careful discussion of French colonial leg-islation and policy in Ivory Coast and elsewhere and its examination of the E0 March 1963 agrarian reform law that was not promulgated. Ley believes that the slow pace of registration (in 50 years, he estimates that only about 2,000 square kilometers, or .60 percent of the total area, had been registered) has been fortunate, permitting the state to formulate and implement development policy in a way that would not have been possible if systematic registration of individual ownership had been carried out at an earlier date.

The actual state of the country's cadastre is given in:

IC5 Sadia, Duon. "Country Report, Ivory Coast." Paper pre-sented at the United Nations Interregional Seminar on Cadastral **Survey** and **Urban** Mapping, West Berlin, E4 June-5 July 1974.

Sadia states that 2,000 square kilometers had been surveyed through 1974, with concentration primarily in urban centers. He argues that surveying and registration are necessary to promote investments because they are assumed to enchance security.

## KENYA

Land registration in Kenya has been more extensive than in any other country in Africa and has been carried out in different areas of the country (and under different political regimes) over the past thirty years. By 1981, some 6,222,800 hectares of land had been registered, over half of it in Rift Valley Province. The general objectives of registration in Kenya are similar to those of programs elsewhere: to increase tenure security, eliminate boundary disputes, and increase farmer incentives and ability to obtain credit and invest in agriculture. Land registration is also supposed to create conditions favorable to the emergence of a land market which will permit land to shift into the hands of more efficient producers. Achieving these intermediate objectives **is** expected to lead ultimately to increased agricultural productivity.

Micro-studies of the experience with land registration in Kenya constitute the most extensive body of empirical research on land tenure reform in Africa. In general, their findings cast serious doubt on conventional expectations concerning benefits and responses to land tenure reform and contain important insights as to why those expectations have often not been fulfilled. They also identify several unexpected and arguably undesirable consequences of land titling. In some cases, external constraints have prevented some expected responses to titling from taking place. For example, factors limiting access of small farmers to credit--factors unrelated to tenure--appear to have nullified the credit objectives of the reform. Not have transactions produced the desired effect. Because land purchases have often been motivated by a desire to ensure subsistence opportunities of the next generation, or simply for speculative purposes, land which has been sold appears to be less, not more intensively, utilized. Many farmers continue to behave with respect to their land as before, or are responding in unexpected ways. The persistence of traditional inheritance patterns and concerns with family subsistence have resulted in land being further subdivided, often illegally, with most successions going unrecorded in the register. Substantial numbers of sales are not registered. The land titles shown on the register are increasingly at variance with the facts of possession and use.

The studies further suggest that individualization and registration of titles have threatened the security of tenure of women and children and the "security of economic opportunity" of entire families through rights of disposal conferred on the male head of house-hold. The Land Control Boards, which must approve land sales, have reacted to this problem by frequently disapproving or qualifying land transactions in ways which have limited the development of a land market and its anticipated benefits. The process of adjudication and registration of titles has itself created insecurity as better-informed and powerful individuals have taken advantage of the

uncertainties implicit in this transitional situation to appropriate land. While in areas of rapidly commercializing agriculture such trends may have already been under way, they were accelerated by the reform and in others they may have been initiated by the reform.

**There have** been three major freehold registration programs in Kenya: a program begun in the 1950s in the Kikuyu Reserves during the Mau Mau Emergency and later extended into other areas of the country, a second initiated at independence in the Highlands area, and a third project which registered group title to ranches for the Masai. Of these programs, the first has been the most thoroughly studied and its political and economic goals increasingly called into question. A valuable introduction to the 1950s consolidation and registration program, including its background and execution, is provided in the following study:

**K1 Sorrenson, M.P.K. Land Reform in the** Kikuyu Country: **A Study in Government Policy. London: Oxford University Press, 1967.**

By the 1950s, many Kikuyu smallholdings had become subdivided into very tiny units, often with fragmented holdings scattered in separate microenvironments. Production levels were low, and in an effort to increase crop yields and incomes of peasant farmers in the Reserves, it was recommended that a program of careful land use planning involving consolidation and registration of holdings be established. (This plan for the reorganization of African agriculture was known as the Swynnerton plan.) The threat of the Mau Mau movement and the declaration of the Emergency provided added urgency for implementation of a program which, it was hoped, would create a class of small-and medium-sized producers who (among other things) would provide political support for the administration. By 1960, all of the Kikuyu reserves had been registered, and the following year the program was extendeded Embu, Meru, Nandi, and Baringo.

Sorrenson's in-depth study of the historical development of the land reform in Kikuyuland focuses on the formulation and execution of government policy. He looks at the political, legal, and agricultural objectives of land reform from an official perspective, giving considerable attention to the attitudes and positions of individual government officials, reports, and proposals. According to the author, the motives behind the land reform can only be understood in the context of Kenyan history and the developments that led to the Emergency. Both the initial motives behind land reform and the reasons for its expedient execution during the Emergency had political undertones. The agricultural goals were less compelling but more frequently vocalized.

Unfortunately, Sorrenson concludes, consolidation failed to achieve the structural change necessary to bring about agricultural growth. The reform came to Kikuyuland too late to be successfully implemented and failed to **in-**corporate the resettlement areas into the development plan. The result was the creation of a peasant-based production system restricted to subsistence because of high man-to-land ratios. Structural barriers within the economy prevented anything more than temporary surges in production on the part of wealthier landholders whose financial superiority was further entrenched by

the demarcation and consolidation process. The actual reform process was full of both deliberate and unintentional injustices that further stratified the farming communities and completely alienated the landless.

Other scholars who have looked at the motives behind the colonial government's implementation of land reform and its effects are more harshly critical than Sorrenson. One of them is John Harbeson, who emphasizes the political factors almost exclusively in the following **article.**

**K2 Harbeson, John W. "Land Reforms and Politics in Kenya, 1954-70." Journal of Modern African Studies 9 (1971):** E31-E51.

Harbeson analyzes the motivations for and development of Kenya's land registration and resettlement policies from a political perspective, contending that the reforms were "undertaken to check and counteract the development of African politics rather than to give economic progress a positive and tangible political significance for rural Africans." The reforms were the outgrowth of colonial land policies which slowly destroyed traditional tenure relationships, without consideration of the consequences, and usurped African lands for European settlement. The colonial administration further aggravated the problem through social programs which effectively increased populations and the pressure on scarce land resources within the reserves.

The consolidation and registration program was an attempt to weaken the growth of Kenyan politics by focusing attention on economic development. The Kikuyu were suspicious of the program because it did not address the real problems of political, economic and social insecurity, and it was inherently biased in favor of people who supported government policies. The government's efforts to pacify the Kikuyu and encourage consolidation entailed the design of elaborate procedural safeguards and the use of African personnel whenever possible. The Kikuyu were encouraged by the successes of the first consolidation sections, the promise of government assistance and loans upon completion of the project, and improved security against the possibility of confiscation of their land. Throughout the entire process, the colonial government continued to believe that real security would come through titles and prosperity, regardless of political and social strife.

A number of colonial officials wrote about the reform program and the economic goals of consolidation and registration in the early years of its existence. Among them are the following:

K3 **Pedraza,** G.J.W. "Land Consolidation in the Kikuyu Areas of **Kenya." Journal of African Administration 8 (1956): 8E-87.**

This article provides a brief explanation from the viewpoint of an Administrative Officer in the colonial government of the plan to consolidate fragmented holdings as a prerequisite to other land tenure reforms. Consolidation was only one part of a complete program to modify customary tenure, encourage

farm planning and conservation, and plan resettlement. The success of consolidation varied depending on tenures, climate, and the degree of cooperation by local residents. The program had to overcome three obstacles including: (1) the suspicions harbored by the Kikuyu toward any government policy--especially those regarding land; (2) the difficulty in altering traditional methods of agriculture; and (3) the customary laws of inheritance and land tenure.

The need for consolidation was accentuated by land shortages caused by a growing population and increasing litigation over land disputes. The overall program was designed to bring about four changes in customary tenure, including: (1) an end to fragmentation, (2) the abolition of boundaries between different clan areas, (3) the prohibition of subdivisions, and (4) eventually, the registration of titles. The consolidation process was to operate on a voluntary basis. Once people agreed to participate in consolidation, trained African staff were to supervise the exchange of fragments.

The new allotted holdings were supposed to include land for cash crops and grazing. Three-acre plots were assigned just outside the village areas with 3-6 acre plots allocated just beyond those and still larger plots beyond the medium-sized holdings. This plan was chosen to facilitate land transfers between owners of the smaller plots. Loans were made available from the African district council of up to £125 with the stipulation that subdivision not take place. When the exchange and allocation process was complete, the new boundaries were marked on topographic maps along with information on soil conservation and water supply. Pedraza emphasizes the need for enclosure to follow the consolidation process in order to give farmers pride in their holdings and make plots identifiable for aerial surveys.

K4 Homan, F.D. "Consolidation, Enclosure and Registration of Title in Kenya." Journal of Local Administration Over-**seas** 1 **(1962) : 4-14.**

This article describes the basic procedures used to adjudicate and register holdings in the Central, Rift Valley, and Nyanza Provinces of Kenya during the first five years of the land reform. Homan's bias as Secretary of the Trust Land Board is apparent in his descriptions of activities and decisions made by the government while administering the reform. He draws a brief comparison between Uganda's sporadic reform and judicial review system, and Kenya's systematic processes with its administrative review. The article gives a fairly detailed description of the registration process, which begins with the nomination of adjudication committees. Once property rights have been established, plans for the consolidation of holdings prepared (consolidation only took place in some areas), and public lands designated, a registry is created that contains maps based on ground measurements and aerial surveys.

During the first five years approximately 2 million acres were adjudicated and 900,000 acres registered. Attempts were made to control undesirable land transactions, such as uneconomic subdivisions, through the Land Control (Native Lands) Ordinance of 1959, which called for the creation of Land Control Boards. Homan notes that the number of transactions was unaccountably low the second year after the registry was opened suggesting record maintenance problems. Registered charges from commercial banks increased, however, suggesting that the reform had encouraged investments. The estimated cost for two districts

for the process up to the stage of first registration was $375,767 or nearly **Shs.17/- per acre.**

**K5 Clayton, E.S. "Safeguarding Agrarian Development in Kenya." Journal of African Administration 11 (1960): 144-150.**

Clayton's brief essay provides insight into the colonial government's thinking on agrarian development and land tenure relationships. The reform philosophy of the late 1950s focused on soil conservation and the transformation of Kenyan farms into income-producing farm units. The need for careful agricultural planning and technical innovation along with consolidation is reiterated. Clayton points out that the advantages of cash crops were quickly realized and that they were more readily adopted than other, earlier innovations. He also observes that by 1960 the recurring problem of fragmentation had already begun to appear in consolidated areas after the death of a family head. Legislation was introduced to prevent further transfers of this kind. Clayton anticipated that land reform would produce a landless class who would either be employed as farm workers or as employees in other auxiliary activities.

The colonial registration and consolidation program was extended to other areas outside Kikuyuland as well, areas where population densities were particularly high and land fragmentation a frequent occurrence. One of these areas was Nyanza Province, a Luo region.

K6 McEntee, P.D. "Improved Farming in the Central Nyanza District--Kenya Colony." Journal of African Administration 12 (1960) : 68-73.

McEntee discusses some of the strategies used to promote consolidation in the Central Nyanza District during the earliest stages of land reform. The community development officers found consolidation difficult to promote initially and, consequently, adopted a strategy where communities were asked to consolidate their holdings voluntarily; if they refused, they were told that they probably were not ready for it anyway. This reverse psychology aroused interest in the plan and communities began to participate voluntarily. Staff workers were sent to help those who tried to help themselves both with consolidation and the agricultural assistance that was supposed to follow. Generally, the procedures were left up to clan elders, who oversaw the demarcation and consolidation processes. The allocation of land within demarcated clan units was done through the complete redivision of holdings, with redivisions based on traditional holdings and fragment exchanges. The committee encouraged communal work efforts throughout the entire effort.

K7 Homan, F.D. "A Guide to Following the Law in Adjudication, Land Consolidation and Enclosure for Registration." Government of Kenya. April 1961.

Homan wrote this guide in response to complaints about the registration process and the realization that provisions of the Land Registration (Special **Areas)** Ordinance, 1959, were not being followed. Primarily, the guide attempts to clarify existing laws, point to problems that emerge when the registration process is administered without application of the law, emphasize the more important responsibilities of those involved in the process, and distinguish between applications of the law in fragmented and unfragmented areas. The guide repeatedly emphasizes the need for consolidation and adjudication laws to be adhered to in order to avoid future conflicts and challenges to the validity of titles and for enforcement of the decisions of the adjudication committees. For instance, Homan recommends that all adjudication committees should have the exact number of members as specified in the ordinance in order to avoid conflicts of interest and that the committee should be careful to record rights not amounting to full ownership. Homan's guide is useful be-cause it explains some of the logic behind the consolidation, demarcation, and adjudication procedures from the point of view of the British administration.

Considerable attention is given to detailing the creation of the Record of Existing Rights (the record prepared prior to consolidation) in areas where fragmentation is a problem. Homan outlines the procedures for appointing committee members, the responsibilities of the Adjudication Officer, methods for avoiding conflicts of interests, necessary publicity, and the declaration of public lands. At this stage, all lesser rights (such as rights of way and rights to use a well or salt lick as well as local customs which affect the use of land such as a curse against planting certain crops) should be recorded. Some rights, such as those of the **ahoi** (landless squatters), may be redefined when the registration record is prepared. In the areas where there is no fragmentation, procedures are almost identical but simplified. Land is extracted for public use and boundaries are straightened to reduce the cost of surveying. In areas where a Record of Existing Rights is created before application of the Land Ordinance, traditional authorities may prepare the record. Homan writes of a problem that occurred in Fort Hall, where some clerks sold imaginary fragments to farmers, who could then claim illegally large land shares when land was consolidated. These abuses sometimes required legislation to rectify the problem. In the process of delineating public lands, some people were displaced from their holdings and given compensation. In the most densely populated areas, however, these people had trouble finding new land to purchase. The reconciliation factor which accompanied consolidation distributed the burden among all the individuals in the area by extracting 5 percent of everyone's land.

One of the earliest attempts to assess the economic results of the consolidation and registration is the following:

**K8 MacArthur,** J.D. "**Land Tenure Reform and Economic Research into African Farming in Kenya." East African Economics Review, December 1961,** pp. **79-91.**

MacArthur briefly discusses the economic objectives for land reform and the consolidation and adjudication procedures. Consolidation had been at-tempted independently as early as 1948 in South Nyeri District of Central Province. In most areas, consolidation required government assistance, but in

places where fragmentation was not as serious a problem, such as in Kericho District of Rift Valley Province, it took place voluntarily. By the end of 1960, 1,813,258 acres had been surveyed and 154,747 titles registered.

Chronic indebtedness, recurring fragmentation, and the accumulation of holdings for speculative purposes are three potential threats to the success of land reform. The Kenyan government attempted to avoid indebtedness and the ensuing decline in productive output through the financing of many small loans issued on the basis of title security and offered at low interest rates. By the end of 1960 the government had loaned out £56,233 in credit in Nyeri. The government understood the need for farmer training and farm planning to accompany land reform and had become involved in farm management, soil conservation, the introduction of cash crops, and improved husbandry. By 1960, 27 percent of the registered holdings in Nyeri were growing a cash crop and 1.3 percent of the total agricultural area was planted with coffee.

Measuring increases in agricultural output due to the land reform is difficult because of the paucity of agricultural statistics and the difficulties in obtaining a measure of the volume of production consumed rather than passed through the marketing centers. Some statistics are available which indicate that there was an increase in the value of total export production in five districts from 1955 to 1960.

One of the first critical assessments of the program was written by Mwai Kibaki [later Kenya's vice president and Minister of Home Affairs in President Moi's cabinet].

**K9 Kibaki, Mwai. "The Political Economy of Land in Kenya." Venture, 10-12 (1958-60), pp. 6-7.**

**Kibaki raises** four major criticisms of the three-year-old land program. First, the reform was implemented without sufficient planning for the ensuing economic and social problems such as landlessness, unemployment, and land shortages. In Kiambu District, 4,300 of the registered holdings were less than 1 acre in size, and many people lost access rights to holdings and, therefore, to supplemental sources of income, thus lowering their standard of living. Second, the adjudication process was full of injustices that included corruption and the incomplete investigation of land claims. Third, land control gave too much power to district officers. And fourth, government land policy was moving toward allowing white settlers to gain freehold titles to land originally usurped from native residents. (Farms in the White Highlands were held under 999-year leaseholds. Despite fears by Kibaki and others that the colonial government would permit their conversion to freehold for Europeans, this did not occur.)

In 1965, the Kenyan government asked the British government for assistance in evaluating the land registration that had taken place to date in order to draw up plans for a long-term program of land registration. The team that the British furnished, headed by J.C.D. Lawrance, spent several months in its inquiry speaking with officials and private individuals throughout the country. The report that resulted (often known as the Lawrance Report) is thorough and detailed

and an important guide to the thinking that guided Kenya's continuation of land registration.

**K10 Kenya. Report of the Mission on Land Consolidation and Registration in Kenya, 1965-1966. Nairobi, 1966.**

**The** team was asked to examine all aspects of the land registration program, including its organization, methods, personnel, and costs, and to make recommendations that would allow it to be extended throughout the country in a timely and efficient manner. In addition, the team was to assess the impact of the registration that had already been carried out on agricultural production and to comment on the problem of recurring fragmentation in areas where consolidation had accompanied the adjudication and surveying processes. The report is very detailed and provides both extended descriptions and statistical data on acreages, costs, and personnel of the registration program carried out in Kenya to date. By the end of 1965, after roughly a decade of registration, over 1,631,000 acres had been fully registered and £1,995,000 spent on adjudication and £1,923,000 on surveying.

Lawrance and his fellow team members brought with them a strong commitment to the process of registration and its efficacy in increasing agricultural development, and in their evaluation of the effects of the Kenya program, they conclude that land registration (or land reform, as they often refer to it) has been very beneficial, sufficiently so that the people and government of independent Kenya are anxious to continue what had been initially a very unpopular program. They are quick to note, however, that the rises in agricultural production cannot be attributed solely to registration without taking into account the important contribution of the follow-up programs of extension and credit. Indeed, the commission considers the follow-up programs necessary accompaniments to ensuring the success of a land registration program. The benefits of registration lie in the heightened security of tenure which title provides the individual owner, and this security in turn leads to rising levels of investment and permanent improvements and access to credit. By substituting the guarantees of statutory law for the insecurities of custom, registration "virtually obliterates litigation on land matters" (p. 20). In addition, by permitting land to be more easily transferred, registration ultimately results in a more economic use of -land. There are also important benefits for the government, including revenue generated by transactions in registered land and the opportunity to gather data on agriculture and land use which will facilitate planning in the future. But it is as yet too soon, the authors comment, to evaluate the social effects of registration.

In extending registration to other areas of the country, Lawrance and his colleagues recommend giving priority to areas that meet four essential criteria. First, it needs to be shown that registration will result in increases in agricultural production. In some areas, such as those in which sugarcane is cultivated cooperatively as a cash crop, registration of individual title would only be counterproductive. Second, there must be strong evidence of a willingness of local communities to cooperate in the project. Where it is necessary, for example, for consolidation to precede adjudication and surveying, communities must show themselves agreeable to it. The mission is very firm in its belief that where communities are reluctant to consolidate holdings, land registration should be postponed; it is both uneconomic and unproductive to attempt to register smallholdings, and postponement of registration can serve to persuade communities to agree to consolidation. (For an instance

of registration without consolidation, see Shipton, K33.) Third, land registration must result in improved security of tenure. Individuals who may be displaced by registration (such as customary tenants) must be accommodated elsewhere rather than merely displaced. And fourth, it must be possible to carry out registration and deploy staff efficiently. In 1966, at the time the report was written, there were many communities that met these criteria, and the major factor constraining the extension of registration into these areas was the lack of adequate numbers of trained personnel.

The report provides a valuable discussion of both the philosophy that guided the Kenyan registration program and its implementation in the first decade. Although it lacks the detailgd data on effects of registration that were to be collected in microstudies in subsequent years, it is an important document. Perhaps the single most significant assertion in it is the idea that registration must be seen as a precondition to economic development (p. 132) and accompanied by well-designed programs of extension and credit.

[Note: A summary of the mission's findings and its report are contained in J.C.D. Lawrance's chapter, "Land Consolidation and Registration in Kenya," in Change in Agriculture, edited by A.H. Bunting (London: Duckworth, 1970), pp. 451-460.]

A similar perspective, one in fact that draws heavily on the Lawrance Report, is found in the following article:

**K11 Rogers, Margaret. "The Kenya Land Law Reform Programme--A Model** for Modern Africa." **Fassunq** and **Recht in Ubersee** 6 (1973) : **49-63.**

Rogers explains how a severe land shortage, traditional cultural practices, polygamy, and an increasing population aggravated fragmentation and subdivision in Kikuyu areas and created the conditions under which the East Africa Royal Commission was established to frame recommendations for the economic development of the region and the "adaption or modifications in traditional tribal systems of tenure necessary for the full development of the land." (For a summary of the report produced by the Commission, see EA1 under East Africa.) At that time two recognized systems of tenure existed outside the reserves, one based on the Indian Transfer of Property Act and the other on the Torrens system of registration.

Rogers compliments the East Africa Royal Commission for identifying speculation, soil mining, and chronic indebtedness as the potentially negative consequences of reform. The Commission's report acknowledges that "neither individual tenure nor cooperatives nor collective farming necessarily makes crops grow better" (East African Royal Commission 1953-55, Report, p. 324). Most of the problems predicted by the Commission later emerged and were dealt with through legislation. The Commission concluded, nonetheless, that "legislation should be enacted which would empower the government to dispose of all residual interests in land, particularly to individuals already holding interests in land not amounting to ownership" (ibid., p. 428). This was to be done through a process of adjudication and registration, even though adjudication was not meant to alter customary rights in land. Rogers discusses the problems inherent in recognizing and confirming the equivalent of customary law using

the terminology of English-based law. She refers to a paper by A.N. Allott which gives two reasons for this difficulty: (1) registration requires a well-defined parcel where customary tenure often lacks well-defined boundaries; and (2) customary tenure is a complex collection of rights, some amounting to benefit and some to control.* She concludes that "it is misleading to assume that the process of adjudication of claims in Kenya has not and will not alter existing rights; in some cases it creates rights which have no former recognition or equivalence in customary tenure" (p. 55).

In addition to briefly outlining the history of land legislation in Kenya, Rogers makes observations regarding its administration. Adjudication was the responsibility of an adjudication officer assisted by a committee composed of local representatives who were included in the process to assure that claims under customary law were recognized. Generally, the adjudication process was an administrative procedure, with no provision for the settlement of disputes in a court of law. Under the Registered Land Act of 1963, the government at-tempted to bring previous systems of registration under one efficient system of registration. This act deemed rights of occupation as tenancies and more importantly, made individuals registered as the proprietors of their land the absolute owners of that land together with all the rights and privileges belonging to the land.

Rogers summarizes some findings from the Lawrance Report on estimated project expenditures, the superiority of communal holdings over individual interests in some cases, and the problems of excessive subdivision, fragmentation, and accumulation. The report also recommended group ownership, simpler forms of surveying, and separating the consolidation and adjudication processes.

Policies for group ownership were developed in the Land Act of 1968, which incorporated and registered groups in such a way that they functioned like a cooperative with little traditional foundation. Rogers suggests the Kenya reform was more effective than the Registered Land Act (Lagos) 1965 because it tried to cover interests in "divisible and indivisible shares instead of only divisible shares."

Rogers concludes that legislative changes need to be made to resolve conflicting definitions in group ownership legislation, that more thought should be given to definitions of property rights, and that priority should be given to preventing massive accumulations of holdings. The government should also check the administrative power of the Control Boards and administrative agencies by creating a right of appeal to a judicial court. Policies administered by the Land Control Boards are an effective diminution of the principle of freedom to property because they inhibit land transactions and should be reconsidered.

The view that registered freehold is a necessary condition for agricultural development is expressed in the following book:

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* A.N. Allott, "Theoretical and Practical Limitations to Registration of Title in Tropical Africa," Paper presented to a Seminar on Land Tenure in African Development, Afrika-Studiecentrum, Leiden, 1971.

**K12 Fliedner, Hanfried. Die Bodenrechtsreform in Kenya. Info-Institute fur Wirtschaftsforschung. Munchen Afrika-Studien 7. Berlin: Springer-Verlag 1965. (German with an English summary.)**

This book examines pre-reform customary law, the influences it was subjected to under the British colonial rule, and the circumstances which evoked legislative reform. Registration procedures and the problems encountered up to 1968 are discussed. The book's premise is that customary law is an obstacle to agricultural development and that registration is a necessary reform in spite of such problems as the continued subdivision of holdings, built-in incentives against registering land, and perpetuation of class distinctions through the creation of a substantial landless class. Customary law has effectively held on as attempts are made to absorb the landless and the unemployed. The only farmers who have excelled have been those trained in fields other than farming, leaving most to pursue their traditional ways. In addition, "the comparatively small number of statutory rights introduced by the Registration Ordinance is insufficient to absorb or to transform the multiform entitlement under traditional law." As a result, numerous complaints have been filed over land-related decisions but few are settled because of costly litigation procedures.

Adjudication and registration of land continued and expanded throughout the country after independence in 1963. Problems of increasing expense and time, however, resulted in an evaluation of the program.

K13 Joint UK/Kenya Party of Officials. "Land **Adjudication Programme." Mimeographed. Nairobi, 28 February** 1973.

This paper reports the findings of the review of the land reform program conducted in 1973 by a group of British/Kenyan officials assigned to examine the value of the program given the slowing pace and rising costs of adjudication. They looked at straightforward adjudication in Kwale and Kilifi Districts, consolidation in the Taita Hills, and rangeland adjudication in Kajiado. This assessment concludes that the program is justified because it provides individual security, increases agricultural development, and encourages the long-term improvement of the land. Even though these benefits cannot be quantitatively assessed, the program is considered worthwhile because it is an invaluable source of information for planning, it provides necessary infrastructure, and it is a source of new forms of revenue such as a land tax. It already provides revenue through the stamp tax, which raises funds equal to 5 percent of the annual project expenditures. Furthermore, the project is thought to have established a strong administrative infrastructure and to be of direct benefit to rural development programs. Proof of these benefits is offered through an observation of the comparative advantage of registered over unregistered areas.

Adjudication has been delayed due to the failure of the land courts to decide in favor of those not belonging to local kinship groups but who had been residing in the area for an extended time; due to the difficulty in establishing group boundaries in range areas; and due to the increasing tendency of

individuals to dispute decisions made in the adjudication process. Costs are increasing because of the extension of the program into less developed areas where traditional tenures are more stable. Estimated project costs increase as the project widens its horizons by moving into the rangeland and areas of less agricultural potential. More information is needed on the differences in registration costs in different areas and the costs of adjudication versus consolidation and group ranch development. The committee agree that individual ranches should not be adjudicated until the needs of the whole pastoralist population are taken into consideration. Similarly, consolidation should not take place without a survey to determine whether or not the extent of fragmentation is potentially harmful to development.

Several general assessments of the registration program are provided in the following articles by Lawrance, Okoth-Ogendo, and Homan. As is to be expected based on his earlier writings, Lawrance's assessment of the results of the land registration is positive:

K14 Lawrance, J.C.D. **"Land Tenure-Kenya." Report prepared** for **the Ministry of Overseas Development.** London, 14 June 1978.

Lawrance's brief report on his re-evaluation of the Kenya land reform demonstrates a continuing belief in the benefits of land registration, including its part in encouraging agricultural development, creating employment, earning revenues, and promoting a land market. Lawrance believes that the program is justified on the basis of its immense popularity, and he sees the move into rangeland as indicative of the program's value for development. He claims that the economics of the ranches are carefully monitored as evidenced by the fact that IBRD denies loans to ranches with too many members given their productive capacity. Some procedural, technical, and legislative changes, however, should be made to facilitate registration. For example, until recently 4,000 appeals over land disputes were pending, and land transactions thereby frozen, because the Minister assigned to handle appeals was not coping with his duties. Other changes need to be made to rectify an inefficient distribution of administrative resources and inadequate planning mechanisms. An important technical change would be the conversion of all registries to rules created under the Registered Land Act of 1963. Lawrance suggests that a plan to grant title to squatters on government land should be abandoned because the beneficiaries have no customary rights and that some attempt be made to quantify the benefits to land registration. He disputes claims that adjudication has slowed and become more costly by suggesting production estimates have been too ambitious in the past.

Another positive assessment of the effects of land registration, measured in terms of increased agricultural production, is found in the following article.

**K15 Fleming,** J.T. "Tenurial Reform as **a Prerequisite to the Green Revolution." World Development 3 (1975): 47-58.**

Written in response to an earlier article in World Development calling for cooperative forms of land tenure and agricultural production as the most effective means of extending the Green Revolution, Fleming's article argues for individual, registered forms of tenure as a necessary precondition to agricultural technological change and uses the example of Kenya to prove his point. "The provision of security of tenure as an essential prerequisite to increased productivity," he writes, "was the foundation on which Kenya's successful agricultural programme was built" (p. 49).

Perhaps most valuable for the purposes of this literature review is Fleming's discussion of the context and procedures of the various registration programs in Kenya: the initial project of consolidation and registration begun in Kikuyu areas in the 1950s, its extension to other areas of the country, the buy-out and settlement schemes in the Highlands area, and (covered less thoroughly) the ranch schemes. Fleming gives figures for the number of acres registered up to 1971, the per-acre costs of registration and settlement, and production data for the settlement schemes. Citing these last figures, he notes that generally, the small, individual holdings did better than the larger or plantation type of holding, a finding with which Christopher Leo, writing about the settlement schemes in Land and Class in Kenya (see K36), concurs.

Fleming believes that the most important effect of registration is that the incidence of land disputes is lessened and that this provides the land-holder with sufficient security of tenure to invest in his land and increase production. Another important element in tenure security, and also an effect of registration, is the climate of political and social stability in Kenya, something that early proponents of the land reform in the 1950s had hoped for. He admits, however, that "it is . . . difficult to produce proof to show that the increase in productivity was largely due to the provision of security of tenure through registration" and that the evidence for this correlation is largely circumstantial (p. 55). Nevertheless, he argues, the fact that agricultural production has increased dramatically in those areas where land has been registered for individual smallholders cannot be dismissed.

Fleming is not advocating, though, universal registration of land as a simple solution to raising agricultural production. "The one major criticism which can be levied against the Kenya programme is that registration of title has become an end in itself. It has extended into areas where there is no real need for it to do so, nor is there any immediate likelihood of its introduction leading to increased productivity" (p. 56). But in those areas where the program was "applied correctly" (ibid.), it has achieved notable success. This success, Fleming believes, cannot be brushed aside, and its achievements show that "the successful application of advanced technology is dependent on a sound system of land tenure" (p. 57).

Okoth-Ogendo, on the other hand, does not view registration as favorably and raises a number of objections and provides evidence that the results of registration are not entirely beneficial.

**K16 Okoth-Ogendo, H.W.O. "African Land Tenure Reform." In Agricultural Development in Kenya: An Economic Assessment, edited by Judith Hager, J.K. Martha, and W.M. Senga, pp. 152-186. Nairobi: Oxford University Press, 1976.**

Okoth-Ogendo develops his arguments on the Kenyan land reform by looking at land issues in their historical context, describing the legal aspects of the reform, and discussing some of the political and economic consequences of the registration program. He describes how the British gradually destroyed the traditional balance between African land use patterns and their environment by placing the Kenyans in designated Reserves with fixed ethnic boundaries and limited room for expansion. Government policies discouraged agricultural development and precipitated soil erosion, fragmentation, landlessness, increasing land disputes, and the disintegration of traditional institutions. Because Africans were granted little assistance, the rate of adoption of innovations that might have countered some of these problems was low.

The land reform was, for the most part, initiated for political reasons; however, the country's depressed economy helped to highlight the need to encourage productivity in the African sector. The first land reform statutes **included the 1956** Native Land Tenure Rules which set up the process for reform and the 1957 African Courts Ordinance. Neither statute extinguished rights recognized by customary tenure but not recorded in the adjudication record. It was not until the 1959 Native Lands Registration Ordinance that there were provisions defeating customary rights and providing for freehold tenure. This Ordinance also declared the first register unchallengeable, a move that prevented the opportunity to amend any injustices that occurred during the original adjudication processes. Another important piece of legislation in 1959 was the Land Control (Native Lands) Ordinance which mandated that administrative committees be established to oversee land transactions.

By 1973, 40 percent of the total trust land had been registered, and it was estimated that total project cost would approach $18 million. Farmers' perceptions of their land rights have not changed nor have their practices. As Okoth-Ogendo points out, it is the political, economic, and social functions of tenure arrangements and not their structure per se that inform decision-making about land use. And contrary to the generally accepted wisdom, the availability of agricultural credit for small farmers actually declined as limited financial resources were transferred into the more profitable non-agricultural sector as financial institutions developed programs to meet the needs of individuals with substantial collateral.

The lack of clarity in the land statutes and problems inherent in the administrative process itself altered the distribution of land. Women and children lost rights because they had access but not ultimate control over land. The reform provided substantial opportunities for people with money to accumulate holdings despite limited attempts to prevent this occurring. This trend was perpetuated by new perceptions of power that necessitated a strong property base. The reform also changed the style of land use administration, creating a greater centralization of authority and a system that encouraged political patronage. The administration of group lands encountered unique problems. Because young people were often the only literate members of pastoralist communities, they were elected to the adjudication committees. Land reform was delayed as the young officers attempted to work through traditional authority channels. The reform in these areas primarily failed because no attempt was made to improve the pastoralists' ability to adapt to the new situation nor to provide them with resources.

Inheritance customs and the difficulties they created for the new system are described in an early article by Homan:

K17 Homan, F.D. "Succession to Registered Land in the Afri**can Areas** of Kenya." **Journal** of Local Administration **Overseas** 2 (1963) ; **49-54.**

Homan discusses problems of inheritance as they have affected the registration system. Relevant issues were discussed by the Working Party on African Land Tenure in 1957-58; its report focused on three major aims of land policy: (1) to prevent re-fragmentation, (E) to avoid having so many co-proprietors on the register that land ceases to be a negotiable asset and becomes un- or underdeveloped, and (3). to insure that all heirs under customary law are fairly treated even if they do not receive a share of the land. The government adopted a land policy based on recommendations that the number of co-proprietors should not exceed five, that heirs should be determined by customary law, that subdivision should require the consent of the divisional land control boards, and that the provincial land control boards, after consultation with divisional boards, could lay down minimum sizes for subdivision according to the different ecological zones. Homan outlines the procedure for registering transmissions, discusses the system's shortcomings, and presents some policy and legislative solutions.

Despite these careful plans and measures, however, there were problems with the registration procedure. The first indication of the new system's not functioning as intended was the noticeably small number of successions being registered in Kiambu and Nyeri Districts. Reasons for not reporting successions included ignorance of registration processes, the farmer's lack of concern with a registered title until a transfer was to be made, and a repudiation of the idea of one-owner-one-farm in situations where the land had many potential heirs.

In Kiambu District, attempts to include all but the landowning heir as charges against the registered title were unsuccessful because determining the landowning heir was difficult and the process was cumbersome and expensive. The payment of charges and costly litigation procedures also impeded development because they hampered efforts to acquire loans and paying charges could easily consume a farmer's profits. To alleviate this problem, in 1961 African chiefs were required to report deaths, and the African courts would then determine the landowning heirs, the relevant charges, and the appropriate shares. Certificates recording this information were to be filed in the registry. According to Homan, this new system "ensures registration of all the heirs whilst at the same time it avoids the title being encumbered by a number of charges, and offers an easy remedy through the African courts for an heir who does not get paid" (p. 52). The frequency of registration was still low, how-ever, and so further changes were instituted in which chiefs were required to report the names of close relatives along with the name of the deceased. The landowning heir was responsible for paying all court fees.

Beginning about 1970 a number of researchers began to call for and carry out local studies of land use and the effects of the registration program. It is this research that provides the detailed, specific evidence that the registration program has often failed to achieve its desired goals. One of the first publications suggested ways in which the land reform ought to be evaluated.

**K18 Barber, William J. "Land Reform and Economic Change among African Farmers in Kenya." Economic Development and Cultural Change 19 (1970-71): 6-24.**

Land reform is a generic term for the British government's program to consolidate, demarcate, and register land in Kenya. Barber discusses the impact of the land reform in the Central Province ten years after it was initiated in 1954. The reform was begun in the most agriculturally productive regions of the country and later extended to areas outside the Central Province. The program was designed to create economic and political stability by eliminating the fragmentation of holdings, facilitating land transfers, encouraging new farm strategies (particularly soil conservation), and establishing a secure class of sympathetic African farmers. Desired increases in agricultural production have not been achieved because the reform did not alter land distribution patterns, because farmers have concentrated on providing for their subsistence, and because the growth of a cash crop economy has been undermined by the cultivation of subsistence crops..

Evaluating the success of land reform is complicated by data collection problems and the challenge of isolating the impacts of land reform from other factors. Barber recommends a qualitative approach designed to compare "the presuppositions of the plan such as self-sufficiency in agricultural production and an overall increase in agricultural incomes with the revealed outcomes." He recommends considering factors such as the degree to which the intensification of resources has taken place as African families have continued to cultivate fragmented holdings. Evidence suggesting an intensification of male labor can be attributed to the introduction of cash crops. An exception is found in areas where enclosure has allowed the introduction of grade animals. Barber recommends that future land reforms be implemented cautiously and with due consideration to factors such as the agricultural sector's ability to absorb an expanding population and deal with the consequences of an active land market.

One of the earliest case studies of the effects of the reform--and perhaps one of the less well done--is the following:

**K19 Ali, M. "Political Implications of Land Registration: A Case Study From Nyeri Oistrict in Kenya." Political Science Paper, no.** 7. **Dar es Salaam: University College,** 1970.

Even though this article is titled as a case study, the assertions are rarely documented and evidence of fieldwork is sparse. The appendix does contain data on the number of different types of transfers, revenues from the register, loans, and repayments over a three-month period in Nyeri and includes "total to date" figures for each item. The paper also provides useful descriptions of the operations of the registry and the Land Control Boards, giving detailed outlines of the procedures and processes required to register and transfer parcels of land.

The Land Registry is composed of the registers, the registry map, the parcel files, the presentation book, and the register and files of powers of attorney. A register exists for every parcel of land and is the final authority on ownership for relevant transactions. The register includes a description

of the property, the parcel number, and any privileges, rights, or other conditions pertaining to the land. There are also sections containing all relevant information about the proprietor and encumbrances against the land. All registration instruments are filed in the parcel file for future reference. Any transactions that take place are recorded in the presentation book. The registry map is updated whenever new boundaries are determined, subdivisions are recorded, or when significant developments occur such as the building of a road.

The Registered Land Act contains the, substantive law essential for registration and declares that it is the register which proves title. The Land Control Act of 1968 established the Land Control Boards to oversee every land transaction. Ali describes Control Board members and their responsibility to oversee applications for the transfer of whole parcels, name changes, charges, and subdivision and partitions. Whatever the land transaction request, it is the responsibility of the Control Board to determine how it will affect the agricultural productivity of the parcel. The Board attempts to prevent people from selling their parcels to the detriment of other interests or even their own. The Board has to be cautious because some titleholders may force their wives and children to agree to transactions before the courts; buyers have been known to coerce people into selling their land, witnesses have been threatened, and some people try to hide the fact that other people have interests in the land. Generally, the Board tries to protect the interest of women and children. Parties may restrict someone else's dealings in land if their own interest in the land "is capable of being registered under the act."

All transactions must go through the Land Control Boards and then be registered in order to be legal. People resist registering transactions because they do not like the Board members or their decisions, out of ignorance, and in order to avoid the expense. Some sellers convince buyers to make trans-actions off the record, collect a down payment and then refuse to complete the transaction. This kind of fraud becomes possible when transactions are not registered. Even though registration can be expensive, a transaction does not require a lawyer's services. A certificate of registration is only available upon request.

In general, charges against the title have been recorded for individuals with outside incomes. The commercial banks determine if someone is eligible to receive a loan but the Control Board considers the person's character before giving their final approval to the charge. Subdivision is encouraged if a man buys part of his neighbor's plot to add to his own, but discouraged if the agricultural officers determine the division to be uneconomical. Even though the Boards usually allow social concerns to override economic considerations, and therefore may not allow a subdivision to take place, subdivisions occur nevertheless. The opportunity to appeal exists but is rarely pursued because it is expensive in time and money.

Given his many criticisms of the registration program and procedures, Ali rather surprisingly does not condemn the system but rather suggests that it has been something of a success because many have benefitted from loans. He recommends that more publicity on the implications of registration be employed.

Another early study, carried out in the Fort Hall (now Murang'a) and Nyeri areas of Central Province in the late 1960s, is also favorable in its verdict on registration:

**K20 Taylor, D.R.F. "Agricultural Change in Kikuyuland." In Environment and Land Use in Africa, edited by M.F. Thomas and G.W. Whittington, pp. 463-493. London: Methuen, 1969.**

As part of an overview of agricultural development in the Kikuyu areas of Kenya, Taylor includes a mostly descriptive review of the land tenure reform and its role in Kenya's agricultural *transformation.* He claims the Swynnerton plan revolutionized agriculture because it gave special consideration to consolidation, security of land tenure, technical development assistance, cash crops, access to water, marketing facilities, credit, and agricultural education.

Taylor describes the consolidation process which first began in areas dominated by loyalists and where fragmentation was particularly serious such as in Fort Hall and Nyeri. The article includes maps showing the extent of fragmentation in the Gatunda sublocation of Nyeri before consolidation and the layout of the newly demarcated holdings after consolidation. Most of the new plots were laid out in long strips so several ecological zones could be included as part of each holding. The land reform was meant to be accompanied by intensive *planning* efforts but they were beyond the resources of the gov*ernment,* largely because of a shortage of staff.

Taylor contends that the land reform improved the Kikuyus' standard of living. His own studies in Fort Hall District reveal increases of up to 2,000 percent in monetary income and suggest that a new and distinct middle class of capitalist farmers is emerging, as earlier researchers had noted.* But opposition to the land reform is also growing, and Taylor notes that in some areas of Fort Hall District, over 25 percent of the farmers are displeased with the results of consolidation (pp. 479, 480). Land reform has intensified the problem of landlessness and has failed to prevent further subdivisions as evidenced by the customary boundary marks sighted in farmers' fields. The subdivisions tend to take place in areas where food crops are grown and do not seem to alter the land use patterns in those areas.

A comparative analysis of the effects of the land reform among the Kikuyu and the Luo is provided in the following thesis:

KE1 Bolstad, Paul. "Land **Consolidation and Culture in Kenya: The Kikuyu and the Luo." M.S. thesis, Oklahoma State University,** 1973.

Bolstad suggests that the success of consolidation and registration has cultural determinants that must be addressed if it is to succeed. To evaluate this hypothesis, Bolstad considers the Luo and Kikuyu responses to consolida**tion over** the first twenty years of land reform. He explains Luo resistance and Kikuyu general acceptance of consolidation in light of five cultural variables: each ethnic group's political system; the basis from which social status, prestige and power are derived; the extent to which landholding has become individualized; land scarcity; and the need to spread risks. Bolstad

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* W. Allan, The African Husbandman (Edinburgh, 1965).

uses as a point of departure observed geographic variations in the pattern of success of land reform in terms of the number of holdings registered and the rate of completion.

According to Bolstad, the Kikuyu lived on very productive land at the time of land registration and, as a consequence, had a high population density, land scarcity, and little need to spread risk over several ecological zones. Prior to land reform, the Kikuyu system of landholding had moved toward individualization of tenure and land sales were not uncommon. Land was a sign of prestige and was beginning to be perceived as having a value. In contrast, the Luo regions were agriculturally poor. This forced farmers to spread the risk of cultivation over several landholding-. Perceptions of land values remained fairly undeveloped and land sales were rare, with the exception of exchanges between close relatives or friends. The less rigid and more egalitarian land allocation structures of the Luo led to a stronger resistance to change in the Luo areas and did much to impede land reform. Bolstad emphasizes that in order for consolidation to succeed, it must be part of a larger development program, in an area that is clearly in need of consolidation, and where the need is perceived by farmers.

Although Boistad's analysis is useful and his emphasis on the need to consider cultural factors is important, the work is marred by a tendency to oversimplification, especially as regards historical and ethnographic differences between the Kikuyu and Luo.

A somewhat different comparative perspective between Kikuyu and Luo experiences with land reform is the subject of the following article. Like Homan earlier, Wilson emphasizes the problems with succession.

KEE Wilson, Rodney J.A. **"Land Control in Kenya's Smallholder Farming Areas."** East Africa Journal of Rural Development (1972) : 123-148.

Wilson investigated the efficacy of the Land Control Boards in the Kisii District of the Nyanza Province and the Nyeri District of the Central Province. Registration was ongoing in Kisii and had been completed in Nyeri. The Land Control Boards were established in 1959 to "ensure that land tenure structures evolved in a way that did not prejudice rural economic development." In theory, they were supposed to guard against subdivisions, prevent risky mortgages, guarantee minimum sized holdings, and account for the effect on production of any transaction.

The Boards were not well informed of the reform objectives and did not follow handbook regulations. Consequently, the Boards have refused only 10 percent of applications since their creation. The Land Boards have not at-tempted to regulate the accumulation of holdings even though the motive for acquiring large holdings is often not economic and land purchased over ten years ago may remain unutilized. Purchasers interviewed in Kisii had holdings over 80 percent greater than the average farm site.

The Board has also failed to prevent the division of holdings. Free market activities accentuate the trend toward subdivisions as do traditional inheritance patterns. The records indicate that 70 percent of all sales in Kisii have involved the subdivision of a parcel. The Board does give some

ten-year leases rather than permit permanent divisions of holdings. The primary threat to the success of registration is the failure of individuals to register successions.

Wilson recommends that the Boards should accommodate subdivisions because they are inevitable but should exact stricter controls against fragmentation and the accumulation of holdings. Attempts to establish a standard for the minimum size of an economically viable land unit should be abandoned because diverse ecological and environmental conditions, a lack of production information, and changing technology make it impossible to establish a reasonable standard.

In the 1970s several researchers investigated the workings and results of the land registration program among the Mbere in Eastern Province. Drawing on fieldwork done in the area from 1969 to 1971, Brokensha and Glazier focus on the social impact of the early stages of the program.

**K23 Brokensha, David, and Jack Glazier. "Land Reform among the Mbere of Central Kenya." Africa 43 (1973): 182-206.**

The authors conducted fieldwork in Mbere Division of Embu District of Eastern Province at a time when demarcation and adjudication had commenced in only a few sublocations. Even before Mbere Division was declared an adjudication area in 1970, the Land Adjudication Act of 1968 had already outlined a process whereby clan committees were required to demarcate their boundaries in a way that would be useful for developing aerial photography and survey maps. Most clans embarked on this task with the help of clan labor, but some clans in the most remote regions resisted participation.

A substantial number of land disputes arose prior to the establishment of official adjudication committees. Few clan boundaries were accepted unequivocally as clan members began to see land as a finite commodity and as having a value. Some boundaries were hard to discern because they had never been precisely determined. Traditional courts were blamed for being biased and lost much of their authority to settle disputes. The difficulties that arose in establishing clan boundaries and the lack of satisfactory methods of settling disputes caused significant delays in the adjudication process, particularly as the anticipation of consolidation motivated individuals to act to resolve conflicts. With the introduction of cash crops came a change in the nature of disputes from arguments over boundaries between small garden plots to disputes over larger parcels of agriculturally productive land. Disputes increased due to the introduction of cash crops, increasing population scarcity, land sales and belief that certain educated clan members were taking unfair advantage of influence and knowledge to gain land.

Land adjudication modified but did not destroy the social institutions of the Mbere. The clan committees became more organized and provided a unified front with the appointment of officers and the establishment of official meeting dates. The reform created new tension between neighbors as well as providing a new idiom in which to express enmities. Consolidation was perceived as a threat because people questioned how it could be done equitably, particularly in situations where individuals owned land with sandy or rocky soil. The rush for land blunted traditional generosity as evidenced by the land

allocation process. Strangers to the Mbere area were particularly threatened by clan authorities, who used the ideas behind land registration to force them off land they had cultivated, in many cases, for number of years.

Njeru, a sociologist by training, writes of the ways in which the land reform program was manipulated by Mbere customary authorities to their own benefit. His findings in many ways complement those of Brokensha and Glazier, but in contrast to their approach, which focuses on tensions between neighbors, he emphasizes that the land allocation process accentuated differences between those whose access to power and influence was already unequal.

**K24 Njeru, Enos Hudson Nthia. Land Adjudication and Its Implications for the Social Organization of the Mbere. LTC Research Paper, no. 73. Madison: Land Tenure Center, University of Wisconsin, 1978.**

Njeru focuses on the impact of land reform on the social organization of the Mbere, relying on Mbere perceptions and individual observations of how the reform has affected local conditions. In the process of administering the land reform a number of inequities occurred. The demarcation and adjudication processes were administered by a committee of influential clan *members* who maintained vestiges of control over decisions regarding land. This gave them the opportunity to acquire the best parcels of land and favored them when they were involved in land disputes because they could muster the respect of legal authorities and could afford to pay legal fees. The allocation process had inherent inequities as well. The committee gave preference to families with sons, often leaving a family with daughters without sufficient land. The decision on whether to allocate land to clan members was based on a subjective judgment of their standing in the community. As land sales became more prevalent, other inequalities encouraged by the system and with distributional implications emerged. Poor people often chose to sell their land to large farmers rather than to small farmers because the former could afford to pay the purchase fee immediately. Outsiders came and purchased land in the area because it was relatively inexpensive, an intrusion that brought a changing awareness of land values.

The Mbere believe that the land reform resulted in the termination of land use freedoms, landlessness, an increase in personal conflicts, and distrust among community members. The land reform altered the power of the clan, diminishing its capacity to settle disputes and its social security function. This process was accelerated by the trend away from a collective mentality and toward more individualistic attitudes. As a consequence of land reform there have been an increase in social conflict and a lower level of political cooperation. A positive impact has been a woman's new-found right to purchase land.

Other evidence of the effects of land reform comes from work among the Embu, neighbors of the Mbere; these findings are part of a broader study of household dynamics and the rural political economy carried out by Haugerud in the period from 1978 to 1981. Like Njeru, Haugerud emphasizes that the reform accentuated already existing rural inequities.

**K25 Haugerud, Angelique. "The Consequences of Land Reform among Smallholders in the Kenya Highlands." Rural Africana, nos. 15-16 (Winter-Spring 1983), pp. 65-86.**

When the land reform was initiated among the Embu, there was already a stronger cash crop economy than among the neighboring Kikuyu. Even so, many reform objectives, such as the consolidation of holdings into one-unit farms and the development of a class of capitalist farmers, were not achieved. The reform institutionalized rural inequalities by creating an opportunity for farmers with nonfarm incomes to purchase land. Influential families acquired large landholdings for speculative purposes and to increase their borrowing power. Most of this land was not used for cultivation purposes.

The land reform has failed to promote the cultivation of consolidated holdings. A survey revealed that one-half of the households sampled owned at least two or more parcels of land. Fragmentation has persisted and even accelerated with the evolution of the land market and the continuation of the environmentally motivated, risk-adverse practice of borrowing and lending plots--an activity in which most of the population participates. The need for multiple holdings has also been perpetuated by attempts to absorb rising population densities, to spread risk, to utilize labor, and to accommodate household development cycles.

Registered titles poorly reflect actual land-use patterns. Few subdivisions have been recorded in the register because of conflicts arising from differences between legal and customary law, unaffordable legal fees, and lengthy bureaucratic procedures. Rates of registering subdivisions are highest in the cotton zone, where there is a lower population density and a larger number of land sales. The reform has made previously existing rights less secure and new conflicts have arisen as registered owners try to sell their land without regard for the use rights guaranteed by customary law. Active land markets have been stifled by the Land Control Boards in their attempt to guard the social welfare of the Embu. Simultaneously, the land reform has decreased the capacity of the community to absorb their landless. The reform has failed to transform peasant agriculture because the economic problems of smallholder agriculture were not addressed in the project design.

Another, more recent article by Haugerud provides an overview of research elsewhere in Kenya on the effects of land registration as well as presents further evidence of land-use practices in Embu.

**K26 Haugerud, Angelique. "Land Tenure and Agrarian Change in Kenya." Africa, forthcoming.**

Haugerud's discussion focuses on the relationship of formal and informal land tenure systems to the process of agrarian change, and in it she shows that not only has registration failed to achieve the sorts of social change that had been predicted, it has also not had the economic results that had been forecast. One of the intended results of registration was the emergence of a class of larger farmers who, it was hoped, would be innovative in their farm practices and willing to make investments in their farms. Such a class of progressive large farmers has not emerged. Although the size of farms varies, Haugerud reports that there are no striking differences in farming techniques between large and small farmers in Embu.

Nor is a desire to invest in agricultural development the dominant motive in land purchases. That the land market would be dominated by individuals who wished to acquire more land to expand agricultural production was another assumption of proponents of land registration and it too has not been borne out in reality. Farmers accumulate land primarily for speculative purposes, for the future subsistence security of sons, and for the increase in cash borrowing power that each additional title deed confers. The land that they acquire is, more often than not, separate from their core holdings and thus fragmented. Moreover, the loans that individuals take out against landholdings are often used for nonagricultural purposes. The availability of such loans, Haugerud notes, further increases the attractiveness of rural land acquisition for purposes not necessarily related to agriculture.

Finally, registration has had the opposite effect on land disputes from what was originally intended. Litigation over land claims and uncertainty over land rights have increased rather than decreased with registration. Growing numbers of conflicts divide families and strain the resources of all levels of the Kenyan legal system, from local elders to government courts. Defaults on commercial loans and increased numbers of unrecorded land transfers only add to the numbers and sources of disputes. For those with subsidiary land rights, registration has actually been a source of insecurity of tenure because it has provided the registered landowner with a wide range of discretionary rights over the land with almost no checks against his powers.

Yet another neighboring ethnic group, the Meru, are the subject of this study of agricultural change and land reform:

K27 **Bernard, Frank** Edward. **East of Mount** Kenya: **Meru** Agriculture in Transition. Afrika-Studien, no. 75. Munich: Weltforum Verlag, 1972.

In the context of a detailed case study of agricultural change in the Meru District of the Eastern Province, Bernard devotes one chapter to changes in land tenure. This geographical study emphasizes the spatial dissemination of consolidation. Meru was late to be consolidated because population pressures were less severe than in neighboring areas. There was resistance to surrendering newly planted coffee plants and to *changing* attitudes. Excess litigation exacerbated by extreme *fragmentation* and negative attitudes toward resettlement (due to the traditional bias against the desirability of certain residential areas) also contributed to making consolidation a tedious and lengthy process. It took three to five years to consolidate each adjudication section and an additional seven to *nine* years to complete the entire process. In the end, most adjudicated segments were dominated by plots of approximately 3.5 acres. The threat of further subdivisions into even smaller holdings is accentuated by the rapidly growing population.

Consolidation brought about changes in the landscape including the evolution of an incongruous symmetry with demarcation, a move from circular houses to rectangular styles, the disintegration of traditional settlement patterns, the regional specialization of food crops, and a new openness of the landscape with the removal of trees. There has also been an increase in male participation on farms.

Other work on the effects of land registration has been done among the Luo in nyanza Province by Simon Coldham, who emphasizes the ways in which customary rights come into conflict with the new written law.

**K28 Coldham, Simon F.R. "The Effect of Registration of Title upon Customary Land Rights in Kenya." Journal of African Law 22 (1978): 91-111.**

Coldham **examines** how customary land_ rights were dealt with during the adjudication and registration stages of the Kenyan land reform. He supports his contentions with evidence from fieldwork conducted in the Luo-dominated East Koguta and East Kadianga sublocations of the Nyanza Province. Because East Kadianga was more economically advanced and had moved closer to the indi- vidualization of land tenure, the conflicts that arose there between customary law and the new land law were less severe than in East Koguta.

The updated Land Adjudication Act 1968 outlined a systematic adjudication process that had the distinctive feature of employing local committees at all stages of the reform. Committee members tended to be poor and uneducated and, yet, were given the enormous responsibility of translating customary rights into the adjudication register where the name of any person who, under customary law, had exercised rights over the land was recorded as the owner along with a list of any existing encumbrances. Once land was registered it was no longer officially governed by customary law but by the substantive law established by the Land Registration Ordinance of 1959. Up until the creation of the first register, all land disputes and adjudication procedures were handled administratively and only afterwards were conflicts brought to the courts.

The assumption that customary rights could be equated to the new land law was misguided and, as a result, many individuals were granted greater rights and others fewer than they claimed under customary law. Family interests were often misrepresented, which led to disputes. Only 25 holdings out of the 1,667 registered in East Koguta were listed under the name of more than one proprietor and only 6 percent of the holdings were registered to women. Furthermore, no right not amounting to ownership appeared in the register.

After registration many disputes arose over the legitimacy of the first register, which the Land Act had declared could not be amended. In spite of this, the law was manipulated to protect certain rights deemed legitimate by tradition but not adequately represented in the original adjudication record. The courts used the "trust" concept to declare certain proprietors as trustees for other family members. Coldham observes that the recognition of certain customary rights in the land record would completely undermine the object of registration by inhibiting the land market and moving the system further away from individualized tenure. He notes that using concepts like "trusts" to protect customary interests is, in fact, adjudicating land titles and provides an alternative system of appeals. Since land rights continue to be governed by customary rights it is evident that legislation is ineffective as an instrument of social change.

**A** second publication of Coldham's compares the experiences with land registration of farms in Central and Nyanza Provinces and of group ranches for Masai in Narok District of Central Province. In

this article as well, he emphasizes the conflicts between customary and written legal prescriptions.

**K29 Coldham, Simon F.R. "Land Tenure Reform in Kenya: The Limits of Law." Journal of Modern African Studies 17 (1979) : 615-627.**

Case studies of agricultural settlements in the Central and Nyanza Provinces and of ranches in the Narok District of the Nyanza Province have revealed constraints that have inhibited the effectiveness of the land reform in Kenya. The author emphasizes the limits of the law in bringing about social change and "considers the extent to which customary law has survived in practice with particular reference to subdivisions, sales, and successions." The land reform involved the consolidation and adjudication of holdings, the registration of property owners, and the registration of rights not amounting to full ownership. Some pastoral lands, inhabited by the Masai, were registered under the name of a group representative.

Customary law has continued to determine now a father will divide his land among his children. Unrecorded successions lack a legal foundation and, consequently, have often led to disputes. Four years after registration in the Kiambu District, 3,000 titles remained registered in the names of now-deceased persons. Research has shown that only 3 to 4 percent of the successions from **1966** to 1973 in East Kadianga were registered. Similarly, in East Kadianga, from 1966 to 1973, at least 30 percent of all land sales went un**registered. (From 1964** to 1974, the unrecorded sales in Gathinza amounted to 15 percent of the total.) Confusion has been compounded when the courts have settled disputes on the basis of written law rather than customary law. Complex bureaucratic procedures, substantial fees, and lengthy time commitments have been deterrents to registration as have problems with communicating the implications of registration--i.e., that it requires a new system of conveyancing--and the lack of incentives provided to induce cooperation.

Registering group ranches was unsuccessful because the administrative approach demanded fundamental changes in the behavior of the Masai. The boundaries chosen for the ranches were not consistent with traditional boundaries; the committees chosen to oversee the ranches lacked a traditional foundation such as the **enkutoto** (political segments); and no provisions were included to account for outsiders who were frequently invited to stay in the area for prolonged periods of time. No incentives, such as an increase in the available loans, were provided to encourage the Masai to change their conditions.

Anne Fleuret has recently analyzed the effects of land consolidation and registration in Taita, in the southeastern part of the country. Like many others, she finds that land reform has had a number of unforeseen and unfortunate **consequences.**

**K30 Fleuret, Anne. "Some Consequences of Tenure and Agrarian Reform in Taita, Kenya." In Land and** Society in **Contemporary** Africa, **edited** by R.E. **Downs and S.P. Reyna, pp. 136-158. Hanover, NH: University Press of New England, 1988.**

Drawing on data collected as part of a larger study on agricultural change and its effect on nutrition in Taita, a highland area in the southeastern part of the country, Fleuret discusses the results of land reform begun in the area in the 1960s and continuing into the 1980s. Her chapter analyzes the effects of consolidation on landholdings and access in one community which enthusiastically began its own program in the early 1960s and compares present-day conditions with those in a second community in which consolidation has yet to take place.

In Iparenyi, where consolidation began almost thirty years ago, a number of negative effects of the reform are appa-rent. The risk-avoidance strategies that fragmentation made possible now can seldom be managed. Moreover, the reallocated parcels, though they can be farmed more efficiently, are often too small to feed the households, and farmers are heavily reliant on income-generating activities both on- and off-farm. Some have managed to purchase additional land in nearby, as yet unconsolidated communities, but this is not a solution available for all. Continuing adherence to customary inheritance practices, in which land is divided among all a man's sons, has resulted in a situation in which de jure and de facto ownership are sharply at odds. Division of land among heirs often creates parcels below the legal minimum size which cannot be registered; instead, ownership often is registered in the name of one individual, who as a result has greater discretionary powers over the land. In actuality, though, a number of households may farm the land separately. This ambiguity of ownership and use rights is particularly strong in the case of women, who customarily have only use rights to land derived through their husbands or families. Ex-wives, for example, have no legal right to land under the new system but yet may remain dependent on their former husbands for access to land; disputes and acrimonious relations are not uncommon in such situations. Nor are women likely to receive land from their own families: consolidation has severely constrained families' abilities to allocate land to less fortunate family members such as unmarried mothers. Lack of defined legal rights also limits women's ability to make independent decisions about land which they farm. Finally, Fleuret makes the point that though purchased inputs such as fertilizer are more common on registered than unregistered land, one cannot conclude that this is a result of registration. Rather, use of inputs appears to be related to cash cropping.

While the studies cited above have looked at the results of land re-form in a specific area or among a particular ethnic group, Achola Okeya Pala has focused on the impact--generally negative--of these changes on Luo women.

**K31 Pala, Achola O. "Women's Access to Land and Their Role in Agriculture and Decision-Making on the Farm: Experience of the Joluo of Kenya."** Institute for **Development Studies, University of Nairobi, Discussion Paper, no. 263. Nairobi, 1978.**

Achola Pala examines women in contemporary Luo society in Kenya by focusing on women's rights to land and property and how they influence women's role in agricultural production and decision making. She looks at women's access rights to land; how they acquired the land they are using; how they use the

land; who holds the right of allocation of the farm they are cultivating; whether land is being registered; and how decisions are made regarding the sale, use or exchange of land.

Pala used questionnaires to elicit responses from 135 women in Nyanza, Kisumu, and Siaya Districts of Nyanza Province. Results from the survey show that most women do not cultivate enough land to qualify them for assistance under the Guaranteed Minimum Returns loan plan, which requires a cultivator to have at least 15 acres to qualify for assistance. This "data underscores the fact that most peasants in the area cannot hope to expand the potential of their land through government assistance" (p. 6). All of the respondents have access to some land. The majority cultivate lineage land and retain the flexibility of exchanging land with other lineage members as evidenced by the fact that 93.33 percent of the respondents borrow land from relatives. Land reform will be a disadvantage to Luo women if it inhibits these land transactions.

Most of the respondents cultivate land that is registered under their husband's or son's name. Only eight of the women cultivated land registered under their own name. This suggests that land is being transferred to complete male control and women risk losing their use rights in the process. Even though men might be expected to continue to honor their wives' use rights, increasing land scarcity and the lack of outside employment will threaten traditional guarantees. The women most threatened are those whose families have little or no off-farm income and women with only daughters or who are widowed. The incongruent technical terms used to describe property rights increase the uncertainty of women's future use rights because they obscure the peasants' understanding of the legal implications of land reform.

The land reform also threatens the housewife's autonomy. Where it used to be the woman who would decide who should inherit the livestock and which parcels of land, registration has overtaken that responsibility thus reducing the woman's authority in her household. Another sign of change is the in-creasing cleavage between women who are gaining the authority to hire labor and those who sell their own labor. Land reform may affect the entire produc-
tion system as women, who are primarily responsible for land use decisions, lose any control over land allocation decisions.

(Note: Article based on Achola O. Pala, "Changes in Economy and Ideology: A Study of Joluo of Kenya--With Special Reference to Women," Ph.D. dissertation, Harvard University, 1977.]

Achola Okeya Pala reiterates many of these same findings on the effects of land reform on women's rights in the following article:

**K32 Pala, Achola Okeya. "The Joluo Equation: Land Reform = Lower Status for Women." Ceres, May-June** 1980, pp. 37-**42.**

The Kenyan land reform has had a negative impact on women's access rights to land and, consequently, their status in society. Research on the Luo of Kenya in the mid-1970s has revealed that the vast majority of land titles are registered in the name of a woman's husband and/or her sons. Titles have altered the nature of a husband's property rights by replacing his traditional allocative role with the ability to alienate land. Some sons have taken ad-vantage of the situation and sold their land for quick cash leaving their

**relatives** without access to any economic opportunity. Where women had an important decision-making role at one time, the reform has led to the diminution in the status of women as their traditional roles in agricultural production change. **A** parallel trend has been a growing class distinction between women who are part of families who can afford to hire labor and those who have been forced to sell their labor and land.

**A** broader, but no less critical, discussion of the effects of **registration in Nyanza Province among the Luo** is provided in the following paper by Parker Shipton:,.

**K33 Shipton, Parker. "The Kenyan Land Tenure Reform: Misunderstandings in the Public Creation of Private Property." Development Discussion Paper, no. 239. Cambridge, MA: Harvard Institute for International Development, Harvard University, February 1987.**

Land registration in Nyanza Province began shortly after independence in 1963, and by 1983, when Shipton completed his work in the area, some 56 percent of the land available for smallholder agriculture had been registered. Al-though it was originally intended that the registration be preceded by consolidation of parcels, as had occurred in Kikuyuland, few Luo were willing to abandon the fragmented holdings which serve to spread agricultural risk; as a result, many small, scattered holdings have been adjudicated and registered.

Shipton concentrates on the social effects of the registration and emphasizes that it has led to heightened tensions in Luo society, underscoring generational, gender, and both inter- and intra-ethnic differences. Elders, for example, may prefer to invest money in cattle and thus are concerned to protect grazing rights, while younger members of Luo society may focus on cash crops and on the need for access to credit. Similarly, registration has brought tensions to relations between land patrons and clients, both of whom may jockey to be registered as the legal owner of a particular piece of land. Although adjudication boards have occasionally assigned title to land clients, the more frequent practice has been to favor the wealthier individual, usually the land patron. Composed exclusively of men, the boards are generally biased against the interests of women and poorer farmers. Although they are unpaid for their services, the adjudicators nevertheless expect to be fed well by the landholder, a situation which favors the wealthy as many farmers cannot afford to provide an animal for their feast. (As Shipton points out, there is a conceptual continuity between hospitality and bribery.) Moreover, the expense of appealing the adjudicators' decisions has meant that few objections are lodged.

Although land disputes had been occurring with increasing frequency in the years immediately before adjudication and registration, the prospect of registration set in motion a host of disputes and litigations as individuals sought to clarify land rights. (Land transfers also increased at this time, though why this should be so Shipton cannot explain.) Registration has not ended disputes over land, but it has altered their nature. Whereas before registration, most disputes were over boundaries, since then it is transfers of land that have been increasingly contested. Some disputes concern sales of family land, while others are generated by the cancelling of sales or by multiple transfers of the same parcel. Many of these transfers appear to be motivated by a desire for quick cash.

**Despite an** increasingly active land market, business at the Registry has been poor. Few land transfers are noted in the records, although sales and inheritances are frequent occurrences. Transferring title is a cumbersome, expensive process, and individuals generally continue to rely on the authority of elders in land matters rather than resort to the Registry. Nor have the Land Boards assumed an important role in monitoring land transfers as had been planned. In fact, Shipton believes, they are structurally incapable of doing so, subject as they are to manipulation and contradictory goals. They have the power, for example, to block all transfers of land that will result in either subeconomic holdings or excessive concentration of land in the hands of a few. They rarely do, however, in part because of contradictions in the government-issued guidelines: while the 1967 Land Control Act grants them this prerogative as a check against inequitable land distribution, the handbook issued in **1969** by the Ministry of Lands and Settlement stresses that priority is to be given to issues of economic development.

Shipton contends that registration may actually decrease rather than increase security of tenure. This is what has occurred for women and other individuals who possess inferior rights to land. Men's rights have hardened into absolute ownership at the expense of women and children. At the same time, with the expanded use of land as collateral for loans, women have lost access to credit, and thus their disadvantaged status is accentuated. In addition, smallholders may find it increasingly difficult to hold onto their land as fallow periods are shortened or ended altogether and the fertility of the land decreases, forcing them to sell the land in order to raise cash for various expenses. The result, Shipton predicts, will be concentration of land holdings in the hands of a few, an outcome not unforeseen and, in some quarters, believed to lead to more efficient agriculture, but one which may have dire implications in a society that fails to provide the necessary wage-earning alternatives for the landless.

The change to a system of registered land has not been an easy one for the Luo; it has required the conversion of "multiple, situational, and overlapping rights to individual, absolute, and exclusive rights" (p. 47). Some individuals have been able to manipulate the ambiguities resulting from the change to their advantage, and the overall result is that pre-existing social inequalities have often been accentuated. The government is unable to control the land market, yet at the same time the older controls are eroding.

[Note: A shortened version of this paper appears in Land and Society in Contemporary Africa, edited by S.P. Reyna and R.E. Downs (Hanover, NH: University Press of New England, 1988), pp. 91-135.]

Yet another microstudy of the social ramifications of land reform is George Mkangi's research among the Taita in Coast Province, where registration was begun in 1969.

**K34 Mkangi, George C. The Social Cost of Small Families and Land Reform. Oxford: Pergamon Press, 1983.**

This book is based on fieldwork Mkangi conducted in Taita in Coast Province of Kenya from 1974 to 1976. His research methodology included a census, interviews, observations, and case studies involving 16 households in the sublocation of Shigaro-Sungululu. This sample was stratified into four groups

according to income, size, and conditions of the households surveyed and provides the foundation for an examination of labor utilization, food production and consumption, cash expenditure, education, and family planning. A total of 1,050 holdings were registered in this area after the land reform was introduced in 1969. The average land holding size per household was 1.7 acres--a figure Mkangi later proves conceals the extent of the economic disparity among and within the four stratified samples.

The goals of land reform were (1) to provide an average holding of a size that would enable a household to generate a surplus and (2) to act as a leveler in the distribution of resources and income. Mkangi discusses the colonial influences on African tenure and how they inevitably created conditions which became the basis for arguments in favor of reforming customary tenure. The reform involved three key pieces of legislation: (1) the Native Land Tenure Rules (1955), which emphasized that customary rights were to be maintained, legitimized existing spontaneous tenure changes, and laid down the process of tenure reform; (E) the Native Lands Registration Ordinance (1959), which legalized individual freehold, made the first registration unchallengeable, and complemented a corresponding act which established Land Control Boards; and (3) the Land Act (1968) which uniquely provided for group rights and provided for areas where consolidation was inappropriate.

Mkangi considers land distribution to be an important indicator of the success of land reform and relates the increasing trend toward lanalessness as evidenced by the data on land sales, with values embraced by supporters of the move toward the individualization of tenure. The distribution of land between socio-economic strata favors wealthier households, as illustrated by a comparison between the average per capita holding for male children in the poor and rich strata (.5 acre and 3.4 acres, respectively). This situation is further aggravated by land sales in which large farmers are accumulating the most land while the smallest **shambas** are experiencing the greatest losses. Land reform has aggravated distributional inequities and created class distinctions which were previously mitigated by social relationships and responsibilities. Class disparities are further accentuated by policies and programs which tend to favor households with higher incomes.*

Mkangi studied the impact of land reform on the standard of living in Taita by examining food consumption patterns, household expenditures, population trends, and attitudes toward education, concluding that land reform has negatively transformed the peasant way of life. For instance, the poor used to be free to gather munyunya (a weed-like plant that is a staple in most poor families' diets) from any field. Since they are now restricted to gathering these plants on their own plots, where they may not be available, some people are forced to purchase them instead of providing for their own subsistence. Poor households also have trouble attaining self-sufficiency because of difficulties in organizing labor and insufficient resources. As a consequence, they consider education the only route to a higher level of existence and have more children than other households in the hopes that at least one will succeed in school. The land reform has made it common for parents to sell land for cash to pay school fees. Most of these students face unemployment

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* C. Leys, Underdevelopment in Kenya: The Political Economy of Neo-colonialism 1964-1971 (London: Heinemann, 1975), p. 101.

upon graduation because they tend to enter school later than other children, have problems catching up, and do not fare well in the hierarchical grading system; they therefore provide few returns to their parents' investment.

Mkangi explains the continuing emphasis on land reform as the desire of "external forces to break down pre-capitalist attitudes and social institutions and replace them with the ideas of incentives of the market." Since most people have not been able to produce even enough food for their subsistence, Mkangi considers the reform a failure that has only served to perpetuate discontent and social disintegration.

The most recent attempt to analyze the results of the land reform is a paper presented by Okoth-Ogendo at a workshop on land policy in 1982. In it he discusses some of the unlooked-for and undesirable repercussions of the redistribution **of land and land rights.**

**K35 Okoth-Ogendo, H.W.O. "The Perils of Land Tenure Reform." Paper presented at the Workshop on Land Policy and Agricultural** Countries, **Gaborone, Botswana,** 14-15 February **1982.**

Okoth-Ogendo makes generalizations regarding the impact of land reform "on the political, social, and economic organization of society." Evidence to support his conclusions is drawn from fieldwork done in *Kisii* and South Nyanza Districts in Nyanza Province from 1972 to 1974. The author contends that any benefits from land reform are offset by the redistribution of political power, the emergence of economic disparities and a disequilibrium of socio-cultural institutions. Land reform initially has a positive impact on agricultural planning, but follow-up extension, credit, and assistance have failed to appear. Only 2 percent of the registered holders in *Kisii* and South Nyanza Districts were able to secure credit from 1970 to 1973. Other credit pre-requisites prevented small farmers from obtaining loans and 80 percent of those who borrowed money during that period used it for nonagricultural purposes.

The author argues that it is the "social, political, and economic functions of tenure arrangements and not their structure per se that will determine decision making processes in land use." As a consequence, farmers continue to perceive land rights as exclusive and estimate land values subjectively. The Land Control Boards, which are mostly composed of local residents, have tended to settle land disputes in favor of social justice over economic realities--a trend which inhibits the growth of a viable land market. Confusion is created when higher courts settle disputes on the basis of legal standards only to have their decisions tempered by the land boards. Changing the land tenure structure alone is insufficient to induce improvements in agricultural practices, in part because small farmers lack the capital to make changes in their practices.

Land redistribution was an effect, not a goal, of land tenure reform that arose because of confusion with the legal structure of reform, problems with implementation, and a lack of understanding of the nature of customary rights. Women and children lost potential and de facto rights in the registration process. Less than 5 percent of the total registered proprietors have been women, and this has weakened the family as the basic unit of production. Subtle land redistribution has occurred in favor of farmers with larger holdings who can

afford to purchase plots from smaller farmers in need of quick cash. The redistribution has also affected a change in political power by allowing the emergence of a rural elite.

A second land registration program, known as the "Million-Acre Scheme" and implemented at the time of independence, was designed to transfer the European-owned large-scale farms in the White Highlands to African farmers. The plan, under which both large- and small-scale African farmers were to be able to buy land in the Highlands, involved the purchase of 1,000,000 acres of underdeveloped leasehold land from European farmers. Intended on the one hand to allow European farmers to sell their land at high prices and, on the other, to help alleviate the problem of African landlessness, the scheme called for the farms to be registered as individual freehold and allocated to African farmers. In some cases the original farms were subdivided into smaller units, but in other cases they remained as large holdings.

Only one study to date has focused on this land reform program separately. The findings are presented in the following book:

**K36 Leo, Christopher. Land and Class in Kenya. Toronto: University of Toronto Press, 1984.**

Leo, a political scientist by training, began his research in 1971, collecting data and conducting interviews in two units of the Million-Acre Scheme in Nyandarua District. The research continued over a ten-year period, and although he did not attempt to measure or assess the effects of titling and registration specifically, his findings are instructive for considering the relationship between farm size and productivity.

The design for the transfer of European-owned large-scale farms in the Highlands to African smallholders involved the subdivision of lands originally held under 999-year leases into smaller units held in freehold. The scheme, in which both large- and small-scale African farmers participate, redistributed some 1,000,000 acres of underdeveloped land purchased from European farmers. Intended in part to ease landlessness among Africans, the project failed to make a significant impact on the problem. Smallholder farmers, settled in high-density areas that were often on more marginal lands, were saddled with substantial debts and inadequate services. Large-scale farmers, in contrast, of whom greater resources were required at the outset, received better land in low-density settlement areas. Many of the farms failed to achieve the levels of production planners had expected, and, particularly among the smallholder farmers, defaulting on loan repayments was not uncommon. But overall production levels remained as high, if not higher, than they had been before the program, and the high-density settlements were found to be more productive than the low-density ones, a result that at least in part may have been due to the increased population working the land.

[See also Leo's "Who Benefitted from the Million Acre Scheme? Towards a Class Analysis of Kenya's Transition to Independence," Canadian Journal of African Studies 15 (1981): 201-222.]

A third and very different program of registration was that which created group ranches for the Masai beginning in the mid-1960s. In order to protect their lands against encroachment by non-Masai, Masai pastoralists were persuaded to agree to the establishment of ranches on which freehold title would be held on a group rather than an individual basis. The government, for its part, hoped that by granting freehold title for a defined area of range to reduce and control the number of cattle on the range and the amount of territory the Masai considered open range.

**K37 Davis, Robert K. "Some Issues in the Evolution, Organization and Operation of Group Ranches in Kenya." East African Journal of Rural Development 4 (1971): 22-33.**

Davis anticipates some of the implications, issues, and consequences of land tenure reform in the pastoral areas of Kenya just prior to the implementation of a scheme to establish group ranches over 5,105,000 hectares of land. Group ranches are legally constituted as a corporate body with the power to hold property and acquire debts. Moreover, individuals continue as individuals to hold residence rights but grazing, tillage, and water rights are controlled by the group committee. The authority structure of the ranches includes a slate of group representatives and an elected group committee which has a managerial role. In establishing the first ranches in Kaputiei and Kajiado Districts, attempts will be made to incorporate both wet and dry rangelands in each ranch and traditional affiliations will be upheld.

Group ranches are being established to achieve economies of scale in terms of the provision of water, sale of livestock, grazing and health practices; to create an environment more suitable to commercial production; and to promote better rangeland conservation through the incentives provided by individualized tenure. Davis discusses the distributional consequences that might be encountered in a system where ownership is different than use. A major concern is assuring that the most successful ranchers can acquire the assets necessary to achieve their productive potential.

While Davis is concerned to lay out some of the theoretical is-sues and possible consequences of the establishment of group ranches, evaluations of the actual operations of the group ranch schemes have focused on the ways in which customary authority and relationships have been ignored and problems for the projects have thereby been created. The realities of the process of demarcating both individual and group ranches among a particular group of Masai, the Kaputiei Masai, is the subject of the following paper.

**K38 Hedlund, Hans G.B. "The Impact** of Group Ranches on **a** Pastoral Society." Institute for Development Studies, University of Nairobi, Staff Paper, no. 100. Nairobi, June 1971.

In response to a drought in 1960/61, in which a significant proportion of their cattle herds died, the Kaputiei section of the Masai began to register ranches on an individual basis. By 1965, 56,000 acres out of 806,000 had been

divided among 28 families. Because there was in fact no legal basis for individual registration of ranches and because there was insufficient land to provide each family with a ranch of adequate size, the program was soon replaced by a scheme to constitute and register group ranches. Two factors contributed to local willingness to participate in the group ranches project: the commercial success of a number of the individual ranches, and fear of loss of land through sales to outsiders (especially the Kikuyu). Many Kaputiei Masai also believed that registration itself would automatically bring development as well as prevent land loss to expanding nearby game reserves.

The registration of group ranches was haphazard and proceeded without careful consideration of how the groups were to be organized. Consequently, members were divided into units which lacked either a group identity or a sense of solidarity. Failure to achieve financial success within a short period after their establishment, as the individual ranches had done, contributed to this lack of cohesiveness. (This was largely due to the fact that short-term benefits such as dips and boreholes failed to materialize as planned.) Factional groupings within the ranch units as well as kinship ties to members of other ranches similarly undercut the development of solidarity and a spirit of cooperation on the group ranches. This was apparent in 1970, when, because of drought, outsiders were sometimes permitted to move their cattle onto the ranches. Hedlund points out that motives of reciprocity lay behind this, but that the willingness to accommodate outsiders did not extend to owners of individual ranches, who were not inclined to reciprocate or to enter into cattle exchanges with group ranch members.

Hedlund describes the individual ranch owners as constituting a distinct social and economic class (p. 16) and points out that they do not participate in the traditional age-set practices and yet exercise considerable political leadership within the community. In addition, they tend to be better educated on the average and to be better off economically as well. Unfortunately, Hedlund does not discuss how they came to be selected as individual ranch owners in the first place and it may very well be that many of these characteristics (better education, wealth) were already present. At the very least, however, access to credit and other benefits at an early stage of the individual ranch project enabled them to improve their economic standing.

Within the group ranches, traditional offices and positions of leadership exercise little attraction and their holders play little role in the activities of the ranch. Positions of leadership within the group ranch structure, on the other hand, are highly prized. At the same time, however, Hedlund notes a general tendency toward individualization of effort among the more progressive members and increased participation in the cash economy. Because of the example of the individual ranches and their commercial success, many Kaputiei Masai regard economic success as a product of individual ownership of land. The group ranches, Hedlund believes, are likely to remain faction-ridden for a long time to come because of both the haphazard way in which they were constituted and the failure in provision of technical services soon after their establishment.

Hedlund's findings are supported by research by Halderman, who also looked at ranches in the Kaputiei area. Like Hedlund, Halderman finds that demarcation of group ranches often ignored customary

arrangements and that the new ranches fared poorly during times of drought.

**K39 Halderman, John M. "An Analysis of Continued Semi-Nomadism on the Kaputiei Masai Group Ranches: Sociological and Ecological Factors."** Institute for **Development Studies, University of Nairobi, Discussion Paper,** no. 152. Nairobi, 1972.

Halderman's analysis of group ranch development schemes is based on research in South Kaputiei, an area containing six individual ranches and six group ranches. In his research Halderman found that the group ranches were only successful until the first drought, when the need for self-preservation required the Masai to move their herds to neighboring grazing lands via traditional migration routes. Since most ranches were not provided with resource assistance such as water and off-season forage, acquisition of title alone was not sufficient incentive to change traditional patterns based on reciprocity and the communal use of land, forage, and natural water supplies.

Group ranches were not demarcated to correspond to traditional migration patterns or social organizations. The demarcation of ranch boundaries by the development committee was often impractical. "While natural boundaries such as rivers or hilltops are easily recognizable, their use as boundaries is not always compatible with efficient water development or grazing management." Demarcation led to an inequitable distribution of grazing resources and failed to identify the proper social groups that would give the ranchers a sense of cohesion. Most Masai wanted communal arrangements because of their flexibility, but some Masai were eager to acquire individual titles because of anxiety over the future ownership of their traditional territories, and in some areas, exposure to European successes with farming technologies had fostered the desire to obtain titles for credit. The Poka Ranch, established in 1964/65, was uniquely successful because development assistance was immediately available, and the ranch generally maintained sufficient forage and rainfall. However, even the most successful farmers were forced to move their cattle beyond the boundaries during severe drought. Halderman's research results demonstrate a significant difference between the success of ranches mostly due to variation in the availability of wet and dry season grazing, the amount of development assistance, ecological variability, and the land's ability to sustain rotational grazing. The impact of these differences is seen in such variables as the percentage of cattle watered daily, the regularity of dipping, the percentage who are engaged in cultivation, and the percentage who sell milk daily.

An increase in individual ranches motivated the government to promote group ranches as a way to protect the interests of the majority and to develop all suitable land. The government also realized the need to establish economic units if rotational grazing schemes, stock control, and protection against erratic rainfall were to be possible. Halderman sees group ranches as a reason-able solution to rangeland problems if the obstacles of ecological variance and erratic rainfall can be overcome.

Other evaluations of the group ranches have looked at their day-to-day operations and found difficulties in their design and

operating procedures. The following articles by Helland and Galaty describe some of these problems.

**K40 Helland,** J. **"Group Ranch Development among the Masai in Kenya." In East African Pastoralism: Anthropological Perspectives and Development Needs, pp. 93-115. Addis Ababa: International Livestock Centre for Africa, 1977.**

The underlying objectives of group ranch development in Kenya were to increase commercial production, to regulate stocking rates for maximum productivity, to conserve natural resources, 'and to provide an adequate standard of living. However, the ways in which the group ranches were demarcated raises serious doubts as to their economic, ecological, and social viability. First they were not formulated on the basis of the enkutoto or other traditional units of organization. Second, the ranches raise equity questions because of their variable sizes--particularly in regions of consistent productivity.

Helland gives a fairly detailed description of the demarcation and registration procedures involved in establishing group ranches and briefly examines problems encountered because of a lack of understanding of the social and economic complexities of Masai society. For instance, while the Masai are being encouraged to adopt a more agricultural diet, thereby reducing the need for large herds, the capacity of the group ranches to support the population is diminishing and may be overextended in an attempt to support a growing population. Attempts to encourage destocking of the ranches have been complicated by the disparities in herd sizes. Minimum stock quotas have been issued to all members, but the wealthier pastoralists have resisted culling their herds. The Range Management Committees, developed to oversee such problems, are inhibited by a lack of funds, information, organization, and enforcement capabilities. The situation is further complicated by the interests in maintaining reciprocal relationships in the use of grazing land. Some development loans have been issued, but circumstances have discouraged further investments.

Ranches set up in the Samburu area have encountered some of these problems because of their small size and management bias. In the future, the ranches will be threatened with the overpopulation of people and cattle if current controls are not made more effective. Helland notes that planners must under-stand how the pastoral social and economic system works, how the project will affect that system, and how it affects project activities before such problems can be resolved.

**K41 Galaty, John. "The Masai** Group-Ranch: Politics and Development in an African Pastoral Society." **In** When Nomads Settle, edited by P.C. **Salzman,** pp. 157-172. **New York: Praeger, 1980.**

While both the Masai and government planners sought the establishment of group ranches, their motivations for doing so were not identical. The planners hoped to encourage a radical transformation of rangeland economics by encouraging commercialization, reducing stock numbers and limiting grazing, all of which were dependent on well-defined ranches and impermeable boundaries. Even though overstocking and overgrazing were the results of colonial policies which usurped the best grazing lands and prevented the Masai from participation in

the livestock market, the Masai practices were considered traditional and judged as irrational. In contrast, the group ranches provided security for the Masai and protection of their traditional pasture lands from encroachment by cultivators, quick sales, and the further adjudication of individual ranches. The Masai were particularly interested in group registration after a series of droughts made them realize that pastoralism with its new constraints could not be counted on to provide even a subsistence level of existence. Group ranches were an attempt to protect the rights of ,the majority of the Masai from the consequences of an increasing perception of the value of natural resources such as wildlife and prime grazing lands. An effort was made to register all persons of Masai heritage including those not in the area.

The ranches were intended to be more economically viable in size than individual ranches. They have not achieved the economic goals set out by the planners but have provided an organizational mechanism for future improvements. The ranches have a political organization but no social basis and continue to be dominated by traditional relationships which determine control and yet may give rise to disputes. One constraint to their development is the credit institutions' resistance to loaning to group ranches because bad debts are difficult to collect as no single person claims responsibility.

A legal perspective on the problems of the Masai group ranches is provided in the following article by Simon Coldham:

**K42 Coldham, Simon. "The Registration of Group Ranches among the Masai of Kenya: Some Legal Problems." Journal of Legal Pluralism and** Unofficial Law 20 (1982): 1-16.

The influx of the Kikuyu into the best pasture lands and the proliferation of individual ranches combined to encourage the Masai to seek tenure modifications through group ranches. The government supported their establishment because they were seen as a way to achieve economies of scale in development aid, were thought to be a prerequisite for credit, and were considered one way to prevent the Kikuyu from taking over more pasture land. The Land Act of 1968 contained complex legal provisions for creating group ranches, but certain legal questions were left unresolved. For instance, registries list only the names of adult married males instead of all those entitled to membership under customary law--meaning that, in the future, it could be difficult to determine membership rights. Similarly, problems have arisen with deciding the rights of the non-Masai who live in the area. Some long-standing residents of the area who are non-Masai have been denied membership, while at the same time some Masai continue to invite friends and relatives into the area without regard for the range's limited capacity. Even Masai membership is threatened by ambiguous laws which have the potential for allowing group representatives to band together and oust disfavored members.

Other threats to the success of group ranches are embedded in the ranch structure. The group ranches were established without regard for traditional boundaries, migration routes, or social organizations such as the enkutoto which would have given the group a sense of identity. Instead, ranches were defined by convenient boundaries such as rivers--a situation inevitably leading to disputes. Customary authority structures threaten the viability of the ranches as does their tenuous economic position perpetuated by overstocking

and **a** lack of development capital. Even though an individual shares in the ownership of an undivided ranch, these interests are somewhat ill-defined and no compensation is given when a Masai leaves a ranch. Where legislation in Nigeria and Malawi recognized customary powers of land administration, the Kenya act created groups with no traditional legitimacy, foreign administrative procedures, and novel relationships.

Coldham suggests that the ranches would have been more successful if the Masai had been consulted before their implementation and if they were the focus of intensive economic development.

A summary of the difficulties encountered in the design and operation of the ranches is provided in the following paper by Moses Olang, an ecologist formerly with the Range Management Division.

**K43 Olang, Moses. "Organizations and Procedures in** Group Ranch **Development** in Kenya." **Pastoral** Network Paper 13c. **London: Overseas Development Institute, January 1982.**

Olang provides a brief overview of the establishment of group ranches from their conception through their development phase. He provides details of group ranch administration, the planning stages in their development, and the participating government organizations.

In many ways, the group ranches did not function as had been expected. Some were handicapped from the beginning by too many members given the productivity level of the ranch. The productivity of ranches was generally not considered during demarcation. Ranches with too many members were denied loans. Traditional beliefs worked against attempts to prevent overstocking, and the problem was exacerbated by the unwillingness of wealthier pastoralists to re-duce their herds. Grazing quotas were designed to regulate herd size and were to be used as a basis for loan distribution, but neither objective was ever achieved. Poorer members could not afford to increase their herds even if their quotas guaranteed that right. Other plans to develop the ranches were often delayed for a lack of funds, because of government bureaucracy, or over-worked personnel.

As part of a wider discussion of development issues facing pastoral peoples in East Africa, Bennett devotes a chapter to the Masai group ranches scheme in Kenya and then compares the experience with projects involving pastoralists elsewhere in the region. This broader perspective enables him to make comparisons with, among other projects, ranch schemes for the Masai in Tanzania.

**K44 Bennett,** John W. Political Ecology and Development Projects Affecting Pastoral Peoples in East Africa. LTC Research Paper, no. 80. Madison: Land Tenure Center, University of Wisconsin, 1984.

The establishment of group ranches in Kenya was motivated to some extent by concerns with the degradation of the pasture lands but to an greater extent by the need to reduce and control the number of cattle on the range, the desire

to control the extent of the Masai, and a belief that different tenure arrangements would better promote livestock production and commercialization. Earlier attempts at tenure modification had included assigning individual titles to individual herd-owning households, but this project failed as the best tracts of land went to the entrepreneurially inclined who proceeded to exclude others from the range. Group ranches, on the other hand, are thought to promote the rights of the majority.

The new group ranches allow herders to graze their individually owned herds on land to which they maintain certain use rights. When a group of pastoralists decides to incorporate, they apply to the government for assistance. Arrangements are made to transfer titles to the pastoralists once rights to the range area have been assigned. Adjudicating rights in clan controlled areas is easier than in those dominated by individual right holders. Residual colonial rights also complicate transitions to group titles. When the government assigns freehold titles to a corporate group, that group becomes the owner of the land in perpetuity.

The Masai have been anxious to participate in group ranches because they believe their political survival and economic security depends on securing tenure and thereby preventing the encroachment of cultivators. The ranches have had problems because the pastoralists do not confine themselves to their designated areas during water shortages. Periodic droughts have made ranch size a variable in terms of productivity. Until necessary training and sup-plies are provided as well as direction in modifying traditional cultural rules which regulate productivity, the pastoralists will not be contained or operate efficiently. So far group ranches have not been effective in pursuit of growth or conservation policies.

A completely different, technical perspective on the Kenyan land registration program and its implementation is provided in the following discussion of surveying procedures. The author, F.H. Ratzeburg, was Assistant Director of Surveys in Kenya during the 1960s.

**K45 Ratzeburg, F.H. "Cadastral Survey and Registration in Kenya." Paper presented at the Seminar on Cadastre at Addis Ababa, 25 November-9 December 1970. New York, UNESCO.**

In his discussion of the survey component of the Kenya land registration project, Ratzeburg indirectly demonstrates how technical decisions can have long-term implications for the success of a land registration project. For instance, the decision to use a general boundaries system in the Coast Province of Kenya meant that parcel identification depended on enclosure. As the wooden pegs used to mark the turning points of land parcels rotted away, costly re-adjudication procedures were required. A registration system should include: (1) a record of the rights and interests in a particular piece of land; (E) standards establishing the extent of the state's guarantee of title; and (3) a map adequately displaying parcel locations. In Kenya, both a general boundaries system, as mandated by the Registered Land Act 1963 in Kenya, and a guaranteed boundaries system as specified under the Registration of Titles Act, co-exist.

Ratzeburg suggests that, in general, the choice of survey systems should depend on: (1) the attitudes of the people toward registration; (2) the urgency of the project; (3) the availability of funds and a trained staff; (4) the decision as to how boundaries are to be defined; and (5) the kinds of surveys and **maps** that are to be produced. He further cites three conditions that will ensure the success of registration: (1) that registration should not be attempted unless the cooperation and full support of the people is likely; (2) that titles should be supported by cadastral maps whose evidence is consistent and reliable; (3) that registration must be run by well-trained, competent staff and should not start until such staff is available.

Registration of land and application of western land law concepts have not extinguished customary land law practices and beliefs in Kenya, as many of the studies in this section have shown. Several recent actions by the government appear to reinforce this trend and to be a retreat from the principles of formal statutory property law. Perhaps the most significant is the enactment of the Magistrate's Jurisdiction (Amendment) Act of 1981, which is a recognition of the persistence of customary rights and usages and of the need to provide a forum in which ordinary individuals might present their claims. This act confers on panels of elders the jurisdiction over certain kinds of land disputes (as well as over other matters of customary law). The implications of this act and a later amendment with regard to Kenyan land law are far-reaching and are the subject of the following two papers.

**K46 Kuria, Gibson Kamau. "Need to Rethink the Role of Elders under Magistrate's Jurisdiction (Amendment) Act 1981 as Amended by the Statute Law (Miscellaneous) (No. E) Act 1984 (Act No. 19)--Blending Western and Traditional Property Law Concepts and Institutions." N.p., January 1986.**

Kuria, a lecturer in law at the University of Nairobi, is of the opinion that the 1981 act is a much-needed response to the persistence of customary law practices and to the demand that customary claims be recognized. (He notes that in 1981 there was no court with customary law as its specialist jurisdiction, although there had been such courts during the colonial period.) The act provides for the designation of panels of elders to hear and decide upon land claims arising from the following issues: beneficial ownership of land, division of land and boundaries (including land held in common), occupation and use rights, and trespassing.

Despite registration and the imposition of a western system of property in much of Kenya, claims to land based on customary rights have continued to be pressed in registered areas. These claims are principally of three kinds: (1) cases in which a claim is lodged against the individual designated on the land register as the sole owner but who under customary law held the land in trust for the family; (E) cases in which occupiers of land have invoked the western concept of adverse possession for more than 12 years in order to be registered as owners of the land; and (3) cases in which transfers made under customary law may be declared null and void because the parties have failed to

obtain the consent of the land board to the transaction. Because customary law, including that dealing with land matters, has proved resistant to change, it was felt necessary to provide a forum in which customary claims might be heard and decided on. Kuria believes, however, that as it was written the 1981 act creates as many problems as it solves and that the 1984 amendment, discussed below, makes the task of the panels of elders even more difficult if not impossible.

One significant problem in the 1981 act is its failure to specify how panels of elders are to fulfill their role. It is unclear whether elders are to reach decisions by applying western or customary property law. Kuria points out that they might act in a number'of ways--as lay magistrates, witnesses, advocates, experts on customary law, arbitrators, or jurors--but the law fails to delineate their role or to specify what procedures they are to follow. Moreover, because these are to be ad hoc bodies, there is little likelihood of panels' building on experience and becoming more effective over time. The 1984 amendment confuses the issue yet further, expressly denying panels of elders the power to determine title to land. As Kuria points out, lesser interests in land are derived from ownership, and it is thus possible under this amendment there is nothing that the panels of elders have the power to adjudicate. It is, he writes, a most unsatisfactory situation.

**K47 Muigai, Githu. "The Future of Customary Land Law in Kenya." N.p.,** June 1987.

Githu Muigai feels yet more strongly about the effects of the 1981 act and writes, "If doubt existed as to the true position of Customary Land rights upon registration of land then utter confusion reigned wnen parliament in its wisdom enacted the Magistrate's Jurisdiction amendment act." For him, the principal difficulty is the act's failure to specify what kind of law, whether customary, statutory, or "plain natural Justice," is to be applied by the panels of elders. He also agrees with Kuria's opinion that the 1984 amendment gives the panels no jurisdiction at all.

Another recent action with important implications for the Western concept of sole and outright ownership of land is the issuance of a series of circulars by the Chief and Acting Chief Justices dealing with injunctions, attachments, and sales of land and evictions. Their potential impact is discussed in:

**K48** Nowrojee, **Pheroze.** "Enforcement **of Decrees in Relation** to Meaningful Economic Development." N.p., June 1987.

In four increasingly strongly-worded circulars issued between September 1984 and February 1986, the Chief Justice and Acting Chief Justice expressed concern about the number of attachments and sales of land which had resulted in the eviction of the occupants and directed that such extreme actions be carried out only when all other remedies had been exhausted. As the final circular stated, "In order that human and economic upheavals may not occur, it is considered advisable that although seised of the cases the court should advise the litigants as persuasively as they can to refer their dispute to elders as provided for in Act No. 14 of 1981."

The importance of these circulars is, of course, their infringement of an owner's right to dispose of land which he holds under freehold title and the potential implications for economic development. Nowrojee writes that "the effect . . . would immediately be to bring to a halt lending on the security of a Charge or mortgage of land, something our system cannot survive without" (p. 8). In addition to charging that they contravene constitutional and statutory rights, distort the judicial process, and replace due process with administrative directive, he also finds the circulars vague and uncertain. The first circular, for example, states that consideration is to be given to finding alternative pieces of land for those persons who may be evicted, but neglects to specify how this is to be done or by whom. The third and fourth circulars require that these matters be referred to the Administration for resolution, but do not name a specific ministry or office.

## LESOTHO

Lesotho was able to avoid the creation of a dual tenure system which took place in the other two British Protectorates in the region, Botswana and Swaziland. The cost of this was in part the merger of Basuto areas with considerable white settlement into the Republic of South Africa. No freehold was created in Lesotho, and only a small amount of long-term leasehold of urban Crown Land in Maseru, the capital. Some of the legal infrastructure for a Western property system is in place, such as a Deeds Registry Act, 1968, and a Land Survey Act, 1961. The former is modeled on the South African law, but the latter is more flexible than its South African model, allowing use of the English "general boundaries" concept. The new system of leasehold tenure discussed below has utilized this legal infrastructure, the leases being surveyed and registered under these laws.

Land policy in Lesotho has been largely a question of the future of the customary land-tenure system. Lesotho is unusual in that while most land is technically state owned, there is legal recognition of customary law as governing use rights over that land. The classics on land tenure in Lesotho are Sheddick (1954) and Phororo (1979); the former is comfortable with a gradually evolving land-tenure system, while the latter strongly supports the traditional system.* Tenure reform did come to Lesotho through a series of legal enactments beginning in 1965 and culminating in the Land Act, 1979. It combines modest changes in customary land tenure with an option for a farmer to obtain a long-term leasehold directly from the state. These enactments (up to the 1979 Act) are nicely summarized in:

**LO1 Eckert, Jerry. Lesotho's Land Tenure: An Analysis and Annotated Bibliography. Lesotho Agricultural Sector Analysis Project, Special Bibliography, no. 2. Maseru: Ministry of Agriculture and Livestock Development, 1980.**

Several documents set up the legal framework for a study of Lesotho's land tenure.

The Land (Advisory Boards Procedure) Regulations of 1965 were issued just prior to independence by the Resident Commissioner as a means of partially

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* See Vernon Sheddick, Land Tenure in Basutoland, Colonial Research Studies no. 2 (London: Commonwealth Relations Office, Her Majesty's Stationery Office, 1954); and D.R. Phororo, Land Tenure in Lesotho, Soil Use and Conservation, Water Use and Irriqation (Maseru: Ministry of Agriculture, Cooperatives and Marketing, 1979).

implementing provisions of the Constitution set out in Schedule 2 of the Basutoland Order 1965. The regulations had as their principal purpose the establishment of orderly procedures for the election and functioning of Advisory Boards to advise the Chief in land administration matters.

The Land (Procedure) Act, 1967, spells out its purpose: "To make provision for the procedure relating to applications for allocation of land or for a grant of any interest or right in or over land, for the hearing of cases relating to revocation of or a derogation from any allocation or grant or the termination or restriction of any interest or right, for the hearing of appeals, for the convening of pitsos and for other matters incidental thereto." It instructs every chief and headman to convene **a pitso** (community meeting) for the purpose of electing an advisory board for land matters. Procedures are established for the election of advisory board members, for their disqualification, for filling vacancies, and for their tenure. Procedures are laid down for applications, for appeals, and for hearing of cases. **A** register of all allocations of land or grants of any right or interest in land is to be kept by the chief. Section 13(1) clearly states that this Act shall not sup-plant any procedure in force under Basuto customary law, which would seem to give a definite legitimacy to the Laws of Lerotholi. The Act repeals the Land (Advisory Boards Procedure) Regulations, 1965.

The Administration of Lands Act, 1973, was an attempt to establish more elaborate procedures for administering land, especially for non-agricultural land. It established a system of leases and licenses, the former being the more flexible. In this and many of its provisions, the Act anticipated (or provided the model for) the 1979 Land Act. Effective with the commencement of the Act, all rights in land, except those rights in agricultural land or land within a road reserve, were to be converted to leases. Agricultural land rights were automatically to become licenses. The Act permitted the Minister in charge of land administration to declare "Selected Development Areas," a provision that is repeated in the 1979 legislation. Selected Development Areas, however, were to permit a variety of nonagricultural developments, and do not appear to apply to arable or grazing lands. Provisions are included for charging rent in respect of leases, for setting land aside for public purposes, the establishment of a Land Tribunal, and for creating necessary administrative powers. This Act bears primarily on allocation and use of land for nonagricultural purposes.

The Land Act of 1973 seeks "to make provision for the procedure relating to applications for allocation of land or for the grant of any interest or right in or over land, for the appointment of Development Committees, for hearing of appeals and related matters." The Act makes law the provisions of the Laws of Lerotholi vesting land powers in the king and the chieftainship. In exercising powers of allocation and revocation, the chief in a particular area shall act "after consultation with a Development Committee established for such an area." The appeals process is up through the hierarchy of the chieftainship then into the court system. Development Committees must be consulted at each level of appeal. Similar but separate procedures are established for rural and urban land. The "Minister" is empowered to establish Development Committees and Land Advisory Committees through regulation.

This Act, in the main, reinforces the position of the chieftainship with respect to land matters, provides for a greater measure of popular representation through the involvement of Development Committees and seeks to regularize and formalize the interactions between parties. Considerable attention is

**given to the** protection of individual landholders through the elaborate appel**late process.**

Land Regulations, 1974, were subsequently issued according to the powers **granted** by the Land Act, 1973, for the purpose of establishing Development Committees. Specified are membership, the manner of selection or appointment, reelection, disqualification, and other necessary rules. Development Commit-tees are prescribed "for the area under the jurisdiction of every Chief in the rural areas." Land Advisory Committees are established for urban areas.

The Land Act, 1979, which consolidated the Administration of Lands Act, 1973, and the Land Act, 1973, has been applied only in the Maseru urban and suburban areas and some other municipalities. The content of and experience under the 1979 Act are covered in two seminar proceedings, from 1984 and 1987. The first seminar was organized jointly by the Ministry of Agriculture and the Commissioner of Lands, Ministry of Interior, to consider how the Act might be applied to agricultural land. The background to and content of the Act are summarized in:

**LO2 Bruce, John W. "A Layman's Guide to the Land Act 1979."** In Proceedings: Lesotho **Land Act Policy Seminar, [Quthing, Lesotho, 18-22 March 1984], pp.** 27-36. LTC **Paper,** no. 125. **Madison: Land Tenure Center, University of Wisconsin,** 1985.

The Act reflects an awareness of changes in the demographic conditions of agricultural development in Lesotho. The traditional land-tenure system, **operating in a** largely subsistence economy, had emphasized the principle of access to land for all Basotho. Land-allocation authority had rested with chiefs and headmen and it was their responsibility, in order to provide land for new households, to reallocate land from existing holdings. By the 1970s, population pressure on land was intense. Virtually all arable land had been allocated, and most holdings were so small that it was questionable whether cultivation of those holdings alone could provide a livelihood or accommodate new technologies. Agricultural census data indicated that the proportion of landless households was increasing rapidly, reaching over z0 percent of all rural households in 1980, and the average size of holding was smaller than 1.4 hectares.

The traditional system had provided ready access to a security of subsis-tence opportunities, but it had done so at the expense of security of tenure in a particular piece of land. In particular, the possibility of reallocation of land from existing holdings for new families reduced security of tenure. By the 1970s, holdings had become so small that further reallocation could accomplish little. It was considered that a point had been reached where the disadvantages of such reallocation in terms of security of tenure outweighed its historical usefulness. Under the new Act, the power to make such reallocations was withdrawn, and inheritance became the key mechanism for passing land from one generation to the next. The modification and clarification of the rules of inheritance of land in the Act reflect an appreciation that (1) for small farmers, the building of viable farm operation is often a multi-generational effort, and (z) it is necessary to minimize further subdivision of already small and fragmented holdings through inheritance.

In addition to modification of the traditional allocation, the Act provides for the selective introduction of agricultural lease from the state, a tenure not previously utilized (though sharecropping of allocations has, of course, been widely practiced). Such a lease was felt to meet the needs of farmers seeking to invest substantially in their holdings. The Act leaves the allocation, as it has been at customary law, non-transferable and therefore non-mortgageable. It was considered that mortgageability was a tenure characteristic which innovative farmers would need in order to have more ready access to credit and that this need could be met by a lease. Moreover, it was considered that a lease was needed to give the landholder more exclusive control **over** his holding by providing a title'.from the state rather than the local chief. Traditionally, arable land areas were opened to stock after harvest, and the holder of an allocation was not permitted to enclose his holding for improvement such as double cropping or fodder production. A lessee with exclusive rights would be able to do so.

There was no general or automatic conversion to leasehold, however. Instead, it was left to holders of allocations with a felt need for the new tenure to apply for the conversion of their allocations to leases. An important exception to this was the provision in the Act for the general conversion to lease tenure in Selected Agricultural Areas (SAAB), areas where government has decided it is necessary to pursue intensively the introduction of modern farming techniques. Because a lease is transferable under the Act, the possibility **is also created** for the beginnings of a market in agricultural land.

There is a second instance in which the Act provides for the automatic conversion of tenure in agricultural. All agricultural land in designated urban areas is automatically converted by the Act from allocation to another new tenure recognized by the Act, the license. Here, the objective was not to enhance security of tenure but rather the contrary--to provide government with enhanced flexibility in planning for urban development by providing a relatively insecure tenure regime for what was apparently viewed as a transient land use in the designated urban areas. The license is little more than a tenancy at will.

Finally, the Act creates and empowers institutions for the implementation of its provisions. Land Committees chaired by chiefs are to be created, to be responsible for making any further allocations and for supervising passage of allocations from one generation to the next by inheritance. The Commissioner of Lands is given control of the making and monitoring of agricultural leases and for licenses in urban areas. He also has the responsibility for advising and assisting the chairmen of the Land Committees in meeting their responsibilities. In addition, a Land Tribunal is created to hear certain categories of disputes under the Act.

Anotner valuable contribution to the seminar is:

L03 **Mosaase,** A. "Experiences from **the** Implementation of the **Land Act 1979** in Urban Areas.' In Proceedings: Lesotho Land Act Policy Seminar, [Quthing, Lesotho, 18-22 March 1984], pp. 37-42. LTC Paper, no. 125. Madison: Land Tenure Center, University of Wisconsin, 1985.

A systematic adjudication of the Maseru urban area was planned, with all those who could prove title to be deemed lessees and registered as such.

Pending this process, all transactions (transfers, mortgages, subleases) were suspended. The demand for provision of the new leases from those planning to engage in transactions was so pressing that the Ministry of Interior instructed the Commissioner of Lands to give these cases priority. From January 1980 through early 1984, there were 2,940 applications for leases, and 70 to 80 percent of the effort of the Lands Division was spent on these cases. It was not possible to pursue systematic adjudication. As of early 1984, of the 2,940 cases, 760 were awaiting survey; 1,124 lease titles had been issued. A further problem involves cases (about 15 percent) in which the title claimed proved invalid, as where titleholders had failed to register them within the three months required by the Deeds Registry Act: Under that Act, title to this land would have reverted to the Basuto nation. To avoid this impact, the Minister utilized the provision of the Act on Selected Development Areas, declaring each such parcel an SDA, then granting it to the holder of the defective title. Considerable delays were caused by the ministerial consents required for numerous procedures under the Act and by the Deeds Registry being located in the Law Office.

**A** further difficulty of a basic nature arose with respect to new grants of land. The Act makes provision for advertisement of land in urban areas when the land is ready for title grants. The Land Department made an early effort to refrain from advertising unserviced plots, but the Minister decided that, given the pressure for land, it should e advertised without infrastructure or services. From January 1980 through early 1984, a total of 346 residential and 61 commercial sites were granted, with lease documents prepared and issued. The paper notes that there have been 1,078 commercial site allocations in other towns, suggesting that "the committees are probably not putting a brake on indiscriminate allocations which occurred under previous land laws."

In addition, the Minister has declared two large Selected Development Areas in Maseru. One is a former periurban area, He Themae, the location of a World Bank-funded upgrading project. The author notes that while the SDA pro-visions have greatly facilitated implementation of the project, opportunities for densification were lost due to instructions that those whose holding was confiscated receive holdings of the same size. A high level (over 50 percent) of absentee ownership delayed adjudication, but, by early 1984, about 100 leases had been issued.

The second SDA was in the Maqalike Dam area and the Mapeleng area. Due to anticipated pollution, allocations near the dam site were to be extinguished and substitute sites elsewhere were to be granted. Over two hundred new sites were granted, but the issue of lease documents was delayed because of illegal allocations by traditional authorities.

**LO4 Proceedings: Lesotho Land Act Policy Seminar, [Quthing, Lesotho, 18-22 March 1984]. LTC Paper, no.** 125. **Madison: Land Tenure Center, University of Wisconsin, 1985.**

The seminar developed a set of recommendations to government for application of the Act to agricultural land. There are a number of detailed recommendations (pp. 3-13). In very general terms, a cautious approach to extension of the Act to the agricultural land was recommended. One-hundred-year terms at quite modest rentals were recommended, with the lessee having the option to surrender the lease and revert to a rent-free allocation. Two areas were of

particular concern. There was concern that transactions (assignments of leasehold rights by the lessee) could leave the lessee's family and other dependents without support; criteria to protect them are suggested for the minister, who must approve such transactions. There was also a mistrust of the provisions for Selected Agricultural Areas (SAAs) because of their potential to displace existing cultivators. A set of regulations was proposed which would consider-ably reduce the Minister's discretion in this respect.

There was not seen to be an urgent need for use of the Act's provisions with respect to grazing land. As regards agricultural land in urban areas, it was recommended that the Land Act be amended to permit conversion of licenses to ten-year agricultural leases. The seminar considered that a broad consideration of the structure and role of the Land Committees under the Act was required. These committees have not yet been created in rural areas, and the seminar had heard inconsistent information on the status of the interim committees.

Various other papers provide interesting insights into attitudes toward tenure change in Lesotho.

**A** second seminar was convened in 1987, this time as an orientation exercise for a Commission of Inquiry into Operations under the Lana Act 1979, appointed by the new military government.

**There are** a variety of papers, most of which discuss the desirability of the Act. At this seminar, the Act and its implementation (in the urban and periurban areas) were under attack, in a period of resurgent chiefly power under the new military government. Again, a few papers provide valuable insights into the experience with implementation of the Act.

**LO5 Seeiso,** Morena Masupha. "The Role of the Chieftainship in Agricultural Land **Administration."** In Proceedings, Land Act Review Seminar, [sponsored by Land Policy Re-**view** Commission, Quthing, **Lesotho,** 27-30 **January** 1987]. **Maseru,** 1987.

The Principal Chief of Matseng notes the infection of the operations of the Land Committees by party politics and argues that politicians have sought to control land because in so doing they would undermine the authority of the chieftainship and would gather all power to themselves. He argues that the committees behaved worse than any chiefs had done and that a deadlock was created between chiefly power and the civil government, to the disadvantage of effective land administration. He cites a case from the Lithoteng area in which, though transactions were frozen and chiefs had been instructed to make no new allocations, one found government ministers allocating themselves dairy farms, poultry farms, and piggeries, utilizing the Selected Development Area provisions of the Act. A chief in the area began to allocate land to his people, and was arrested and threatened. A similar situation is described in the case of low-cost housing projects, in which the SDA provisions are utilized to oust existing users. Relatives of officials then purchase the housing built, all idea of a first option to purchase for the former occupants being abandoned. He recounts his own experience in attempting to prevent illegal building, only to find that the Ministry provided no backing because some ministers were involved in the building through straw men.

**LO6 Aitken, Chris. "Experiences of Working with the Land Act 1979." In Proceedings, Land Act Review Seminar, [sponsored** by Land **Policy Review** Commission, Quthing, Lesotho, 27-30 **January 1987J. Maseru, 1987.**

**Aitken notes an** almost total failure to publicize or to explain to the public the provisions of the 1979 Act. Work under the Act continues to be sporadic, with 5,000 lease applications received and some 3,000 processed. A mid-1984 review of files showed 6,737 files, 3,396 of which were active and required attention. This averaged an impossible 350 per officer. Of 4,911 applications for lease, 2,411 titles have been issued, but 400 of the leases issued under the Act have not been returned, indicating a disinterest in tenure conversion. He reiterates the procedures in the case of invalid titles mentioned in the Mosaase paper. He goes into greater detail as regards use of the SDA procedure, especially in the case of Themae. He notes failure to pay compensation to communities where land has been lost. Work on registration in Themae has been slow. A total of 1,508 sites have been prepared since the program began in 1981, but only 47 leases have been granted. As elsewhere, a plan to proceed systematically was derailed by pressures for immediate leaseholds so they could proceed with transactions. New procedures are proposed for future SDAs. While the new system is producing a small but regular income for government, there is a high default level, only about one-half the ground rents due being paid. It is unclear whether government has the political will to terminate large numbers of leases for nonpayment of rent.

The report of the Commission of Inquiry for which the seminar was held was submitted to government in 1988 but has not been made public. In the meantime, only three leaseholds have been created over agricultural land outside municipal boundaries, for intensive operations (one is a poultry farm close to Maseru). One facet of the legislation--and the predecessor statutes--is that the chiefs are to be doing their customary land-allocation work with the assistance of committees--and committees that under the 1979 Act can out-vote them. There is an almost total dearth of information on how these committees are operating. One brief glimpse comes from:

**L07 Murray, Colin.** Families Divided: The **Impact** of Migrant **Labour in Lesotho. Johannesburg:** Rowen, 1981.

In Chapter 3, "Managing the Land" (pp. 65-85), Murray reviews the very short and modest history of tenure reform in Lesotho:

Prior to the Land Act of 1979, there were two major pieces of legislation affecting the administration of arable land in Lesotho. The Land (Procedure) Act of 1967 provided that each area chief had to convene a **pitso** for the election of a Land Committee (komiti **ea** mobu), consisting of five people resident in his area of jurisdiction, such committee to be re-elected every three years. The Land Act of 1973 replaced the Land Committee with a Development Committee **(komiti ea ntlafatso)** which would consist of seven members--four to be elected at a pitso convened by the area chief and three to be appointed by the Minister of the Interior. The formal intention was that every chief should carry out his administrative duties in

> consultation with an elected advisory body which would also maintain a written record of all applications for and allocations of land made within his area. Both in the manner of their election and in the practical interpretation of their terms of reference, these committees have often worked as party political organs [p. 71].

The book also includes a brief case study (the only available case study) of the operation of a Land Committee under the 1973 Act. A woman member of a Land Committee attempts unsuccessfully to reverse in court a ruling of the previous Land Committee which supported a decision by her father-in-law to deprive her husband of the land which .the-father-in-law had earlier allocated to him. The Committee appears to serve as a dispute-settlement institution as well as being involved in allocations of land.

## LIBERIA

Liberia has had a deeds registration system--a system fraught with the difficulties of verifying title--since the early colonial period, and the result was a high frequency of litigation. The state asserts ownership of untitled land, and land nas come onto the register sporadically, upon application from private individuals to purchase land from the state. The registration of the purchase shifts the land from customary land tenure to freehold. A minimum of ten steps is necessary, each requiring a "dash" to the appropriate person, frequently doubling the effective cost of land. In 1974, a system of title registration based on systematic cadastral survey was enacted and implementation started in Monrovia. However, the pace of application is slow. and registered land outside Monrovia remains under the deeds registry system.

Tarpeh describes the deeds registration system in:

L1 **Tarpeh,** Dominic Nmah. "A Study of **Liberia's Traditional and Modern Land Tenure Systems." Senior thesis, Cutting-ton College, 1970.**

**After covering** the various systems of traditional land tenure in Liberia, the author discusses purchase procedures for land in both urban and rural areas, both of which involve over ten distinct steps. For farmland, one starts with the town chief, working up to final signature by the President of the Republic. In town, one sees the county revenue agent, county commissioner, etc., up to the President's signature. Although not mandated by the law, each step necessitates a payment of varying amounts.

For Gbanga town in Bong County, the following data on land purchases/ surveys are given:

| **YEAR** | **FARMLAND ACRES** | TOWN LOT ACRES |
|---|---|---|
| 1960 | 215 | |
| 1961 | | |
| 1962 | 126 | |
| 1963 | 5346 | 8 |
| 1964 | 5119 | 16 |
| 1965 | 2578 | 22 |
| **196** | 2822 | 53 |
| 1967 | 2951 | 50 |
| 1968 | 1935 | 15 |
| 1969 | 790 | 20 |

Tarpeh explains the rush to register in 1963/64 as representing the wealthier, more informed elite who could best afford the payments and surveying costs. Further, the author suspects that land was being held for speculative purposes.

Social impacts of such registration include the weakening of tribal authorities as possession of deeds becomes increasingly necessary for establishing inheritance rights. Economically, Tarpeh believes that registration encourages the planting of cash crops (especially tree crops which require little attention) by customary holders to forestall others from purchasing the land.

In order to avoid some of these negative impacts, the author suggests the **use of a tax** graduated by both time and size to discourage holding unworked land or to make large holders pay more. However, Tarpeh admits that a tax might serve to discourage registration altogether.

The stages of land purchasing are also described **in:**

**LE Cobb, Richard et al. "Liberia: Rural Roads." AID Impact Evaluation Report, no. 6. Washington, D.C.: USAID, 1980.**

This paper explores the impact of construction of rural roads on land ac- **quisitions,** noting that farm-to-market roads intended to benefit small farmers lead to a rush of purchases from the state by elites of land along the road, often even before the road is constructed.

In addition to those impacts of registration mentioned by Tarpeh, Cobb cites the increasing problem of multiple claims to land and the reduction of **available subsistence lands** as problems arising out registration.

**A** specific titling project is discussed **in:**

**L3 Liberia. Department of Agriculture.** Gbedin Program of Agricultural Development and **Rural Development. Monrovia: Government** Printer, **1964.**

This paper reports on a project in Gbedin started in 1962. The goal was to develop 3,000 acres (half irrigated, half dryland farming) involving 600 families working one 2-1/2-acre field of each type. An agricultural credit corporation was to have initial title to the land, but would transfer it to participating farmers when they paid for it with the earnings from their farming enterprises. No follow-up evaluation was reported for this project.

Delineation of the defects of existing law and how current law could integrate title registration are provided by:

**L4 Bentsi-Entchill, Kwamena, and Gerald H. Zarr. "The Assurance** of Land Titles and **Transactions** in **Liberia."** Liberian Law Journal, **vol. E, no. 2 (1966), pp. 94-110.**

The authors give a very brief description of land law, including laws of 1827, 1839, 1861, and 1958. The last required correct surveying of land as a precondition for eligibility for probate and registration. The 1958 law is **also** considered to be very broad in that it pertains to "every instrument affecting or relating to real property."

Bentsi-Entchill and Zarr see the major defects of current law to be the lack of rules for the priority of instruments to be registered and the lengthy

grace period (four months) given between application and action. They assert that the indexing system for tracing transactions in the land registry is inadequate.

While listing the major difference between deeds and title registration as one of State guarantee, the authors still believe that the current system lends itself to adaptation to title registration, especially in towns because of the pre-existence of tax maps.

The actual process of registration of deeds in Liberia before **1974** is detailed by:

**L5 McBorrough, W.J. "Status of Cadastral Survey and Land Registration in Liberia." Paper presented at the Seminar on Cadastre, 25 November-9 December 1970. Addis Ababa, U.N. Economic Commission for Africa.**

The differences between deeds and title registration are clearly presented **in:**

**L6 Harrop,** J.R.G. "The Introduction on Land Registration **in Liberia." N.p.:** United Nations, 1972.

Harrop describes the preconditions necessary for implementing title registration, the foremost being an adequate cadastral survey of any area to be registered. To maintain such a registration system, it must be kept up to date, secure, and purged of deed materials. In addition, the author believes that the system should be decentralized, while operating out of one agency to increase its efficiency. In order to finance a registration system, a tax could be levied based on land size and/or on each land transaction.

Although a title registration system was enacted in 1974, it has only been implemented on a piecemeal basis, starting with the city of Monrovia. The procedures involved are summarized in:

**L7 Glay, J. "Country Report--Liberia." Paper presented at the Workshop on Cadastral Surveying, Mapping, and Land Information, Hanover, Germany, 1978.**

Registration procedures include the adjudication of ownership by demarcation, recording of rights and interests in parcels, and registration of these rights and interests in a land register.

After the enactment of the new title registration law of 1974, the United Nations sponsored a project to title parts of Monrovia; the project is described in:

**L8 United Nations. "Land Registration and Cadastral Survey Pilot Project." Draft Report on Project Results. New York, [1978?].**

The project was begun in 1974 and assumed that title registration would increase security, decrease litigation, create reliable land markets with better credit facilities, stimulate land development, and provide the information necessary to implement registration in other parts of Liberia.

For the project, Monrovia was divided into adjudication areas. Area One consisted of 100 parcels of land and took one and one-half years to complete. Area Two, started in late 1975, involved 980 parcels and was incomplete when this report was written. Difficulties in implementation included problems of investigating titles, the shortage of administrative personnel, and an inadequate indexing system.

An example of the effort to publicize the registration effort is the following publication:

**L9 Liberia. "Republic of Liberia Land Registration Program." N.p., n.d.**

This pamphlet appears to be intended to inform the populace of the procedures to follow if they are in an adjudication area in Monrovia.

Another such publication is the following:

**L10 Liberia. The Registered Land Law: A Handbook for the Guidance of Officers of the Adjudication Division. Monrovia: Government Printer, 1976.**

**This is** a detailed, thirty-page description of the registration procedure written in non-technical language for government employees involved in the registration procedure.

## MADAGASCAR

Land law in Madagascar, and regulations governing the procedure for registration of land, have undergone changes in several distinct phases. First, there were the French-based laws, during which time land in the central nighlands around Antananarivo was surveyed and registered beginning in 1929. 'this registration has not been kept up to date, and most of the records still list the person in possession of the property at the time of the original survey as the cur-rent property owner. After independence in 1960 the government placed increased emphasis on developing land by smallholders, and all estates over 5 hectares in size which remained uncultivated were to be broken into smaller units. After the coup in 1972, a reliance on state and/or communal farms developed. However, the dismal performance of these farms has led since 1982 to a de-emphasis on these forms of landholding.

There has been no systematic study of the effects of registration on agricultural production in Madagascar, and most of the literature dealing with land tenure discusses the legal framework of customary and written land law.

Two discussions of customary land tenure systems deal with the effects of the French-based registration system and the lack of suc- cess this latter system has had.

MA1 **Blanc-Jouvan, Xavier. "Les** droits fonciers collectifs dans les coutumes **malgaches." Revue Internationale de Droit Comparé 16 (1964): 333-368.**

Blanc-Jouvan states that 96 percent of the land in Madagascar is held under customary land tenure, wherein the extended family plays a relatively independent role, and his analysis concentrates on the role of individual property rights within the framework of customary land tenure. He points out that individual property existed in the hign plateau region before the arrival of the French. The author says that the failure of legislators to clearly define customary tenure and recognize customary use rights exacerbated the problems in implementing land laws.

Although not specifically about registration, a book useful to the consideration of registration and titling is:

**MA2 Rarijaona,** Rene. Le concept de propriété en droit fon**cier de Madagascar. Besancon: Imprimerie** de 1'Est, Uni**versité de Madagascar,** 1967.

Rarijaona uses the first portion of his book to lay out the customary land tenure systems and concepts, such as means of acquisition, transactions

in land and succession. He then traces the evolution of land tenure through its interaction with judicial practices, as well as its response to both internal and external pressures. Among the trends in customary tenure systems that Marijuana notes are individualization of tenure and de-sacralization of process. He further states that the failure to implement land laws (such as registration) results from the following factors: (1) laws fail to account for social and economic realities; (2) they tend to address only certain segments of the population; (3) sporadic execution .of laws results in benefits for the few; and **(4)** administrative rigidity, centralizatiion, and isolation of administrative departments limits application.

More specific treatment of registration and titling is given by:

**MA3 Rabemanda, Andre. "L'evolution de la propriété immobiliare a Madagascar." Revue Juridique, Politique, Indèpendance et Cooperation 24 (1970): 723-734.**

**Rabemanda gives** a brief history of land laws, starting with legislation in 1897 establishing registration. A law in 1926 allows individuals in customary collectives to acquire title to part of the collective. Laws in 1960, 1962, 1964, and 1967 (covered more thoroughly in Rakotonirainy below) serve to facilitate access to individual land ownership without completely repudiating customary tenures. Potential effects on customary tenure are given only cursory mention.

Specific information on titling before its de-emphasis after 1972 is provided in:

**MA4 Gasse,** Victor. **Les regimes fonciers Africains et Malcache. Paris: Librairie Genérale de** Droit de Jurisprudence, 1971.

Between 1959 and 1966, 14,629 titles were issued for 178,400 hectares with the following distribution:

| YEAR | NUMBER | HECTARE |
|---|---|---|
| **1959** | 2,449 | 19,607 |
| 1960 | 1,788 | 25,131 |
| **196** | 1,727 | 15,680 |
| 1962 | 2,257 | 13,284 |
| **196** | 2,637 | 25,039 |
| 1964 | 2,373 | 31,980 |
| **1965** | 2,165 | 19,269 |
| 1966 | 1,848 | 28,345 |

The author cites problems of expense, lack of personnel, and inability to keep the register current as impediments to increasing land registration. A short section is devoted to describing registration procedures and what land is registrable.

The most complete discussion of registration legislation is found in:

**MA5 Rakotonirainy, Germain. La dynamique des structures foncieres sur les hautes terres Malgaches. N.p.: Université de Madagascar, 1984.**

The author traces the laws pertaining to registration and titling of land, which include the law of 9 March 1896; decrees of 4 February 1911, 28 September **1926,** and 25 August 1929; and ordinances of 3 October 1960, 62-110 of 1962, 73-073 of 1973, 74-021 of 1974, 74-022 of 1974, and 74-084 of 1974.

Under the French, the law of 1896 established registration for certain lands, while the decree of 1911 made registration obligatory for (1) lands alienated to the State, (2) lands acquired by Europeans from indigenous peoples, and (3) urban areas (at the discretion of the Governor-General). Furthermore, the decrees of **1926** and 1929 permitted granting indigenous people title if they had had the land longer than 20 years and if they had individually put (and kept) the land in production.

The period 1960-1972 saw ordinances aimed at establishing services to ensure titleholders' rights, spelling out procedures, and specifying the legal effects of registration. After the coup, the new government began to institute collective registration in 1974, managed by elected local governmental institutions (village councils or **fokontonolona).** With the failure of these councils to keep adequate records, a national Office of Lands, Survey, and Agrarian Reform was created.

In 1985, a sweeping reorganization of the land administration system was undertaken, but no analyses are as yet available on this development. This information and a short summary of land tenure in Madagascar can be found in James Riddell and Carol Dickerman, "Madagascar," Country Profiles of Land Tenure: Africa 1986, LTC Paper **no.** 127 (Madison: Land Tenure Center, University of Wisconsin, 1986), pp. 104-108.]

British colonial law in Malawi allowed for registration of deeds in land, a policy that benefited Europeans owning land in urban areas and agricultural estates and plantations. At one time, significant amounts of land had been allocated to Europeans for agriculture. Many of these estates .no longer exist, but of those that remain, held in freehold and devoted to the production of tea for export, most are located in the Southern Region of the country. In all, some 53,903 hectares are held in freehold, according to 1988 figures of the Department of Lands and Valuation.

The British statutes pertaining to land regulation remained in force until 1967, when President Banda initiated enactment of four laws affecting land use and allocation. These laws were the: (1) Registered Land Act, (2) Customary Land (Development) Act, (3) Local Land Boards Act, and (4) Land Amendment Act. The first law created the legal means for registration of title. The second established the means for adjudication of disputes over customary land and for its "conversion" for "better agricultural development." This bill was later supplemented in 1971 by the Adjudication of Title Act, which allowed for the adjudication of rights in land other than that held under customary tenure. The last act, the Land Amendment Act, established criteria for the privatization of customary land and vested control of customary land in the head of state.

At the time these acts were put into effect, Banda argued that the laws would "revolutionize our agriculture and transform our country from a poor one into a rich one" (quoted in S.R. Simpson, Land Laws and Registration, p. 457). Banda further stated:

> Under our present system of land holding and land cultivation no one either as an institution or as an individual, will lend us money for developing our land because our present methods of land holding and land cultivation are uneconomical and wasteful. They put responsibility on no one. . . . No one holds lane as an individual. Land is held in common (ibid., p. 458).

Banda's comments set the stage for the debate on "customary" versus "modern" (including land registration) land tenure in Malawi.

The four acts enacted in 1967 have been reviewed by Rowton Simpson in the following article:

MW1 Simpson, Rowton. **"New** Land Law **in Malawi."** Journal of **Administration Overseas 7 (1967): 221-228.**

Simpson covers the salient points of each act and compares each law to other land laws in East Africa and England. He also comments that a new or

**additional** land law is needed, one that converts existing documentary title to registered title. He writes that it is undesirable to have a distinction between titles issued under English law and titles issued under customary law. Consequently, it is imperative to devise a law that will convert title deeds recorded on the deeds registry to registered title. Simpson notes various precedents, from England and other African and Caribbean countries, which may **serve** as models for this new land law.

**A** brief outline of Malawi land tenure, registration and the government settlement programs is presented in:

**MW2 Nothale, D.W. "Land Tenure Systems and Agricultural Production in Malawi." In Land Policy and Agriculture in Eastern and Southern** Africa, edited by J.W. Arntzen, **L.D. Ngcongco, and S.D. Turner, pp.** 127-132. **Tokyo: United Nations University, 1986.**

**Nothale reviews** the general land tenure types recognized in Malawi. Beginning in 1967, land in Malawi was classified as (1) customary (African Trust Land prior to independence), (2) public, and (3) private land. Customary land is largely regulated by village elders, headmen, etc., according to the rules and regulations specific to each group and is supposedly inalienable. Public land is land that is acquired and used by the State; it also includes all other land that is not designated as customary or private. Private land is held, used, or occupied under freehold, leasehold, or certificate of claim which is registered. Customary tenure is the most common form of tenure, comprising approximately 80 percent of the land in Malawi. Leasehold arrangements, how-ever, are becoming more prevalent, especially as a result of the large agricultural settlement projects.

Nothale reviews the discussion concerning fragmentation of land holdings. At issue is the impact of fragmentation on production. Beginning in the colonial era, fragmentation was seen as a deterrent to agricultural production. Consequently various plans were designed to consolidate and register prime agricultural land. In the 1950s and early 1980s, the administration implemented policies to consolidate and redistribute plots of equal size to farmers. By 1959, more than 81,000 hectares of land had been registered under this plan. The premise that fragmentation adversely affects production has been a central argument in much of the literature on Malawi registration programs. Nothale briefly discusses the value of consolidation of land holdings and questions whether consolidation will diffuse the problems associated with fragmentation or merely create additional problems.

**A** more precise, anthropological/historical discussion of the evolution of Malawi land tenure policies was prepared for the World Bank in 1985:

**MW3 Riddell, James** C. **"Customary Tenure in Malawi." Paper prepared for the World Bank. Washington, DC, 1985.**

The paper focuses largely on customary tenure (pp. 3-13), rules of access and transfer, and specifically the differences and similarities in land tenure

procedures between matrilineal and patrilineal groups (pp. 5-14). The paper also discusses in some detail the various land acts, registration and settlement programs in Malawi since independence (pp. 17-19). Riddell directly ad-dresses the issues of fragmentation versus consolidation and customary versus modern forms of land tenure and argues that customary tenure (whether a matri- lineal or a patrilineal system), in and of itself, is not a detriment to pro- ductivity and growth. He notes that land held customarily has advantages over "modern" forms of tenure. Customary land tenure systems are governed by rules that are clear and comprehensible to the members of that community and perhaps are more appropriate for the farmers of Malawi. Further, on the issue of frag- mentation, he argues that there are advantages to having land spread between different ecological and social areas. This "spread" in many instances provides an insurance policy against environmental and social disruption.

Another issue that Riddell focuses on concerns the lack of security under customary tenure. President Banda has argued that land without title, and thus without individual control, lacks security. This lack of security seriously affects the farmer's opportunity to secure financial assistance. Consequently investment is lacking and productivity lags. Riddell states, however, that there is no evidence that the customary systems lack security of tenure, and he questions the necessity of registration of land, either as freehold or leasehold. The problems of agricultural production, he believes, must stem from other sources. (The paper also has an extensive annotated bibliography.)

In contrast to Riddell, other authors have taken the position that a more "modern" system of land tenure should be adopted--though they do not necessarily regard the existing legislation as the ideal solution. This is the view taken by Brietzke in the following article:

**MW4 Brietzke, Paul H. "Rural Development and Modification of Malawi's Land Tenure System."** **Rural Africana,** **no.** 20 (Spring 1973), pp. 53-68.

In this paper the author reviews the history of Malawi's land tenure pol- icies and finds that these policies, especially those "regulating" customary tenure, were in need of modification by 1960. Brietzke discusses the strengths and weaknesses of customary tenure, noting particularly the ways in which it inhibits agricultural growth (pp. 53-59). He writes that individualization of tenure will increase credit-worthiness and thus lead to greater investment in production (p. 64).

The strength of this paper is the detailed, legal assessment of the stat- utes passed in 1967 (pp. **60-64).** In his review of the statutes, Brietzke finds that they are poorly constructed and disadvantageous to many Malawians. There has not been a concerted effort to link the legislation to agricultural policies with regard to development projects, marketing, agricultural credit, and taxes. Moreover, the improved extension service, credit, and inputs that are part of the development projects are not available to everyone. Although customary tenure inhibits productivity, the author believes, the statutes are inappropriate to the needs of :Malawi. He states in the conclusion:

> The statutes are too negative in character and contain too few rewards to encourage the creative pursuit of development goals. . . . Those changes that are essential to Malawi's

development--acquisition of individualism, new skills and goals, weakening of traditional sanctions, and commercialization--will be retarded [p. 65].

The debate over "customary" and "modern" forms of tenure has not been limited to written discussions of abstract advantages and disadvantages, but remains a vital issue in the planning and implementation of development projects. Under the provisions of the Land Amendment Act, policy has been to grant leasehold titles to individuals and corporations who wish to,engage in commercial agricultural production. Most of these leasehold estates are located in the Central Region, a less densely populated area than the Southern Region and one better suited for tobacco cultivation. Indeed, most lease-hold applications are motivated by a desire to grow barley or flue-cured tobacco, crops whose cultivation is limited to the private (as opposed to the customary) sector. Production of tobacco for export has been very profitable, and the numbers of applications for lease-holds have increased every year. Although the estates have been successful insofar as production of a crop which has earned valuable foreign exchange is concerned, they have achieved this at the expense of the customary sector, which has lost between 400,000 and 500,000 hectares to leasehold estates. Moreover, much of the land on estates is left uncultivated, as growers find it not worth their while to produce other crops on the land, and in the past several years there has been increasing pressure from international donors on the Government of Malawi to suspend these allocations Unfortunately, no studies have been conducted of land use and agricultural productivity on estate lands.

A good deal more attention has been devoted to a project for the freehold registration of customary land held by smallholders in the area around Lilongwe, the capital. Debate has centered not only on the advantages of "modern" versus "customary" forms of tenure but also on the specific ways in which this particular project, the Lilongwe Rural Development Project (also referred to as the Lilongwe Land Development Program), was carried out. One of the most useful discussions of the project and its establishment is the following:

MW5 Mkandawire, R. Mulomboji. "Customary Land, the State and Agrarian **Change in** Malawi: The Case of the Chewa Peasantry **in** the Lilongwe Rural Development Project." **Journal** of Contemporary African Studies 3 **(1983-84):** 109-128.

Mkandawire focuses on the consequences and long-term implications of registration and consolidation practices among the Chewa peasantry in the Lilongwe Rural Development Project (LRDP). The author questions whether the "radical" alteration of customary tenure through registration, consolidation and provision of title to land will produce greater security, investment, and consequently greater agricultural productivity. He draws on data and case studies from the Chewa group in the LRDP.

Mkandawire argues that the Chewa were using land effectively prior to the **passage** of the 1967 land laws. The debate, of course, arises over the definition of the term "effective." This is an issue not easily resolved, even when

**extensive** data are available. However, like Riddell, Mkandawire writes that customary tenure does not inhibit production. Indeed he argues that the pro-gram at LRDP **has** given rise to increased conflict among the Chewa and between the peasants and government officials. Further, the benefits of registration **are** not likely to be realized by many of the peasants, and those that do benefit will usually be the larger and more wealthy landowners. The author speculates that the registration program may contribute to landlessness. He presents survey data that indicate many farmers are not in favor of registration and, in fact, resent the registration program. In addition, he found that 46 percent of the 117 farmers interviewed did not know why land was being consolidated and registered.

Mkandawire notes a few examples of increased conflict over land among peasants. Specifically he notes that the consolidation has given rise to more boundary disputes. He concludes that the laws are inappropriate. Communities **in** which land was held under customary tenure were already experiencing changes relating to tenure prior to passage of these laws. In other words, customary tenure is evolutionary and was changing to meet the needs of new socioeconomic conditions in Malawi. He notes that there was a movement toward greater control of land by the household, rather than by the larger, more abstract community.

This paper is well argued, but it is impossible to tell from the tables who was included in the surveys. The author does not explain how those people interviewed were selected. Without greater specification on the methods used in data collection, the results are problematic.

Similar questions about the implementation of the Lilongwe Land Development Program (as well as reservations about evaluation of the project) are raised in:

**MW6 Phipps, Brian. "Evaluating Development Schemes: Problems and Implications. A Malawi Case Study."** Develo^p^ment and Change 7 **(1976): 469-484.**

Phipps' article is a general discussion of the evaluation of development projects using the particular example of the Lilongwe Land Development Program. Phipps expresses reservations about the project as a whole and also about the focus of any evaluation of it. One of the main purposes of the Lilongwe project is to increase agricultural productivity among participating farmers and provide exportable surpluses for the Malawian economy, and Phipps questions whether this is an appropriate goal. Assessment of the success or failure of the project will obviously be carried out with this goal (and others) in mind and therefore be subject to the same criticisms as the project itself.

Phipps is writing at an early stage of the project and thus the concerns he raises are ones he believes may occur rather than results that he or others have observed. The project is designed to cover an area of 1.15 million acres in central Malawi, with expenditures of approximately E6.3 million over a twenty-year period, and will involve, among other things, the adjudication of land rights of between 190,00u and 250,000 people over this period, an average of about 18,000 a year. It appears unlikely, however, that this is a realistic goal--in the two years 1971 and 1972, only 180 certificates of registration were issued. Phipps is also concerned that the new system of land tenure may create more problems than it solves. Although an early report as stated that

there have been few disputes over land so far, Phipps questions whether the lack of formal disagreements can be taken to mean that all the participants are in agreement with the new arrangements. Moreover, he believes that individualization of title may result in a sharp division in rural society between the landed and the landless. He fears that the long-held belief that "there is no surer way of depriving a peasant of his land than to give him title to it" [first expressed in the East Africa Royal Commission Report (EA1) in 1955 and quoted here, p. 479] may be validated in the not-too-distant future. And finally and perhaps most importantly, Phipps writes that the Lilongwe project has not been as carefully planned as necessary. Specifically, too little thought has been given to the impact ttat- replacing the older system of land tenure may have on such critical components of local society as authority and social status. This change may be not only disruptive, but also counter-productive.

The most detailed ciscussion and analysis of the implementation of the Customary Land (Development) Act in the Lilongwe Rural Development Project are found in the following article:

**MW7 Ng'ong'ola, Clement. "The Design and Implementation of Customary Land Reforms in** Central **Malawi."** Journal **of African Law 26 (1982) : 115-132.**

Ng'ong'ola, a lawyer by training, is largely concerned to compare the design of the Customary Land (Development) Act (CLDA) and its implementation, setting the discussion within the context of the debate on modern versus customary land tenure arrangements. Pages 117-20 provide an excellent, detailed outline of the provisions of the act while a following section, entitled "Implementation of the *CLDA* in Lilongwe, Central Malawi," discusses the problems of implementation of the act in the project area.

The Lilongwe Development Project area in Malawi is the only development project in which the CLDA has been applied. (All other project areas continue under customary tenure provisions.) Ng'ong'ola attributes this special status to the area's high population density, its considerable agricultural potential, and the large sums of money committed to the project by international donors, who, the author reasons, very likely insisted on the introduction of individual title. Application of the law, however, has diverged from the course laid out in its provisions. One of the problems encountered in the early stages was improper staff selection for the allocation teams.* Ng'ong'ola writes that the early teams, which included expatriates, were without proper legal training or knowledge of the local customs and languages. Additional problems arose from a significant lag time (three to four years) between demarcation of the land units and registration. This lag left land rights in limbo for too long a period of time (p. 112). Another problem was that demarcation procedures

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* The Customary Land (Development) Act provides for the allocation of land rather than adjudication, emphasizing that once an area is declared a development area and plans are drawn up for its transformation, land may be redistributed. In actual implementation, however, there has been little re-allocation of holdings.

were largely male-dominated, while customary land inheritance patterns among the Chewa (who inhabit the Lilongwe region) are matrilineal. And finally, be-cause local people did not automatically come forward to secure their rights to land as had been envisioned, the allocation process required the participation of customary authorities, which had not been provided for under the CLDA. This unforeseen need to rely on customary authorities raised a number of questions with regard to conflict of interest.

One of the most important differences between design and implementation of the act stemmed from the stipulation that land was to be granted on an individual basis. Local development committees voiced objections to the notion of individual ownership of land, arguing that local society was not yet ready for individual rights (as evidenced by the fact that land dealings were **relatively infrequent) and** that there was no guarantee that individual title would prevent excessive subdivision or fragmentation of holdings. Granting title to family units, the committees suggested, would result in better exploitation of the land and greater cooperation of family members who would otherwise be without rights to land. Consequently, the program was altered so that land titles were granted to family units, a change that was not without many complications and difficulties. As Ng'ong'ola points out, the CLDA was not designed for a gradualist approach (such as granting titles to families), but rather for the immediate and final stage of individual title. It would have been better, he believes, to have deferred application of the act altogether. In addition, the issue of family title was further clouded with the idiosyncratic way in which some family units were constituted--in a number of cases, members included individuals not related by either blood or marital ties. Nor did the record of who had ownership rights to a given piece of land always coincide with cultivation rights.

The process of demarcation and allocation has given rise to disputes in a number of cases. Some are over boundaries, which as a rule did not conform to earlier divisions; in these cases the local development committees have tended to rule against re-demarcation. Other disputes have arisen over ownership and have often been resolved by the creation of separate family units. But given the amount of change in the land tenure system introduced in Lilongwe, the numbers of disputes are surprisingly small and Ng'ong'ola concludes that land allocation was carried out in a "relatively bias-free" manner (p. 130).

The CLDA has obviously been applied in Lilongwe in a fashion very different from what was intended when the law was enacted, and it is not yet clear what the implications will be for agricultural development. As Ng'ong'ola notes, conversion to individual title would not, in and of itself, guarantee increased production, and before the law is applied to other development projects, he recommends that the CLDA be amended to legitimize the participation of customary authorities in the allocation process and that guidelines on how customary land rights are to be converted be drawn up as well.

In speculating about the effects of the unorthodox application of the CLDA in Lilongwe, Ng'ong'ola writes that neither the goal of individual title nor the replacement of matrilineal succession patterns is possible now. And the success of the program may be affected as well. Lending institutions will probably be more reluctant to lend money against land held by family units than by individuals. And some of these family units may have to be re-organized and boundaries re-demarcated. Despite these problems, however, Ng'ong'ola concludes that the notion of family land is not without merit. Development of a land market (which he associates with individual title) is not necessarily desirable, and joint title will facilitate cooperation between family members.

**A** second article by Ng'ong'ola is a subsequent look at the Lilongwe program, and it presents valuable evidence of how the Lilongwe Local Land Board has functioned since its creation and to what extent its actions remain consistent with the intent of the legislation.

MW8 **Ng'ong°ola, Clement.** "Land **Reform** and **Land** Dispute **Resolution in Malawi: The Work of the Lilongwe Local Land Board." Journal of Eastern African Research and Development 16 (1986): 105-121.**

The Lilongwe **Local** Land Board has-.two **principal roles:** to supervise and consent to all land transactions and to resolve disputes. In both of these roles, however, it has functioned in somewhat different ways than had originally been intended.

In its obligation to supervise and consent to land transactions, it has lacked formal guidelines and has instead evolved a series of considerations it takes into account in approving (or disallowing) applications. Among the factors it considers are the area of the land transferred, the legal nature of the transaction (for example, sale, lease), the amount of land remaining to the family, the price, the racial identity of the transferree, the consent of a majority of family members, including women, and its own judgment as to whether or not the legal implications of the transaction itself are clearly understood by the family members. In its decisions, Ng'ong'ola sees several principles being applied: (1) Approval is most readily given for applications to extract profit (for example, to use gravel for road construction). (z) Leases are more readily approved than outright sales. (3) The smaller the acreage being transferred, the more readily the Board gives its consent. In fact, the Board has been called upon relatively infrequently to give its approval to sales of land, and Ng'ong'ola emphasizes that this is not because such transactions are often carried on off-register but rather because they are rare. He attributes this failure of the local land market to develop--as had been envisioned by early planners--to the fact that in applyin$^{g}$ the law, allocation committees chose to ignore its provisions for individual title and to grant only family title. Family title discourages sales and has in fact "perpetuated traditional feelings among Board members and villagers that land must be preserved for the family and future generations" (p. 112), a notion that is underscored by heightened awareness of land shortage. Although Ng'ong'ola acknowledges that a rural bourgeoisie has emerged in recent years, he believes that its appearance must be attributed to other factors than the attempted conversion of customary land (ibid.).

With disputes the Board is confronted with even more ambiguity and uncertainty. The legislation does not explicitly state that it is to resolve disputes, and Ng'ong'ola questions whether it in fact has the legal authority to do so. Despite this lack of a clear mandate, however, it has been active in dispute resolution and in its proceedings has enunciated several principles that are not entirely consistent with the original objectives of modernizing the land tenure system. Disputes tend to fall into one of two categories, concerning eitner family members omitted from the group at the time of the original allocation or individuals who, though not strictly members of the kinship group, possessed use rights to part of the land allocated to the family. The Board has shown itself willing to make minor corrections in the record when family members have inadvertently been omitted though, strictly

speaking, it does not possess the authority to do so. More at odds with both the spirit and the letter of the law are its judgments in disputes regarding family members with use rights to land. In these cases, it has upheld the "old style of cultivation," in effect nullifying the land demarcation and re-organization exercise (p. 115). Its willingness to adhere to principles of matrilineal succession similarly undercuts the initial intent of the development program as does its use of conciliation to achieve settlement of disputes at the expense of applying norms or sanctions.

Ng'ong'ola concludes that to the extent that the land reform was intended to cure the defects of matrilineal land tenure and to move land holding in the direction of individualized tenure, it has failed to do so. **A** vigorous land market has not emerged. Nor have lending institutions shown themselves willing to make loans against registered holdings. The decision to introduce family titles almost exclusively undermined the original objectives of the land reform at an early date, and the rulings of the Lilongwe Local Land Board have only served to continue the process.

A more positive position on the reform is taken in the following **paper:**

**MW9 Pervis,** D.W. "An **Economic Analysis of a Land Registration Program in the Lilongwe Agricultural Development Division, Malawi, 1970-1983." Paper written for USAID/ Malawi, June 1984.**

Based on research carried out in 198J, Pervis analyzes and assesses the impact of land registration in the Lilongwe Land Development Program. Pervis is an agricultural economist by training, and his analysis of data gathered from a sample survey is heavily quantitative; the paper is packed with 57 separate tables and 29 figures.

The 349 farmers in Pervis's sample showed a general lack of awareness of the land registration program and its implications. Registration has had little effect on farmers' investment patterns or on land use. Nor have farmers' attitudes toward registration changed markedly: one-third of the respondees said registration had made no difference in their activities. Other responded that registration had made them more secure in their holdings or had given them greater control over land use.

Unfortunately, this is not an especially persuasive study. Pervis's arguments are weakened by severe methodological problems, including errors in statistical calculations and inconsistent or missing definitions of key terms and variables. Even more damning is the fact that Pervis shows little understanding of how the customary tenure system functions in reality or any awareness of how the registration was actually carried out. He therefore is unable to appreciate how rarely headmen actually rescind land allocations in the customary system or to consider how the fact that virtually all the land in the LLDP was registered as family rather than individual land may or may not affect farmers' attitudes and practices.

Another paper, written as a political-economic evaluation of Malawi's rural development, argues that land reform was needed by

the 1960s; however, the author finds that the policies adopted were colonial in nature and perpetuated inequalities which existed prior to **independence.**

**MWlO Mwakasungura, A.K. "The Rural Economy of Malawi: A Critical Analysis." DERAP Publication,** no. **197. Bergen:** Chr. **Michelsen Institute, 1986.**

**Mwakasungura is** highly critical of Malawi's development projects, including the Lilongwe project, and questions whether these expensive undertakings **will actually improve** peasant agriculture-in the country. Such projects require vast sums of capital, and although production levels increase (perhaps inevitably), Mwakasungura doubts that they can be replicated elsewhere in the country because of their high cost. Moreover, he writes that many participants in the Lilongwe project were unable to meet production goals and repay loans because, with land now held only by individuals rather than families, farmers could no longer call upon labor from the extended family as they had in the past. In some cases, families simply abandoned their plots and moved out of the scheme (p. 47). Unfortunately, despite scathing criticism of the projects and of Malawi's agricultural policy in general, Mwakasungura's arguments are not entirely convincing; the paper is long on ideology and short on data.

Registration, and particularly survey, procedures are briefly **discussed in:**

**MW11 Dale, P.F. Cadastral Surveys within the Commonwealth. London: Her Majesty's Stationery Office, 1976.**

Dale devotes most of his section on Malawi (pp. 240-44) to the survey procedures. **A** few comments relate to the social issues raised by survey and registration. He notes that the change from registration of deeds to title was first undertaken in and around *Lilongwe.* He discusses the procedures for registration, including survey, of private, customary or public land in the project area. He adds that registration of title, as operated under the Registered Land Act, is to extend to all areas of the country and that some 40,000 titles held in the Deeds Registry will be converted to Title Registry and that at that time they will acquire state guarantee. According to Dale, the legislation for the registration of title is similar to that operated in Kenya. He states, "In both countries, the objective of cadastral surveys is seen to be to service the requirements of registration of titles or deeds and not in the broader concepts of ensuring a satisfactory land information system."

## MALI

The French colonial laws of 1932 and 1955-56 established a land registration system where customary users might "legitimize" their claims to land. In addition, residents and businessmen might apply for permits to "inhabit" and "occupy," respectively, parcels in urban areas. Although apparently these laws remain in effect, it is not clear to what extent individuals have taken the appropriate steps to legalize their rights under written law. There is no written literature dealing with registration and its effects on agricultural production.

## MAURITANIA

The information on titling and registration in Mauritania is scant, although there are laws in effect which provide for the registration of both urban and rural land. Under **a 1960** decree, title can be granted for urban parcels. The critical legislation for rural land is Ordonnance 83.127 of 5 June 1983 and its implementation decree 84.009 of 19 January 1984, which abolish traditional tenures and provide for the registration of rural holdings. In providing for the establishment of a land registration system, the law mandates that a land register be established in each **dèpartement.** All subdivisions of collective land must be approved and supervised by administrative authorities and registered. For collectives to retain their lands, they are required to form cooperatives.*

The main emphasis of the legislation, however, is on the state's ability to acquire needed land for development projects. This aspect of the law and its potential effects are discussed in the following:

**MR1 Park, Thomas K., ed. Land Tenure and Development in the Islamic Republic of Mauritania: Fuuta Tooro and the Gorgol Region. Madison: Land Tenure Center, University of Wisconsin, 1988.** [Relevant sections are pp. 14-18, 23, and 32-37.]

The principal advantage of the legislation is its framework for the settlement of conflicts with regard to land rights between the needs of the state, on the one hand, and the dictates of **shari'a** [Islamic law] and customary tenure systems, on the other. A series of articles in the 1983 ordinance sets the basis for the state's establishment of domain land and provides for the possibility of its reallocation as concessions. The state is thereby empowered to acquire land for development projects without "being hindered by refusals or speculative demands of particular individuals" (p. 23). Although Article 3 unequivocally states that the customary Land tenure is abolished, other provisions of the law make it clear that what is really cancelled is the right to appeal to customary tenure rules to counter the state's declaration of domain land; customary tenure, thus, remains in effect except where it comes into conflict with the development effort (p. 15). The legislation also declares that the state recognizes private property as the standard form of ownership and, by providing for land registration, institutes a means for the establishment of individual title. But here, too, the language of the law is equivocal;

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* The full text of both of these laws has been published by the Government Printer in Nouakchott. Translations may be found in Thomas K. Park et al., Land Tenure Study of the Dirol Plain (Madison: Land Tenure Center, University of Wisconsin, 1987), Attachment 2.

as Park notes, "Registration is encouraged but does not entirely replace the standard shari'a procedures" (ibid.).

It is not clear as yet what the effects of this legislation will be. The potential for its misuse is great, but at the time that the data for this study were gathered (in 1985), there "was no convincing evidence that the legislation was being used systematically to allow groups that had no traditional claim to allow [flood plain] lands to acquire such a claim" (ibid.).

[For a further discussion of the impact of this legislation on development, see S10 in the Senegal section, especially pp. 58-71.]

## MOZAMBIQUE

Land registration in Mozambique is **rare.** At independence, **in** 1975, all land was nationalized and there is no system of registration for customary land. Some private farms were respected by the new government but they only occupy a very small percentage of the land.

During the colonial period legislation regarding land ownership varied. In the early years, land which was considered unused by the Portuguese--that is, it was not settled by Portuguese--belonged to the crown. The King of Portugal could then make concessions to settlers and these concessions had perpetual hereditary rights. How-ever, since agriculture in Mozambique was not important to Portugal until the twentieth century, few Portuguese people settled in the colony for this purpose.

In 1881 all the land was granted to three companies: the Companhia do Mozambique, the Companhia da Zambezia and the Companhia do Niassa. These companies could then sub-grant land to other companies or individuals for limited time periods. The companies were subject to the laws passed by the Portuguese government during the twentieth century with the goal of encouraging Portuguese people to settle in the colonies.

Rigoberto Sandoval in his article ["A New Hope, A New Country: Mozambique's Land Reform," Land Settlement and Cooperatives, no. 1/2 (1974), pp. 43-51] states that a dual agricultural system developed in Mozambique. One sector was geared towards producing export crops using capital-intensive techniques and another sector characterized by small peasant units practicing subsistence agriculture. Sandoval concludes that the colonial system created a minority of well-to-do landowners and a majority of poor peasants. This situation was not a direct result of the registration system. There were other factors involved, such as the amount of capital, the technology and the forced labor used in the private export-oriented sector which caused this disparity.

At independence the government's policy was to create state farms and agricultural cooperatives, support for which--it should be emphasized--has varied throughout the last ten years. Although state farms and agricultural cooperatives receive government support, there is a small private sector. This sector has its land rights guaranteed by the state, which ultimately owns the land. Since the government's emphasis has been on land use rather than land registration, the literature of post-independence Mozambique deals mainly with the former.

## NAMIBIA

The worldwide interest in the issue of Namibian independence and the validity of the mandatory powers held by South Africa has generated a large volume of literature on this African country. However, very few references deal even obliquely with the subject of land registration in Namibia--probably in large part due to the primacy of the political issues and the fact that the country's wealth is mineral rather than agricultural. Namibia has an extremely low population density and a shortage of arable land (even dryland cropping is impossible in 70 percent of the country).

The best introduction to the history of land alienation in Namibia is provided by the following dissertation:

**NA1 Crowell,** W.U. **"The Evolution of** South African Control **over South** West Africa **(Namibia)."** **Ph.D. dissertation, St. John's University [New York], 1975.**

Crowell provides an historical account of the issues surrounding the proposed independence of Namibia and the efforts of the UN and local political groups to terminate South African rule. On the subject of land acquisition, he describes the alienation of land from indigenous Namibian peoples during both the German and South African colonial periods.*

NA2 Anschel, Kurt R., and Russell H. Brannon. "The Agricul**tural** Sector of Namibia: **A Brief** Assessment." Report prepared in cooperation with Southeast Consortium for International Development (SECID). Washington, DC: U.S. Department of Agriculture, and **USAID,** August 1978.

The purpose of this report is to provide current information on the agricultural sector in Namibia and to suggest a framework for analyzing the requirements for the development of agriculture in an independent Namibia. Very little attention is paid to land registration, but it is pointed out that all white-owned farms are held privately, whereas in the "homelands" land is held communally and distributed in accordance with customary practices (pp. 29-30). The report recognizes that a major problem facing an independent Namibia is the redistribution of land and the social and economic consequences of different land reform options. The authors assert that the indigenous land tenure system

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* For details on physical aspects, such as land potentialities (Chapter 5), as well as the cultural and political composition of Namibia, see J.H. Wellington, South West Africa and Its Human Issues (Oxford: Oxford University Press, 1967).

is one of the "constraints resulting from the socio-economic character of the indigenous population" (p. 49). In the penultimate chapter various agrarian reform policy options are discussed, including freehold, customary communal tenure, nominal public ownership and public ownership. In each case reference is made to the experiences of other African countries.

NA3 Duggal, N.K. "Toward Agrarian Reform: **Policy Options for Namibia." Report published by U.N. Institute for Namibia.** Lusaka, 1979.

The Prohibited Areas Proclamation of 1928 divided Namibia into distinctive black and white areas in accordance with the separate development policy of South Africa. The report lists the land policy objectives of the two political parties at opposite ends of the political spectrum. SWAPO demands the abolition of the "Bantustans" and a vigorous land reform program to return land to the indigenous people, whereas the DTA advocates minor reforms with the retention of the separate development policy.

**NA4** U.N. Institute for **Namibia. "Agrarian** Reform Options for an Independent Namibia." Discussion Paper for Seminar on **Agrarian** and Land Reform Programmes for an Independent **Namibia,** Lusaka, 22-26 **January 1979.**

Describes the ecology and development potential, different land categories, current agrarian structure and future reform options, production organization and agrarian reform auxiliary measures (including credit institutions, extension and education). Types of land tenure considered in the paper include leasehold, state ownership and freehold (pp. 57-61).

One of the few papers that deals with land registration practices in Namibia is Van den Huevel:

**NA5 Van** den **Heuvel,** P.A.L. **"A** Short History of the Survey and Registration of Land in South West Africa." South **African** Survey Journal, 19/20, 114/115 (1983/1984): **4-15/20-29.**

This two-part paper gives an interesting account of the early colonization of Namibia and land registration practices during the German regime and after the South African takeover. The mandate granted to South Africa by the League of Nations included the right to "apply the laws of the Union of South Africa to the territory" (p. 20). The German method of registration, based on methods used in Germany, was gradually replaced by the registration of deeds system operating in South Africa. The author refers briefly to registration in the area occupied by the Rehoboth people, but otherwise gives no details of land tenure or registration in the regions occupied by the indigenous people of Namibia. The major portion of this paper deals with survey techniques, administrative details on record-keeping practices and with legislation affecting surveying and, to a lesser extent, registration.

Registration of land was first introduced into Niger by the French shortly after the turn of the century, but during the colonial period few titles were actually registered (2,040 by 1957, fifty years after the first title was issued) and most of these were of urban land in Niamey. Since independence, the pace of registration has accelerated somewhat (5,891 titles issued by 1970) , but there has not been as yet any study of the effects of registration or even a breakdown as to the location and size of registered holdings. (Figures are from N1, below.)

An overall description of the different customary and written systems of land tenure is provided in:

**N1 Niger. "Note sur: Le régime foncier au Niger; Les droits coutumiers; Les domaines public et privé." Paper presented at the Seminar on Cadastre, Addis Ababa, 25 November-9 December 1970. Addis Ababa, U.N. Economic Commission for Africa.**

Registration of land imposes on the landholder development conditions. At the time the initial application is made, title is held by the State, which only turns it over to the individual upon fulfillment of the development conditions. Once land is registered, no other claims to that land are legally recognized. It is noted that most registered land is urban, with only a few registered rural parcels. Lastly, this document describes in detail how surveying is to be carried out.

Less useful in terms of registration, but interesting from the perspective of surveying is:

N2 Kaouge, Moumouni. "Cartography, Topography, Land Registration and Town Planning: Review of Methods Used in Niger." **Published article, source unknown.**

The author talks about the status of mapping and surveying in Niger. Kaouge also mentions that the land register is kept under the Real Estate, Registration, and Conservancy Service.

## NIGERIA

There are as many different customary tenure systems in Nigeria as there are ethnic groups (approximately 400). Colonial and later independent governments designed different land tenure policies for the three major regions of the country. Land policy was based on (1) political and economic goals of the state in each specific region of the country, and (2) the state's ability to enforce land policy in each region. In the north, policy evolved largely as a result of the Crown's relationship with the emirates. The emirates provided a conduit through which the British could control peasants and thus guarantee uninterrupted extraction of commercial and agricultural surplus. In 1900, the British enacted the Native Land Proclamation, which stipulated that only natives of the north could acquire interests in land in northern Nigeria. This law helped to prevent the emergence of landless peasants. In 1910, the British went a step further and ostensibly nationalized all land in the Northern Protectorate with the enactment of the Land and Native Rights Proclamation. The law vested control and administration of all land in the government of northern Nigeria. Title to land became vested in the state and the occupier's interest was defined as a right of occupancy. The law was revised and reenacted in 1916 as the Land and Native Rights Ordinance and again later reproduced and reenacted in 1962 as the Northern Nigerian Land Tenure Law. There are almost no socioeconomic data available on the effects of these laws.

In the southern regions of the country, attempts to reform land tenure were a response to the needs of commercial interests in the area. Property, and particularly land, was becoming more commercialized in both urban and rural areas. Rapid economic development, particularly in Lagos, fueled immigration and congestion. Land for residential and commercial purposes became increasingly scarce and valuable. In rural areas, the development of the cocoa industry fueled the commercialization of land. The resulting changes in socioeconomic relationships led to tension and conflict over land. Attempts to impose a "uniform land policy," like the one in the north, were stymied by an unusual union of colonial and African entrepreneurs. Consequently, the history of land administration in southern Nigeria is more a patch-quilt of law and policy than is the history of land policy in northern Nigeria.

Different systems of land registration were also developed and implemented in the different regions. In the north, there were two systems of registration, a regional government system of registration of instruments and a local government system for the registration of transactions. A land registry for the north was established first in Kaduna in 1915. There are also very little data on the success of these registration programs. In the south, both title and deed registries were developed concurrently (and continue to exist) while in the Southern Protectorate, a deed registry was implemented. After the amalgamation of the Northern and Southern Protectorates in 1914,

the Land Registration Ordinance of 1915 was promulgated. It was later reenacted in 1924 and remained in force until 1945 when it was repealed and replaced by provisions of the Richards Constitution.

Beginning in the 1950s government officials began to consider establishing a more uniform system of land tenure in the country, and a series of committees was appointed to look into this possibility. The reports of these committees, together with commentaries on land legislation (both proposed and enacted), constitute the core of literature dealing with registration of land **in** Nigeria. The perspective of these reports and articles is decidedly legalistic, and questions of agricultural productivity remain largely unstudied. Unfortunately, little concrete change in land registration procedures resulted from these reports, but what is particularly noteworthy is the consistency in the recommendations for change. Perhaps most important is that the authors urged that both family and individual lands be made registrable. They also recommended that title registration replace deed registration and that registration be systematic rather than sporadic.

These issues remained unresolved, and in the 1960s and 1970s, additional problems began to emerge. First, the southern part of the country witnessed a tremendous increase in land disputes, resulting in costly litigation; second, the state had difficulty acquiring land for development purposes; and, finally, the absence of a uniform statutory land policy in the south frustrated the acquisition of land by competing military and civilian interests. These issues gave rise to a number of books and articles calling for the enactment of new legislation. In contrast to the earlier literature, these publications are more empirical and less legalistic in their perspectives, and their authors are more often trained in the social sciences than in law.

In 1977, the government established the Land Use Panel to study the various land tenure systems in the country and to develop a plan to incorporate them into one national system. The committee issued two reports: a majority report, which argued against the extension of the 1962 Land Tenure Law of northern Nigeria to the entire country; and a minority report, which advocated land nationalization. The minority report, prepared by R.K. lido, from the Department of Geography, University of Ibadan, was accepted by the government. In 1978, the military promulgated the Land Use Decree, which reproduced most provisions of the 1962 Land Tenure Law of northern Nigeria. The decree vests all land in the military governor of each state and provides for the issuance of certificates of occupancy for urban land and rights of occupancy for rural land. The law sets maximum holding sizes at 500 hectares for agricultural purposes and 5,000 hectares for grazing purposes. Undeveloped urban holdings are limited to 0.5 hectare. The law establishes terms for access, succession, duration of certificates, and ground rents. Land rights may be revoked for improper land use, that is, failure to fulfill the conditions of use for which the certificate was awarded or for over-riding public interests.

Customary tenure relationships continue notwithstanding the statutory laws; however, these relationships are not unaffected. We have

only a few studies which examine the way these laws affect tenure and other socioeconomic relationships and how local communities respond to and/or resist these attempts at land tenure reform.

A general discussion of Nigerian land law in the period before 1978 is provided in the following:

**NI1 Olawoye, C.O. Title to Land in Nigeria. Lagos: Evans Brothers, 1974.**

In Chapter 8, "Registration of Title to Land," Olawoye focuses on the Registration of Titles Act, 1935, which provided for the introduction of title registration in the Southern Provinces of the colony of Nigeria. Although the act was intended to be applied throughout the entire southern region, only in Lagos was a Title Registry established. Moreover, not all land had to be or could be registered; registration was compulsory only at the point that land was transferred (sold or leased) from one individual to another, and registration of family land, held jointly by descendants of a common ancestor, was not permitted.

Another useful survey of registration in Nigeria before the enactment of the Land Use Decree and commentary on the 1935 Registration of Titles Act can be found in:

**NIE Oluyede, P.A. Nigerian Law of Conveyancing. Ibadan: Ibadan University Press, 1978.**

In outlining the systems of registration, Oluyede observes that although land registries existed throughout the country (as provided for under the 1935 Registration of Titles Act), only that of Lagos handled registration of title. As the system was constituted in the rest of the country prior to 1978, it failed to achieve the important purpose of facilitating land transactions. Oluyede cites two principal defects. First, anyone who purchased (or hoped to purchase) unregistered land was required to conduct a full investigation of title. And second, any person could defeat an application for registration if he proved that the land was otherwise subject to native law and custom. The result was that almost all land subject to customary tenure could be excluded from the Register. Oluyede recommends that family land be made registrable.

As early as the 1950s government officials had begun to consider the need to revise the existing registration legislation and procedures. There is a rough progression in registration and tenure re-form from the federal territory of Lagos to western Nigeria to other regions, and the review of the literature which follows is organized to reflect this. In 1957, S.R. Simpson, a Colonial Office land tenure specialist, was asked by the Federal Government of Nigeria to study the process of land registration in the Federal Territory of Lagos and to make recommendations for any changes that might serve to make the process more efficient. The following report presents his findings.

**N13 Simpson, S. Rowton. A Report on the Registration of** Title to Land in the **Federal** Territory of Lagos. Lagos: **Government Printer, 1957.**

Land registration was first introduced in Lagos in 1883 with the establishment of a Deeds Registry; by 1956, some 70,000-80,000 deeds had been entered. Alongside the system of deed registration, a system of title registration was introduced with the enactment of the Registration of Title Ordinance in 1935. This Ordinance required that when land was sold or leased for 40 years or more, it was to be brought onto the Register. Land registration was thus sporadic rather than systematic and compulsory only if transferred through sale or long-term lease; by 1956, after 21 years of operation, the Title Registry contained only 2,400 freehold and 500 leasehold titles. The path toward full registration was thus a long one, made even more so by the protracted litigation that often accompanied (and still accompanies) land transactions.

Simpson's most important recommendation was that rather than enact new legislation to replace the 1935 Ordinance, the existing law be amended to permit systematic land adjudication throughout the Federal Territory of Lagos. The 1935 Ordinance already provided the basic requirements of a land registration system--security of title, freedom to use and transfer land, and the right to will it to designated heirs; what was needed was complete registration of land in the Federal Territory. He also recommends that title be vested in either an individual or a family; hitherto, only individually held land might be registered.

Two years later a working party was constituted to act upon Simpson's report: to draw up the recommended enabling legislation and to advise on its implementation and the procedural and administrative changes suggested by Simpson.

NI4 Nigeria, Federation. Report of a Working Party on Registration of Ownership of Land in Lagos. Lagos: Government Printer, 1960. [Also known as **the Clover Report.]**

The report is a lengthy commentary on the registration act drawn up by the working group. It discusses adjudication procedures, the organization of the Land Registry, and various transfer provisions. Particularly interesting is the section on adjudication, which outlines, among other things, the procedures for registering title to family land, an innovation recommended by Simpson (see above) and enacted in the new law. Previously family land had been recognized under customary law but could not be registered. By enacting this change, which required both demarcation of boundaries and adjudication of ownership rights, the authors hoped to eliminate much of the confusion and litigation that accompanied transactions in family land. (Under customary tenure, family land was not to be disposed of outside the family, but practices in the first half of the century had shown that this rule was often ignored.)

The law permitted the appointment of up to twenty family representatives. It was not the responsibility of the Registry, however, to supervise their stewardship. Instead, dispositions of family land were to be accompanied by declarations from the representatives that the family members had been consulted. The text of the new legislation is included as Appendix C, "Draft Bill for a Registered Land Act."

The bill drafted by the Working Party was passed as the Registered Land Act of 1964. The second edition of Coker's Family Property among the Yorubas provides a convenient summary of the provisions of the act.

**NI5 Coker, G.B.A. Family Property among the Yorubas. End ed. London: Sweet and Maxwell, 1966.**

The Registered Land Act of 1964 provided for the registration of family land in the names of all the family members or their representatives, and established elaborate provisions for settling the names of members and recording their shares. Family land could not be disposed of unless all family members were in agreement, and unless this condition was met, the transaction was not registrable. The law guaranteed occupants of family land the right of continuing use, but prohibited their acquiring title by adverse possession.

The clearest discussion of the problems of the older deeds and title registries in Lagos and of the provisions of the 1935 and 1964 land registration laws is found in the following article:

**NI6 Willoughby, P.G. "Land Registration in Nigeria: Past, Present and Future." Nigerian Law Journal 1 (1965): 260-283.**

In this article Willoughby summarizes the findings from the various reports concerning the operations of the land registries in Lagos and notes that neither system was adequate to encourage development of land. Perhaps half the deeds brought to the deeds registry were inconsistent with previously registered deeds. The Registered Land Act of 1964, however, was intended to rectify many of these difficulties with its provisions for compulsory registration, systematic adjudication of all titles and interests in land, and the recording of these interests in the register. With the establishment of such a register, Willoughby writes, land dealings might e transacted and recorded with facility. He suggests that this same act be adopted in other areas of Nigeria as well, specifically in those areas of rapid urbanization where serious problems of land tenure might arise in the future. A postscript notes that although the Registered Land Act of 1964 was superseded by the Registered Land Act of 1965, there were few changes of substance in the new law.

A summary of the various kinds of registries and cadastral surveys for each of the states in Nigeria as of 1976 is found in the following:

**NI7 Dale, P.F. Cadastral Surveys in within the Commonwealth. Overseas Research Publication, no. 23. London: Her Majesty's Stationery Office, 1976.**

Pages 252-55 provide a concise and informative description of cadastral surveys used for registration purposes. Problems encountered include the slow pace of surveying and its relative expense, leading Dale to conclude that a faster approach is necessary.

Drawing on the example of Lagos and recognizing that uncertainty of title was proving a constraint to development of land in Western Nigeria State, the government of that state appointed a committee in 1961 to consider the possibility of introducing a system of title registration. The committee was chaired by P.C. Lloyd, a social anthropologist expert in the field of Yoruba land tenure.

**NI8 Western Nigeria State. Report of a Committee Appointed to Consider the Registration of Title to Land in Western Nigeria. Ibadan: Government Printer, 1961.**

The Committee concluded that introduction of a title registry not only would be valuable for Ibadan and Ikeja, but also might be extended later to other parts of the region. Rather than register only land rights recognized under English law (freehold and leasehold), however, the Committee recommended that registration apply to all rights in land, whether under customary or English rules. Under a unified land law, family land would be equated with leasehold and inalienable without family consent. Improvements to family land made by an individual would be protected through registration, and all dealings in family land would have to be publicly advertised and any objections heard in court. Once the initial registration had been carried out, all dealings in land had to be registered to be legally recognized.

In 1971 the Government of Western State invited J.C.D. Lawrance to review the Lloyd Committee's recommendations; his critique is contained in:

**NI9** Lawrance, J.C.D. "**Registration of** Title in **the** Western **State** of **Nigeria."** London: **Foreign and** Commonwealth Office, Overseas Development Administration, 1971.

Lawrance recommends systematic adjudication and registration rather than the gradual approach advocated by the Lloyd Committee and suggests that the Registered Land Act of 1965 (enacted after the Lloyd Committee had met and submitted its report) be adopted as a model. If the 1965 Act were to be adopted, Lawrance writes, several important decisions would have to be made. Perhaps most important is that if the new law was to unify customary and English land law, careful consideration would have to be given as to how to go about this. Registration fees could be set at a level to cover the costs of maintaining the register, but initial adjudication should be considered a capital expense. Lawrance notes that landowners seldom derive any immediate advantage from registration of their holdings, but he suggests that they might bear some of the cost by being charged a fee at the point at which they derive some benefit (for example, when they transfer land or require a certificate of title).

An interesting discussion on the differences and problems arising out of the dual system of English-based law and customary land rights **is found in:**

**NI10 Park, A.E.W. "A Dual System of Land Tenure: The Experience of Southern Nigeria." Journal of African Law 9 {1965) :** 1-19.

Citing court cases as examples, Park shows that it is possible for land to shift back and forth between Englisn-based land rights and customary rights through the use of wills and conveyances. He concludes that this shifting of rights on a case-by-case basis results in a complexity that is not addressed by the Registered Land Act of 1965. At the heart of the problem is the fact that the 1965 Act perpetuates the existence of two tenure systems side by side. Park urges that action be taken to eliminate this duality of tenure and sees the implementation of a compulsory program of adjudication and title registration as the first step in this direction. Recognizing that the title registra- tion being undertaken in Lagos die permit recording of family land, ne nopes that such **a** program would remove "the '·more unsatisfactory consequences of that duality."

James, in Modern Land Law of Nigeria, also includes a discussion of the interactions of customary and noncustomary land tenure practices:

**NIll James, R.W. Modern Land Law** of Nigeria. Ile-Ife: Uni- **versity of Ife Press, 1982.**

James' book contains a thorough investigation of changes in Nigerian land law up until 1973. In addition, James covers the transactions and machinery for assuring land rights, describes the legal effects of registration, and de-fines "registrable instruments and documents." He concludes that defective transfers of group lands lead to land trafficking and overlapping conveyances, while suggesting also that restrictions on interest rates on customary loans based on customary title need to be regulated just as for freehold title. Most importantly, James states that registration and individual title per se do not contribute to economic development, but rather that it is land use controls that are more important to achieve development goals.

While James and others have written about customary and freenold tenure from theoretical and legal perspectives, there have been few attempts to gather data on how tenure status may shape farmers' actual practices. One of the few studies to do so is the following:

**NI12 Ike, Don Nnaemeka. "A Comparison of Communal, Freehold and Leasehold Land Tenure." American Journal of** Econom**ics and Society 36 (1977): 187-195.**

Ike's hypothesis is that "a communal land tenure system is inherently inferior to . . . a freenold land tenure system" (p. 187). Analyzing data from a survey conducted in 1973 of 200 farmers in the Ibadan area, he finds that farmers with freehold tenure cultivate a greater percentage of their holdings, use more labor, and in the end receive higher net incomes from their holdings than do occupants of communal land (who he terms "communal tenants"). From these results he concludes that a valid land reform program "should first seek to displace the communal system of tenure. . . . Evidence abounds to substantiate a presumption that a movement to individual freehold . . . would lead to increases of wealth by means of increased agricultural output in the agricultural sector of Nigeria" (p. 194).

This is not a sophisticated survey nor are the data analyzed in an especially persuasive fashion. The value of the study lies in the fact that it is one of the very few attempts in Nigeria, where a great deal of thought and time was given to tenure reform, to relate farmers' behavior to tenure type.

Similar discussions of registration of instruments are contained in the following:

**NI13 Elias, T.O. Nigerian Land Law. 4th ed. London: Sweet and Maxwell, 1971.**

**NI14 Allott, Anthony. New Essays in African Law. London: Butterworths, 1970. (See Chapter 9, "Fee Simples in West** Africa.")

**NI15 Nwabueze, B.O. Nigerian Land Law. New York: Nwamife Publishers,** 1972. **(See Chapter** 18, "Registration of Land...)

In the 1970s a number of books and articles began to appear which took up and enlarged on the Lloyd Committee's recommendation for the adoption of a unified system of land law, seeing the existing patchwork system as a constraint to development not only in the particular state or region but limiting to Nigeria as a whole. These discussions are especially interesting in light of the provisions of the 1978 Land Use Decree.

**NI16 Nwabueze, B.O. "Reform of Land Tenure: Economic Development and the Reform of the Land Law." Paper presented at the Seminar on Land Administration and** the **Development of African Resources, Ibadan, 1972.**

Nwabueze discusses the differences between customary and English land law practices and specifically cites potential areas of conflict between the two systems such as pledging and tenancy. Within the discussion of how one might use registration to integrate these disparate practices, the author suggests that State ownership of land based on transferable rights of occupancy subject to revocation be imposed to promote defined goals. These goals include: socially just distribution of land; use of land rents to benefit communities as a whole; reduction in land speculation, landlessness, and absentee ownership; and ensuring proper use and development of land through conditional occupation of the land. Nwabueze also notes, however, that State ownership of land does not justify eliminating private ownership, is not compatible with customary practices, does not provide compensation for land, and should not restrict the amount of land it is possible to hold.

**NI17 Yakubu, M.G. Land Law in Nigeria. London: Macmillan,** 1985.

Although Yakubu's book is titled Land Law in Nigeria, it focuses largely on land law in northern Nigeria. Chapter five, "Security of Rights in Land,"

specifically deals with registration in northern Nigeria and compares the laws of the north with those enacted in the south. He criticizes the registration of instruments as being inappropriate for a largely illiterate society. He states that the land tenure laws of the north may not protect most Nigerians or provide additional security and in fact may only assist or advance the interests of the privileged members of society. He closes his book with a discussion of the Land Use Act. Unfortunately, like many studies of the "impact" of land **tenure legislation,** this one lacks any **empirical evidence.**

**A paper which addresses itself specifically to the regional differences in land tenure systems is the following:**

**NI18 Famoriyo, Segun. "Problems of Duration and Alienation in Nigerian Land Tenure." Paper presented at the Seminar on Problems of Land Tenure in African Development, Leiden,** 13-17 **December 1977. Leiden, Afrika-Studiecentrum.**

Famoriyo contrasts the land tenure situation in the northern and southern areas of Nigeria and talks of the problems associated with the lengthy procedures for alienating land. Concentrating on tenancy, with its "inferior" interest in land that "interferes" with investment, the author also speaks of pledging, borrowing, sale, and gifts and concludes that there is a need to **facilitate** the ease of purchase in rural areas for either tenants or others wishing to expand operations. Compulsory registration of land, either in the name of the individual or group, is recommended to both control and regulate land sales and to protect the purchaser.

Famoriyo reiterates part of this discussion in the following two publications:

**NI19 Famoriyo, Segun. Land Tenure and Agricultural Development in Nigeria. Ibadan: Ibadan University Press, 1979.**

**NIE0 Famoriyo, Segun. Principles and Practices of Land Tenure in Nigeria. Ibadan: Nigerian Instititute of Social and Economic Research, University of Ibadan, n.d.**

Using many of the same arguments as in his earlier paper, Famoriyo adds a thorough examination of tenures by ethnic group as well as a section devoted to the problems of rising land prices, insecurity, and succession. A short section (pp. 186-90) concentrates on registration in Lagos and argues for compulsory registration of titles.

In an attempt to bring some consistency to the various land tenure systems in Nigeria, to control land speculation, and to facilitate transactions in land with a view to fostering national development, the Government of Nigeria enacted the Land Use Decree in 1978. The best general discussion of the legislation and its probable impacts is found in the following paper:

**NIE1 Uchendu, Victor. "State, Land and Society in Nigeria: A Critical Assessment of Land Use Decree (1978)." Paper presented at a seminar held at the University of Nigeria, Nsukka, 1-4 May 1979.**

Under the provisions of the Land Use Decree, all land is vested in the State, which is to hold the land in trust and administer it for the "common benefit of all Nigerians." Individual rights in land are now to become rights of occupancy, as are family and other corporate rights in land, and guaranteed by the issuance by the State of certificates of occupancy. The certificates are a form of contract, with terms of tenure spelled out (e.g., access, succession, duration, rents). Theoretically, this allows access to land by anyone anywhere in the country, irrespective of ethnic affiliation. Transferring an interest in land requires the consent of the Governor, while the right of occupancy may be revoked for failure to fulfill the specified conditions of the contract or for "overriding public interest." Rural holdings may not be sub-divided into two or more parts, even for inheritance, nor are they to exceed 50 hectares in size. Urban holdings are to be limited 0.5 hectare in area.

According to Uchendu, the law addresses four important issues: the lack of uniformity in the laws governing land use and ownership, the uncontrolled speculation in urban lands, the problems of equal access to land by all Nigerians, and the fragmentation of rural lands arising from the application of traditional inheritance principles.

A national workshop on the substance and the implementation of the Land Use Act was held in Lagos in 1981; papers from the workshop are presented in:

NIE2 Omotola, J.A., **ed. The Land Use Act. Report of a National Workshop held at the University of Lagos, 25-28 May 1981. Lagos: Lagos University Press, 1982.**

The workshop focused on the legal ramifications of the Land Use Act, and the papers and discussions raise a number of points with regard to the application of the act. Several of the papers are especially interesting in the context of land registration and development. Omotola, in a discussion of the legal rights conferred by the certificates of occupancy, suggests that the certificates may not be registrable and may in fact give rise to disputed land rights. As he points out, the law does not specify that issuance of certificates by the Governor is dependent on careful investigation of claims (as was required for titles). Omotola also questions whether or not the conditions imposed by certificates on occupancy on their holders are legally enforceable. Can, for example, rent be collected by the State, which now holds the title, from the certificate holder, who formerly held freehold title to the land? Other questions are raised about mortgages in a paper by Omolaja Adeniji. Whereas it was land that was mortgaged in the past, he says, now it is only the right of occupancy that is mortgageable. He also shows that the distinction between developed and undeveloped land is now more important than in the past; on developed land, the improvements are the property of land holder, whereas undeveloped land, on which no improvements have been made, is the property of the State. Moreover, because the law requires that all transfers

and conveyances receive the consent of the Governor, mortgages will now have to have his approval.

A third paper, by J.O.A. Awogbemi, lays out some of the advantages and disadvantages of the Land Use Act. Awogbemi asserts that the new legislation has limited (but not eliminated) land grabbing and speculation, has reduced the numbers of court cases and land disputes, permits the government to acquire undeveloped land without having to pay compensation to the former owner, and facilitates planned land use. Its principal defect is that it sets rural and urban acreage limits that apply throughout the country, regardless of local conditions and population density.

An early, more detailed look at the effects of the Land Use Decree in one particular part of the country is the subject of the following dissertation:

**NIE3 Ega, Lawrence Alegwu. "Status, Problems** and Prospects **of Rural Land Tenure in Kaduna State and Some Reflec- tions on Land Tenure Policies in Nigeria." Ph.D. dis- sertation, Cornell University, 1980.**

In the general section on the decree, Ega states that all allocation powers reside in the hands of the government (the Governor and local land councils). Two types of certificates of occupancy (COs) exist, a "customary" right, alienable only through consent of local government or the Governor, and a "statutory" right, alienable only with the consent of the Governor. COs in rural areas are restricted in size to 500 ha. for agricultural use and 5,000 hectares for grazing purposes.

The author criticizes the decree in several respects on the basis of his study in Kaduna State. First, he finds that the decree does not reflect actual tenure patterns and problems, but rather was formulated in response to an "artificial" land scarcity (especially in urban areas) caused by speculators. Ega continues on to say that the high ceilings on land in rural areas will lead to inequalities in farmholding size, possibly denying COs to many farmers due to the finite amount of land available. He cites farmer ignorance about the Land Use Decree as one indicator of this trend. (In his survey, 47 percent of the farmers knew nothing about the decree.) Finally, Ega believes the decree's emphasis on "formal tenure" does not address the problem of fragmentation.

In conclusion, Ega claims that "the reform did away with private ownership of land and forbade alienation and tenancy but retained private holding and operation and failed to pursue policies that would equalize land or raise pro- ductivity and incomes of farmers."

Another publication of Ega's, a study of land transactions in four villages in Zaria after the 1978 Land Use Decree, follows the same line of argument.

**NIE4 Ega,** L. **Alegwu. "Land Acquisition and Land Transfer in Zaria Villages in Nigeria."** <u>**Agricultural**</u> <u>**Administration**</u> 15 **(1984):** 87-100.

Ega gives the following breakdown for how land rights in his study area were acquired: inheritance 71 percent, gift 13 percent, purchase 9 percent, rent 2 percent, loan 2 percent, communal allocation 2 percent, and pledge 1 percent. He concludes that land is in a transitional stage between communal land rights and exclusive individual rights, and that this demonstrates the "myopic focus" of the 1978 act, which fails to adequately account for practical land tenure patterns and their attendant problems.

Paul Francis focuses on some of the same features of the Decree as do Uchendu and Ega:

**NI25 Francis, Paul. "'For the Use and Common Benefit of All Nigerians': Consequences of the 1978 Land Nationalization."** Africa **54 (1984) : 5-28.**

Francis emphasizes the potential for abuse inherent in the system of land administration and allocation envisioned by the decree and claims that the new system debases most rural dwellers' "title" to land, while remaining ambiguous about concurrent claims to land. Citing continued sales of land and the concentration of power over land in the hands of a few state administrators, the author asserts that the Land Use Decree will not facilitate economic development. He ends by saying that the abrogation of the Constitution following the 1984 coup leaves the fate of the decree in doubt. (Note: The Land Use Decree continues in force as of Summer 1989.)

The theme of inequality is also the focus of two articles by Peter **Koehn:**

**NI26 Koehn, Peter. "Development Administration and Land Allocation in Nigeria."** **Rural** Africana, **no.** 18 (Winter **1984) : 59-75.**

and

**NI27 Koehn, Peter. "State Allocation and Class Formation in Nigeria."** **Journal of Modern African Studies** 21 (1983) : **461-481.**

Koehn describes in detail provisions of the decree that ensure unequal access. Requirements that petitioners need to demonstrate the financial capacity to make improvements within the time period stipulated in the COs make it difficult for the poor to obtain them. In urban areas, this is compounded by the requirements that new plots be provided with services (water, electricity, roads, drainage). This difficulty in obtaining COs in turn drives up the black market price of land to a point that also excludes most of the poor.

In a 5 percent random sample of CO applicants in Kano and Bauchi States, three trends emerged. First, the CO applications acted upon most often were those of individuals connected to persons in the military or affiliated with the allocating authorities. Second, applications of individuals earning less than N1,300/year had no action taken, while only 12 percent of those with earnings between N1,300 and N2,500/year received attention. The other 88 percent

who received action on their CO applications earned more than N2,500/year. Last, the most common reason listed by officials for refusing CO applications was the lack of money to develop a plot. Thus, both urban and rural poor have been effectively barred from the land allocation process under the decree in these two states.

Okpala raises many of these points concerning unequal access in:

**NI28 Okpala, Ifebueme. "The Land Use Decree of 1978: If the Past Should be Prologue..::" Journal of Administration Overseas 18 (1979): 15-21.**

Generalizing for the whole of Nigeria, Okpala states that during a recent period, over 70 percent of State land allocations were made without advertising. He believes that these inequalities in land access could lead to landlessness, which had not been a significant problem before implementation of the Land Use Decree.

A relatively recent work reviews legal cases that have arisen with regard to the decree:

**NIE9 Omotola, J.A. Cases on the Land Use Act with Supreme Court Decision. Lagos: Lagos University Press, 1985.**

Omotola has selected cases wnich refine and throw further light on the various provisions of the Land Use Decree. As he notes in his introduction, "The Act is accepted by all to contain many provisions which defy understanding. A look therefore at how the judges go about the problem of their interpretation will no doubt facilitate the work of all" (p. iv). Cases are arranged by topic, under such headings as validity of the decree, jurisdiction, effect of certificates of occupancy on land claims, customary tenancy, revocation of rights of occupancy, with a final section on a Supreme Court decision ruling which stated that the decree is an ordinary statute and not part of the constitution. This particular ruling is important as the legality of the Act has been frequently challenged since the return to civilian rule in 1979. Many ambiguities remain and these are highlighted by the many contadictory court decisions noted in this collection. Omotola supplies a brief introduction which summarizes and emphasizes the salient issues of each case.

A study conducted in gun, Ondo, and Oyo states in 1982 investigates the "extent of implementation as well as the administrative, political and human problems encountered in the process of putting the Act into effect." This study is:

NI30 **Fabiyi,** Yakub L. "Land Administration in Nigeria: Case Studies of the **Implementation** of the Land Use Decree (Act) in Ogun, Ondo and Oyo States of Nigeria." Agricultural Administration 17 **(1984):** 21-31.

Examining applications for certificates of occupancy in the three states of Ondo, Ogun, and Oyo for the period from October 1978 to the end of 1981,

Fabiyi found varying rates of approval, with only 64 percent approved in Oyo State and 92 and 95 percent for Ogun and Ondo, respectively. He explains this difference by the fact that in Ondo state, with the highest rate of approval, there is no requirement that applications for certificates be publicly advertised, as is done in Oyo and Ogun. On the other hand, he attributes the low rate of approval for Oyo to the time delays caused by responding to the large number of objections filed against the applications. This explanation, though, is unsatisfactory for while it offers a reason for lengthy procedures, it throws little light on why Oyo applications are more often disputed than those in Ogun, where advertisement is also required.

Fabiyi believes that the implementation of the Land Use Act poses "almost intractable problems." These problems include: (1) the lack of a definition of what constitutes improvement to the land, (2) the need for an appropriate method for assessing the value of improvements, (3) the scarcity of replacement agricultural land for displaced individuals, (4) delays in and shortages of funds for compensation payments, (5) a shortage of trained personnel, and (6) official corruption. He recommends that the necessary training and funding be made available to see that the act is honestly and carefully implemented and that accurate records be kept of the application procedures. He thus sees that the problems can be remedied by a greater responsiveness and efficiency on the part of the administration rather than by any amendments to the act as it is now written. He concludes that "a successful land reform coupled with other agrarian reform measures . . . would go a long *way* towards revolutionalizing the country's agricultural sector."

## RWANDA

Registered land in Rwanda is largely limited to the urban areas, but population pressures on land have increased the numbers of disputes in recent years and in one commune in northern Ruhengeri in the late 1970s the residents themselves demanded that their fields be measured and registered in the presence of witnesses. This was done by commune officials at a cost of about S1 per family, and farmers in the area have handwritten notebooks in which are recorded their registered fields, dimensions, and witnesses. In the case of sales, both buyer and seller have witnesses and register the transaction.

One of the ways the government has attempted to solve land shortage is through the establishment of **paysannats,** rural settlement schemes for smallholders. Although certain activities and services are provided on a communal basis, landholding is individual. Each family is given rights to two hectares of land, and in exchange is expected to comply with various regulations in the Ministry of Agri-culture concerning crops and production techniques. The 2-hectare holding is not divisible and only the wife has the strict right to inherit her husband's land in the **paysannat.** If both parents die, the son (usually the eldest) designated by the father before his death as the new head of the family reports the death to the commune authorities and signs a new contract with the government in order to legalize his rights to the land. Sales and rentals of parcels are not permitted, but rentals do nevertheless occur. Production levels on the **paysannats** are not higher than elsewhere in the country, but the reason for this is apparently less the tenure arrangements than the government's sometimes onerous regulation of crop selection and crop prices. (See James C. Riddell and Carol Dickerman, eds., Country Profiles of Land Tenure: Africa 1986, LTC Paper no. 127 (Madison: Land Tenure Center, University of Wisconsin, 1986).]

A **paysannat** and ranching scheme in Mutara, in northeastern Rwanda, designed to provide individual title to land and various social and technical services for the very poor, was evaluated by Renè Lemarchand for the World Bank in 1978.

**R1 Lemarchand, Rene. The World Bank in Rwanda; The Case of the Office de Valorisation Agricole et Pastorale du Mutara (OVAPAM). Bloomington: African Studies Program, Indiana University, 1982.**

Lemarchand's evaluation is a very critical one (so much so, apparently, that the World Bank preferred not to make use of it), for he charges that the Bank's OVAPAM project in Mutara, rather than alleviating rural inequalities by providing services and land for those with little or none, actually increased the gap between those with wealth and power and those without. The project, which began in 1974, had two separate components: the establishment of a

**paysannat** of some 6,000 families and the setting up of cattle ranches for approximately 3,000 families. In all, the project was to cover some 51,000 hectares. **Paysannat** families were to receive title to 2-hectare holdings; the holdings were inheritable, but could be passed on to only one heir. Ranching families were to be given pastureland for their exclusive use and thus encouraged to substitute a more sedentary existence for their traditional pattern of transhumance.

In his investigations Lemarchand discovered that very different people had benefited from the project than had originally been planned. The two principal categories of beneficiaries he found were (1) descendants of traditional land-owning lineages in the area and (2) members of the emerging bureaucratic structure (teachers, extension agents, etc:). Many were absentee landowners, who then hired landless rural workers to farm their holdings. What had emerged, according to Lemarchand, was "a kind of retraditionalization of patron-client ties, with the beneficiaries acting as landed patrons vis-a-vis landless workers. The result, predictably, has been precisely the opposite of what the individualization of land tenure was supposed to achieve: to the extent that the relatively affluent were allowed to further enlarge their resource base, the rate of social inequality among the rural population has tended to increase accordingly" (p. 14).

Lemarchand attributes the failure of the project to reach the targeted beneficiaries to a lack of consideration of the social and political realities in Rwanda in general and in Mutara in particular. Project designers neglected to address very important questions of ethnic rivalries and power relations at both the national and local levels, questions of fundamental bearing on the operation of the project. As Lemarchand writes, "many fundamental issues--including access to land, price-setting for basic food crops, the distribution of social benefits, the recruitment of agricultural extension agents, and so forth--are often decided on the basis of sociopolitical considerations which bear only a distant relationship to the manner in which donor policies are conceptualized and implemented" (p. 2). By failing to address these issues, planners of the Mutara project (as elsewhere in the Third World) insured that the project would reinforce rather than alleviate the existing unequal relations between the power-holders and the powerless.

## SENEGAL

Although originally subject to the same land administration laws as the other francophone countries of West Africa, laws passed since independence **have established** in Senegal **a** new system of land tenure. As President Leopold Senghor commented at the time, it was the intention of the reformers to introduce **a** system which would provide for **a** middle course between the extremes of full individualization of title, on the one hand, and nationalization, on the other, a system which would encourage "free cooperation" (quoted in S3, p. 12). **Under** the National Domain Laws of 1964 and 1972 all land not previously registered is the property of the State. Moreover, there is to be no further registration of land. These laws also provide for the establishment of local councils to replace traditional authorities in supervising land use and distribution. These councils are empowered to draw up registries of land (livrets fonciers), which record allocations of land to individuals by the State. Although the two laws **have** now been applied throughout the country, only in rare cases **have** the councils begun to draw up the registries provided for by law. (For a fuller discussion of these laws, see James **Riddell** and Carol Dickerman, eds., "Senegal," Country Profiles of Land Tenure: Africa **1986,** LTC Paper, no. 127 (Madison: Land Tenure Center, **University** of Wisconsin, **1986),** pp. 158-163.]

Although the **1964** law disallows any further registration of land ownership rights, the new system provides for formal recognition of occupancy rights. This is discussed in:

**Sl Niang, M. "Reflexions sur la réforme foncière sénégalaise de 1964." In Enjeux Fonciers en Afrique Noire, edited by E. Le Eris, E. Le Roy, and F. Leimdorfer, pp.** 219-227. **Paris: Karthala, 1982.**

Niang likens the new system to a form of registration of rights to "occupy" rather than to own land, and sees the legislation as an attempt to unify customary, colonial, and Muslim land tenure systems. He states that the lack of **specific legal and administrative** frameworks in **the 1964 law** resulted the enactment of the 1972 **law,** which provided for rural councils to implement the laws.

The author believes that this new system is subject to abuse since legitimate land rights of customary holders may be undermined by those who better understand the law or who can better afford to undertake. the stipulated development. Further, this **law** is seen to disadvantage pastoralists who do not continually occupy their land. The article includes the text of the 1964 law.

Possible consequences of these two laws on the land tenure practices of one particular ethnic group are the subject of the following **article:**

**S2 Van der Klei, Jos. 'Customary Tenure and Land Reform: The Rise of New Inequalities among the Diola of Senegal." African Perspectives, no. 2 (1978), pp. 35-44.**

The author repeats Niang's assertion that loaning systems are being undermined by the Domain laws, and predicts the elimination of loans of land, thereby increasing inequalities among the population. He also predicts that town dwellers will lose rights to village land since they are not there most of the year to "occupy" it.

A broader study of the impact of the National Domain Law in the Basse Casamance in both rural and urban areas was carried out in 1982/83:

**S3 Hesseling, G., with M. Sypkens Smit. Le Droit Foncier au Senégal; L'impact de la réforme foncière en Basse Casamance. Leiden: African Studies Centre, n.d.**

Gerti Hesseling's inquiry into the impact of the land reform is constructed around two hypotheses: that application of the 1964 Law has been accompanied by economic and social change resulting in increasing numbers of conflicts and that the application of the law has varied widely, influenced by the composition of the rural council itself as well as by customary and Islamic practices. To test these hypotheses, she interviewed the presidents of twenty-five rural councils, analyzed records of rural council proceedings, and conducted more detailed research into land transactions and disputes in three specific locations, one in Ziguinchor, a second near the town, and a third in a rural village.

Hesseling found that the implementation of the 1964 Law (applied in Basse Casamance since 1979) has indeed been uneven, with very little centralized guidance given to rural councils and with a greater impact in the more urbanized areas. All of the presidents of rural councils voiced complaints about how the law has been implemented, many focusing on financial and administrative bottlenecks. In addition, rural council members are often without much experience in handling land matters and lack detailed knowledge about the 1964 Law, what little information they possess often having been acquired in a three-day seminar. This has led to instances of land allocations contrary to both the letter and the spirit of the law (for example, an allocation to a nonresident for commercial development as a tourist camp).

In interviews with twenty-one household heads in a small village near Ziguinchor, she found that despite a high number of transactions (mostly rentals) in land, almost none were carried out according to the provisions of the 1964 Law with the approval of the local rural council. Some individuals said they knew nothing about the rural council and its activities, while others said they did not go to the council to get land. In this village, apparently, Diola customary practices have adapted to permit land rentals to outsiders. In other ways, however, individuals are very much aware of the law and its potential impact: the incidence of land disputes has increased since 1979, with disputes over loaned land increasingly common. In some instances, these loans are several generations' old, and awareness of the law's provisions has pushed the parties to clarify their positions. Hesseling notes that most of the decisions have gone in favor of the borrower.

In Ziguinchor itself, there has been greater adherence to the provisions of the law, albeit unevenly. Virtually everyone is aware of the law, and individuals assume that it will eventually replace customary practices, although it has not as yet done so entirely. Many apparently attempt to ensure the validity of land transactions by resorting to particular features of both customary and "modern" systems.

In the more isolated rural areas, by way of contrast, the 1964 Law has had little effect on land use patterns and transactions. Smit, an anthropologist, returned to a small Diola village where he had studied land use in 1976, prior to the application of the law in Casamance, and found that the number of loans of flooded rice fields had actually increased since his original study. This was not expected, and he explains this result by the fact that endogamous marriage patterns have created close and overlapping family ties which support loans of rice fields. Loans of peanut fields, on the other hand, have fallen. Peanuts are a newer crop, and their cultivation is not closely linked with the social structure of the village. Then, too, peanut cultivation is not as profitable as it has been in the past. But Smit does not believe that individuals are unaware of the potential impact of the 1964 Law. Disputes over land are rare in this small village, and when they do occur, they are likely to be resolved by authorities such as senior family members, village elders, or the village chief and not by the rural council. Smit concludes that when change does come to land use patterns in the village, it will be introduced from the outside by development projects, by outsiders who wish to acquire land, or by "évolués" with "grandiose projects" in mind (p. 77).

Hesseling focuses on the impact of the 1964 Law in Ziguinchor alone in the following:

**S4 Hesseling, Gerti. "Land Law in a Semi-Urban Context: The Case of Ziguinchor." In Aspecten van Staat en Maatschappig in Africa, pp. 367-390. Leiden: African Studies Center, 1984.**

As part of a study of the nature and interaction of the customary and national land tenure systems in a peri-urban area, Hesseling describes the process of obtaining newly demarcated urban land from the State. Implemented in the 1970s in Ziguinchor, the program aimed in particular at the regularization of land rights in the lower-class compounds of the town. *An* applicant first went to a land allocation board, from which he received a "ticket" with the plot name and number written on it. *Any* person who could prove that he was a family head and that he lived in the compound with his family was entitled to a plot approximately 400 $m^E$. The next step required the applicant to obtain an official occupancy permit, an expensive and time-consuming procedure, and it was at this point that most people stopped. By the the early 1980s less than 3 percent of ticket holders had acquired the official permit, believing that the ticket conferred title.

Hesseling provides examples of four cases from Ziguinchor in which customary notions of land tenure are at odds with the modern, statutory system and *shows how* these four individuals respond differently to challenges to their land rights.

In the following paper, Hesseling investigates in greater detail the disputes arising from the allocation process in Ziguinchor:

**S5 Hesseling, Gerti. "Land** Conflicts and the Law in Ziguin-**chor (Senegal)."** **Paper presented at the Second International Symposium on Urban Anthropology, Leiden, 16-18 July 1985.**

Allocation of land in the newly subdivided quarters of Ziguinchor was highly contentious. Many houses were demolished (60 percent) as land was assigned to individuals who had not previously occupied it. In addition, in almost a third of the instances, the allocations gave rise to disputes. In this paper Hesseling discusses the nature of these disputes as well as the institutional framework for their resolution.

Most of the disputes are the product of what, under Senegalese law, is termed "illegal occupation," occupation of land to which one does not possess formal legal rights. In many countries squatting is not prosecuted, but in Senegal this is a criminal offense, and the infraction is made all the more common by the fact that the National Domain Law of 1964 does not recognize either customary rights to land or land rights acquired through transactions not formally registered with the appropriate government offices. In Ziguinchor, allocation of plots to individuals as compensation for land lost elsewhere meant that a significant number of residents were displaced and many chose to dispute the decisions of the Plot Allocations Board.

Few, however, resorted to the courts, and instead pressed their claims through a series of administrative commissions established to review the cases. In general, the commissions upheld the decisions of the Plot Allocations Board, reaffirming the rights of the allocatees over those of the occupants and the primacy of the 1964 Law. But most of those deprived of land and houses have not been reconciled to their loss and have continued to dispute the allocations. In 1983, a new review commission was appointed, and its decisions and proceedings indicate a greater willingness on the part of the government to acknowledge the continued adherence of much of the population to customary procedures and land rights. Unlike previous commissions, this one includes, in addition to officials, representatives of local residents; it also conducts its proceedings more in accordance with customary norms than did its predecessors, using local languages rather than French and holding open meetings. Al-though **Hesseling** acknowledges that it is still too soon to see what the impact of this new commission will be, she notes that "as far as form is concerned some concessions **have** been made to traditional law."

Other studies have considered the application of the new land laws in the rural areas of Senegal. The following two articles focus on the Siné Saloum region:

**S6 Faye,** J., **and Niang,** M. **An Experiment** in **Agrarian Restructuration and Senegalese Rural Space Planning."** **African Environment E:4** (1977): 143-153.

and

**S7 Stanley, *Bob.* "Senegal Tackles Land Issues."** **International Development Research Reports 4:4 (December 1975):** 10-11.

Both articles describe field consolidation in the Siné Saloum region of Senegal whose objective was to facilitate the intensification of agriculture. Stanley's article is a brief, informal description of the consolidation process in the village of Thyssé-Kaymor, where 322 fields with and average size of 2.7 hectares were consolidated into 248 fields with an average size of 3.2 hectares, while Faye and Niang discuss a broader study of land tenure practices before and after consolidation that they carried out. In all, some E,500 hectares of land holdings (including Thyssé-Kaymor) were consolidated. In both studies the authors found that the farmers participated in consolidation as a way to secure their rights to land through the quasi-official demarcation and mapping process, rather than from a desire to become more economically efficient. Nevertheless, consolidation is starting to show some of the benefits planners had originally hoped for. According to Faye and Niang "we are beginning to perceive changes in the attitude of the peasants who, after two crop-years, **are** appreciating the new shapes and sizes of the plots which facilitate the use of agricultural equipment, as well as the existence of paths for its transportation and cattle tracks" (p. 152).

**Others have** focused on the effects of the **1964** National Domain Law on particular irrigation projects and the ways in which the provisions of the law may work to the detriment of the success of the schemes.

**S8 Diao, Mbaye. "Le projet de wise en valeur de la vallée de Baila en Basse-Casamance (Senegal)."** In **Enjeux Fonciers en Afrique Noire, edited by E. Le Bris, E. Le Roy, and F. Leimdorfer, pp. 228-239. Paris: Karthala, 1982.**

Diao's focus is a rice-cultivation scheme in the Basse-Casamance area of Senegal, and his concern is that the new land tenure system be introduced in such a way as to enhance the success of the project. Summarizing the findings of a survey of farmers in the area, he writes that most villages are not happy with the rural councils that have been established to supervise the land tenure system and to centralize control over land allocation. Many farmers in the area would like to see land restored to its "owners," and to limit tenants' access to land through the owners themselves. Diao also notes that holdings are highly fragmented and often dispersed over a wide area. The new system of land tenure has not solved these problems, or, given the lack of a rural cadaster or surveying program, is it likely to do so. Instead, disputes over land rights and property boundaries **have** increased.

In order to provide for the management of water distribution and control over problems of salinization, necessary activities in the rice cultivation project during the interim period before the rural councils become fully functional, Diao suggests the appointment of a committee consisting of both customary land authorities **(chefs de** terre) and rural council members. Such a committee, by providing a forum for landholders to make known their views, would ensure an orderly transition to the new system of land tenure and at the same time enable the rice cultivation project to proceed effectively.

The largest and most expensive irrigation schemes are those along the Senegal River, and here, too, researchers have considered the potential impact of the national law.

**S9 Weigel, Jean-Yves. "Organisation fonciere et opération de developpement; le cas des Soninke du Sénegal." In Enjeux Fonciers en Afrique Noire, edited by E. Le Bris, E. Le Roy, and F. Leimdorfer, pp. 315-323. Paris: Karthala, 1982.**

Considering the effects of an irrigation project in the Bakel area of Senegal on the customary land tenure system of the Soninké, Weigel concludes that the project's system of land allocation, carried out in accordance with the 1964 Land Law, has permitted a more egalitarian distribution of land. Whereas the customary system was an extremely hierarchical one, in which land-less individuals of lesser status (including descendants of captives and artisans) derived land rights only through relations of dependence with members of the noble caste, the new legislation has permitted allocation of land irrespective of social status. As a result, although nobles continue to exercise control over recession-agriculture land, lesser groups predominate among those allocated irrigated land. This in turn has permitted them to escape the control of the nobles and led to the diminution of the tatter's authority. Weigel points out, however, that the irrigation scheme is new, and that any analysis of its effects can be only provisional.

**S10 Seck, Sidy M. 'Aspects fonciers et organisationnels dans le développement de la culture irriguée." Saint Louis: Organisation pour la Mise en Valeur du Fleuve Senégal, March 1985.**

Seck focuses on land tenure and organizational factors in the development of irrigation projects on both sides of the Senegal River, in both Senegal and Mauritania. Although the two countries have national land tenure laws quite different in their emphasis, Senegal's with its emphasis on use rights and Mauritania's with its provisions for individualization and privatization of title, similar land tenure concerns and problems have emerged in the implementation of irrigation projects. On both sides of the river the potential for social and political change resulting from projects is very great; introduction of more egalitarian access to land will alter the hierarchical structure of local society--a result that few would find objectionable. At the same time, however, the organizations established to manage the projects have sometimes found their efforts blocked by local groups and authorities who are reluctant to permit their land to be used for expansion of projects or who refuse to conform to the mandated development conditions. Projects also suffer from a lack of clear definition of participants' rights; in many instances disposal rights and conditions for forfeiture of allocations have not been spelled out. Seck also sees the need for more cooperation between the governments of Senegal and Mauritania to ensure, among other things careful harmonization of land tenure policies in the irrigation schemes.

The Seychelles have been both a French and a British colony, and this dual heritage has left its imprint on land law and registration. Until the **passage** of new land legislation in 1964 and 1965, land law was based on the French Civil Code.. A Deeds Registry had been established as early as 1790, but the records were scattered--early records were kept in Mauritius and only after 1903 were deeds recorded and the registry maintained in the Seychelles. The 1965 Land Registration Ordinance provided for the registration of title on a voluntary basis, and the result was that roughly half of the parcels on Mahé (the main island) were surveyed in the following decade. In the late 1970s, a project for the systematic and compulsory registration of title on Mahé was begun and is apparently still continuing.

Prior to the enactment of the 1965 legislation, two separate studies were made of the survey and deeds registration system and recommendations for its restructuring submitted. They are:

**SY1 Mitchell, A.P. "Seychelles: A Report on Survey and Land Registration.' Unpublished report submitted** to **the Governor of the Island of Mahé, Seychelles, 1959. Mimeographed.**

Although in the Seychelles much land was originally divided into strips using metes and bounds, the **markers** used were impermanent and of little use today in surveying for registration and titling. Land was originally divided into long, narrow strips from the coastal plain into the mountains. Subsequent divisions often maintained this pattern to assure each new holder a portion of the coastal plain, making **resurvey** efforts expensive and disputes frequent.

Mitchell calls the Deeds Registry a costly waste that does nothing to **facilitate** settling **land** disputes. **However, he** feels that the implementation of systematic adjudication and titling would not justify the costs involved unless **the** larger **estates were partitioned.** The author nevertheless makes suggestions for rearranging the current organizational structure.

**The second study also provides** additional background on previous surveys:

**SYE McEwen, A.C. 'Land Survey and Land Registration in Seychelles.' New York: United Nations, Department of Economics and Social Affairs, 1961.**

McEwen was asked to review surveying problems and needs in the Seychelles as the necessary first step to introducing a better system of land registration. Written from his perspective as a surveyor, McEwen sees part of

the problem as a lack of trained surveyors and regulations governing survey standards.

The author cites problems with deeds registration and states his opposition to piecemeal, voluntary registration of titles. He further suggests that arbitration would be a viable method of determining ownership in boundary disputes arising out of any adjudication and titling program.

A third report on the land registration system in the Seychelles was written by Lawrance in 1979, after title registration in Mahé had begun and in response to the govgrnment's interest in implementing systematic adjudication and registration of land on the island.

**SY3 Lawrance, J.C.D. 'Note on a Visit to the Republic of Seychelles.' London: Overseas Development Administration, 1979. Mimeographed.**

Lawrance notes that progress in registering land since 1965 has been slow and sporadic. Out of a total estimated 8,541 parcels on the whole of Mahé, only 3,940 had been surveyed and even fewer (660) registered by 1978; (7,800 parcels are estimated to be less than 1 acre in size). Lawrance also mentions that the government now favors systematic registration of land and he endorses this plan of action, citing benefits of titling for both individuals and government. For individuals, he sees reduced conveyancing costs, reduced litigation, and increased access to development credit. For government, the author envisions more reliable land statistics to aid land use planning or reform, more efficient control of land transactions, facilitation of government land acquisition, and registry fees that will finance the registration department. A substantial part of the report is devoted to estimates of the steps, costs, equipment, and staff a program of systematic land registration will require.

A summary of land surveying and registration procedures in Seychelles over the years is provided in:

**SY4 Dale, P.F. Cadastral Surveys within the Commonwealth. Overseas Research Publication, no. 23, pp. 262-263. London: Her Majesty's Stationery Office, 1976.**

Dale describes the surveying policy currently being applied in the Seychelles and adds the criticism that this policy is strong on technical details and completely divorced from human and land matters.

Of minor interest is a description of a survey/mapping project carried out on the island of Mahé beginning in 1980:

**SY5 Opie-Smith' P. "The Organisation of Map Revision in a Small Country." Paper presented at the 1983 Conference of Commonwealth Surveyors, Paper No. D1. Mimeographed.**

This document includes a map showing the areas already mapped.

A dual system of land tenure has existed in Sierra Leone since the middle of the nineteenth century. In Freetown and the surrounding Western Area, land can be registered as freehold and recorded as such in a deeds registry. No figures are available as to how much land this represents, but even if the entire Western Area were free-hold, this would amount to only about 250 $mi^2$, or less than 1 per-cent of the area of the entire country. In the Provinces areas (the rest of the country), however, customary tenure systems have continued in force, with officials reluctant to extend freehold registration to this **area** lest local people lose their land rights altogether. Although most rural land transactions in Sierra Leone thus continue to occur under customary tenures and are not registered, there has been increasing discussion about the advisability of implementing a more "westernized" system of land management, including registration.

The best summary of land registration, earlier studies of the systems, and recommendations for change is provided by L.C. Green, in the appendix to:

**SL1 Harrell-Bond, Barbara, and Ulrica Rijnsdorp. "Family Law in Sierra Leone; A Research Report." Appendix A, "Land Law in Sierra Leone,"** by L.C. **Green,** pp. 118-136. Lei-**den: Afrika-Studiecentrum, 1975.**

Green discusses the application of freehold tenure and establishment of a deeds register in the Western Area, but notes that despite their existence, there remains unregistered land in this region today. There have been several recommendations and attempts to extend freehold title to the Provinces Area of Sierra Leone, but they have been resisted by customary chiefs and local populations, who fear the loss of both power and land to the economically superior Creole population concentrated in the Western Area. Green himself favors some sort of registration of rights, whether freehold or customary, and suggests that the deed registry be replaced by a title registry. His belief is that customary systems do not provide adequate security of tenure and cannot change rapidly enough to meet changing conditions. He asserts that changing circumstances, including the spread of cash cropping, the development of land markets, greater complexity in land rights, the need to control the distribution of interests in land, increasing numbers of land disputes, and the expansion of agricultural credit, make the introduction of land registration (in the name of either the individual or the family) necessary.

In the main report itself, Harrell-Bond and Rijnsdorp support Green's recommendations, but caution that that stranger farmers may be victimized by the registration process as the original family reasserts its rights to land lent long ago. They suggest that a specified period of residence be set as

the criterion for permanent rights over land. Otherwise, they warn, "under the present situation, land registration could only contribute to the existing confusion" (p. 65).

An earlier study of the customary land tenure system and its effects on agricultural production came to the opposite conclusion and recommended that registration of individual freehold not be instituted in the Provinces area of the country:

SL2 Barrows, Richard Lee. "Land Tenure and Agricultural De- **velopment** in **Sierra** Leone." M.A. thesis, **University of Wisconsin-Madison,** 1970. Published as "African Land Reform Policies: **The Case** of Sierra Leone," Land Economics 50 (1974): 402-410.

Barrows argues against the conversion of customary tenure to "legal, individualized" tenure, asserting that the possible effects on the agricultural system have not been carefully studied, that the result is likely to be a few laxge farmers and many landless peasants, and that it will not prove a "significant aid to development" (p. 92). He points out that in the Western Area, where there is registered freehold land, there is also a substantial amount of landlessness. Rather, Barrows suggests that production can be raised with new inputs and that the question of credit and investment be solved in other ways such as through a program of government subsidies to farmers.

Attitudes toward registration are the subject of the following study:

SL3 **Turay, Harry. "Land Tenure Systems in Sierra Leone: Perceptions of Land Owners of Problems Related to Land Tenure and Action Policies Toward Development; A Project Report." N.p.: Njala University College, 1980.**

**In a random survey of 4,503** households throughout Sierra Leone, Turay questioned subjects about their attitudes with regard to land registration. Respondents said that they favored registration for several reasons: to help prove ownership, to prevent quarrels over land, and to improve the possibility of receiving government assistance for improving the land. Turay also asked in whose name land should be registered, in the name of the family, the head of the household, or the individual. His results showed that 58 percent favored registration in the name of the family, while 32 percent preferred registration in the name of the household head. Those who did not favor this latter course cited the indivisibility of family and communal land, as well as the difficulty of family members in claiming land at the household head's death. Registration in the name of the individual was overwhelmingly disapproved of by 87 percent of the respondents. In their rejection of individual title, respondents gave the reasons that such registration would bring problems for the family, that there was insufficient land to share, and that the eldest son should inherit.

Generalizing from data on land acquisition collected for the 1970/71 Agricultural Statistical Survey, Kamara suggests that several steps be taken to regulate transactions in the future.

**SL4 Kamara, James N. 'Marketing Transactions of Agricultural Land in Sierra Leone.' Paper presented at the Land Tenure Systems in Sierra Leone Conference, 8-9 February 1980. N.p.: Njala University College.**

The Agricultural Statistical Survey data showed that only .42 percent of the total agricultural land in Sierra Leone had been acquired by purchase. (Interestingly, in the Western Area, where most land is registered and the land market more active, 3.17 percent of the land had been purchased.) Kamara argues, however, that market transactions are likely to be increasingly important in the future and that individual ownership will become more prevalent. He also believes that customary land tenure practices, which forbid the sale of communally or family-held land, interfere with the operations of the land market. He therefore recommends that that a coherent national policy regarding land use and transactions be established and that as a first step, a careful study of land alienation be carried out. He also suggests that land use plans be established for each province. Kamara does not discuss land registration at any point in the paper.

## SOMALIA

There is little literature on land administration, land tenure systems, or processes of land registration in Somalia. This information is sensitive because the realities of land administration "do not necessarily conform to law, policy, or political ideology, and because . . . [these] political processes involve the interests of influential individuals and powerful interest groups" (Hoben, S0l, p. 2)

It has been estimated that no more than 10 percent of the land under cultivation has been registered and that this 10 percent presents problems because government records are unreliable and difficult to interpret. The Land Law of 1975 declares land in Somalia the property of the State, but permits registration of long-term leases. The first articles reviewed here deal largely with land issues raised by the 1975 Law.

A broad, anthropological review of land tenure issues is presented by Allan Hoben:

**SO1 Hoben, Allan. "Resource Tenure Issues in Somalia." Paper prepared for USAID/Somalia, January 1985. Boston: Boston University, African Studies Center.**

Hoben writes that information about land tenure systems and processes of land registration is scarce. The realities of land administration are not necessarily in line with legal dictates, but rather are dominated by the interests of influential individuals and powerful interest groups. He notes that there has not been a **cadastral** survey or comprehensive land-use plan drawn up for Somalia. Hoben's estimate is that no more than 10 percent of the land under cultivation has been registered. These government records are unreliable and difficult to interpret.

Hoben's paper covers a variety of topics, including an overview of Somalia's indigenous tenure systems and Somalia's experience with refugee settlements. The most relevant parts of the paper cover the legal and political instruments that have been used to alter the indigenous system (Section two) and the Land Reform Law of 1975 (Section three). The author notes that successive governments, colonial and Somali, have attempted to substitute central authority for the decentralized authority of the "traditional" clan system. These governments have sought to reduce the influence of the clans in conflict resolution and political control. Consequently, national law gives virtually no recognition to customary rights or to the institutions that have enforced them. He writes that at many points, custom and law contradict one another.

In a discussion of legislation (pp. 31-39), Hoben reviews the land laws of 1911 (Law 820), 1929 (Law 226), 1966 (Draft Land Law), and 1973 (Law 40). Most relevant is the discussion of the Land Law of 1975 (pp. 32-39), the most striking feature of which, according to Hoben, is the lack of recognition of customary rules and procedures. These older rules and procedures, however,

still influence access to, and disputes over, land. Further, not only does the law provide insufficient attention to the problem of registration, it also creates conflict between the State and the clans. Although the State desires to reduce clan influence, the law relies on clans at the local level to enforce policy. Consequently, the process of registration has generated conflict over the allocation of land.

As regards registration procedures (pp. 35-39), Hoben states that there are no land maps and thus no way of knowing how much of the arable or cultivated land in a district has been leased. Additionally, agricultural coordinators are poorly trained and underpaid. The registration process itself also presents problems. The policy objective of preventing concentration of land in private hands appears to be easily circumvented: the Ministry of Agriculture is not equipped to prevent people from registering more than one block of land in different names or through other corporate or cooperative entities. Hoben writes:

> The indeterminacy of land records presents difficulties for land use planning and generates conflicts which inhibit project implementation and rural development. In the absence of a cadastral survey and adequate assessment of land potential, government officials have no way of knowing how much land has been registered or what portion of the cultivated or arable land it represents. Nor has it proven possible to avoid overlapping and duplicate claims to land [p. 39].

[Note: A revision has been published as "The Political Economy of Land Tenure in Somalia," in Land and Society in Contemporar✓ Africa, edited by R.E. Downs and S.P. Reyna (Hanover, NH: University Press of New England, 1988), pp. 192-220.]

Recent Somali land legislation, including the 1975 Land Law, has been translated into English:

**S02 Beileh, Abdirahman, trans. 'Somali Legislation Relating to Land.' Paper prepared for the Land Tenure Center, February 1985. Madison: University of Wisconsin.**

The four land laws translated from Somali to English are: (1) Law 73 of 21 October 1975 (Agricultural Land Law), (2) Decree of 16 October 1976 (Law 23 on Agriculture), (3) Law 41 of 13 September 1973 (Urban Land Distribution), and (4) Decree 31 of 31 December 1973 (Nomination of Chairpersons of Regions and Districts).

The first law, noting that the Somali constitution provided that **all** land is owned by the government and managed by the Secretary of Agriculture, stipulates that all land must be registered. It states that all parties, whether private or public, must possess land-use permits. Duration of the permit and maximum size of holdings allowaole are covered in Articles 7 and 8, respectively. Other issues covered by the law include: nationalization of excess land (Art. 9), restrictions on the use of land (Art. 12), rights and responsibility of the farmer (Art. 13 and 14), and most importantly, registration procedures (Art. 19 and 20).

The second piece of legislation, Law 23 on Agriculture, briefly deals with the procedures for acquisition of land by special agencies (defined as an

agency in which the government is part owner). It also covers the circumstances that result in repossession of land. Land that is not used for agriculture or livestock for a period of two years, for example, can be repossessed and reallocated. The law discusses issues of compensation for repossessed land as well as taxation of allocated land.

The third law, Urban Land Distribution, addresses issues of urban land tenure. Articles 27 and 28 cover registration, but unfortunately, like many of the provisions in the other laws, the articles are extremely brief and not easily interpreted--i.e., Article 27 states that all land must be registered and that this is the responsibility of the Administrative Department and its district and regional representatives and Article 28 states that the land register is open for public examination during office hours and that it is only open to those who pay the land taxes.

The fourth law, Nomination of Chairpersons, has no direct bearing on registration issues in Somalia.

A paper by Marco Guadagni reviews the origins of land law in Somalia in the brief period from 1892 to 1912.

**S03 Guadagni, Marco** M.G. "Colonial Origins **of** the Public **Domain in Southern Somalia (1892-1912)." Journal of African Law 22 (1978) : 1-29.**

Although the paper does not directly discuss registration issues or provide specific examples of the registration process in Somalia, it does provide an excellent overview of the early development of land law in Somalia and its relationship to European, and specifically Italian, law.

Recently the Land Tenure Center carried out a study for USAID in Shalambood on the lower Shebelli in Somalia to evaluate land and water resource issues in an 8,500 hectare area that has been proposed for agricultural rehabilitation. Results of the research are presented **in:**

**SO4 Roth, Michael et al. An Analysis of Land Tenure** and **Water Allocation Issues in the Shalambood Irrigation Zone, Somalia. Paper prepared for USAID/Somalia, March 1987. Madison: Land Tenure Center, University of Wisconsin.**

The goals of the study were to (1) evaluate security of tenure, the system of land registration, and mechanisms for dispute resolution in the project area; (2) analyze the demographic composition of households with respect to economic size of land holdings and the willingness and ability of farmers to take advantage of the opportunities offered by the scheme; (3) provide information on the current system of water distribution; and (4) analyze problems related to livestock damage to canals and irrigation infrastructure. Most relevant from the perspective of land registration are the second and third sections of the paper, which discuss land tenure structure and organization, and security of tenure and land registration, respectively. The second section contains a review of the legal framework for land tenure (including the Agricultural Land Law of 1975), geographical characteristics of the region, and large farm and smallholder characteristics.

The third section of the paper analyzes data collected in a survey of 56 smallholder farmers in the Shalambood Irrigation Zone and from interviews of government officials and local authorities in the area. Their findings suggest that registration of land does not necessarily guarantee either security of tenure or credit for the landholder--although farmers' perceptions are that registration can protect them against land-grabbing by outsiders. The incidence of outsiders actually taking land in the area is quite low--in the one case in the area that the researchers were told of, local authorities ruled against the outsider--but farmers believe the threat to be a real one. More frequent are disputes over use rights, which may arise when a renter refuses to relinquish land acquired on a temporary basis, and it is usually unregistered land that is at issue.

Farmers believe that registration will give them security, but in practice most smallholders have not registered their land. Roth et al. estimate that only 5 percent of smallholder farms are registered whereas all of the large private farms have been. In 1986, 350 instances of registration in the project area were noted in the local Land and Water Office in Genale, almost all of which involved larger areas of land. In the survey area, registered farms averaged 5.5 hectares in size, and non-registered holdings only 1.6 hectares; women were especially unlikely to register their holdings. When asked why they had not registered their land, farmers cited problems of nigh costs, complicated procedures, and long delays. (The procedure should take only several months, but has been known to go on for as long as four years.) Officials, on the other hand, attribute low levels of smallholder registration to laziness and a lack of information on the part of farmers. It is probably true that farmers are not always well-informed about the process, but it is also clear true that registration is expensive and time-consuming. Particularly costly is the need for the landholder to pay for having a map of his holding made. It may also be necessary for the applicant to make one or more trips to Mogadishu to move the papers along to the Ministry of Agriculture, where final approval is given. Another factor that may discourage registration is the provision of the 1975 Land Law that limits registered title to one per house-hold. One-third of the households in the survey area, the researchers found, had multiple parcels, and were the provisions of the law to be strictly en-forced, they could not be registered.

Among the claims made for the benefits of registration is that landholders are likely to use their land more productively, investing in inputs and having access to credit to make more costly, long-term improvements. Roth et al. could not test this, however, because of several important complicating factors. Because registered land in Shalambood also had the best access to irrigation, it could not be compared with unregistered land. Moreover, access to credit was more often a function of farm size than of registration status. Land is seldom used to secure a loan. The attractiveness of registered land as collateral is limited by the fact that under the 1975 Land Law, land cannot be sold, rented, sublet, or otherwise transferred. Instead, other assets such as bank accounts, cattle, or buildings are put up as collateral. Small farmers who lack capital or other mortgageable assets use group guarantees or risk-snaring through a cooperative to secure credit. Another complicating factor in attempting to measure the value of registration, Roth et al. found, was that the farmers with the best production and marketing arrangements were those on cooperative-affiliated farms who lacked the individual title which registration advocates proclaim necessary.

The authors suggest a number of ways in which the registration process needs to be amended. Perhaps most important is their recommendation that the process be made less time-consuming and costly. They recommend that final approval for registration be granted by the regional Land and Water Office in Genale rather than by the Ministry of Agriculture in Mogadishu, as is now required. Another obstacle at present is the requirement that land divided among heirs must be fully re-registered, a cumbersome and costly process which many prefer to avoid altogether. In order to prevent wholesale de-registration and as a way of lessening the increased numbers of inheritance disputes that will undoubtedly occur in the future, Roth ,et al. suggest that a simplified procedure be introduced for cases of subdivision of already registered land. They also believe that the government must recognize that many farmers have multiple holdings and permit their registration. Such a change will benefit primarily the smallholders. (Roth et al. found that in most instances, the total area of these multiple holdings was less than 30 hectares per farmer.) And finally, it is recommended that the government provide more affordable map-drafting services.

## SOUTH AFRICA

In surveying the land registration literature on South Africa, one is continually frustrated by the narrow focus of the work. Some references deal specifically with the technical aspects of the cadastral surveying and land registration system, while others concentrate on social and economic issues surrounding the land without relating them to the registration system. It is only in the past few years that studies of a more multidisciplinary nature have been undertaken.

There is no shortage of references on the technicalities of the land registration system in South Africa, nor on the legal intricacies of various statutes associated with land, but there is a dearth of follow-up studies dealing directly with the evaluation of systems in operation. The work carried out by anthropologist Monica Wilson in the Keiskammahoek area of the Ciskei is a notable exception.

**SA1 Mills, M.E. Elton, and Monica Wilson. Land Tenure. Keiskammahoek Rural Survey, vol. 4. Pietermaritzburg: Shuter and Shooter, 1952.**

As part of a wider study of social and economic conditions done in 1949/50, Wilson and Mills looked at three villages in the Keiskammahoek area in which four different systems of land tenure--freehold, quitrent, customary, and trust--prevailed. In their analysis, the authors note, "We have been particularly concerned to discover the relation between the different types of tenure and land use, the standard of living, migration to towns, and the stability of the family" (p. 1).

Mills and Wilson found that although the size of holdings varied from one village to another, there was little difference with regard to crops, agricultural techniques, or productivity. Owners of quitrent and freehold land tended to be better-educated and somewhat better-off than holders of customary land or of trust lands (leaseholds made available to the landless after 1936 as European-owned farms in the area were purchased by the South Africa Native Trust), but this distinction did not express itself in long-term investment in farm improvements, only in the quality of housing. With regard to social and demographic characteristics, however, tnere were very important contrasts between freehold and quitrent holdings, on the one hand, and customary and trust holdings on the other. Households in the freehold and quitrent villages tended to be larger, with more adult males continuing to live and farm with their parents. This difference the authors attribute to the greater security in inheritance patterns afforded under the freehold and quitrent systems--sons are assured they will inherit, whereas in the customary and trust areas, where there are restrictions against multiple holdings and where chiefs and village councils retain responsibility for the allocation of holdings, sons set up separate households on land given to them by their fathers whenever possible. Emigration is also related to tenure type: males may leave freehold and quitrent villages secure in the knowledge that when they return they may claim

their holdings, while emigrants from customary and trust areas risk losing land if it is left unfarmed or if the annual taxes on it are unpaid. The result is that fewer men from freehold and quitrent villages migrate permanently, losing all contact with their homes. Freehold and quitrent tenures also afford a certain amount of security in access to land for unmarried women.

These differences between tenure types notwithstanding, there are a number of important similarities that are the product of common constraints inherent in the South African political economy. Land rights are valued less for their economic value than for the security they afford because the areas in which Africans may own land are carefully limited. As a result, the land market does not operate in a "normal" fashion, and land sales, even in freehold areas, are rare, occurring only when the landowner finds himself in very dire straits. Nor is farming a profitable enterprise. The income from semi-skilled labor in town exceeds that produced by farming, and the inevitable consequence is that the enterprising are more likely to work in town than in the rural areas. Moreover, even if the return from agriculture were better, there is a shortage of capital or even access to credit for investment among all farmers, regard-less of tenure type. Thus, these common constraints act to prevent the emergence of other differences between tenure types.

In order to fully understand the extremely inequitable land arrangements in South Africa, where 11 percent of the population holds over 8U percent of the land, it is necessary to examine land alienation from an historical perspective. The following is a comprehensive history of the occupation and ownership of **land:**

**SA2 Davenport, T.R.H., and R.S. Hunt. <u>The Right to the Land.</u> Cape Town: David Philip, 1974.**

This book contains a collection of approximately 150 documents (dating back to 1b57) *which* describe the introduction of European tenures into South Africa and the subsequent clash between the indigenous inhabitants and the European immigrants over the question of land rights.

Many people feel that apartheid was first institutionalized in the Native Lands Act of 1913, which set aside specific areas for black occupation and thus instigated a policy of separate "development" among the various races of South Africa. Although these areas, known as "scheduled areas," were extended slightly by the passing of the Native Trust and Land Act of 1936, this did not effectively address the problem of the inequitable distribution of land in South Africa, but instead served to consolidate the principle of apartheid. (References to several detailed histories of apartheid are given at the end of this section.)

Apartheid became even further entrenched by the passing of the Group Areas Act, originally enacted in 1950 and revised in 1957 and ayain in 1966, *which* provided for the creation of separate residential and business areas in cities and town for the various racial groups. A detailed review of this act can be found in the following publication:

**SA3 Van Reenen, T.H. Land, Its Ownership and Occupation in South Africa; A Treatise on the Group Areas Act. Cape-town: Juta, 1966.**

Van Reenen examines the Group Areas Act from a lawyer's perspective, beginning with the premise that the lawyer in South Africa has no right to question the merits of the policy underlying an act nor should he take responsibility for the social and economic consequences of the law. The lawyer's role is to interpret the letter of the law and administer it through the prescribed channels. Despite this restriction, the book is relevant because it describes one of the most far-reaching instruments of the apartheid policy, a law that has dictated population and land distribution for the past two decades and pervaded the entire social structure of the country.

In 1955 the Tomlinson Commission recommended that blacks be given freehold title to their land. Initially the government rejected this principle, but when they did finally accept it, they began pursuing a vigorous "homelands" policy, whereby each black ethnic group would be granted its own independent state. In 1976 Transkei became the first homeland to accept independence and it was followed by Bophuthatswana, Venda and Ciskei. Various other "national states," such as KwaZulu and Lebowa, were also designated for independence but have refused to conform with the government's plan of forming a constellation of independent states.

**Mafeje provides an historical overview of the development of the homelands in his** 1975 study for the Food and Agriculture Organization:

**SA4 Mafeje, Archie. "Study on Land Tenure Conditions in South Africa." Document No. 35447 El. Rome: Food and Agriculture Organization, December 1975.**

This is an excellent account of the historical evolution of the homelands and the land tenure practices among different groups in South Africa. Beginning with the indigenous inhabitants, their modes of production and social structures, this study includes a brief discussion of the Dutch and British colonial periods and then concentrates on the development of land tenure systems since 1910.

Legislation passed in 1913 and 1936 relegated black farmers to certain restricted **areas** which amounted to less than 14 percent of the total land area of South Africa. Reserve areas were first delineated under the 1913 Native Lands Act and later expanded in order to "alleviate pressure" under the provisions of the 1936 Native Trust and Land Act. The author describes the impact of these laws on the various racial groups and shows how they have instit_utionalized the concept of apartheid. Mafeje estimates that approximately 6 percent of the land in the black **areas** is held under individual land tenure and explains that this land was purchased before 1913 in some parts of Ciskei, Transkei, and Zululand--in what was to become "scheduled areas" after 1913 (p. 24). Although he alludes to the registration of black family plots, ne unfortunately gives no details of land registration procedures involved with

other types of land. Despite this limitation, however, this report provides a valuable insight into the sociopolitical aspects surrounding rural land in South Africa.

Discussions of land tenure within the independent homelands of Bophuthatswana and Transkei are provided in the following four publications:

**SA5 Jeppe, W.J.O. Bophuthatswana; Land Tenure and Development. Cape Town: Maskew Miller, 1980.**

Bophuthatswana is one of five so-called independent national states or homelands in South Africa. Although the author regards land registration as "purely an administrative matter" (p. 210), he does recognize that it is an important tool for land tenure reform. Various indigenous Tswana rights to land are identified and examined. H breakdown of the different systems of land tenure in Bophuthatswana reveals that 42.5 percent is tribal land, 41.6 percent is trust land, 14.6 percent is private land, and the remainder is in the urban and unclassified categories.

Jeppe recommends the implementation of a registration system in the tribal areas of Bophuthatswana which would incorporate three categories of rights--residential, cultivation and grazing. Individual fields should be surveyed to provide the spatial definition for cultivation rights, but the surveying system should be simple and cheap. ['this was attempted in tribal areas in KwaZulu, where it was found to be inappropriate; see Jenkins, SA26.] This book does provide a useful description of land tenure in Bophuthatswana, but does not deal with land registration in any detail.

**SA6 Prinsloo, D.S., et al. The Property *Rights* Institution as a Detriment of Economic Progress in Traditional Agriculture." In Transkei Birth of a State. Conference Report No. E. Pretoria: Foreign Affairs Association, 1976.**

**SA7 Southey,** C. "Land Tenure in **the Transkei: A** Report Prepared for **the Planning Committee." Unpublished** report, **[1981].**

The Transkei Government commissioned Southey (a Canadian) to prepare a set of recommendations on "whatever land tenure issues seemed most relevant" to the development of the agricultural sector in Transkei. Over 87 percent of the land in Transkei is held under customary tenure with government-owned land making up 4.2 percent of the remainder. Government-owned land includes quitrent land (33 percent) and land held under a certificate of occupation (54.3 percent). Although this report concentrates on tenure issues in tribal areas, it does deal in some detail with quitrents and certificates of occupation. Unfortunately, no effort was made to determine the differences in agricultural production between land held under these tenures and those of a customary nature.

While recognizing the importance of the tribal system in providing social security, subsistence and a cultural base to raise children, Southey asserts

that in order to develop a successful agrarian sector it will be necessary for Transkeians to move away from traditional strategies. He does not, however, suggest granting freehold, as contemplated in the Government's development plan, but favors a "nybrid" approach. He recommends that separate tenure arrangements be applied to (a) residential and garden lots, (b) arable lands, and (c) grazing areas. Freehold title, subject to several restrictions (p. 33), is proposed for residential and garden lots whereas a modified quit-rent or certificate of occupation is recommended for arable lands. Tne report presents a lengthy description of alternative schemes to control stock and access to grazing (pp. 38-50), but these all essentially attempt to increase herd production and control the size of the herd by reducing the social value of cattle.

Southey also suggests very briefly that cadastral surveying standards be lowered to take into account the value of the land, but offers no alternatives in this regard (p. 56). The report concludes that the unrestricted freehold approach contemplated in the government development plan is contrary to the long-term economic forces prevailing in Southern Africa and that there is "a need to radically re-think the rural programme, and to seek alternatives to peasant farming."

**SA8 Carstens, P.J.A. The Administrative Implications of Landownership in the Republic of Transkei." D.Admin. dissertation, University of Pretoria,** 1971.

Carstens obtained the data for his dissertation from questionnaires sent to all Transkei .nagistrates and tribal authorities. Various government departments of the Transkei government were also questioned about their views on the most appropriate form of tenure. This dissertation is therefore an official view of land tenure alternatives, rather than one which relates the perceptions of the landholders. It does, however, contain substantial detail on the formal procedures and participants in the administration of land in Transkei.

The following report by Cross examines the effect of land tenure and labor migrancy on agricultural development in KwaZulu, another homeland.

**SA9 Cross,** C. **"Land Tenure, Labour Migrancy, and the Options for Agricultural Development in KwaZulu." Memorandum submitted to the Buthelezi Commission. Durban,** 1981.

Cross provides a general discussion of land tenure and planning needs for KwaZulu and argues that registered freehold tenure does not necessarily promote a land market nor an increase in the landowners' investment in the land.

Agricultural strategies of a more general nature are discussed in the following works by Behrmann and Coetzee.

**SA10 Behrmann, H.I. "Agricultural** Land Tenure in South Af- **rica." Unpublished paper. N.p., n.d.**

Behrmann discusses land tenure aspects associated with both black and white farmers and notes that in areas where blacks hold freehold tenure to their land, the land has become overpopulated and overstocked. Unrecorded subdivisions have also taken place due to the inadequate provisions for transferring title and the expense involved in formally recording transfers. The author argues that improving education and individual ability are more important to agricultural production than **a** strengthening of title or tenure.

**SAll Coetzee, D.F. "Some Recommendations and Guidelines Which May Lead to More Successful Agricultural Development in Lebowa and Other Black Homelands: Part I." Aqrekon, vol. 17, no. 4 (1978), pp. 14-21.**

This article deals primarily with agricultural strategies such as the creation of alternative work opportunities and the provision of agricultural extention services and credit. Although individual tenure is envisioned as being the ultimate solution to agricultural problems in Lebowa, the author pro-poses that the system of registration of guaranteed rights of use be continued.

The legal requirements of the surveying and registration system in South Africa outside of the national states are described in the Land Survey Act No. 9 of 1927 and the Deed Registries Act No. 47 of 1937 as well as in the regulations framed under these Acts. Barnes and Fisher et **al.** provide brief outlines of this system.

**SAl2 Barnes, G. The South African Cadastre: An Overview of the Geodetic Network, Land Registration System and Surveying** Profession." Technical Papers, 45th Annual **Meeting, ACSM, pp. 98-105. Washington, DC: American Congress on Surveying and Mapping, 1985.**

This paper discusses the relative importance of different boundary evidence and provides an overview of the coordinate reference framework, structure of the surveying profession. The principal components of the land registration system, which operates very successfully without any form of title insurance or state guarantee, are also described. Most of the so-called homeland or national states have a cadastre which resembles the system operating in non-black areas, also described in this paper, but they are administered by a different government organization.

**SA13 Fisher, R., C.L. Merry, and A.C. Hamilton. "Integrated Surveys: The South African Experience." The Canadian Surveyor 36** (1982): 245-257.

In South Africa all cadastral surveys, medium- and large-scale mapping, and most engineering surveys make use of the national network of geodetic points which all have accurate coordinates based on a national coordinate system. The authors review the events that led to the development of this by focusing on the organizational structure and the historical development of the control survey and cadastral survey systems.

The integrated system operating in South Africa is analyzed and various advantages and disadvantages listed. The strengths include (a) minimization of boundary disputes, (b) the availability of current land tenure information through the cadastral (compilation) maps, and (c) the availability of information required for resurveys facilitating more efficient and accurate survey work. The weaknesses of the system are identified as (a) the lack of a legal requirement that surveys be connected to the national coordinate framework, (b) the delay involved in obtaining approval for cadastral surveys from the Surveyor General's Office, and (c) the cost of surveying certain kinds of land, particularly in underdeveloped rural areas.

The authors assert that the high cost of certain surveys and the "ponderously elaborate" (p. 257) survey system are definitely preferable to the cost of title insurance and court litigation.

The surveying and legal professions are almost entirely responsible for the spatial and legal definition of land and its conveyance. This close cooperation and the extensive quasi-judicial powers allocated to surveyors has meant that surveying in South Africa is much more intertwined with law than in many other countries. For references that deal with the legal aspects of surveying, see the following three articles:

**SA14 Barnes, Grenville. "Law, Land and the Juridical Cadastre in South Africa." Paper written for IBS 400, Legal Issues in the Development of Land Information Systems. Madison: University of Wisconsin, Summer 1985.**

This paper gives a brief outline of the legal system in South Africa, highlighting the court structure, the hierarchy of legal authorities and the role of the legal profession.

Tne juridical cadastre, which can most aptly be described as a "modified" registration of deeds system based upon an extremely accurate survey system, is described. The two major titling instruments are the deed, which identifies rightholders and describes the nature of rights, and the diagram, which defines the location and extent of rights. A deed or grant is required for any transfer of real rights in land and these documents must be attached to a surveyor's diagram.

The latter part of the paper deals with the spatial data used to define boundaries and the location of parcels. Coordinates, based on a national reference framework, are used extensively to define parcels and could provide the ideal foundation for the development of a multipurpose cadastre. A brief discussion of the role of coordinates in re-establishing property boundaries is also included.

**SA15 Palmer, David. "Security without Guarantee: The South African Cadastral System." Occasional Paper No. 13. Fredericton, Canada: University of New Brunswick, 1984.**

Palmer provides a concise account of the development of the South African cadastre followed by an explanation of the quasi-judicial role of the South African land surveyor in resolving boundary disputes. Unlike many other

cadastral, the South African system does not rely on title insurance or state guarantees of title or boundaries to provide security of tenure. This is ensured through the high quality of survey and title data which emanate from the surveying and legal professionals and are checked in the Surveyor-General's office and Deeds Registry prior to entry into the system. Palmer points to the low frequency of court cases relating to title and boundaries as evidence of the security of the system. Only four registered titles, out of **a** total of over 4 million, nave been upset by the courts, the last case occurring almost thirty years ago.

Boundary disputes are generally resolved by land surveyors, who consider all evidence at a field court and make,a decisibn on the lawful position of the boundary or beacon (monument). Once a decision has been made and the agreement of the owners has been obtained, not even the Supreme Court can overrule the decision. A boundary or beacon that has been examined under this process becomes "lawfully established" and its position cannot be changed even if subsequent uncovering of evidence indicates otherwise.

The author describes the full process of the field court and the related documentation. A list of the number of field courts held in each province is included, showing that on only two occasions has this procedure failed. By resolving boundary disputes quasi-judicially, the owners are spared both the expense and the time associated with lawsuits.

**SA16 Simpson, K.W., and G.M.J. Sweeney. The Land Surveyor and the Law. Pietermaritzburg: University of Natal Press, 1973.**

This is a detailed text covering the legal aspects of land surveying and the legal principles inherent to the practice of cadastral surveying.

Gibson and Kerr may be referred to for more general treatments **of land law.**

**SA17 Gibson, J.T.R. Wille's Principles of South African Law. Capetown: Juta, 1963.**

**SA18 Kerr, A.J. The Customary Law of Immovable Property and of Succession. Grahamstown: Rhodes University Press, 1976.**

The latter book describes the origin, development and application of customary law within the context of the formal legal system operating in South Africa. The author draws extensively on existing case law associated with disputes of a customary nature. Chapter **X** (pp. 95-110) is devoted to the "ownership" of land, which includes land (arable and residential) held under quitrent or permission to occupy ("unsurveyed land"). This chapter includes a discussion of the acquisition of ownership, rights and duties, the suspension and cancellation of ownership, and land disputes. The book also deals briefly with certain servitudes (easements) that exist under custmary law.

Although the land registration system operating outside of the national states and homelands has remained relatively unchanged over

the past decade, various alternative systems have been proposed for land held by blacks under customary and other tenures. Jones represents the thinking in the sixties and contains some useful historical facts.

**SA19 Jones, B.M. "Land Tenure in South Africa--Past, Present and Future: The Apportionment, Tenure, Registration and Survey of Land in Southern Africa and Proposals for the Establishment of a Cadastral System for the Bantu Areas of South Africa." Ph.D. dissertation, University of Natal, 1964.**

The major part of this dissertation is concerned with the historical development of, and procedures associated with, the land registration and cadastral surveying systems in South Africa. These systems plus the "Bantu Registration System" are evaluated according to the following criteria: (1) security of title, (2) accuracy, (3) completeness of record, (4) simplicity, (5) cost, (6) speed, and (7) adaptability.

In investigating alternative land registration systems, .ones limits the choice to either the South African deeds registration system or the Australian registration of title system. In proposing the former he recommends that title be guaranteed in order to "engender confidence" in the system among the black community. He also suggests that blacks should be made responsible for the administration of the system. The remaining recommendations essentially propose the construction of a duplicate of the system operating in white-owned areas of South Africa. Although the author recognizes that a cadastral system should be designed to meet the needs of the community it is to serve (p. 169), he fails to investigate what these needs are and thus reduces the validity of this work.

This dissertation contains many valuable historical facts, but other than as a historical account and as representative of white policymakers' thinking at the time, it appears to have little relevance in the South Africa of the 1980s.

Bacon et al. and Bacon oath deal with the question of land tenure, registration, and development in KwaZulu.

**SA20 Bacon, C.J.; C. Cross; C. Fourie; D. Jenkins;** J. McLaughlin; **and D. Scogings. 'Zulu Land Tenure and Development: The Adaptation of Contemporary Institutions." Report prepared for the Buthelezi Commission. Durban, 1981.**

The authors of this report represent both the land surveying and anthropological professions and, as a team, possess substantial experience with Zulu land tenure and land registration systems. A brief discussion of traditional Zulu land tenure is followed by an outline of various individual rights to land. Throughout this report, the authors emphasize the dynamic nature of Zulu land tenure and the need to recognize this fact when designing land registration systems and other strategies for agricultural development.

Land tenure is viewed as comprising several different phases, ranging from traditional indigenous tenure to a more modern individualized tenure. A useful

table of factors (level of sovereignty, over-rights, migrancy, etc.) is presented which can be used to distinguish the different phases (p. 5). It is recommended that any land registration system should be based on existing institutional structures. They warn against using individual tenure interests as a basis for the cadastral parcel and suggest that the isigodi or tribal ward (a "fixed micro-political unit," p. 15) would be a more stable and effective unit against which to record land tenure information. Individuals who want formal title below the ward level can be accommodated on a voluntary case-by-case basis.

A strong case is made for the use of large-scale aerial photography to (a) record boundaries and (b) provide a document for registration. The actual marking of the photo-identifiable boundaries should be carried out by the people on the ground under the supervision of a surveyor.

**SA21 Bacon,** C.J. **"Towards Cadastral System's Improvement in KwaZulu."** Report prepared for the **KwaZulu Government, June 1981.**

This report deals with the potential role of a multi-purpose cadastre* (MPC) in integrated rural development. The author defines the term cadastre and discusses three types of cadastral, viz. the fiscal cadastre, the juridical cadastre and the MPC.

Integrated development is defined as "a strategy to improve the economic and social life of the community" (p. 3) which implicitly requires a multi-disciplinary approach. The MPC, being a system that facilitates the integration of different types of land information, can provide the framework for interdisciplinary cooperation. In addition, it can provide current and reliable information required for integrated rural development. The author recommends that the Kwazulu Government take steps to study the feasibility of developing an MPC, in view of its substantial advantages over the traditional juridical cadastre.

For more information on land registration system proposals that have reached the implementation stage, see the following two papers by Jenkins:

**SAE2 Jenkins, D.P. "Tenure Rights and** Registration of Land **in KwaZulu." Preliminary Report, Department of Surveying and Mapping. Durban: University of Natal, 1981.**

This report was written prior to the commencement of field research by the author and presents a breakdown of certain anticipated problems. For the purposes of boundary delineation and registration, four categories of land were identified:

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* A land information system that contains various parcel-based information relating to land tenure, zoning, land taxation, services, census statistics, planning, etc.

1) settled land with visible boundaries;
2) settled land with few or no visible boundaries;
3) vacant land to be used for new agricultural and residential settlement programs;
4) land to which "Permissions to Occupy" (PTO) have been granted.

The use of unrectified aerial photography is recommended for categories (1) and (3) (agricultural land), and for (2) once adjudication has taken place and individual rightholders have been identified and boundaries clarified. The boundaries of parcels can be photo-identified either by eye or by using a magnifying stereoscope. In all other cases a field investigation is necessary before any photo annotation can be done.

Category 4 land, to which Pros have been issued, presents a somewhat different problem as these 4,000-odd parcels are scattered throughout KwaZulu. The absence of a clear definition of the locality and extent of the parcels held under this tenure are becoming a major concern to moneylenders who have made loans on the strength of these PTOs. The author proposes that, due to the urgency associated with PTO parcels, **a** separate section be created in the Government Survey department to address this problem.

The report concludes that it would be desirable to improve the communication channels between the various planning agencies and that research is needed to investigate alternative survey and land registration systems.

**SA23 Jenkins, D.P. "Land Tenure in Rural Kwazulu." Paper presented at the 8th Conference of Southern African Surveyors, Durban, 20-24 May 1985. Paper No. 29.**

Registration of individual rights in the rural areas of the so-called homelands or national states has been very limited. Recognizing that individual rights exist in the umusi, or dwelling site, and cultivated fields, this paper describes two pilot projects undertaken to register these rights. The projects aimed at investigating the viability of registering individual rights as well as testing certain adjudication surveying and registration techniques.

The first project involved the Mzweni Ward, an area of approximately 50 square kilometers, used almost exclusively for subsistence farming. The idea of demarcating individual fields was soon dispensed with as this proved an al-most impossible task due to the scattered distribution of each owner's tields and the problem of congregating all interested parties. The corner points of the dwelling sites were demarcated by means of cairns of stones (painted white) after an adjudication process involving the occupant, adjoining occupants, induna (headman), and land surveyor. Aerial photography for the demarcated ward was flown to obtain a graphical record of the approximately 1,100 odd corner points (cairns).

The second pilot project was carried out in the Khuluse Ward, a cash cropping (sugar) area 60 kilometers from Durban with a fairly high occurrence of "absentee ownership." The concept of individual ownership was far more advanced in this ward and occupants had a much clearer perception of their boundaries, thus minimizing time required for adjudication. Property corners were demarcated with stone crosses and once again aerial photography was done to capture the positions of these corners.

Jenkins concludes that, contrary to the recommendations of many policy-makers, subsistence farming areas (such as the Mzweni Ward) would gain very

little benefit from freehold tenure based on a rigid boundary pattern. In many cases the imposition of such a system could cause substantial social and economic damage to the community. He recommends that priority be given to cash cropping areas like the Khuluse Ward, where settlement patterns have "crystalized."

The Sudan, with its Afro-Arab heritage, has a tenure history which can be documented in some depth. Both the Christian kingdom of Nubia and its Islamic successor states had formal systems of property rights of which documentary evidence survives. For example, there are collections of land charters from the Sultanate of Dar Fur, established in the mid-seventeenth century. These were initially grants of limited rights of revenue collection over broad regions or communities for mainly military or administrative purposes and grants of tax-exempt or other privileged statuses, but the charters show a progression to grants of Islamic law freeholds **(melk,** allodial rights) over smaller, more precisely defined districts and their inhabitants.*

The modern histbry of land tenure in the Sudan begins with the Anglo-Egyptian reconquest of Sudan in 1898. The policy of the Condominium government provided for the registration as freehold of traditional smallholdings along the Nile in the northern Sudan. This was only 1 percent of the land in Sudan but was by far the most valuable land. Land not registered was presumed to be owned by the government unless and until the contrary was proved in a settlement (adjudication) process. Customary rules and Islamic law were accepted as *governing* use rights.

In 1970, the presumption of government ownership was made conclusive by legislation which vested all unregistered land in government. Freehold registered up to that date was preserved, but no further freehold has been created. Leasehold has been the preferred tenure for land allocation in the development schemes on government land, which include Africa's largest irrigation and mechanized rain-fed schemes. In the vast areas of savanna which are state-owned but fall outside development projects, ineffective local control by government has left a de lure tenure vacuum. This vacuum is filled by a blend of Islamic and customary legal principles, accepted by the courts as governing rights to use state-owned land. The recent period of Islamization of laws (1984-87) appears to have had little effect on the situation on the ground but has left the legal position confused. Planned land-tenure reform has been largely confined to the registered land and government development-project areas.

A very useful introduction to the evolution of land tenure in Sudan is provided by:

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* See R.S. O'Fahey and M.I. Abu Salim, Land in Dar Fur: Charters and Related Documents from the Dar Fur Sultanate (Cambridge: Cambridge University Press, 1983).

**SU1 Mohammed Hashim Awad. The Evolution of Landownership in the Sudan." Middle East Journal 25 (1971): 212-228.**

A profound dualism in the land-tenure system developed early in the country's history, based in very different patterns of land potential and use. In the irrigated areas along the Nile in the northern Sudan, Arab immigrants into the Nubian kingdoms beginning in the seventh century married Nubian women; their offspring inherited land rights under the *Nubians'* matrilineal system of inheritance. Their children were Muslims and so **shari'a** (Muslim law) governed their property relations. Private individual ownership and associated doctrines of Islamic property law were introduced. By 1315, Arab kings had replaced the Nubian kings and Islamic law became the general legal regime for the region. At the same time, however, Arab pastoralists were moving into the vast arid lands on either side of the Nile, where only a nomadic existence was possible. These brought with them the notion of communal ownership of tribal **territories (dar)** which owed more to Bedouin custom than to Islamic law.

Focusing on the irrigated lands along the Nile, the author sees the Funj, Turkish, and Mandist periods as tending toward semi-feudal tenure patterns through the development of grants of tax rights and later land ownership. The establishment of the Anglo-Egyptian Condominium in 1898 brought an end to these tendencies toward development of an indigenous class of large landholders and a dependent tenantry, reaffirming the original Arab pattern of small freeholders. (The riverain populations had been slow to flock to the Mandi's banner and had suffered for it.) British land policy in the years immediately after the reconquest emphasized reestablishment of stable smallholder land rights as a key element in the restoration of public order. Landlessness was to be avoided as a potential source of agitation in a country whose political volatility had just been demonstrated. The Sudan was exceptional in the British colonial experience in that commerce followed the flag rather than vice versa. Colonial administrators early developed a policy of limiting land acquisition by Europeans and, more relevant in the Sudan's circumstances, merchant populations from elsewhere in the Near East. In the years immediately after establishment of the Condominium, land speculation by Lebanese and Syrian merchant classes threatened to spill over into Sudan from Egypt.

The author sees this policy of preserving a smallholder agriculture as having been assisted in a major way by the diffuse ownership of most parcels of land along the northern Nile. These very small parcels, hardly capable of further subdivision on inheritance, tended to be held in undivided co-ownership by heirs or generations of heirs, making it difficult for a prospective buyer to acquire a clear title from all the interest-holders. The author notes the extent of subdivision of holdings and the resultant very small parcel sizes, but he dismisses the common assertion that the small parcel size has hampered development. Legal subdivision is not necessarily physical subdivision, and freeholders pool land for certain purposes. Critical operations such as irrigation have traditionally been managed on a scale larger than the scale of ownership, and with the introduction of modern pump technology replacing the water wheel in the period 1927-57, the average size of the irrigation unit rose from 10 to 92 feddans (1 feddan = .42 hectare). The author describes communal land-tenure patterns as appropriate for the land-use patterns possible outside irrigated areas and defends the use of short-term leasehold tenure in government development projects.

The Condominium government sought to affirm the land rights of smallholders through a process of systematic and compulsory adjudication, demarcation, and registration of land rights, a process which provided an important model for later programs in Kenya and other British colonies. A good introduction to **this process is:**

**SU2 Simpson, S. Rowton. "Land Law and Registration in the Sudan." Journal of African Administration 8 (1955): 11-17.**

**Even** before taking Khartoum, the reoccupying Anglo-Egyptian forces in 1897 issued a Khedival decree on settlement of land titles in Northern Province. The first two pieces of formal legislation after the reoccupation, both in 1899, concerned land. The first provided for land registration in the urban areas. The second, the Title to Lands Ordinance, provided for the creation of land commissions composed of military officers (often seconded to administrative duties) and local notables to investigate systematically and register land titles in rural areas. The Ordinance, which was to be applied in the riverain areas of the northern Sudan, recognized the existence of full individual ownership under Islamic law and provided for the registration of both ownership and use rights less than ownership. In 1905, it was replaced by the Land Settlement Ordinance, which gave further form to the process which had come to be known as "settlement": the "settling" of titles which elsewhere is known as "adjudication." The 1905 Ordinance introduced the principle that "all waste, forest and unoccupied land" was presumed to belong to the Government and, unless the contrary were proved, should be so registered in the settlement. Irregular use was specified not to be sufficient to rebut the presumption. Considerable amounts of land were thus registered to the Government.

Registers were kept from the institution of the program, but a formal deeds register was introduced by the Deeds Registration Ordinance of 1907. This register, tied to a comprehensive cadastre, readily converted to a title registry when, in 1925, a system of title registration was introduced, the first such experiment in British Africa. By that time, 175,000 parcels had been registered. The 1925 act, the Land Settlement and Registration Ordinance, was a consolidating ordinance and did not alter the basic program of registration beyond providing registration with more conclusive legal effect by stipulating that any unregistered dealing with registered land was null and void. Simpson notes that part of the promise of the new system was that it would make land transactions easier, and suggests that it nas been a success, pointing out that, in 1953, 9,000 transfers were conducted on the register with only the assistance of the registry staft--and without professional legal assistance. The land registry is described as "a thriving and efficient institution."

The author also reviews policy on land transactions. In the first few years after the reoccupation, Greek and Armenian merchants had purchased some land from natives in the vicinity of Khartoum. Government policy against land speculation led to legislation in 1905 and 1918 which closely restricted native land sales, conditioning tnem on government consent. (The 1918 Ordinance continued in effect well into the independence period and may still be in effect.) But, in 1907, a notice gazetted for Khartoum Province allowed sales, though a foreigner could acquire land only from the Government. Some of the early private pump schemes originated in titles acquired at that time. Shortly

thereafter, Government policy turned against alienation of Government land in freehold; it was subsequently alienated only on fifteen-year leaseholds.

A more technical legal analysis of the Land Settlement and Registration Ordinance, including the practice of the courts under the ordinance, is provided by

**SU3 Saeed M.A. El Mahdi. A Guide to Land Settlement in the Sudan. Khartoum: Khartoum University Press, 1971.**

The book begins with a review of the legal history of land registration in the Sudan. Most interesting for present purposes is Chapter 5, which examines the extent to which the courts have been willing to enforce the provision of Section 28 of the Ordinance, which declares any unregistered transaction (including unregistered successions) null and void. This is the sanction against failure to register, the guarantee to a subsequent dealer with the land in a title-registration system that what the register shows is in fact the legal situation. A 1950 judicial decision conveys the position: "On a strict interpretation of section 28, the sale agreement was long since void for lack of registration. But, the courts in their anxiety to do justice between relatively unsophisticated litigants, and having regard to the admitted fact that the land register is very far from up to date, have never applied this section strictly; perhaps it is unfortunate they have not, but that is the position." Most of the cases cited involve leeway for late registrations which do not disappoint anyone who has relied upon the register, but they clearly undermine whatever residual sense there might be that one needs to register a transaction promptly. Saeed's overall evaluation of the experience under the registration legislation is, however, quite as positive as that of Simpson; he emphasizes the thousands of simple, inexpensive, and reliable transactions which are regularly processed under the system.

The concluding section of the book deals in a prospective way with the then very new Unregistered Land Ordinance, 1970. This legislation was an expression of the Nimiery regime's early Arab Socialist period, and nationalized all land not yet registered under the Land Settlement and Land Registration Ordinance. The author examines the exceptions under which new registration could take place under the 1970 Ordinance, but in the event these have been resorted to only in a very few cases since 1970.

Some of our most valuable insights into the early "land settlements" which preceded the systematic registration of riverain lands in the north early in the century come from a collection of case materials on real property law:

**SU4 Thompson, Cliff F. The Land Law of the Sudan: Cases and Materials." 3 vols. Khartoum:** Faculty of Law, Uni**versity of Khartoum, 1965.**

The third volume in this mimeographed collection deals with the experience under **land** registration. Reports on several early settlements by the field officers involved are provided in full or excerpted: "The Suakin Land

Commission Report of 1905," by Herbert S.G. Peacock (pp. 518-526); "Report of the Land Settlement of Sukkot and Mahas, Halfa Province, 1907-1911," by T.A. Leach (pp. 503-526); and "Report of Land Settlement in Berber Province, October 25-December 18, 1909," by C.F. Ryder (pp. 550-554). These provide a valuable corrective to the impression created by later commentators that existing rights in land sorted themselves out rather easily into the "ownership" and "rights less than ownership" categories of the registration legislation. It is clear that there was a tremendous diversity of customary and Islamic rights, that there were many important and close judgment calls, and that these were not always made consistently in the different settlement areas. One problematic area in implementation was enforcement of rules on minimum parcel sizes and minimum share fractions for co-owned land, an effort by the authorities to stem the progressive subdivision of land and rights in land implicit in the Islamic law of inheritance. Mentioned in the earlier reports, it is discussed in the Gezira context in official correspondence from 1921 (pp. 602-604) and reflects both the difficulty of dealing with the matter without altering Islamic law and the sensitivity of any such proposal.

The 1928 "Notes on Land Registration," by Bell, Chief Justice, (pp. 383-388), indicate the extent of early difficulties in maintenance of the registers. Failure to register transactions and successions has already emerged as a key problem, and he suggests that the registrations based on settlements in the period 1907-1912 are "to a large extent useless for this reason." He attributes the problem to a large extent to the impossibility of strict adherence to the Islamic law on inheritance and the difficulty and expense of obtaining certifications of heirship from the **kadi** courts. He sees the system as breaking down in the provinces where it has so far been implemented (Northern, Khartoum, and Blue Nile, at that time) and concludes that some settlements (he specifies those for the Geteina rain land, the Khartoum **buqr** land, part of the Kamlin rain land, and the then quite recently settled Managil Markaz) would have better been not done. A testy exchange of memos between Bell and Harold MacMichael, Civil Secretary (pp. 389-398), indicates a serious division of opinion over the viability of the whole registration enterprise, with MacMichael and Bell agreeing that the only hope for the system lies in greater indigenization of both its substance and its administration, the latter through devolution of new responsibilities to the Native Authorities.

These reservations gave rise to a full review of the registration program. Thompson reproduces almost the full text of the Report of the Land Registration Committee, 1929 (pp. 399-431). The report notes the reluctance of courts to apply with full rigor the provisions of the legislation rendering transactions which are not promptly registered null and void, and complains that it is common knowledge that the court will rectify the register by entering the transaction at a later date. Transactions usually come onto the register only when some dispute arises or when the next transaction occurs and the transferrer must prove he has title. The report concludes, however, that the failures to register are not due primarily to this problem or to ignorance of the advantages of registration but to the difficulty, delays, and expenses involved in registration. Two or more visits to a registry are usually required, involving journeys of as much as fifty miles. The report also reviews the experience with undivided shares in land and their registration. Those shares are themselves fully transferable, subject to certain rights of pre-emption by existing co-owners, and the transfers must be registered. The report concludes that the fact that so many parcels are co-owned in undivided shares has not

only prevented **many** transactions but has ensured that most of those which do take place are imperfectly accomplished and done off the register. The Com- mission notes its sense that in many of the rain-land settlements, rights which were only really rights to use were incorrectly registered as ownership, and urges caution in this respect in the future. There is an undertone, not clearly articulated and perhaps a matter of contention, which suggests that the management of the registry by the Sudan Judiciary isolates the registry from the native administrations, which are linked into the provincial civil administrations.

The Commission recommends against any deregistration (White Nile Province had **actually** requested the nullificatioir of some settlements there), admitting the serious imperfections in the work but being extremely reluctant to set the precedent. The Commission sees as the ultimate objective a system of registra- tion maintained by the employees of the Native Administration, with technical supervision by a government department. It proposes moves to initiate the transfer of responsibilities: the delegation of the Governor's power of con-sent to transactions among natives to the sheikhs' courts, the admission for registration of locally drawn up contracts rather than only those on the reg- istry's own forms, and delegation of the power of registry employees to attest to signatures on contracts to local sheikhs and omdas. Mending further dev- olution of authority to officials of the Native Administration, the Commission calls for registration tours by the provincial registrars, "taking the register to the people." As regards registration of inheritances, it urges that while heirship should still be determined by the kadis' courts, the heirs should themselves come forward to inform the registry of the distribution of the land which they have made among themselves, as this will often bear only a limited relation to the dispositions of the **kadi** court. As regards the impediment to sales posed by undivided co-ownership, the Commission discusses a proposal to address the problem through an imposed trust-for-sale along the lines of the 1925 property reform in England. The proposal is set out in detail in an annex to the report by the Registrar-General, but the Commission withholds any firm recommendation, suggesting that there is a need to establish how the trust-for- sale would be viewed by the Islamic law authorities and a need to experiment on a small scale before considering more general application.

Thompson also provides (pp. 431-446) the memorandum embodying the decisions of the Governor-General's Council (1929) in response to the report of the Commission, accepting the recommendations with only minor modifications in matters of detail, and a 1931 note by the Legal Secretary on progress in implementation, which appears to have been on a fairly modest scale but to have been regarded as satisfactory. The note is dismissive of the trust-for-sale proposal, which was, in fact, never enacted.

Finally, Thompson provides (pp. 536-547) a series of memos from 1914 to 1948 on the legal status of unregistered land. Land outside the irrigated areas acquired new importance with the initiation of commercial sorghum production there in the 1940s. The memos view the governing principle as having been established in 193U, that unregistered land is held in "bare ownership by government in trust for the natives, subject to all rights of user belonging to the natives whether in community or individually." It is evident that the authorities are very reluctant to expand registration into rain-fed areas partly because the problems of distinguishing administrative and tax tenures from ownership rights had proved so knotty in earlier rain-land settlements. The exchanges take some interesting twists, as when, in a 1945 memo, the Judge

of the High Court for Blue Nile Province, W. O'B. Lindsay, urges that "Civilised countries have come to regret individual ownership and lands are passing into the hands of European countries with beneficial results, but under greater difficulties than those which the Sudan would have to face in order to carry the policy into effect."

There are several previously published items reproduced in Thompson: Simpson's (1956) talk on land registration to Seventh Cambridge Summer Conference; Miskin, Land Registration (SU5) ; .and Simpson, Land Tenure Aspects of the Gezira Scheme (SU10). These are more readily available in their original sources and are rather more general in coverage, and so they are annotated separately here.

A useful published contemporary assessment of the registration is by a former Senior Supervisor of Survey for Northern Province:

**SU5 Miskin, A.B. "Land Registration."** **Journal of African Administration 5:2 (1953): 72-80.**

A discourse on registration in general is followed by a review of the experience in Sudan. The English "general boundaries" concept had been included in the Sudan ordinance to avoid what was considered to have been unnecessary contention in fully surveyed registration in England under a 1862 registration ordinance. In fact, the concept proved inapplicable because there were few relatively permanent natural or man-made boundaries to be used. Survey (how-ever rough) had to be done. In spite of the rapid implementation of the project (in 1903 alone, some 30,000 individually owned irrigated plots were demarcated using plane table surveying and registered in Northern Province), some basic failures to understand the existing land-tenure system plagued the pro-gram. In particular, there was a failure to appreciate all the ramifications of multiple ownership (co-ownership), and as a result registration did not facilitate sales as anticipated. Miskin notes that the relationship between units of ownership and units of use is highly variable, and gives examples where these coincide, where the ownership unit is smaller than the unit of operation due to pooling of owned units, and where the unit of operation is smaller than the unit of ownership because of unregistered subdivisions among heirs. He notes a trust-for-sale approach to undivided co-ownership as still being under consideration.

Another window onto the field experience with the settlements is provided by:

**SU6 Leach,** T.A. "Date Trees **in Halfa Province."** **Sudan Notes and Records 2 (1919) : 98-104.**

This **is** an insighttul piece by a settlement officer charged with registration of rights in date trees. It is remarkable in that it was apparently appreciated very early on that the trees and the land were owned quite separately. The author explores the complexities of the system of co-ownership in shares which arises out of the combination of attribution of shares due to supply of factors such as the seedling, land, labor, and water and the division

of these shares through the Islamic rules of inheritance. The author concludes: "However, when all is said and done, it must be remembered that the system practically insures against entire loss of crop by spreading the risks and that the natives do not feel the inconvenience of the divisions to any great extent, since they are mainly concerned only with the distribution of the dates, and the real sufferers are only the judicial and administrative staff. **A** register is of no value unless it gives a complete and accurate record of actual ownership, and as the ownership is of the nature explained the register is bound to follow it. The lack of a Register is (experto crede) desolation; and an incomplete Register is the worst state of all, causing in-justice among the people, for the rights. of the deserving may be lost eternally because they are not recorded in the book" (p. 104).

A somewhat different angle on the registration process--that of the surveyor--is provided by a Sudan Government contribution to a 1970 seminar on cadastre:

SU7 El Mahdi Mohamed Farah. "Past and Present Difficulties in **Land** Registration." **Paper** submitted by the Government of the Democratic Republic of the Sudan to a Seminar on Cadastre, 25 **November-9** December, 1970. Addis **Ababa:** Economic Commission for Africa.

Survey work in the Sudan began in 1901-02 in Northern Province, initially to provide a base for taxation. At first, the main concern was with land possession, but a growing focus on ownership led to the beginning in 1903 of registration of shares in ownership. The early settlement commissions were composed of Egyptian army officers (most of these were Englishmen holding commissions in the Egyptian army). From these beginnings, there developed a local administrative system of registration at the provincial level which was taken over by the Legal Department in 1936. The early survey work, organized and carried out at provincial level, had a number of serious defects: (1) Each bank of the river or island was treated as an independent unit, with no ground-control system to tie these independent units together. Each map was thus a separate, independent unit. This survey work was referred to local zeros (astro fixes) and was thus computed on an arbitrary grid extending for a long distance from the zero, ultimately causing serious errors in both distance and azimuth at the common line of contact with the next zone. (Later mapping was tied to first or second order triangulation nets.) (2) No proper mechanisms were set up in the early stages to ensure that alterations in titles or boundaries were properly recorded on the register or map. (3) Boundary markers were impermanent, often either destroyed or removed. (4) There were constant changes in the positions of islands and the shape of the river banks due to the seasonal inundation.

In 1944, the Department of Surveys carried out an experimental resurvey. Substantial discrepancies were found in that new plots, subdivisions, and other alterations were shown either on the maps or in the register but not in both. It was found that the maps or the register needed correction in 16 percent of all the plots checked. Thirty percent of the total plots would, on resurvey, give rise to such discrepancies on the ground as would require the service of a resettlement officer.

While there is a large and thoughtful literature on land tenure in the major government irrigation schemes in Sudan, there has been a remarkable lack of empirical work on the private pump schemes along the Nile, almost all of of which are at least partly located on registered land. Only two **relevant items could be located:**

**SU8 Omer M. Osman. "Some Economic Aspects of Private Pump Schemes." Sudan Notes and Records 39 (1958): 40-48. Re-**printed in **Shaaeldin (SU11), pp. 253-268.**

In 1956, there were over 1,500 private pump schemes in Sudan, irrigating over 625,000 acres. Some of these were organized as partnerships and others as individual ventures, but a number were private cooperatives. In Blue Nile Province, on which this study focuses, there were 1,134,883 feddans under irrigation in private pump schemes in 1956, a little less than half the amount irrigated in the government's vast Gezira Scheme but an increase by a factor of six from 1947. The author notes: "Suitable land has always been abundant and free from most of the land tenure problems of the northern province." The larger schemes, over 300 acres in size, have yields as high as those on government schemes. The smaller private schemes have lower yields due to lack of capital and managerial skills. As the author notes, however, the smaller schemes might be the more efficient if data existed to compare costs as well as production for the different size classes. A government loan program has been in effect for some years, under which "only registered land (freehold or leasehold) whose value was fifty percent in excess of the loan was accepted as security." Approval of applications for loans was, however, based more on skill and general credibility than on availability of collateral. In practice,
repayment was not enforced. After 1955, the government strongly favored co-operative schemes over other private scheme types.

**SU9** Phillips, Lucie Colvin. "Sudan: Northern Province." In Land Tenure Issues in River Basin Development in Sub-**Saharan** Africa, edited by Peter Bloch, pp. 74-83. LTC **Research Paper 90. Madison: Land Tenure** Center, **Univer**-sity of Wisconsin, 1986.

Modern irrigation infrastructure in the northern region includes 14 large projects with centralized pumping stations dominating 3,500 to 30,000 feddans (1,470-12,600 hectares) each, small licensed private pump schemes dominating 10 to 533 feddans, and borehole wells dominating 5-20 feddans. About 10 per-cent of the land in Northern Province is in large schemes operated by autonomous state corporations under the supervision of the Northern Agricultural Production Corporation. There are, however, several thousand private pump schemes in operation in the northern region (no statistics are kept and the number varies from year to year). Government officials and farmers inter-viewed unanimously believed them to be the most efficient form of production organization.

it is important to understand the nature of these private schemes at the outset. A scheme is private if the pump is private, from which it follows that the management of the scheme is private. Private schemes are often wholly or partly on land rented from government, and the "typical" scheme will include

registered freehold land along the riverbank plus government land leased in. This government land is land which was beyond the reach of the waterwheels and was not registered in the early settlements, and which became government property by virtue of the Unregistered Land Act in 1970. Where a scheme does lease in government land, a nominal rate of 10 piastres per feddan is charged. The leases are usually for a period of 10 years, renewable if the land is used properly. Where the scheme is wholly or partly on private land, the pump owner must also reach agreements with the owners of the land. Tenants may be given the land to farm, and where the pump is 6 inches or larger, agreements with tenants must be reviewed with the local sheikh for fairness. These agreements are enforced by local officials and courts. Each rural council has a land committee.

Cooperatives, one type of private scheme, are organized by their participants, sometimes by tribal or local community leaders. A great many of these were established in the 1970s, but they have tended to fall under the domination of one local merchant through moneylending. Inputs, cash, and food are lent during the cropping season in exchange for crop shares representing up to 200 percent interest. Land distribution among members is done by the cooperative. Tenancies are equal in size, but local notables tend to hold several.

Registration was done early in Northern Province. The two types of land which were registered were the riverbank land, which could be planted during recession, and land above this, which could be irrigated with the water wheel. Land in basins which are only irregularly flooded were considered communally owned, as was the land beyond that which could be irrigated by the water wheel. Since 1970, both these areas are technically government-owned land, but many local people still regard them as communally owned. The right of registration is defined as beginning at the center of the river--and thus to encompass any land which accretes in that area--and is regarded by many as stretching away from the riverbank for so far as irrigation can reach. This last is much farther with today's diesel pumps than with the water wheels. Government rejects this claim; it did, in fact, acquire legal title by statute in 1970 to all the land not registered prior to that year.

Land taxes follow rates established in 1965, which with price and currency inflation are very low. Land is classed according to fertility in six categories, with taxes descending from 60 to 10 piastres per feddan. Those leasing government land pay this tax as well as owners. Taxes on production are more substantial. Islamic taxes **(zakat** and ushur) amounting to 15 percent of production are collected by government, and additional religious offerings are made to Islamic leaders in many areas. Fruit trees are subject to a separate tax of 10 percent of yield.

The 1930 Land Acquisition Ordinance has been used to rationalize scheme layouts. It authorized government to acquire private freehold lands for public purposes for up to thirty years at a nominal rent of 120 piastres per feddan per year. All government and most private and cooperative schemes incorporate some freehold lands along the riverbank. The organizers must work out an agreement with the owners either to participate in the scheme or to rent, sharecrop, or sell their lands. When government appropriates land for irrigation schemes, a complex formula determines compensation for prior owners. Titleholders are given irrigated hectarage in the project equivalent to two to five times their original holdings, also receiving compensation for fruit trees and other permanent improvements. Sometimes they keep their title in theory, and the government pays them a nominal rent. In other cases, they relinquish title for compensation. People with less clearly documented usufruct rights

or grazing or forest rights receive lesser but--according to the author--still generous compensation.

On private pump schemes, the tenant is more likely to cultivate the land himself, employing salaried labor for labor-intensive operations. He shares expenses and profits with the pump owner in a variety of sharecropping contracts. He also has a secure tenancy, which he can rent out. At the expiration of the ten-year pump-license/land-lease, the tenants frequently seek renegotiation of their agreement. In the past, they were permitted to secede from the scheme to organize independently with a new pump, taking with them the leased land they had farmed for ten years as well as any freehold they owned. Authorities found that this led to' uneconomical proliferation of schemes and have recently ruled that only titled lands can be withdrawn from a scheme at renewal time.

Colvin notes a debate over whether farmer/tenants are more "exploited" on government or private pump schemes. While abstract comparisons of the charges borne on private versus government projects suggest that those on private schemes pay more, this is like comparing apples and oranges: tenants on a private pump scheme have a role more analogous to sharecroppers of tenancy owners on a government scheme than to the tenancy owners themselves. Private pump-scheme owners usually take a 50 percent share, depending on how they share input costs other than water. On early schemes in the 1950s and 1960s, some reportedly took two-thirds to three-quarters shares, but a combination of government regulation and better organization on the part of the farmers seems to have lowered the rates. Some owners even offer bonuses for higher productivity and take shares as low as one-third to give farmers incentives. On government schemes, production costs have been billed to tenants on the classic Gezira pattern (see SU10), but the individual account system recently developed for the Rahad Project and introduced into Gezira is now being implemented on all the government schemes as existing contracts expire.

Colvin analyzes the pros and cons of the tenure types. She notes that long fallow periods still play a major role in fertility maintenance, and that a sort of shifting cultivation, which would normally be considered incompatible with irrigation agriculture, is sometimes practiced. On private schemes, **ex**hausted land is sometimes abandoned and the pump simply moved to a new site. Land is plentiful, and this is a drawback of the leasehold system. In general, freehold plot owners attend more carefully to the continued fertility of their lands than either pump-scheme operators or tenants. Titled lands suffer, how-ever, from severe fragmentation. Since they were originally registered in the 1920s, two or four generations have inherited rights. Islamic law (Maliki school) is observed, providing for the division of property among all children, with one share to each male and one-half share to each female. Some riverbank plots are no more than a meter or two in width, and very few farmers have contiguous plots sufficient to generate a family income. Colvin notes minimum plot sizes for irrigated tenancies (2 feddan) and suggests that this might usefully be extended to freehold land (and that such an extension is under consideration).

This literature on private schemes is dwarfed by the literature on the Sudan's vast state irrigation schemes. Much of that literature dwells at length on the intricacies of the sharing of costs and benefits between the government and the tenant, but, as will be seen, these arrangements are not very directly tied into security of

tenure, which is short and highly conditional. Perhaps the most interesting issues here relate to the conversion from customary tenure in the scheme areas. Major irrigation schemes such as Gezira totally change the landscape and land-use patterns in the area and so pro-vide a context in which tenure change is more easily imposed. The creation of the Gezira Scheme was based on a major land settlement and taking and constitutes a critical part of the experience with registration in the Sudan. **A** useful introduction is:

**SU10 Simpson, S. Rowton. "Land Tenure Aspects of the Gezira Scheme** in **the** Sudan." Journal of African Administration **9 (1957) : 92-95.**

When it was decided to create a huge irrigation scheme in the Gezira, government insisted upon a full-scale settlement and registration of rights in the area as a prelude, to permit proper compensation to be made. The 1907 settlement, one of the very earliest in Sudan, found unexpectedly that most of the area was held in traditional rights equivalent to private ownership. Simpson notes that the settlement has since been criticized for registering to traditional leaders ownership of land which was, in fact, held by them as administrators for the tribe. Be that as it may, says Simpson, the generous settlement provided a firm foundation for the scheme, one with which everyone was satisfied. The registered rights were then acquired by government for forty years, title remaining in the registered owner, who was paid the nominal rent of 2 shillings per acre per annum. Government then divided up the land on the scheme into tenant holdings. The owners' rights were translated into "as of right" tenancy allocations, in proportion to their owned holdings. In spite of the limited value of the subsisting ownership rights, there has been an active market in those rights. The Government more recently sought to buy up these rights and, by 1957, owned half the scheme outright. Cultivating tenants of the scheme, however, have only annual tenure, conditional on compliance with extensive regulation of their operations by the scheme. Their efforts to obtain security in their economic opportunities have been through the Gezira Tenants Representative Association rather than formal tenure reform.

**SU11** Elfatih **Shaaeldin,** ed. The **Evolution** of **Agrarian** Relations in the Sudan. The Hague: Institute of Social Studies, **and** Development Studies Research Center, Uni**versity** of Khartoum, 1997.

This extraordinarily useful collection brings together most of the interesting articles which have been published on land tenure in Sudan, plus useful new material and thoughtful commentaries. A number of the items are annotated in SU12 to SU20. Most of these annotations deal with the Gezira Scheme; the last two deal with related issues in other public schemes.

**SU12 Gaitskell, Arthur. Gezira: A Story of Development in the Sudan. London: Faber and Faber, 1959.**

Elfatih's book (pp. 89-135) includes Chapters 3, 4, and 5 of this classic on the Gezira Scheme. Gaitskell attributes the major effort at land

registration settlements in the first few years of the Condominium to a combination of a desire to stabilize the position of smallholders and a desire to identify land available for concession agriculture. When a government attempt in 1911 to irrigate 600 acres at Tayiba in Gezira proved unsuccessful, the project was contracted to the Sudan Plantation Syndicate, the manager of the Zeidab concession further down the Nile from Gezira. The Syndicate's contract gave them the option, if they made Tayiba successful, to purchase 10,000 feddans of government-owned land within the area to be irrigated or 30,000 feddans of rainland in the Gezira. By 1913, Tayiba was clearly a success. The settlement for the area had been completed in 1911, 944,000 feddans having been registered, and almost all of the land had been found to be privately owned.

Zeidab had begun in 1904 with wage labor then switched to fixed rents. The fixed rents proved unsatisfactory; they were too difficult to collect in bad years. The Sudan Plantation Syndicate acquired Gezira as it'was turning to sharecropping, which was seen as a modification of the customary sharecrop-ping arrangement in northern Sudan involving the landowner, the water-wheel owner, and the farming tenant. In the case of the Gezira, the shares were set at 35 percent for government, 25 percent for the syndicate, and 40 percent for the tenants. The new system was introduced in 1913, in the middle of the agricultural year, and drew a very negative tenant reaction. It involved a major decrease in income for them, and some compensation was paid by the scheme. These shares were not altered until 1950.

**SU13 Shaw,** D.J. **The Managil South-Western Extension: An Extension of the Gezira Scheme."** **Tidjdschrift van het Koninklijk Nederlandsch Aardijkskundig Genootschap 82 (1965). Reprinted in Shaaeldin (SU11), pp. 137-199.**

Shaw writes about the arrangements for the Managil Extension of the Gezira in the early 1960s. While tenancies in the Gezira proper had been 40 feddans, in Managil they were set at 15 feddans. A settlement was carried out and land was acquired for registered owners on the same basis as for Gezira, though with a compulsory but nominal rent (in Sudanese pounds, £5.0.100/feddan/year). As in Gezira, government subsequently sought to purchase much of the residual freehold, and, by 1963, government owned 60 percent of the freehold in the extension; at that time, 57 percent of the main Gezira was government owned. As in Gezira, landowners received tenancies as of right. A registered holding of 15-29 feddans entitled the owner to one tenancy, 30-44 feddans, to two tenancies, 45-59 feddans, to three tenancies, and 60 or more feddans, to four tenancies. Those with 5-14 feddans were given one tenancy after all the large holders had received their tenancies. As in Gezira, the large owners could and did nominate others to some of their tenancies. The author notes the continuing use of year-to-year tenancies and attributes to this a reluctance by tenants to invest in the tenancy. On the other hand, he characterizes the eviction rate as low, noting that in the period 1951-61, there were only 373 evictions, or 37 a year, from among a total of 41,233 tenants in the Gezira.

**SU14 Thornton, D.S. 'Agricultural Development in the Sudan Gezira Scheme."** **Sudan Notes and Records 53** (1972): **98-**115. **Reprinted in Shaaeldin (SU11), pp. 331-356.**

This examination of the Gezira divides the history of the scheme into a "Cotton Scheme" period up to 1964 and a period of intensification and diversification since that time. New cash crops have been introduced but the share arrangements have not been adjusted; tenants pay nothing for water used on crops other than cotton because of the difficulty of monitoring other water use. This creates disincentives for cotton production. Thornton notes other trends: there is greater hiring of labor, and the size of tenancies has de-creased. Thornton notes that while it is difficult to assess the impact of institutional factors precisely, "the restriction on tenancy size and insecurity of tenure does not facilitate the growth of incomes of those tenants who may be competent and ambitious enough to'manage larger farming operations with the increased capital input it implies." He considers that a consolidation of tenancies is needed and that the development of the scheme must tend either in the direction of more independent mixed farmers or toward the scheme taking over more and more farming operations directly.

**SU15 Mohamed M. Abdel Salam. "Institutional Impediments to Development in the Sudan Gezira Scheme." Sudan Journal of Development Research, vol. E, no. 2 (1978), pp. 47-63. Reprinted in Shaaeldin (SU11), pp. 357-380.**

The author makes a strong case for the inadequacy of tenure arrangements in the Gezira. He paints a picture of a massive failure of incentive, with only women and old men left on the once-lucrative tenancies. Workers with initiative leave the scheme and capital accumulated there is invested outside agriculture. He explains that the eight-step rotation system practiced in the scheme was for many years a serious disincentive. Each tenant had been given four separate 10-feddan plots, of which, in any one season, 10 feddans had to be in cotton and 5 feddans under dura. The rest would be left fallow. The four plots were scattered. The rotation would take the farmer onto others' land, resulting in alienation and detachment from the land. "The cash crop was grown in one of these four plots, the dura used to alternate between one's land and his neighbor's land and the fodder crop might be grown anywhere."
And the tenant was "a producer on a conveyor belt of land" supplied to him by government. There was no incentive to invest in the land, especially in needed operations such as leveling. Since 1975/76, however, each tenant is allocated a compact, contiguous holding. Abdel Salam expresses concern over the rate of subdivision since the 1940s and notes that half the tenancies in the Gezira are now half-tenancies, tending toward the same size as the tenancies in the Managil Extension.

The author applies Cheung's analysis of share tenancy to the cotton-sharing arrangements. Marshallian economic analysis suggests that there is inherent inefficiency in sharecropping, while Cheung suggests that efficiency can be achieved through manipulation of area and **rental level.** Abdel Salam concludes that the share system is not inherently inefficient but that its being applied only to cotton has rendered it inefficient in the Gezira. he notes its historical role in permitting sharing of risks and its efficacy fros government's viewpoint in securing greater revenue for government and in facilitating the control necessary for centralized farming operations and marketing. He suggests that it deviates from traditional sharing arrangements in important respects. He concludes that the tenancy system creates alienation but makes no clear proposal for its reform.

**SU16 Mohamed Hashim Awad. "Agricultural Development in the Gezira Scheme: A** Rejoinder." Sudan Notes and Records **54** (1973): **193-196. Reprinted in Shaaeldin (SU11), pp. 389-396.**

Mohammed Hashim Awad opposes the introduction of a common system of land and water rental for all cropped land--as opposed to just land growing cotton--citing the historical failures of such a system in Gezira precursors such as Zeidab and Tayiba. He notes the losses currently being incurred by the North-ern Province Agricultural Corporation and the tenant dissatisfaction over rent levels in the all-wheat Khasm al-Girba scheme. To make land rents equitable, he argues, would require that they be assessed according to soil quality, and this would act as a progressive tax, penalizing the more productive farmer. He further argues that greater decentralization, if that is what is wanted, could be achieved under the sharecropping system and that water control would need to continue under a land and water rental system. The need for such control stems from the nature of the crop, not sharecropping. Finally, he questions whether a market in tenancies such as that favored by Thornton would be a good thing. He sees Thornton's proposal as leading to holdings of 4-20 thousana feddans, ousting 99 percent of the tenants, who would become landless laborers. Even the new, larger tenants would, he suggests, be dependent on financiers, "a class of dependent farmers controlled by a small body of hidden overlords." This, he urges, is the lesson of the once prosperous private cotton estates, which fell into debt and were then seized by creditors. He favors adjustments in the current Gezira system rather than its replacement.

SU17 Farah Hassan Adam. "Evolution of the Gezira Pattern of Development within the Context of the History **of Su**danese Agrarian Relations." Sudan Journal of Development Research, **vol. 2, no.** 1 (1978). Reprinted in Shaaeldin (SU11), pp. 397-414.

Farah Hassan Adam focuses on the growth in disparities among Gezira tenants. Two-thirds are poor, operating a cotton tenancy of about 5 feddans; less than a third are at an intermediate level, operating a cotton tenancy of between 0 and 2 feddans; while 2 percent supervise one or more cotton tenancies of over 20 feddans in size. Most of the farm machinery is owned by these larger farmers, who are really trader-farmers. He examines the various prescriptions by donors for reform of the Gezira system and concludes that these really involve the disintegration of the public sector in the scheme. The proposed reforms, he argues, have done little for other schemes. He notes the experience of the private pump schemes, the larger of which were nationalized in the late 1960s because of continual disputes between management and tenants and the deterioration of production. They were transferred to the control of the Agricultural Reform Corporation. As an alternative to liberalization re-form, he argues for a larger public role, treating the scheme as "one production unit." He proposes a consolidation and expansion of government ownership, with government becoming the sole provider of machinery services, a redistribution of the larger tenancies, an adjustment of the share system, and a mini-mum wage for laborers.

Finally, there are two articles which examine agrarian structure on two other irrigation schemes:

**SU18 D.S. Thornton and R.F. Wynn. "An Economic Assessment of the Sudan's Khasm El Girba Scheme." In The Evolution of Agrarian Relations in the Sudan, edited by Elfatih Shaaeldin (SUll), pp. 201-236. The Hague: Institute of Social Studies, and Development Studies Research Center, University of Khartoum,** 1987.

This paper, apparently published for the first time in this volume, deals with land issues in a resettlement scheme established in 1963-68. The inhabitants of the area were semi-nomadic Shukriya and Beja, but their claims were considered and registered by a settlement commission. The land was considered government owned, but it was recognized that use rights had existed. Compensation was paid in cash at £S.l,/feddan, but only to those who lost land to the research farm and to the buildings erected during the construction phase. Lana in the scheme was distributed in 15-feddan annual leaseholds. Some tenancies were allocated to Halfawis being resettled because their villages had been in-undated by Lake Nasser as the result of the Aswan High Dam. Others went to Shukriya and a few to the Beja. Disputes over appropriate sharin[g] of the land seriously interfered with the initiation of the scheme, witn some land being reallocated from Halfawi to Shukriya. The share system adopted for cotton was 56 percent for government and 44 percent to cultivators. The authors note dissatisfaction with the shares Eor cotton and that the greater the freedom allowed tenants to cultivate what tney wish, the more untenable the cotton share system becomes. They suggest that this and other schemes need to move toward a system with greater farmer independence, one in which the dynamic for improvement of tenants' circumstances lies in the tenants' own productive efforts rather than in dickering with government over shares. They also suggest a market in tenancies to allow landholding to adjust to the particular abilities and circumstances of farmers.

**SU19** Jedrej, M.C., and G. Stremmelcor. **"Guneid Sugar** Scheme: **A** Sociological Consideration of Some Aspects of Conflict between Management and **Tenants."** Sudan Notes **and** Records 52 (1971): 71-78. Reprinted in **Shaaeldin** (SU11), pp. 237-252.

This article deals with the Guneid Sugar Scheme. (With tenancies of 15 feddans, it is generally on the Gezira model.) However, tenancies are inheritable and can be bought and sold with the consent of the Tenants' Union, the General Manager of the Scheme, and a local judge. They note, though, that the tenants themselves have customary rules that land should not be sold out of the family, and that this land is thought of by the tenants more as owned than as rented land.

There is much less information available on tenure arrangements for agriculture in the commercial, rain-fed areas. A key article, prepared in 1980, is:

**SU20 Simpson, Monag** C. "**Large-Scale Mechanized Rain-Fed Farming Developments in the Sudan." In The Evolution of Agrarian Relations in the Sudan, edited by Elfatih Sniaaeldin, pp. 269-289. The Hague: Institute of Social Studies, and Development Studies Research Center, University** of Khartoum, 1987.

Simpson notes that food shortages during the Second World War caused government to initiate mechanized production of sorghum and sesame on rain-fed land in the western savanna around Gedaref. At the outset in 1945, government tried direct cultivation, which failed. It then turned to tenancies of 240 feddans and required applicants to have the resources to purchase a tractor. Later, policy shifted to 28-feddan tenancies with government land preparation. None of these was successful. From 1954, tenancies of 2 square kilometers (1,000 feddans) have been let at £S.0.03/feddan. New rain-fed schemes opened in Dali, Mazum, and Renk in 1958; at South Gedaref and Damazine in **1969;** and, the first scheme in the west, at Habila in Southern Kordofan in 1971. Major World Bank loans in 1968 and 1971 funded the program. After 1971, all the rain-fed areas were government owned; earlier the program had profited from the presumption of government ownership, though some traditional users received compensation.

Cultivation has been plagued by declining yields. The tenant response to this was not to invest in fertility but to abandon the tenancy and move on. An alarming species of mechanized shifting cultivation developed which mined the soil and initiated desertification.

The holders of the tenancies tend to be merchants from outside the areas affected, and many local people, especially nomads, have lost their land. Some have settled and work as occasional labor for the mechanized farmers. At the same time, a local kulak class is developing, based on acquisition of second-hand tractors.

In 1977, the Worla Bank refused to fund further expansion of the system, but Arab petro-dollars have fueled new mechanization, as in the case of the 700,000-feddan King Faisal Scheme.

A more recent look at the deteriorating situation in the rain-lands and at the tenure situation in the post-Nimeiry period generally comes through:

**SU21 Republic of Sudan. Report of the Land Tenure Task Force. Khartoum: Ministry of Finance and Economic Planning, 1986.**

This task force met as part of a larger strategy review for rain-fed agri-culture organized by the Ministry of Finance and Economic Planning and the World Bank. The report was written by Hunud Abia Kadouf, chairman of the task force, and John Bruce, a consultant The report examines recent land policy. The 197U Unregistered Land Act nationalized all unregistered land. It did not define the legal status of existing land users and gave government broad powers to evict and complete discretion as regards compensation. The Act provided the legal basis for a style of land acquisition which has been far less painstaking with respect to customary land rights than the settlement model developed

during the Condominium. At the time of the passage of the Act, a settlement was under way as a prelude to the establishment of the Rahad Scheme, but this was abandoned in mid-course when the Act removed the legal necessity for it by nationalizing the land. In areas outside the schemes, the courts have recognized local systems of Islamic and customary law as governing rights to land use. Also in 1971, the Local Government Act abolished the Native Administration, which had been based on traditional leaders. In many areas, the new local government structure did not reach .to the local level, but authority of the sheikhs to administer land in their villages had been withdrawn. In practice, the courts and administrators have had to continue to accept that authority as part of the customary system.

Islamization of law in 1983-84 altered the legal position of traditional users, though the extent of the change is far from clear. The Civil Transactions Act of 1984 repealed the Unregistered Land Act but reconfirmed the legal position that all land not registered prior to 1970 (including all rain-fed land) was the property of the government. Where small amounts of land in the northern region had been registered under exceptions to the Unregistered Land Act, it was restorea to government ownership. As regards unregistered land, the 1984 Act incorporates the Islamic legal principle that if someone brings into production previously unused and unclaimed "waste" land, he then has usufructuary rights in the land, which rights can be inherited or transferred and can be taken only with compensation. It is possible that some traditional cultivators might be recognized as usufructuaries. Pastoralist land rights are unlikely to be recognized on this basis, and generally local custom would appear to have force only insofar as it can do so under the pro-visions of Islamic law governing custom, or urf. The Civil Transactions Act also sets up a new administrative machinery for allocation of usufructs, involving committees of three to five members at the national and regional levels to grant usufructs. The Act defines "lease" as an express grant of usufruct, and these provisions may provide the basis for the continuing system of state leaseholds over rain-fed land. It is not clear how these committees would re-late to other local authorities dealing with land, and the confusion increased in 1985 when a Miscellaneous Amendments Act withdrew land administration authority from the regional governments.

The report goes on to examine systems of traditional land use and land tenure in the rain-fed areas, then turns to mechanized sorghum cultivation in the rainlands under leases from the government. Today, 60 percent of the rain-fed cropped area is under mechanized agriculture: it supplies 70 percent of sorghum production and 30 percent of sesame production; 20 percent of production is exported. The Mechanized Farming Corporation (MFC) has 3.6 million feddans out on leasehold in farms of 1,000-1,500 feddans, and it is estimated that there are another 2-3 million feddans under unauthorized mechanized cultivation. MFC policy at the time of the report called for a further expansion by 5.5 million feddans by 1990, roughly doubling the amount of land now under cultivation. Yields continue to fall, however, and some abandonment of holdings is taking place, with this estimated for the eastern Sudan at 10-15 per-cent of land brought under mechanization. Unauthorized cultivation is motivated not by a need for more land but as an alternative to the investments needed to maintain fertility.

The MFC leases out land in farms of 1,000-1,500 feddans. Credit for purchase of a tractor is available with the tenancy, and gasoline and spare parts have been subsidized. The leases are for fifteen years and are routinely renewed if the tenant so desires. Land rents are specified for the first year

of the lease but can be adjusted by government thereafter; currently, the annual rent is £S.2/feddan, or about $0.60/feddan (in U.S. dollars). The lease requires that the entire area of the holding be cleared of trees and brush in three years and that at least one-third of the holding be placed under cultivation in each subsequent year. There is also **a** requirement that the land be utilized properly and in accordance with the regulations of the Corporation, including a required rotation, specified farming practices, use of improved seeds, and construction of a windbreak 40 meters in width around the farm. However, the rotation and **shelter-belt** requirements are routinely ignored. The lease also contains a prohibition against assigning, subletting, or mortgaging the leasehold, but in' .practice such transfers are permitted if prior consent of the MFC is obtained.

Where local traditional users are displaced by a scheme, they are given land as compensation in a **bildat** scheme, a block of land divided into and distributed as small holdings. An MFC regulation requires that the mechanized farmer within whose tenancy the evicted smallholder previously cultivated must compensate the smallholder for the expense of clearing the new land. In some areas, all the holders on a **bildat** scheme have formed a cooperative or had all the land registered in the name of a representative and secured a lease and thus access to credit. Under the Unregistered Land Act, compensation was discretionary and this discretion was exercised in some areas to evict traditional users without any compensation. Compensation never extended to pastoralists, who used the land only occasionally.

Some mechanized cultivation has been authorized not by MFC but by the provincial and regional governments. As part of a general program for devolution of authority to the regional level in 1980, land administration authority was conferred on the regions. This appears to have acted to regularize but not stop mechanized shifting cultivation. Procedures have varied from region to region. The experience involved considerable confusion, including conflict between MFC and regional authorities and between regional authorities and traditional land users. The Miscellaneous Amendments Act (1985) appears to have withdrawn land-administration authority from the regional governments.

There have also been a few modest attempts at modernization schemes for smallholders. The Nuba Mountains Agricultural Production Corporation (NMAPC), established in 1970/71, aims to provide tractor services to groups of farmers with contiguous holdings. It charges £S.2.50/feddan for plowing operations. A scheme will be initiated if villages can put together a tract of at least 1,000 feddans. This is divided into 10-15 feddan holdings, and these are distributed to all those who participated in the clearing of the land, with those who had previously had holdings in the area getting more land than others. There is a required rotation, and cotton must be marketed through NMAPC. There are a number of problems in these schemes which seem to originate with the land-tenure arrangements. A new agreement with farmers introduced by NMAPC in 1984 makes no mention of who owns the land in the block farms. It provides, however, that the project can evict farmers who fail to attend to farm operations or fail to pay debts or who sell the inputs supplied by the project. Farmers object to being evicted from land which they consider has always be-longed to their community, and there is some uncertainty about whether these holdings are inheritable and can be subdivided. There are commonly disputes within communities between those who previously had their holding in the area of the block farm and get only an extra 5 feddan in consideration of that and those whose holding lies elsewhere.

The report concludes that land must henceforth be regarded as a scarce and threatened resource. It recommends that MFC consider a moratorium on new leasing for mechanized cultivation and introduce more rigorous monitoring of farming methods and conservation measures required under the leases. It recommends longer leasehold terms as rewards for observation of the windbreak and rotation requirements, elimination of all subsidies to mechanization, and rents which more closely reflect the productive value of the land. It notes that if government cannot control unauthorized mechanized cultivation, it will be very difficult to require better husbandry on the holding as the sanction of eviction is ineffective.

## SWAZILAND

Nonindigenous tenures were introduced into Swaziland in the mid-nineteenth century. These initially took the form of concessions given to British and Boers by the king for prospecting, for grazing, or for almost any purpose. By the death of King Mbandezeni in 1889, Swaziland was overlaid with concessions which overlapped in some areas and were in several cases three or four deep. Conflict over the concessions was endemic. With the emergence of Britain in the role of protector of Swaziland at the end of the Boer War, Britain moved to resolve the matter. The concession experience has been the topic of a number of scholarly articles, but for our purpose it **is adequately summarized in:**

**SW1 Booth, Alan R. Swaziland, Tradition and Change in a Southern African Kingdom. Boulder, CO: Western Press, 1983.**

This history examines (pp. 11-23) the concession experience and the dualism it has left in the land-tenure system of Swaziland. The British created the "Grey Commission" in 1904 to delineate boundaries and establish priority of claims to concessions. The recommendations of the Commission were implemented by the Concessions Partition Act, 1907. The partition awarded the Swazi a third of the country, divided into thirty-two Native Areas. This **was** accomplished by carving off the most heavily utilized third of most of the concessions, leaving the Native Areas scattered throughout the country. The bulk of the land was awarded to whites in freehold or in some tenure convertible to freehold. A small amount was retained as Crown Land. Swazi had to become tenants of white owners or move to the native areas. Removal to the native area (reserves elsewhere in Africa) was carried out in 1914. The Queen Regent Gwamile had already begun (from 1907) urging young Swazis to go and work in the gold mines of South Africa and to contribute a quarter of their earnings to a fund to buy back the land. Only very small amounts were acquired.

By 1941, overpopulation and overstocking in the Native Areas had become so serious that Sobhuza in council petitioned the British king in Parliament for redress. Britain, now in need of colonial support and resources as never before in its war with Germany, responded. In 1940, Colonial Welfare and Development funds went for the repurchase of European-held lands, and the bulk of the remaining Crown Lands (until then reserved for European purchase) were earmarked for Swazi use. In 1946, as part of Britain's empirewide venture into social experimentation in the colonies, a Native Land Settlement Scheme was launched utilizing these new lands, which, with subsequent additions, totaled nearly 350,000 acres (141,750 hectares). Its goals, relief of population pressure and the securing of the economic future of the peasantry through managed cultivation and stock raising on redistributed lands, fell short of achievement. But the Swazi thereby regained much land. In 1944, the drive toward reclaiming the land was supplemented by Sobhuza's inauguration of the Lifa Fund, a levy on Swazi cattle and cash for the repurchase of more territory. By independence in 1968, 56 percent of the land lay in Swazi hands.

At present, the Swazi Nation Land (SNL) portion stands at 60 percent of the kingdom, and on that exist some 50,000 smallholding farms (homesteads) averaging 7.4 acres (3 hectares) in size. These farms are run largely along traditional lines, using family labor and draft animals, and they produce for subsistence. A combination of factors--land tenure policy, customary methods, modern homestead economics, and inadequate marketing facilities--all have contributed to their marginal productivity. About 70 percent of the population reside on SNL, and about half of the -people depend directly on traditional agriculture for their livelihood.

The remaining 40 percent of the kingdom is given over to Individual Tenure Farms (ITFs), stemming from the concessions period. They number about 850 and average about 1,977 acres (791 hectares). They were owned almost exclusively by foreign individuals and companies at the time of independence, but foreign ownership (partly througn the workings of the Land Speculation Control Act of 1972) now amounts to only about 17 percent of the kingdom's land areas. In control of the balance, roughly 23 percent of the land, are a number of publicly owned modern farms, run by governmental bodies such as the Ministry of Agriculture, the Prisons Department, and the Defense Force. Others are owned and operated by Tibiyo Taka Ngwane, a royal corporation. A few of the modern farms (on no more than 4 or 5 percent of the modern farm area) are on Swazi Nation Land, but utilize up-to-date ITF methods and technology.

The freehold areas established as a result of the concession experience are known in Swaziland as Individual Title Land (ITL). These were surveyed and registered initially as a part of the Transvaal survey and land registry system:

**SW2 Levy,** D. "Situation **Report: Swaziland." Unpublished report. Southampton, England: Directorate of Overseas Surveys, Ordinance Survey, (late 1970].**

**Prior** to 1972, the Surveyor-General of the Transvaal in South Africa was ex officio the Surveyor General of Swaziland. This state of affairs stemmed from the era after the Anglo-Boer War when Transvaal was a British colony. After the formation of the Union of South Africa in 1910, Swaziland became a British Protectorate, but it was found expedient to continue the administration of land survey from Pretoria. From 1960, duplicate records were maintained in Swaziland. In 1972, a Surveyor-General was appointed for Swaziland and the original records dating from 1890 were transferred to Swaziland. The deeds register was transferred at the same time. The report focuses primarily on the state of survey services in Swaziland and concludes that they are rudimentary, consisting largely of a few small expatriate operations. The style and standards of the survey professions are those of South Africa.

There are a few broad looks at tenure in Swaziland. Hughes's important work* focuses only on traditional tenure. One useful overview is:

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* See A.J.B. Hughes, Land Tenure, Land Rights and Land Communities on Swazi Nation Land in Swaziland, Monograph no. 7 (Durban: Institute for Social Research, University of Natal, 1972).

**SW3 Whittington, G.W., and J.B. McI. Daniel. "Problems of Land Tenure and Ownership." In Environment and Land Use in Africa, edited by M.F. Thomas and G.W. Whittington,** pp. **447-461. London: Methuen, 1969..**

Examining the position with respect of Individual Title Land (ITL) in 1976, the authors note that there are large differences in the intensity of land use and a high level of absenteeism. Forty percent of ITL farms and 35 percent of the ITL area were owned by absentee owners, largely white residents of South Africa. Most of the worked ITL was in the Highveld and Middleveld where, though there is some commercial cropping, the land has traditionally been used for winter grazing by sheep from the Transvaal. The number of sheep has, however, declined steadily since the first decades of the century, and in the last two decades commercial forestry has expanded over large areas of ITL in the Highveld.

Swazis today have access to ITL (if they are wealthy enough to purchase it). In the years before independence, a significant amount of land was shifted from Crown and ITL to Swazi ownership, but under a tenure provision which led to its lapsing back into traditional land tenure. The authors indicate that the Swaziland Land Settlement Scheme in 1946 combined a limited amount of freehold bought back by government from owners with 130,000 acres of Crown Land, a total of 147,396 acres or 7.27 percent of total land area. The program was focused in the Herefords and Hlatilculu areas. Leasehold tenure was applied, but the scheme was not a success and was virtually abandoned after 1954. In practice, these areas are now subject to the normal Swazi laws and customs regulating the holding and use of land. Daniel has written elsewhere* that the leaseholds involved no rent. The lessee could not sell, mortgage, or sublease, and could be evicted if he did not cultivate correctly. Daniel noted that it was doubtful whether the title conferred, with its provision for eviction, appeared to offer any better security than the settler enjoyed in the Swazi Area. He also noted that confusion resulted from the fact that no provisions had been made for land in settlements to be allocated to sons when they married.

The authors also comment on the LIFA program for repurchase of land for the Swazi Nation, indicating that over the years 6.31 percent of the total land area had been purchased back for the nation, but also noting that this land has now become subject to local chiefs but is held under the direct control of the king.

Swazis have in the past decade begun to purchase ITL on a significant scale. A valuable window on the Swazi freeholders has recently been provided:

**SW4 Russell, Margo. A Study of Individual Tenure Farms in Swazi Ownership. Mbabane: Ministry of Agriculture and Cooperatives, 1988.**

This report is part of the Land Tenure Center's research project of institutional constraints and opportunities for agricultural development.

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* J.B. McI. Daniel, "Some Government Measures to Improve African Agri-**culture in Swaziland," Geographical Journal 132 (1966): 506-15.**

While that project focused on Swazi Nation Land and the traditional land tenure system there, it also sought to determine whether Swazi farmers, if they were experiencing frustration on SNL, sought to shift their operation to ITL. For example, among the 47 advanced farmers surveyed by Flory, two had purchased ITL. Both these fields were over 20 kilometers away from their other land.* How common was this pattern? how often did SNL farmers break ties with SNL entirely when they purchased ITL, in which case they would have shown up in a sample of SNL homesteads?

The Swazi Ownership report indicates that these are not common patterns. Working with Land Registry records, Russell found that 30.5 per-cent of the holdings, totaling 77,582 'hectares **or** 11.6 percent of ITL land, are now in private Swazi hands. The average size of these holdings is 73 hectares, about half of the size of other holdings. While 64.4 per-cent of the holdings are under 5 hectares, 20.1 percent are in the 5-100 hectare range and 15.5 percent are in the 100-1,000+ hectare range. Some owners have more than one holding. There are 86 individuals who have average total ownership of 530 hectares, or over one-half of the total land in Swazi ownership. Of total ownership, 14.3 percent is by women, though the average size of women's holdings is half that of men's.

A sample of thirty 1-hectare or larger holdings indicated several characteristics of the holders. Seventy-four percent of the holdings had been purchased since 1974. Forty-seven percent had been purchased as developed holdings, while 23 percent were bought as pure bush and 30 per-cent had a few facilities. Forty-two percent of the buyers had borrowed money from banks to make the purchase, while 50 percent had paid cash and 8 percent had an installment arrangement with the seller. At the time of purchase, very few of the purchasers were full-time farmers. Most were salaried workers in the civil service (33 percent), employed in the private sector {21 percent), migrant workers and other wage laborers (21 per-cent); others were in medical practice (12 percent), royal family affairs (8 percent), or self-employed (5 percent). Some were, however, already engaged in agriculture to some extent, and 10 percent indicated that commercial cropping of cotton was the major avenue through which they were able to accumulate sufficient money to purchase farms.

The reasons for purchasing the land were complex and cannot be clearly ranked, but they listed: (1) inadequacy of arable land on SNL--a desire to obtain larger holdings both with a view toward commercial operation and with a view to providing land for the family, (2) inadequacy of grazing on SNL--though they continue to use SNL for grazing also, (3) stifling of incentive on SNL, (4) property development and speculation, and (5) retirement.

Plans for commercial operation were often not realized. Several of the holdings sampled were agriculturally inactive at the time of the sample, and a third of the holdings farmed did not produce for sale. Of the land used, 17.2 percent is in crops and timber, and 82.4 percent is in grazing or fallow. Cattle were run on over 90 percent of the holdings

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* Bruce Flory, Constraints to Commercial Agriculture on Swazi Nation Land: A Survey of Swaziland's Advanced Farmers (Mbabane: Ministry of Agriculture and Cooperation, 1987) , pp. 10-11.

and maize grown on 60 percent, though most holdings are not highly specialized. There were, however, 17 percent of the holders who had dairy cattle, apparently keeping them on freehold to keep them separate from other cattle. Of the holders, 14 percent earn no income from agriculture; 59 per-cent, less than half of their income; 41 percent, more than half of their income; and 10 percent, all their income.

There is little in the above figures to suggest that SNL farmers are shifting into freehold as an alternative to SNL. What stands out, in fact, is that these freeholders are deeply involved with SNL. Well over half of the freeholders have a house on SNL, and about half of them now head this homestead, though they are commonly resident elsewhere. Nearly half still cultivate SNL and, of these, half still rely to a significant extent on SNL, typically to produce the family's maize supply. These freeholders had a 60-percent incidence of polygamy, and a common pattern is for a first wife to be with the husband's family on the SNL while subsequent wives are on the ITL holding. The freeholders retain their allegiance to the chief of their home area, and 94 percent of the freeholders said they paid tribute to their chief.

Nor does acquisition of freehold necessarily mean that one has no contact with the local chief where the freehold is located. While other factors influence this, one major factor is squatters, whose relationships with Swazi owners tend to be problematic. The Farm Dwellers Act of 1967 protects the pattern established during the Protectorate, when Swazis lived on white-owned farms and provided labor in return for the use of land. While the absence of squatters was a major factor in the selection of land for purchase, a third of the purchasers acquired land with some squatters; and while 20 percent (with a mean of 1.7 squatters) said that they had no problem with their squatters, 13 percent (with a mean of 9.5 squatters) said that there were difficulties. Swazi owners complained that they faced higher expectations than the former owners, and themselves had ambiguous feelings about their roles. Although the number of squatters' cattle is supposed to be strictly controlled, some will bring in additional livestock if not carefully superintended. At worst, situations of tension and sabotage develop. When disputes arise over matters such as this, the freeholder has only the local chief to whom to turn. The squatters may already have vowed khonta to the chief, and a freeholder may require a new squatter to do so, as a vehicle of social control.

All the freeholders, in fact, had active links with the local chief, and they do favors for him. The relationship is complex. Often the nearby SNL community feels it should have got the land through the repurchase program. Chiefs may tend to see landowners as a source of land for their squatters, a competing source of land--indeed, there is a similar dynamic of labor for land involved in the chief-subject and owner-squatter relationships. Some owners themselves were uneasy about their status. While most defended the land as their private property, some appear to accept that, ultimately, it belonged to the nation and fell under the local chief's authority. Hughes* noted that some ITL farms purchased by Swazis had become indistinguishable, so far as patterns of cultivation and settlement were concerned, from neighboring chiefdoms. The Russell study makes clear that those dynamics are still operating today, but also suggests that the result described by Hughes is taking place in only a minority of cases.

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* Hughes, Land Tenure, Land Rights and Land Communities, p. 235.

Another major shift in the tenure system has come about through the lane repurchase program funded by the British government as part of its independence-aid package. The details of this program are not especially relevant to the case at hand because virtually none of this land has gone over to Swazi cultivators. A review of the history of the program is beyond our needs here, but can be traced through official reports. Between 1970 and 1983, 287,188 acres were purchased and the program continues, though on a low key, as most of the land which is promising for cultivation has already been re-purchased. Only a very small amount of this land has gone to Swazi farmers, however. The British have insisted that this land be "projectized" before repurchase and not be allowed to slip back into traditional tenure states. As a result, the re-purchase program has formed the basis for the creation of a state and parastatal agricultural sector, with large-scale projects and enterprises either directly operated by the Ministry of Agriculture and Cooperatives (MOAC), Tibiyo, or Tisuka (the latter two are royal corporations) or leased by them to foreign firms.

**A** recent study, also part of the Land Tenure Center research program, examines both the uses to which this land has been put and, more interesting for our immediate purposes, the efforts made in several projects on Swazi Nation Land, the customary tenure area, to carve out special tenure niches for small projects:

**SW5 Levin, Richard. Land Tenure Arrangements in Agricultural Production Schemes. Mbabane: Ministry of Agriculture and Cooperatives, 1988.**

After repurchase, the land is turned over to MOAC, which has, in turn, given part of the land to Tibiyo and Tisuka for administration. Some operations on this land are run directly by i4OAC, Tibiyo, or Tisuka, while in other cases, the land has been leased to firms.

MOAC operates six breeding ranches, three sisa ranches, and three fattening ranches. The Nyonyane sisa Ranch was studied by Levin as an example of the state-ranch model. The **sisa** ranch's purpose is to improve livestock performance through crossbreeding. Cattle can be kept there for E2 (about $1.25 in U.S. dollars) per beast per month. Levin reported an access problem for small herd owners, for whom it is not worthwhile to transport a few beasts to the ranch. Most users are large herd owners. Cattle can be sent on to a fattening ranch for sale, but this is not frequent. The owners of the live-stock have no role in management of the ranch.

There are cases, however, in which repurchased land is farmed by small-holders. Where this is the case, tenure has been an important issue and often a subject of controversy between farmers and the scheme. Levin notes that the Amanzimnyama Maize and Bean Farm has made land available to twenty smallholders but is operated essentially as an MOAC-run state farm. He concludes that the farm would be better operated if the farmers were given more secure tenure, but notes that this seems to be considered incompatible with its status as SNL
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Some projects, however, have moved in this direction. The Mphetseni Pine-apple Settlement was established by MOAC on 250 hectares of repurchased land, which was leased to the Pineapple Settlement Company (PAC) which manages the

scheme. The 250 hectares were divided into 27 farms of about 9 hectares each. The farmers were selected from good farmers from all over Swaziland. Each was given a lease, has access to an equipment pool, and could borrow from the scheme. Harvesting was done cooperatively, with required marketing through the scheme. The farmers borrowed heavily and accumulated great debts, requiring a government backout scheme. In 1981, government witndrew from the scheme, liquidating the PAC and leaving management of the scheme in the hands of a farmers' association. The association markets, and has had access to input credit, througn Swazican, the canning firm.

The original plan for the scheme was that scheme members were to purchase their plots after twelve years. This has not materialized, although twelve of the farmers have met the conditions for purchase. The Ministry has been reluctant to go ahead with the sale, though at the time of the study the purchases were said to be going through. If so, it will be the only instance where repurchased SNL has been resold to private owners, and seems to run contrary to policy in other, similar situations.

The case of Vuvulane Irrigated Farms (VIF) is also innovative. Though it was initiated on freehold land, it later became SNL. VIF was established on freehold by the Commonwealth Development Corporation (CDC) in 1962. By 1973, 223 Swazi farmers had leased holdings averaging 4.5 hectares, and by 1982 there were 263 farms with farm sizes between 3.2 and 6.5 hectares. The leases require farmers to devote 70 percent of their land to sugar, which is processed and marketed by the scheme. The terms of the lease were a major point of contention. The early leases were indefinite in duration. The issues of inheritance on the death of a lessee and compensation on cancellation of a tenancy were hotly contested.

New leases which went into force in 1975 were for twenty years, with rent renegotiable after ten years. The leases placed important restrictions on land use and left the corporation to name a successor on death of the tenant, subject to compensation to the tenant's family for approved improvements to the holding. In 1982, CDC handed legal title for the land over to the Swaziland National Agricultural Development Corporation (SNADC). The land became SNL and was leased to the farmers on a twenty-year renewable and inheritable basis. In a situation of declining earnings from sugar, the tenants have challenged the appropriateness of their being required to pay rent on SNL. Growing dissatisfaction led to the appointment of a Commission of Inquiry in 1985. Although its work has been completed, its recommendations have not been made public. In 1986, ownership was transferred to Tibiyo. This failed to bring calm, as fourteen tenants were evicted for rent default. Their appeals to the king, however, resulted in their reinstatement in the scheme.

On SNL where customary tenure patterns have been well developed, innovation has taken the form of seeking models of agricultural development consistent with the customary tenure patterns. Mayiwane Maize is a Taiwan-supported MOAC project. The land utilized comes from existing homestead allocations, with members selected by Rural Development Area (RDA) management and staff on the basis of previous performance. Membership is on an individual basis, so women can join, and, in fact, a majority of the twenty-nine members are women. Each member commits 1 hectare to the project, and more than one member from a household may join if there is another hectare to commit. They continue to farm the hectare, but a package of inputs and services is provided by the project. If a member dies, the family may retain the membership, designating the successor to the hectare. The scheme is demonstrating high productivity on SNL. Although a number of chiefs' areas are involved, there have been no

difficulties. The 1-hectare participation level may be less threatening than experiments creating larger-scale operations.

The Fuyani Poultry Cooperative is again on SNL under customary tenure. The site was allocated by a chief, who selected an open, unoccupied piece of land previously allocated as grazing land and allocated those who had formerly grazed on this land another piece of land. Membership is open to anyone local, even those from nearby chiefdoms, involves a joining fee, and is managed by an elected committee. Almost all the members are women. The poultry farm is managed cooperatively. Its experience with outsider membership has been smooth and suggests that this may be problematic only when land under a project is allocated to individual outsiders.

The Magwanyane Sugar Project, again on customary SNL, owes its existence to local initiatives but received very substantial assistance from MOAC. MOAC officials helped the community plan the project, organize an association, arrange a loan for pump and pipes, and construct a storage reservoir. The chief allocated a 40-hectare area to the committee, joining himself and, when the land was allocated to members, received a plot. Some of the land had been used as pasture while some parts of it had been farmed. Some of those who farmed there joined the scheme. The scheme has grown and now has thirty-five members and 100 hectares, a 54-hectare sugarcane block, and individual holdings for vegetable production. Membership is individual, with husbands and wives counted as separate members. While part-time farmers are not allowed, hiring labor is permitted. There is some absenteeism; although the chief is an absentee, he maintains an active role, settling all major decisions of the scheme's governing committee.

Finally, there is the outgrower-contract farming model. It resembles the Mayiwane Maize Scheme model, except that it is operated by a private firm. The Cassallee Tobacco Project is an example. It was piloted through leasing 120 hectares of repurchased ITL from Tibiyo and Tisuka but now purchases primarily from SNL farmers. Levin notes that where a processing element is involved in the operation, the processing operation may need to be based on ITL or repurchased ITL leased to the operator. He also notes that even with this cash crop, successful outgrowers are quite limited in their ability to improve their incomes because they have difficulty expanding their scale of production.

The same LTC research program produced a more narrowly focused examination of tenure arrangements in smallholder irrigation on SNL:

**SW6 de Vletter, Fion. Innovation and Adaptation: A Study of Land Tenure and Smallholder Irrigation Schemes in Swaziland. Mbabane: Ministry of Agriculture and Cooperatives, 1988.**

The de Vletter study, an examination of twenty-five smallholder irrigation schemes, found that in virtually all schemes a management committee had been given autonomous powers to deal with the day-to-day running of the schemes. Chiefs were members of seven of the schemes, but not one committee included a chief. Chiefs have, nonetheless, played an important role. The chief's approval is a prerequisite for any scheme. He often (but not always) chooses the site and is responsible for allocating plots. In at least five cases, the chief played an initiating role and, in all but eight, pursued the necessary and often frustrating steps for establishing an irrigation scheme, for example,

obtaining official clearance, water rights, and so forth. After the scheme was set up, chiefs generally pursued a laissez-faire policy, with the committee left to act on mundane misdemeanors. Committees organize work groups, absence from which results in fines; maintain bank accounts; borrow money; and tend to turn to the chief in only one difficult situation--eviction.

The Tate and Lyle report* had been concerned that eviction from schemes within the traditional tenure framework would be difficult. In fact, sixteen of the schemes had made provision for eviction. While it was clearly difficult to move beyond fines as a disciplinary tool, five schemes had, in fact, evicted members, in two cases for leaving the land uncultivated, and in one case for refusing to participate in work on channels. It is clear that access to land in the schemes is not viewed as entirely a matter of customary tenure, and that it is accepted that somewhat different rules apply. There is some ambiguity as to whether, on the irrigator's death, the plot is regarded as part of his estate or belonging to the scheme. The future use of the plot tends to be settled by the family in discussions with the management committee. Only the Zakhe scheme has a predominance of second-generation members, and most successors are eldest sons, though often the plot is farmed for a long period by the deceased's wife.

Flexibility in membership--and thus access to land--was a striking feature of some of the schemes. In government-initiated schemes, membership has tended to be on a first-come, first-served basis; in others, allocation has been by the chief. While in a majority of cases membership is by homestead or house-hold, in some cases there was membership by individuals and, in these cases, instances of women and bachelor members were found. Even outsiders to the community were admitted in some cases. Women in particular had more formal involvement than anticipated. In fifteen schemes, there were women members (some widows who had succeeded to their husbands' memberships) and two were composed entirely of women. Of the twenty-two operational schemes, nineteen had women sitting on their committees, with a ratio of women to men of 1:3 or 1:2. Where allocations were made to homesteads, wives were often elected as committee members despite the presence of male household heads. These latter were often preoccupied with rain-fed crops such as cotton in the lowveld, while wives concentrated on production of vegetables.

De Vletter also found the schemes to be more effective producers than anticipated. Earlier studies had indicated that only 50 percent of the land was in use in such schemes. De Vletter found only six schemes with significant amounts of land unused, and ten schemes had provision for the lending of plots among members to ensure they were kept in use. De Vletter concludes that these smallholder schemes have a good deal to offer and are a viable alternative to larger-scale operations on the Vuvulane model.

Two problems do emerge from his study, however. First, the issue of inclusion of outsiders in a scheme seems particularly controversial, likely to engender disputes and likely to be ultimately resolved against outsider participation. Second, it became clear that when a serious dispute did arise, one serious enough that it could not be settled by the chief, it was not dealt with effectively by higher authorities. The case of "schemes that did fail,

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* Tate and Lyle Technical Services, "Reconnaissance Study, Usutu and Ngwavuma River Basins," Land Tenure Technical Report no. 5 (London: WLPU Consultdnts, 1982).

or became temporarily inactive pending decisions, are the result of involvement of higher authorities who are forced to grapple with issues for which there are no obvious solutions in customary law and practice."

De Vletter identifies several needs: (1) a need for all schemes to have written constitutions which set out rights and obligations clearly; (2) a need to affirm that access to a scheme plot is not a right but a privilege, conditioned upon fulfillment of certain obligations and subject to withdrawal if those obligations are not met; (3) a need to affirm a policy of openness on such schemes to groups disadvantaged in access to land under the customary tenure system--women, in their own right, .unmarried men, and some outsiders, especially those with training in agriculture such as graduates of the School of Appropriate Farming Technology; and (4) a need to have clear policies promoting schemes of this nature and the means for prompt and sustaining settlement by higher authorities of such disputes as do arise.

Most of the tenure *change* on SNL has been either through an evolutionary process or on local initiative. There has been no state-enacted tenure reform, and, in fact, few proposals for such reform. One exception is:

**SW7 Maina,** M., and G.G. Strieker. "Customary **Land Tenure and Modern Agriculture on Swazi Nation Land: A Programme of Partnership." Mbabane: Ministry of Agriculture and Cooperatives, 1971.**

The authors state that the customary tenure system is the "principal reason for the disaffection of young Swazis from the rural areas," but argue that a freehold system would run contrary to Swazi cultural values and result in land concentration and landlessness. They propose a systematic adjudication, demarcation, and registration of land rights in each chief's area, with those farmers who requested leasehold being given it at that time. The leases would be for between 5U and 100 years, have modest rents based on unimproved value, allow a successor to be nominated, and have limits on subdivision. The leases would be administered by a National Leaseholo Authority, which would use local chiefs as its agents--though the exact relationship is not clear in the proposal. A leasehold credit scheme is proposed in which the National Leasehold Authority would guarantee bank loans to leaseholders. If the lease-holder defaulted and the Authority had to pay, the Authority would then recover the debt from the leaseholder (it is not clear how) and would have the right to cancel the lease in the event of a "serious default."

A similar proposal is put forward in Magagula:

**SW8 Magagula, G.T. "Land Tenure and Agriculutral Production in Swaziland." In Land Policy and Agriculture in Eastern and Southern Africa, edited** by L.D. Ngcongco and S.D. **Turner, pp. 133-140. Tokyo: United Nations University, 1986.**

The literature on land registration in Tanzania, despite the implementation of several different programs, is sparse and unfocused. A system of land registration was established by both the German and British colonial regimes, but has been discussed only in the context of land tenure policy in general. The paucity of data is even more evident in the post-Arusha period (1967+), with government policy focusing on the implementation of the **ujamaa** program and on the dismantling of the system of freehold land titles. There is an abundance of literature discussing land issues in light of the socialization programs since 1967;* however, few of these papers specifically address the issues of farmer security of tenure or titling.

Individual land registration, as mentioned above, was introduced in Tanzania during the colonial period and was a feature of both the German and British administrations. The best overall description and evaluation of the colonial system can be found in the following:

**TA1 James, R.W. Land Tenure Policy in Tanzania. Nairobi: East African Literature Bureau, 1971.**

James's monograph covers both the German and British colonial systems as well as the independence period up to 1970 and provides a valuable overview of trends in land policy up through the first years of ujamaa. An expert in land policy and land law, James provides a thoughtful consideration of land legislation and programs for all three periods.

In the years of the German occupation, from roughly 1890 through 1917, government policy was to encourage European settlement and the development of plantation agriculture. To this end, the Imperial Ordinance of 1895 was enacted which facilitated the acquisition and registration of large tracts of land as freehold. All land except that which was already privately owned or possessed by chiefs or other Africans was declared Crown land. Individuals might prove their claims to this land by providing "authentic documents." Thus, James writes, "the result was that in law, only settlers who could prove grants of land from the German administration, whose grants were entered in one of the German registers, or those who had documentary evidence of grants

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* For a comprehensive review from different theoretical perspectives, see Dean E. McHenry, "Peasant Participation in Communal Farming: The Tanzanian Experience," African Studies Review 20 (1977) : 43-63; Susanne D. Mueller, "landing the Middle Peasantry: Narodism in Tanzania," Working Papers no. 20 (Boston: African Studies Center, Boston University, 1979) ; and Goran Hyden, Beyond Ujamaa in Tanzania; Underdevelopment and an Uncaptured Peasantry (Los Angeles: University of California Press, 1980)

from local chiefs or a public authority, had security of tenure" (p. 14). These grants were made according to German law, with most deeds issued originally as leaseholds with the option to purchase, the purpose being to prevent land speculation while encouraging land utilization. By the end of the German occupation, approximately 1.3 million acres of land had been alienated in freehold to settlers, most of it located in the northern highlands areas of the country where some of the most valuable and highly developed land is found today.

The British acquired Tanganyika as a League of Nations mandate following the German defeat in World War I. English land law was introduced into the country, and German titles were recognized and converted into fee-simple. Under the British, few new grants of land were made, and by the end of the colonial period the amount of alienated land was 2,500,000 A., or roughly 1 percent of the total land area (freehold plus leasehold?). As in the German period, it was in the areas of high agricultural potential that registered land was likely to be found and almost invariably held by Europeans and other foreigners. [Larsson (see TA2, below) writes that during the British occupation, only one freehold grant was made, and that it was eventually turned over to government control.] James notes that the British made special arrangements under the Land Registration Ordinance for land designated as wagf land under Muslim law; this land was deemed freehold upon registration.

At independence the new government gave careful consideration to land policy and to the role that registered land should or should not play in Tanzania's development. Although the common wisdom at the time emphasized the necessity of individualization of title for agricultural development, the government chose to emphasize issues of social justice and common rights to land. As one of the first pieces of legislation after independence, the Freehold (Conversion and Government Leases) Act of 1963 was enacted, which, as the title implies, provided for the conversion of freehold titles into 99-year, renewable government leases carrying only a nominal rent. (This act was later in effect repealed by the Government Leaseholds (Conversion of Rights of Occupancy) Act of 1969, which converted the leaseholds to rights of occupancy in order to bring them into line with property rights held by occupants of what had originally been Public Land.) The **1963** Act established several important tenets of land policy in independent Tanzania: that land belongs to the society rather than to individuals; that the right to land depends on actual use of it; and that land is not a commercial commodity. The Arusha Declaration in 1967 and subsequent government papers and proclamations took these principles yet further, calling for equality, self-reliance, and **ujamaa** (perhaps best translated as cooperation of the sort found in traditional extended families) to guide Tanzania's future course of development. The concrete expression of these values was to be the establishment of **ujamaa** villages, in which land was to be held in common and worked together by village members for the common good.

Writing just three years after the Arusha Declaration, James has little to say with regard to the actual workings of **ujamaa** but is very sympathetic to the overall goals of the policy and makes several important points with regard to anachronistic legislation and other legal anomalies resulting from the **ujamaa** program. Problems with regard to property rights have been created, not only in the newly established **ujamaa** villages, but also in the older developed areas where leaseholds are prevalent. The result is a multiplex system of land tenure, with several forms co-existing. Old, inappropriate legislation

remains on the books, a legacy of the colonial period. James recommends that some sixteen statutes be repealed because they are out of line with present-day social and economic conditions--especially in the post-Arusha period. He does not believe, however, that **ujamaa** villages should be incorporated as others have recommended as a first step toward registering occupancy rights (with the goal of ultimately acquiring loans against security in the land); such a step is not appropriate for the collective sector. And indeed, as of 1970, there was no indication that this might be done.

A briefer discussion of registration opportunities is found in the following:

**TA2 Larsson, F. Gerhard. "Land Registration in Developing Countries." U.N.O. World Cartography 11 (1971): 33-65.**

In the paragraphs dealing with Tanzania specifically (pp. 54-56), Larsson notes many of the specific rules and obligations governing the registration process. Unfortunately, it is not at all clear if his discussion refers only to the colonial period or if it applies equally to the post-independence era. It appears that the mechanisms he notes were initiated during the British occupation and continue in force as of 1971.

Urban lots and new settlements must be surveyed by "normal ground survey methods," before grants are made. Most of the urban lots are not registered, however, but rather leased from year to year; these leases are not recorded in the register. Only rights of occupancy issued for a period of five years or more are registered. Land is usually registered on application of the owner, while the right of occupancy is granted if the applicant has plans for the land and the appropriate documents demonstrating "possession." Larsson does not provide any details, but it appears from his discussion that this is a cumbersome process. He comments that the government can speed up the process of registration by declaring a district a compulsory first-registration area. In this case claimants are ordered to make known their interests in land within a specified time limit. At the time of Larsson's study, in 1971, this procedure had not been implemented to any extent.

Customary land seems to have been treated as a right of occupancy. One could own trees and buildings and have the right to use the land. But this right disappeared when the occupant left the village or did not cultivate the land. In principle, there also appear to be opportunities for the registration of customary land as a right of occupancy. Larsson writes that there were costs and advantages to registering customary land. The costs of registration included payment of ground rent to the state, fees for mapping and registration. The advantage to registration is security and the consequent opportunities for securing loans. He notes that to date (1971) there has been little registration of customary land and suggests that perhaps peasants see the costs associated with registration as greater than the potential returns.

After independence, the government of Tanganyika passed the Freehold Titles (Conversion and Government Leases) Act, which brought into the public sector an additional one million acres of land. Larsson points out that al-though land itself is no longer an exchangeable commodity, it continues to possess marketable value. People can sell or buy the "improvements" to the land, e.g., buildings and permanent crops. The quality of these improvements

affects not only the price they would fetch upon exchange, but also in a sense the value of the land. Similarly, favorable location of land (by a railway station or by a river) will affect the price of the improvements. The Act vests the absolute interest in land in the State. **A** peasant can apply to the State for a right of occupancy and continue to use the land so long as he can prove he is using it in a "responsible" way. Although the government emphasized that the intent of the 1963 law (and of the **ujamaa** policies, discussed below) was to give the people the rights to, and responsibility for, their own land, it appears that the new law actually decreased peasants' control over land.

Larsson also comments on the Customary Leaseholds Act of 1968, apparently designed to reform the "feudal" relationship between large landowners and cultivators (i.e., tenants) especially prevalent in the northwestern provinces. The act stipulates that a tribunal shall be appointed to oversee the division of land between landowners and cultivators. Larsson speculates that one of the intentions of the act was to deny the landowner his "right" to land if the cultivator could prove that he had been using the land for a "long period of time" (p. 55). If the cultivator could prove this, he would be granted a right of occupancy. Larsson comments that this is only an adjudication procedure, noting that the right of occupancy is not recorded in the Land Register and that customary rules of transfer and inheritance continue to apply. He believes that this law will foster the development of private rights, including possibilities for mortgage and sale, in customary land.

It appears from James and Larsson that the mechanisms and potential for registering land on an individual basis, as rights of occupancy, continue in force. Even with the implementation of the more "radical" socialization policies, especially those affecting tenure in 1967 and 1973, it is not obvious from the literature that these opportunities and mechanisms have been extinguished. One researcher* noted that in Ismani, a large commercial maize-producing area, land sales and rentals, along with customary forms of land acquisition, continue to occur. Different ways of acquiring land, including allocations from the the Village Development Committee as well as land purchases or rentals from other farmers, co-exist. Feldman does not state whether these latter acquisitions are registered, although the paper substantiates the continued existence of tenure practices prohibited by the State. The fact that these forms of tenure continue to exist within the purview of the Village Development Committee speaks to the State's inability to enforce its policies.

The **ujamaa** program and villagization schemes have been analyzed extensively in a number of books, articles, and other publications, the most useful of which are cited at the end of this section on Tanzania. In the context of this review of registration literature,

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* See Rayah Feldman, "Custom and Capitalism; Changes in the Basis of Land Tenure in Ismani, Tanzania," Journal of Development Studies 10 (1974): 305-20.

however, the importance of **ujamaa** is somewhat ambiguous, for while the program has little to do with land registration directly, its indirect implications for land registration and critical role in Tanzania's development course in the past two decades cannot be ignored. Harbeson's article provides a recent and concise overview of the **ujamaa** program and, most importantly, a discussion of various policy changes that have been considered by the Tanzanian government and international donors in the past few years.

**TA3 Harbeson, John W. 'Tanzanian Socialism in Transition: Agricultural Crisis and, Policy Reform.' UFSI Reports (1983), no. 30.**

**In** the initial period of **ujamaa,** from roughly 1967 to 1972, emphasis in the rural areas was on the creation of **ujamaa** villages together with the collectivization of production. Recognizing that peasant agriculture was the backbone of Tanzania's economy, the program sought to achieve development while at the same time considering local needs and circumstances. Progress toward these goals, however, turned out to be a great deal slower than had been envisaged. Although a number of **ujamaa** villages were set up and formally registered as such with the government, many were only nominally in compliance with the principles of the program--what one analyst has called "signpost u'amma villages."

Beginning in 1973, the government shifted its emphasis from collectivization of production to villagization, conceding that the former had been unsuccessful and that the creation of **ujamaa** villages had not occurred at the rate or with the results that had been hoped. Instead, it chose to postpone collectivation for the time being and to work toward villagization alone, with the goal of providing improved educational and public health facilities to the new, concentrated settlements. These settlements were to be registered as simple villages, with progress toward becoming **ujamaa** villages coming after (rather than as a requirement for) registration.

In neither of these two periods--in which the distinctions must be seen as differences of emphasis rather than as abrupt reversals of policy--have the goals of collectivation or villagization proven especially beneficial for Tanzania's economic development. Many critics have attributed this failure to the misapplication of the principles of the Arusha Declaration and subsequent elaborations, but Harbeson places the blame squarely on the policy itself; the failure of **ujamaa,** he writes, is fundamentally a failure of domestic institutions, and the results for Tanzania have been devastating. At the base of this failure has been a consistent neglect of process (by planners as well as critics), of consideration of precisely how interaction between peasants and officials is to be achieved.

The crisis in Tanzania has led to a campaign by international donors, including most notably the World Bank, for policy reform and to a willingness on the part of Tanzanian authorities to re-think some of the **ujamaa** objectives. Two important efforts have resulted, the 1982 Task Force on National Agricultural Policy and the 1983 Agricultural Policy Paper, both of which have implications for the future of land registration in the country and which, if implemented, could fundamentally alter the direction of Tanzania's development. The former recognizes that performance on the collective village farms has been disappointingly poor, and instead calls for a return to private landownership.

Adopting a pluralistic approach to agricultural production, it recommends not only that individual smallholder production be fostered, but also that medium-and large-scale private production be given a role in the Tanzanian agricultural sector.

As a response to the suggestions of the Task Force and in contrast to some of its more "revolutionary" recommendations, the 1983 Policy Paper is somewhat more tempered in its statements. It too focuses on the need to de-centralize development initiatives, but instead of envisioning private medium- and large-scale farming as having a role in this, looks to smallholder production almost exclusively. Most interesting is the recognition that one of the principal drawbacks in the system of land tenure implicit in the **ujamaa** program is the lack of security in land at the household level. In order to end this insecurity, the paper recommends, individuals should be given 33- to 99-year leases, while villages could be eligible for 999-year leases which could then be sublet to individuals. This suggestion has not as yet been put into effect, but has the potential to change the structure of the agricultural sector in very fundamental ways.

A more detailed consideration of the findings and recommendations of the 1982 Task Force is found in the following **paper:**

**TA4 Gondwe, Zebron Steven. "Agricultural Policy in Tanzania at the Crossroads." Land Use Policy 3:1 (January 1986): 31-36.**

The Task Force noted that there were four legal tenure regimes in existence: government leaseholds, rights of occupancies, customary tenure, and collective tenure. It also recognized three forms of agricultural production: the homestead farm, on which the peasant grows crops of his own choice and the produce belongs to the family; the block farm, a piece of land within the village worked by a single family; and the collective farm, on which all village residents are required to contribute labor.

In his review of the report, Gondwe notes that the Task Force did not make any statements about the registration of **ujamaa** villages, only about registered villages. He was told that the Task Force believed that there was not a single **ujamaa** village in the country, only registered villages in transition to becoming true **ujamaa** villages. Gondwe writes that the recommendations of the Task Force focus on the restoration of private initiative, which will help in the transition from villages to **ujamaa villages.** The recommendations of the Task Force include the establishment of policies aimed at increasing land security. First, land allocated to village councils should be given for a period of 999 years or longer. Second, villages should grant individual farmers inheritable leases for a period from 33 to 99 years. These leases may not be sold, but the land leased may be surrendered to the Village Council. The Council may award compensation for improvements to the land. As of this writing, there is no indication that these policies have been implemented by the Ministry of Lands.

In 1985, the Government of Zanzibar asked J.C.D. Lawrance to prepare draft legislation for a proposed project of registration of land

rights on Zanzibar and Pemba islands. His recommendations as well as the draft legislation he prepared are contained in the following:

TA **5 Lawrance, J.C.D. "Report by Land Tenure Advisor on Preparation of Draft Legislation for Establishing a System of Land Registration in Zanzibar." N.p., December 1985.**

In drafting legislation for the registration of land on Zanzibar, Lawrance was asked to work within an unusual set of constraints. All land in Tanzania is vested in the State, and there was no intention to alter this fact. Thus, registration would be used to convey or authenticate lesser rights than out-right ownership as granted in freehold tenure. Moreover, the use rights which were to be backed by registration were to be without term, leasehold tenure thereby being eliminated as well. Within these limitations, however, rights of occupation, as the tenure type is called, can be inherited, transferred, mortgaged, and leased. (The need to guarantee these rights appears to be the motivation for the proposed program of registration; Lawrance mentions that the number of mortgages registered since independence has fallen drastically and discusses the need to provide guarantees of security of title to both landholders and lenders with a view to increasing agricultural investment and, ultimately, production.)

The legislation that Lawrance has prepared calls for the systematic demarcation, survey, and adjudication of land. His model is the 1925 Sudan Land Settlement and Registration Ordinance, with reference also to the 1963 Kenya Registered Land Act and the 1965 Registered Land Act of Lagos State in Nigeria. The system that is to be established in Zanzibar, while uniform with regard to procedures and fees, for example, is not highly centralized, and controls over land tenure will continue to be exercised by customary leaders at the community level. Lawrance writes that issuance of land certificates to rights holders is not necessary, the register alone providing proof of title, and suggests that certificates often serve to facilitate fraud and thus are better left unissued. Another useful observation he makes is that while provisions of the proposed legislation can serve to control fragmentation of ownership, fragmentation of landholdings is a somewhat different matter and cannot be adequately controlled through land-registration legislation.

(Lawrance's report and the draft legislation were prepared in December 1985. The Government of Zanzibar has yet to seek passage of the legislation, however, disagreements between several ministries having apparently stalled any action.)

## TOGO

Although registration of land was first introduced by the Germans and later continued under French colonial rule, registered land has largely been confined to holdings in the coastal area held by Europeans and descendants of repatriated slaves. There have been no studies of these holdings, however. Rather, what literature there is centers around land reform legislation enacted in 1974 and 1978, and only briefly mentions registration. A discussion of the legislation and how it is to be implemented is found in:

**T1 Koffigoh, Kokou. "La reforme agrofonciere au Togo." In Enjeux Fonciers en Afrique Noire, edited by E. Le Bris, E. Le Roy, and F. Leimdorfer, pp. 240-251. Paris: Karthala, 1982.**

Under the law of 1974, land is divided into three categories: (1) land held by individuals and groups, (2) land in the public and private domain of the State, and (3) national land, which includes all land not under cultivation except for fallow land adjacent to cultivated land. This last category of land is to be made available to citizens who can develop it. As provided for by the ordinance of 17 May 1978, development of land is to be under the authority of **zones d'amenagement agricole planifie.** Among other responsibilities, the zones have the authority to establish new **structures agrofoncieres** and to undertake comprehensive land registration in the name of either private owners or the State. According to Koffigoh, regional commissions are in the process of demarcating national land, and to date have set aside 42,600 hectares in the Plateaux region, 110,700 hectares in the Central region, 14,500 hectares in the Kara Region, and 70,000 hectares in the Savanna region, a total of 328,151 hectares. He notes, however, that their work is far from completed. The text of the 1974 law is included as an appendix to the article.

A complementary paper, in the same collection, discusses customary tenure practices and what effects the reforms will have on them:

**T2 Foli, Messanvi. "La reforme agrofonciere et le droit coutumier au Togo." In Enjeux Fonciers en Afrique Noire, edited by E. Le Bris, E. Le Roy, and F. Leimdorfer, pp. 253-263. Paris: Karthala, 1982.**

Foli discusses some of the problems involved in the reform, such as the cost of inventorying land, the need to educate the populace about the reform, and the difficulty of designating land as unused or abandoned. To counter these problems, the author suggests using small pilot areas and avoiding overly centralized direction in the rural areas.

An earlier work of Foli's provides a discussion of registration legislation enacted during the colonial period:

**T3 Foli, Messanvi. "Le regime juridique des terres au Togo." Doctor of Law thesis, Universite de Paris, 1970.**

Registration of land was originally begun by the German colonial administration and continued in force during French rule under a law of 1922. This legislation assumed that only individual titled land facilitated production, and therefore sought to assure the title holder of the land that he owned the land uncontested. Registration of land-.was obligatory in two situations: if received as a concession from the State and if subject to a written contract valid under French law. It is this law that formed the basis of the Togolese land law until the enactment of reforms in 1974.

Foli also outlines two possible options of land holding and looks at their advantages and disadvantages. The first option is individual property rights, which are seen to increase production through their guarantee of se-cure tenure. Disadvantages include increased landlessness, more speculation, decreasing social cohesion, and ease of distortion by elites. This is contrasted to communal forms of land holding, which are seen to promote social cohesion, discourage speculation, provide a means of overcoming shortages of labor and capital as well as low technological levels. However, communal land rights are seen to increase fragmentation, maintain low production levels, and promote insecurity of tenure.

While noting that other countries such as Senegal and Ivory Coast have instituted reforms aimed at suppressing customary tenures, Foli nevertheless argues for a land tenure reform based on community rights, not individual property. Land needed by the State and production coops should be excepted. (As noted above, the 1974 and 1978 reforms do indeed allow for community tenures.)

## UGANDA

There have been two waves of land registration in Uganda, a very early program implemented in the kingdom of Buganda (and to a lesser extent in Toro and Ankole) at the beginning of the century and a series of projects carried out in_Ankole and Kigezi in the 1950s and 1960s, at roughly the same time as and corresponding to Kenyan reg-
istration programs. **A** number of studies have focused on the effects of the registration over the years, but their range is less wide titan in the case of Kenya. More often than not, the authors have been associated with the Ugandan Department of Lands and Surveys, and tney have tended to view registration from similar perspectives, considering it beneficial in almost all situations and needing only minor alterations to function well. This predisposition has also led many authors to conclude that problems with registration programs are largely the result of a failure of education, of inadequately trained personnel and of a poorly informed public.

The Buganda land registration system, known as the **mailo system** because the land was divided into square mile sections, was the out-growth of the Uganda Agreement of 1900. That agreement was an accord between Great Britain and the **kabaka** (king) of Buganda designed to restore order to a kingdom that had been bitterly divided by civil war and to shore up the position of the **kabaka.** It provided for substantial allocations of land to the **kabaka** and his nobles and chiefs. **Mailo** land was divided into two categories, official mailo and private mailo. The former were grants of land attached to specific offices in the Buganda government. These lands could be neither subdivided nor sold, and instead passea intact from the original office-holder to his successor. Official mailo was abol-
ished in 1967 (as was the **kabaka**-ship), and these estates became Public Land. Private **mailo,** on the other hand, was similar to freehold, and could be subdivided or transferred with few limita-
tions. Although private mailo, too, has since been abolished (under the Land Reform Decree of 1975), it was the focus of a number of careful studies. The books and articles resulting from them pro-vide the most extensive literature concerning the long-term effects of land registration in Africa. With the exception of the research by Richards (U16) and by Richards, Sturrock, and Fortt (U17), how-ever, these studies focused on similar features of the mailo system and their findings were quite consistent. There was universal agreement that the law concerning peasant tenants needed to be revised and that land registers had to be updated. The authors also believed that land registration in Buganda had been one of the most important factors in its hign level of agricultural production and prosperity relative to the rest of the country (at least until 1975).

The most thorough studies of mailo land (i.e., private mailo) are those of Henry West, who served as Assistant Commissioner of

Lands and Surveys in Uganda until 1964. West has written two books and a number of articles on the history and operation of the mailo system.

U1 **West, Henry** W. **The Mailo System in Buganda. Entebbe: Government Printer, [1964].**

This survey of the **mailo** system, written for the information and guidance of African officials of the Ugandan government responsible for land survey and registration, draws on West's many years of experience in Uganda. The book deals with the original mailo settlement of 1900 and its enabling legislation (outlined in Appendix A) as well as its evolution up to 1964 and suggested reform measures.

The original mailo agreement, the product of the Uganda Agreement of 1900, was a political rather than an economic measure undertaken without consideration of customary tenure practices and designed to restore order to the kingdom of Buganda, shore up the position of the **kabaka,** and allow the peaceful imposition of British colonial rule. Under the initial agreement, the area of Buganda was assumed to be 19,600 $mi^2$; allocation of this area was to be as follows :

958 $mi^l$ for to the **kabaka** and nobles
8,000 $mi^2$ for 1,000 chiefs
9,000 $mi^2$ for Crown land
Miscellaneous allocations for missions, etc.

Authority for the allocation of land was granted to the Lukiiko, or King's Council, with the chiefs given the responsibility of drawing up lists of people to whom land should be allotted. In the end, allocation was made to some 4,136 indiviauals, who were issued provisional certificates for specified amounts of acreage and then allowed to select in turn land corresponding to those amounts. Certificate holders were given first choice of land, before Crown land was designated, and the effect of this method of land distribution was to place the most desirable land in the hands of individual Ganda, with the less desirable (and generally less fertile) areas that remained becoming Crown land. Surveying of the land followed a modified Torrens system and was begun **in 1904 and** continued until 1936; once land had been surveyed and demarcated, the holder was issued a final certificate and his holdings entered in the Land Register. West estimates that the total cost of survey and registration was some £tUU,000, a small sum given the area surveyed and the time period (22 years) over which the work was carried out.

The very settlement itself raised a number of important problems. It was the European notion of land as a valuable good that was central to the settlement rather than the prevailing African concept of value from rights over people within a given area of land. Furthermore, allocation of land was made without regard to pre-existing rights of occupancy and ignored clan rights to land as well as claims of peasant-tenants. This failure to make provision for tenants in the original settlement led to some of the first difficulties, and the 1927 Busuulu and Envujjo Law was an attempt to rectify the oversight by providing tenant cultivators with security on their plots of land and limiting the amount of tribute they could be required to give the mailo holder. This law, according to West, grafted onto a "quasi-freehold system . . . a pattern of hereditable tenancies" (p. 22), creating a situation which was to prove

problematic in the future as tenants could not be evicted under normal circum- stances and yet continued to pay fees for use of the land set in 1928 which became, with inflation, uneconomically low.

Other problems came to the fore as the survey proceeded throughout the kingdom. Too few qualified personnel were provided for the survey, and with each passing year it became more difficult to allocate the original grants of land as the grantees died or otherwise disposed of all or part of their allo- cations--which in any case had never been formally delineated beyond the pro- visional certificates for specific amounts (rather than areas with specified locations) of land. Nor were the Land Registers. kept up to date as heirs failed to register successions and .subdivisions and as sales and other such transactions went unrecorded. By 1946 it was estimated that there were 150,000 transactions in **mailo** that could not be recorded until new surveying was carried out (p. 39).

But despite these and other very obvious defects, West terms the settlement beneficial to Buganda, stating that "Johnston's Settlement (as amended by later measures) has, in the main, proved economically and socially successful" (p. 59). He makes strong claims for the value of the **mailo** system, writing that the land settlement accelerated the changeover to a cash economy, enhanced the mobility of labor, facilitated sales, and created a class of large and reasonably prosperous landowning peasants. Because of the settlement, Buganda has so far avoided problems of concentration of holdings in a few hands, population pressure on land and landlessness, and fragmentation of holdings. (West can state with authority that these problems do not occur in Buganda with any frequency, but why does ne conclude that their absence is due to the Land Settlement?)

The defects that West describes in the **mailo** system are ones he terms "technical" and believes can be remedied with revised policies and regulations. The greatest need is to up-date the land registers, which are estimated to be out of date for 43 percent of the entries. Land must be resurveyed and re- registerea and then provisions and inducements established for its remaining current. Procedures need to be not only modernized, simplified, and clarified but also made cheaper and more accessible for landholders. In addition, in- heritance procedures must be revised so that customary practices are less cum- bersome than they are at present and less likely to lead to "ill-advised" sub- divisions of land; in short, the customary procedure needs to be integrated into the new system in such a way as to allow recognition of the continuation of customary inheritance practices while maintaining an up-to-date written record of all land transactions. West also recommends that the government be given greater powers to compel a landholder to develop the land, authority for which must go hand in hand with revision of the 1927 Busuulu and Envujjo Law. This law has become obsolete and now serves only as a disincentive for land-holders, who receive only nominal fees from tenants they cannot evict. Al-though the law acted to prevent massive landlessness at its inception, its usefulness has now passed; land occupied by **busuulu** tenants brings no return to its owner and is not mortgageable. "Custom," West asserts, "should now give place to contract" (p. 126).

There are several principal lessons to be learned from mailo registration, according to West. The first is that success of registration of title depends on enclosure. If governments could legislate compulsory hedging of boundaries, then land settlements could be better administered. It has never been Ganda custom to hedge fields, and West believes that failure to require

landholders to do so has impeded land administration. Second, for land administration to be efficient, an informed, supportive public is necessary. In the case of Buganda, this would require new land legislation, written in clear language and translated into Luganda and containing strong incentives for landholders to comply with its provisions (pp. viii-ix). A third point which West makes is that registration of land is appropriate only in those areas where population density and intensity of land use are such as to make surveying and demarcation of boundaries worthwhile; otherwise, he says, registration creates more problems than it solves (pp. 65-74).

A second, more extensive study is:

U2 West, Henry W. Land Policy in Buganda. Cambridge: Cam-
**bridge University** Press, 1972.

In this book, West draws on the experience and research presented in his earlier study, The Mailo System in Buganda, and supplements them with data from fieldwork done in 1965 and 1966. Land Policy in Buganda is intended for a wider audience than the earlier book, and West is concerned not only to depict the legal and administrative evolution of the **mailo** system, but **also** to describe de facto changes in inheritance procedures, tenancy arrangements, and market transactions that have occurred over the years. To gather data on these changes, West carried out five separate investigations: (1) re-drawing the map of the settlement survey, done 1904-36, to reflect 30 years of land dealings; (2) surveying enabling legislation for the **mailo** system; (3) conducting five sample field studies; (4) investigating the records of the Buganda Standing Committee on Succession, 1950-64; and (5) consulting records of land sales, **1959-66.** Although he describes the original settlement, his aim in this work is less to present the successive legal changes and accomodations resulting from the 1900 Uganda Agreement, which he does in his earlier book, than it is to discuss the "consequences in terms of land policy and of the resultant land proprietary structure, and the influences and forces acting upon them . . ." (p. 2).

West continues to emphasize that despite the fact that the original motivation for the Uganda Agreement of 1900 was political rather than economic, the **mailo** system nas been a success--at least in the short term. It has "sent Buganda headlong along the road towards individualization of property rights" (p. 27), a path which West clearly favors, and set one pattern of land rights (absolute individual ownership) for all of Buganda, regardless of land use or potential, a condition whose utility West is less convinced of. (West believes that registration should not have been done in those areas of Buganda wnere the soil was less fertile, population density lower, and land use less intensive.) Perhaps the most important consequence of the mailo settlement is that it has led to the early introduction of a cash economy and the aevelopment of a land market. Less commendable is that it has widened the gap between the privileged, the landed, and the unprivileged, the landless. Within the family, it has strengthened the position of the nuclear family against the lineage or clan.

West devotes a chapter of the book to findings on changes in tenancy in the almost 40 years that the 1927 Busuulu and Envujjo Law has been in effect. Intended to provide peasant tenants with a measure of security, the law has

achieved its goal and prevented the eviction of tenants from **mailo** land. From the owner's perspective, however, it has also retarded development of the land by its setting of the obligatory fees payable from tenant to landowner at very low rates, its affirmation of the inheritability of busuulu tenancies, and its rejection in all but the most extreme cases of the possibility of eviction of tenants. The law has also tended to frustrate the operation of the Registration of Titles Ordinance because low returns to the owner from busuulu tenancies act as disincentives to paying survey and registration fees (p. 84).
Because such land cannot be mortgaged (it cannot be seized if the owner defaults on the land or the tenant evicted), there is no impetus to develop it. Nor does this system encourage the tenant to develop the holding; a tenant can only partially benefit from improvements he himself makes. In addition, he may hold land on several different **mailo** properties, the result of subdivision of land between co-heirs over successive generations. West estimates that perhaps 30 to 40 percent of cultivable **mailo** is occupied by busuulu ten-ants, although the percentage is slowly declining as landowners refuse to grant new leases. In some areas where the land is held by an absentee owner and is unoccupied, squatters have settled on the land, while in regions where land is increasingly valuable for cash-cropping, owners may demand extra fees from tenants; this has occurred in the Luwunga area, where Rwandan and Ankole immigrants are ignorant of the rights guaranteed tenants under the 1927 law.

Some of West's most interesting findings concern the evolution of inheritance procedures with regard to **mailo** land. Unless a landowner leaves a will specifying how his land is to be divided among his heirs, inheritance is according to customary practices, with administrative powers for allocation of land given to clan and lineage heads. This procedure, outlined under the Succession Order of 1926, was initially intended to encourage the break up of **mailo** land ano to allow a more equitable aistribution. It has been successful in this, but the process by which heirs succeed to their land is hopelessly complex and in need of revision. In a study of successions recorded between 1950 and 1964, West found that land is increasingly subdivided and plural holdings common, with an average of 1.6 plots per owner. Clan heads are reluctant to sell land outside the clan, and instead prefer to subdivide the holdings. In addition, women are more likely to own land than they were in the past: although there has never been a stricture against women owning land, in recent years daughters have become almost as likely to receive a portion of their fathers' lands as sons, and widows are often left land by the terms of their husbands' wills. For the period 1950-64, 45.6 percent of all heirs were women. Equally significant, however, is the fact that these women inherited only 29 percent of the total area, generally being allotted appreciably smaller shares than the men. It is West's opinion that co-ownership will become increasingly common in the future as a means of avoiding excessive subdivision-of holdings--a condition increasingly prevalent since 1957 (p. 124). He also suggests that in the future inheritance of such valuable resources as coffee trees may be handled separately from land as an alternative to ongoing parcellization.

Despite the existence of land registers, the land market in Buganda is largely uncontrolled, and sales go unregistered and subdivisions of holdings unsurveyea. Nevertheless, the market has become increasingly important in recent years, especially in urban and other desirable areas. Buganda has no system of adequate conveyancing and no way of dealing with subdivisions of land. Of the 37,030 successions between 1950 and 1964, only 27 percent of the heirs took the appropriate steps toward recognition as proprietors--and West

estimates that even this small percentage may be too high, that it may fail to include those with small uneconomic holdings and those wno hope to avoid taxation (p. 116).

West does not believe that the situation with regard to the mailo system is by any means hopeless, but that the problems can be remedied with new regulations and administrative machinery. The conditions which he believes it is most important to correct are the pluralism in holdings, absentee ownership, and subdivisions of holdings. It is now time to replace the subsistence farmer with a market-oriented one, and West recommends that the state be given greater powers to administer and even intervene in land dealings to insure that land is developed and that transactions are fully registered. He also suggests that it is time to replace the old tenancy law, which has perpetuated inefficient land use and hindered progress, with one that provides incentives for both tenant and landowner to develop their holdings. Finally, succession procedures need to be simplified and alternatives, including the institution of cash settlements, implemented to prevent subdivision among the heirs.

A companion volume is the pamphlet West has compiled containing documents relating to the establishment and evaluation of the mailo system:

**U3 West, Henry W. The Transformation of Land Tenure in Buganda Since 1896. African Social Research Documents, vol. 2. Leiden: Afrika-Studiecentrum, n.d.**

Included in the collection are Articles 15-17 of the Uganda Agreement of 1900, a sample of specific land allocations, provisional and final certificates, a certificate of succession, and excerpts from two court cases concerning the alienation of customary clan lands. The volume also includes memoranda evaluating the mailo system, among them a brief report from Sheppard in 1938 (not the same one cited below) and later notes concerning successions and the Busuulu and Envujjo Law. A bibliography provides additional citations of government documents and special studies.

**A** shorter paper of West's which summarizes many of his assertions and recommendations is:

**U4** West, Henry W. "Reflections Upon the Problems of Land **Registration** in **Buganda." Paper** read to the Conference of the East African Institute of Social Research, Makerere **University** College. **Kampala,** December 1963.

In this brief paper, West emphasizes how little Sir harry Johnston knew about customary tenure in Buganda before he drew up the Uganda Agreement of l90u (he had spent only three months in the country) and discusses specific provisions of the settlement which were to prove especially troublesome to implement. As in his other work, west points out that land registration is only appropriate in those areas where population density and land values are relatively high.

Another researcher who looked at the mailo system, and in a somewhat earlier period than West, is A.B. Mukwaya. His major study **is:**

**U5 Mukwaya, A.B. Land Tenure in Buganda; Present Day Tendencies. Kampala: Eagle Press,** 1953.

In this 1953 study of the mailo system, MuKwaya focuses his inquiry on two aspects of the Buganda tenure system: the extent of fragmentation and the evolution of rules defining peasant rights. His aim is to analyze the changes that have occurred in these two areas rather than to prescribe specific ways in which the system mignt be revised.

After a brief introductory section, in which he makes the very important point that the land settlement changed the relationship between landlord and tenant from a political one to an economic one, Mukwaya proceeds to examine **98 mailo** land titles from sample areas in Busiro and Buddu Counties. Of these 98 estates, 62 had undergone some alteration since surveying early in the century. Sales, inheritance practices, and gifts were responsible for these changes, with sales the most common means of transfer. In the sample, 57.8 percent of the landowners had purchased their holdings, which comprised 23.8 percent of the total area sampled, while 19 percent had acquired their estates through inheritance. The average size of mailo holdings had also decreased over the years; with each decade, the average size had fallen while the number of landholders had risen. By 1950, 86.8 percent of landholders owned estates of less than 100 acres, but their holdings comprised only 24.7 percent of the total sample area. These small estates were most likely to be acquired through purchase, while the larger ones were most often inherited. Mukwaya notes that subdivision of the original mailo grants is not a recent phenomenon, but rather a process that had already been observed by 1926. He describes a recurring pattern in the breaking up of estates: holdings tend to be pared down and pieces sold off at the beginning of an owner's tenure; after a period of several years, this levels off and the shape of the holding stabilizes until the owner's death, when the estate is likely be again subdivided and new sales occur. Mukwaya provides two examples of mailo estates and their successive alterations up to 1950 which vividly demonstrate this pattern (pp. 40-42).

Sales are the principal means of redistribution of land holdings and occur often. The most important determinant of the amount of land sold to any one buyer at any one time is the amount of cash that buyer can raise. Sales are therefore likely to be of small amounts of land as well as frequent. At first, owners often sold land to obtain money for surveying fees, but more recently (i.e., since perhaps 1935) sales have been motivated by the need to raise funds to purchase cars, finance business ventures, build houses, and pay school fees. For the buyer, acquisition of land brings social and political advantages, the first and necessary step in upward mobility. Land is also considered a secure investment, but seldom purchased with the idea of agricultural production in mind. Most buy with the intention of becoming landlords rather than of farming the land themselves. As Mukwaya remarks, ". . . the magic usually attributed to the ownership of land has not worked very effectively, or not as yet" (p. 37).

In the second part of his study, Mukwaya looks at the rights of peasant holders to determine if they have changed in the years since the passage of

the Busuulu and Envujjo Law in 1927. From an examination of 333 court cases from 1947 to 1952 and another 114 cases decided by the **Katikiro's** (Prime Minister's) office, he concludes that, if anything, the rights of peasant-tenants have actually increased beyond the intent of the original law, that it is virtually impossible to evict a peasant-tenant as long as he continues to cultivate the land and pay the annual **busuulu** fee to the owner. The law requires the landowner to obtain a court order for the eviction, and the courts have often declined to issue the necessary document.

Like West a decade later, Mukwaya concludes that the mailo system has helped to preserve a stable rural society in which the rights of both landlord and peasant tenant are guaranteed. It has not, however, provided an incentive for the progressive landholder or tenant who wishes to obtain larger holdings for his own use or to mechanize production; rather, the system has perpetuated a "vicious circle of subsistence agriculture." Again like Nest, Mukwaya does not favor abolition of the **mailo** system but rather recommends that it be adjusted to encourage farmers to adopt efficient and remunerative production strategies.

**A** summary of Mukwaya's findings in presented **in:**

**U6 Mukwaya, A.B. "Some of the Problems of Land Tenure in Buganda." Conference paper, no. 43. Kampala: East African Institute of Social Research, Makerere University, 195?.**

Like Mukwaya's earlier, book-length study, this brief paper focuses on two aspects of the **mailo** system, subdivision of holdings and peasant rights, and presents much of the same data gathered in the early 1950s. Mukwaya continues to emphasize that while the **mailo** settlement was beneficial in its early stages and facilitated the introduction of coffee and cotton cultivation, it now serves to provide security for the subsistence cultivator rather than to encourage the owner or peasant-tenant who seeks to innovate and expand production.

The most recent study of **mailo** land is one done in 1972 which focuses on the interactions of absentee landowners and their tenants.

**U7 Mugerwa, E.B. "The Position of the Mailo-Owners in the Peasantry Society in Buganda - A Case Study of Muge and Lukaya Villages." Political Science Paper 7(a): Dissertation. University of Dar es Salaam, Department of Political Science, March 1973.**

Mugerwa's study looks at the relations between *peasant-tenants* and **mailo landowners in order** to find out what powers landowners exercise over their land and the extent to which they influence and control the peasant cultivators on it. Mugerwa worked in two selected villages in Buganda, both areas of mailo land held by absentee owners. Based on field observations and interviews, the study is especially valuable for its description of the ways in which mailo owners, their stewards, and tenants contravene the provisions of the Busuulu and Envujjo Law.

Although the tenancies are supposed to be granted gratis, Mugerwa notes that **mailo** owners often ask (and receive) substantial fees at the time the initial contract is drawn up. For this reason, many landowners prefer to grant tenancies to foreigners (often Rwandans or Burunais) who are ignorant of the law's provisions and from whom money can be demanded. (West has made the same observation.) Nor is the tenant's tenure as secure as the law permits. Although a tenant cannot be evicted without a court hearing--and only then if he has clearly violated the terms of his tenancy--landowners sometimes push tenants off their plots without a hearing and for very little pretext. Mugerwa writes that a tenant whose papers are not in order or who has neglected to pay one of the annual dues may find himself quickly evicted. In addition, tenants may find that they have to satisfy the demands of more than one mailo owner: although the tenants' lands cannot be divided among several heirs, mailo estates can. A tenant may therefore find his holding divided between two or more landowners, both of whom demand the full complement of annual rents from him.

The ability to contravene the provisions of the law lies not only with the landowner, however. Tenants too manage to get around the law's restrictions. Tenants are not permitted to sell or transfer their plots, but may in fact manage to do so with the fiction that the new tenant is merely looking after the plot in the original holder's absence. This kind of transaction requires the cooperation of the estate manager, who must be persuaded to issue the new holder with the correct papers either because he has been convinced by the tenant's story or because he has received part of the proceeds of the sale.

Mugerwa also provides interesting calculations of the amounts of money **mailo** owners can expect to receive from their tenants, and his figures bear out West's contention that the fees are unrealistically low. Estimating the income tenants produce for the two absentee owners who are the focus of the study, Mugerwa calculates that they receive far less return from their holdings than do their most prosperous tenant farmers and even less than the average tenant earns from sales of cash crops.

Like West, Mugerwa calls for the repeal of the 1927 Busuulu and Envujjo Law, but his rationale for doing so is different. He is less concerned with economic development and agricultural production than with the fact that ownership of **mailo** land and the provisions of the law allow the landholder to exercise undue political and social power over the tenant.

Other studies of the **mailo** system are less specific in their focus, treating it either as one of a number of factors in the economic development of Buganda or in the context of Uganda as a whole. One such study surveys land fragmentation throughout Uganda and discusses the **mailo** system in light of the broader problem.

U8 Lawrance, J.C.D. "**Fragmentation of Agricultural Land in Uganda.**" **Entebbe: Government Printer, 1963.**

Surveying land fragmentation in the early 1960s, Lawrance writes that while there is no evidence that the **mailo** system encourages fragmentation, it can be seen to facilitate subdivision of holdings by its lack of restriction of land transfers. Lawrance believes that where excessive fragmentation exists it must be endea through a program of land consolidation. Even more important is to prevent its occurring altogether; to achieve this, he advocates educating

public opinion to the dangers of fragmentation, implementing legal controls to prevent harmful subdivisions, ana encouraging the establishment of alternative sources of livelihood. Lawrance holds up the land consolidation and registration of Central Province in Kenya as a model, asserting tnat the legislated controls against excessive subdivision will prove effective against the recurrence of fragmentation. (Unfortunately, recent studies of landholding pat-terns in Central Province do not support Lawrance's view, and instead show that subdivisions continue despite the fact that they have little legal force and cannot be registered. These and other studies are discussed in the section on Kenya.)

Another assessment of the effects of the mailo system is found in Wrigley's chapter in The King's Men, a study of economic and political change in Buganda during the colonial period. Although discussion of the system is somewhat brief, the author makes an assertion about the 1927 Busuulu and Envujjo Law that is worth noting.

**U9 C.C. Wrigley. "The Changing Economic Structure of** Bugan**da." In** The King's **Men; Leadership and Status in** Bu$^{g}$**anda on the Eve of Independence, edited by L.A. Fallers, pp. 16-63. London: Oxford University Press, 1964.**

Wrigley writes that the effect of the 1927 Busuulu and Envujjo Law has been to reverse the intent of the original land settlement. Legal ownership, he points out, did not change, but "the proprietor's rights were now so restricted as to become almost valueless. In return for a small fixed payment the occupier enjoys absolute security of tenure . . . and the holding passes automatically and without entry fine to nis heir . . . .Thus, once a landowner has allowed a peasant to occupy land he has lost all effective control over it for ever . . . as well as all chance of making it yield more than a very limited income. . . . There is no way of gaining a substantial and continuing income from the land except by farming it, and it is to the cultivator, not the proprietor, that the proceeds of agriculture go" (pp. 43-44.)

Southwold's study deals with land inheritance patterns in mid-century Buganda and looks at them in the light of both religious and economic change.

U10 Southwold, Martin. **"The** Inheritance of **Land in Buganda." Uganda Journal 20 (1956): 88-96.**

Based on a survey of 105 successions recorded at the Lukiiko in a single year, Southwold shows that customary patterns of land inheritance among the Baganda have changed in the twentieth century. Whereas in pre-colonial times the principal heir was most likely to be a brother's son, now it is most often the deceased's eldest son who receives the largest portion of the land (40 per-cent on the average). Southwold attributes this change to Moslem and Christian influences rather than to the introduction of the **mailo** system itself. An-other recent innovation is that daughters now receive shares of land on almost equal terms with sons, a practice which did not exist in the past and which is

not in accord with the nonbinding provisions of the 1926 order concerning successions. Southwold believes that the system of succession is now relatively stabilized and that the only change that is likely to occur in the future is with regara to provisions for widows, who do not receive land when their husbands die but rather are provided for by their children; as more and more Baganda migrate to towns, widows are likely to require some formal settlement.

Another series of articles, written in the 1920s and 1930s, are interesting as historical background. Several of these deal with the implementation of the **mailo** system and are written by colonial officials associated with the project.

Ull **Thomas, H.B.** "An Experiment in African Native Land **Settlement." Uganda Journal** 27 (1928): 234-248.

Writing in the early years after the Uganda Agreement of the negotiations between the British and the Baganda chiefs, Thomas claims that the **mailo** settlement "perpetrated a grave injustice upon the overwhelming majority of the Baganda people." Nevertheless, he sees individual ownership as an inevitable goal and upon it will be "built the true prosperity and contentment of every people" (p. 248).

**U12 Thomas, H.B. "The Surveyor and the Politician: An African Object-Lesson." Empire Survey Review 2 (1933):** 28-32.

In this brief article about the **mailo** system and its effects on Buganda written before the conclusion of the survey, Thomas observes that fragmentation has been occurring since 1920 and that because of it, the survey "is being subjected to an ordeal for which it was never designed" (p. 30). His opinions are much the same as in his later, more extensive articles, and Thomas writes that although Johnston's Uganda Agreement of 1900 will ultimately result in a country of small farmer proprietors, the process will be both costly and inequitable.

U13 Thomas, H.B., and A.E. Spencer. A History of Uganda Lands Settlements and of the Uganda Lands and Surveys Department. Entebbe: Government Press, 1938.

The most pertinent sections in this history of the Uganda Lands and Surveys Department are those concerned with the actual surveying program for the **mailo** settlement. In Chapter 14, Thomas and Spencer discuss the techniques, personnel, and instrumentation employed during the almost thirty years that the survey took to complete and give estimates of the costs per acre. For the early years, from aoout 1908 to 1917, they estimate a cost of £5-8 per square mile, while in the later years (1920-36) costs rose to £8-30 per square mile. They emphasize, however, that these are only average figures and vary greatly depending on local conditions and time requirements.. Overall, they calculate that expenses for the entire survey of 9,003 $mi^2$ came to £200,000, or

approximately £22 per square mile. Further, more detailed information concerning surveying techniques and procedures is contained in the appendices (pp. 114-200).

**U14 Strickland, J.G. "The Uganda Mailo System." Empire Survey Review, no. 21 (July 1936), pp. 422-427, 460-469.**

**This** two-part article contains many of the same features as Thomas and Spencer's history of the Uganda Department of Lands and Surveys. The first part is a general description of the **mailo** settlement, while the second section discusses surveying instruments and techniques, procedures and logistical matters. Strickland's estimates of the costs of the survey are almost identical to those of Thomas and Spencer.

Several other reports are unobtainable in the United States but appear to present useful evaluations of the **mailo** system in its earliest years.

**G.** Place. "The Torrens System of Registration of Title as Applied to the Uganda Protectorate by the Registration of Titles Ordinance, 1922." Entebbe: Government Printer, 1923.

V.L.O. Sheppard. "Report on the Cadastral Survey and Registration of Title to Land in Buganda." Unpublished memorandum, 1938.

J.G. Strickland. "An Indexed Memorandum on the Buganda Mailo System." Unpublished memorandum, 1936.

Another article of historical interest is that of Lucy Mair which surveys customary Baganda tenure practices from an anthropologist's perspective and discusses the impact of the **mailo** system at a relatively early date.

**U15 Mair, L.P. "Baganda Land Tenure." Africa 6 (1933) : 187-205.**

**In** this article devoted largely to traditional tenure practices of the Baganda, Mair briefly describes the **mailo** system. Basing her conclusions on fieldwork done in 1931 and 1932, she writes that the system has "so far... not been accompanied by the disadvantages that the introduction of freehold tenure has brought with it elsewhere" (p. 200). The **mailo** system affords greater security to the peasant tenant than in the past, but at the same time she notes that the difference in material conditions between rich and poor in Buganda has increased enormously in recent years, the establishment of the mailo being the single most important contributing factor.

Several studies done in the 1960s focus on overall economic development in Uganda and the role of Buganda in this evolution. In

this research the **mailo** system is considered along with other factors contributing to economic change.

**U16 Richards, Audrey I. Some Effects of the Introduction of Individual Freehold into Buganda." In African Agrarian Systems; Studies Presented and Discussed at the Second International African Seminar, edited by Daniel Biebuyck, pp. 267-280. London: International African Institute, 1963.**

**In** this brief outline of the **mailo** system of Buganda, Richards describes both the land tenure system and other contributing factors in agricultural production in Buganda. An anthropologist, her perspective is quite different from that of West and others associated with the Lands and Surveys Department who tend to view the mailo system from the inside out. She notes that Buganda is one of the most fertile areas in East Africa, that cotton and later coffee have been grown very successfully there, that significant numbers of migrant laborers have come to work on the farms since the 1920s, and that the kingdom has been well served by the rail connection from Kampala to Nairobi and the coast. Although she agrees with other researchers that the **mailo** settlement has produced a wealthy class of landowners and that agriculture is Buganda is very productive, she is less willing than others to attribute the success to the land tenure system alone. Other factors, including those mentioned above, bear consideration. She points out that although the Nyoro and other neighboring groups have asked the government to introduce the **mailo** system in their areas, they are attracted not by the security provided by the other system--their own systems give cultivators quite adequate security--but rather by the ability of Ganda landholders to raise large sums of money from sale and mortgage of their land. Sne questions whether the introduction of freehold without the provision of rural credit schemes will satisfy Africans' desire for capital and whether the implementation of schemes for 4- or 5-acre holdings will ultimately lead to their consolidation in the hands of a few interested in commercial production--or even if this is desirable.

A particularly interesting and extensive survey is one done by Richards and otners in Buganda in the mid-1960s with both anthropologists and economists interviewing large-scale commercial farmers. Here the **mailo** system is considered as one of a number of possible factors contributing to farmers' prosperity.

U17 **Richards, Audrey** I., **Ford Sturrock, and** Jean M. Fortt, **eds. Subsistence to Commercial Farming in Present-Day Buganda; An Economic and Anthropological Survey. Cambridge: Cambridge University Press, 1973.**

Defining large-scale tarmers as those who farm 20 acres or more, the authors designed a survey to answer the questions of what differentiates large-scale commercial farmers from subsistence cultivators, what conditions are conducive to an individual's making the change to large-scale production, and what characteristics distinguish him from small-scale farmers.

Most interesting in the context of this survey of the literature are those segments of the nook that discuss the extent to which the mailo system has

affected the emergence of large-scale commercial farming. Chapter 3, "Land Tenure and the Emergence of Large Scale Farming," by J.M. Fortt, focuses on the evolution of the **mailo** system, drawing heavily on West's research, and on its effects on the emergence of progressive farmers. Fortt makes the very important point that the original land allocation procedure ensured that the **best land became mailo land and** it was on this land that cotton and later coffee cultivation was most successful. (The allocation procedure also perpetuated a system of plural holdings, with landowners often having several estates in different counties of Buganda and with the inevitable result of a certain amount of absentee ownership. See also Mugerwa, U7, above.) Fortt emphasizes the importance of land sale's• in the evolution of the **mailo** system and in the emergence of large-scale farmers, almost all of whom purchased significant amounts of land at an early point in their farming careers. Land sales became increasingly numerous from the 1920s onward as cotton and later coffee production profits enabled individuals to purchase farm land. Because of the provisions of the Busuulu and Envujjo Law, which guaranteed a certain security of occupation to **bibanja** tenants, it was most often these tenants who were in a position to purchase **mailo** land. The Busuulu and Envujjo Law is obviously the most troublesome aspect of the **mailo** system, but attempts to introduce reform have come to nothing. (In 1964 the Buganda Planning Commission recommended the establishment of a semi-freehold system of bibanja tenancies which would have given the tenant legal title to occupy the land in return for payment of an annual fee to the landlord; the proposal was rejected by the Buganda government.)

A chapter on the origins and growth of the commercial farms (Chap. 6, by D.A. Hougham) also emphasizes the importance of land purchases. Although he is careful to point out that no single pattern of land accumulation is dominant, he also shows that only 25 percent of the farmers in the survey had acquired their land through inheritance and that therefore their relationship to the original beneficiaries of the 1900 Agreement was very limited. Land sales have had an increasing importance in the emergence of large-scale commercial farming, although since the 1950s the area of land obtained in individual sales has declined. Evidence from the survey shows that two factors are paramount in the transition from subsistence to commercial farming: the ability of a farmer or prospective farmer to acquire land through purcnase and the accumulation of capital. Some two-thirds of the estates included in the survey had been purchased; in some cases purchased acres were added to inherited estates, but for most of the large-scale commercial farmers, ownership had come solely tnrough purchase. Moreover, additional acres were seldom acquired **in a** slow process of accretion; rather, farmers had been given the opportunity to acquire substantial traces of land and presented with the prospect of a dramatic rise in income. To the extent, then, that the **mailo** system has facilitated the functioning of the land market it has proved beneficial to the emergence of large-scale commercial farming. The second necessary ingredient, as mentioned above, is capital, and most of the farmers in the survey had accumulated capital either outside agriculture altogether (e.g., from jobs in Kampala) or from the sales of cash crops such as coffee and cotton. An alter-

native source of capital was bank loans, and here again the possession of mailo land, against wnich loans might be taken out, was an advantage. None of the farmers **in** the survey raised capital through sales of land. Another characteristic of these farmers was that they had far fewer tenants on their land than most cultivators, a fact which leads the authors to concur with Henry

West and others that the Busuulu and Envujjo Law has outlived its usefulness and must be revised.

Audrey Richards points out in the conclusion that the **mailo** system alone has not been responsible for this evolution--after all, for almost fifty years traditional attitudes toward land as a source of social and political power continued in force and only **a** small percentage of large landowners are also successful large-scale commercial farmers. Moreover, a comparison with Bugisu, where coffee production was achieved on peasant plots rather than on large-scale farms as in Buganda, points to the limited role of the **mailo** system, with its right to dispose of land freely, in the emergence of commercial production.

Other researchers who have investigated the mailo system, however, have made broader claims for its importance than Richards et al. One such group is the World Bank, which evaluated the economy of Uganda as a whole shortly before **independence.**

**U18 International Bank for Reconstruction and Development. Economic Survey Mission. The Economic Development of Uganda. Baltimore: John Hopkins University** Press, **1962.**

Several pages are devoted to the **mailo** system in Buganda in this report of the 1960-61 mission, and the authors state that the introduction of the concept of private ownership of land in Buganda has aided the development of that province. The two most important results of the system are security of tenure and the development of a land market, which have facilitated investment and commercial production. The **mailo** system has also led to the rise of a group of commercially oriented producers. On the negative side, however, are subdivisions and mutations of ownership as well as tenancy laws which militate against the mobility of land resources. The World Bank mission agrees with the recommendation of the Royal Commission of 1953-55 (see the section on East Africa above) that the present laws and obligations between landlord and tenant be replaced with contractual arrangements (pp. 235-37).

A similar survey was undertaken at about the same time for Buganda alone and it undoubtedly discusses the mailo system. Unfortunately, it does not appear to be available in the United States.

**U19 Buganda** Planning Commission. The Economic Development **of the Kingdom of Buganda, Part I. 1965.**

The most recently published description of the mailo system is that of Francis Butagira. His recommendations are not at odds with those of West and others, although his perspective, as someone with a legal rather than an administrative or technical background, is somewhat different.

**U20 Butagira, Francis K. "The Mailo Tenure in Buganda." In Land Law Reform in East Africa, edited by James Obol-Ochola, pp. 44-58. Kampala: Milton** Obote Foundation, **1969.**

One of a number of papers on land law and tenure in East Africa presented at **a** conference in Kampala in 1968, this chapter outlines the land tenure system in Buganda as it existed before the 1900 Uganda Agreement and as it evolved in the years after the settlement and suggests ways in which the system should be reformed. Butagira is an advocate and lecturer in law in Kampala, and his emphasis is on structural rather than agricultural change over the years. As for reform measures, he recommends that the **mailo** system be made more egalitarian in its distribution of land and more conducive to agricultural innovation. To **achieve** this, he proposes that there be both a ceiling and **a** floor on estate size, with excess land from large estates returned to the state for redistribution and small holdings consolidated into estates with common owner-ship; those displaced by these changes should be compensated with land else-where in the country. He also recommends that the Busuulu and Envujjo Law be repealed and that new, economic rents be set and peasants given thirty-year leases. **A** comprehensive survey and revision of the land register will be required to effect these changes.

Two smaller areas of land registration established in the early part of the century were in the kingdoms of Ankole and Toro. As with Buganda, the land settlements were attempts to shore up local authority and allow for the peaceful imposition of colonial rule. In Ankole the result of the 1901 Ankole Agreement was the demarcation of 50 $mi^2$ private freehold and 26 $mi^2$ for official estates. In Toro, 255 $mi^2$ became private freehold and 122 $mi^2$ official estates. Although these systems were subject to similar laws regulating landlord-tenant contracts as existed in Buganda and appear to have evolved in much the same way as did the mailo system, they have never been systematically studied in the way the mailo system has. As in Buganda, official freehold was abolished in 1967 and the holdings designated as Public Land.

Other land registration schemes were carried out elsewhere in Uganda in the 1950s and 1960s following the recommendations of the East Africa Commission report (see under East Africa above). Passage of the Crown Lands (Adjudication) Rules in 1958 made it possible for individuals to obtain freehold title to Crown Land. In some schemes the process involved adjudication, surveying, and actual registra- tion, while in other areas consolidation of fragmented plots was also done. An overview of these schemes is provided by S. ukec, Commissioner for Lands and Surveys in Uganda in the late 1960s.

**U21 Okec, S. "Pilot Schemes for the Registration of Land Titles in Uganda." In Land Law Reform in East Africa, edited by James Obol-Ochola, pp. 255-264. Kampala: Uganda Trust Press, 1969.**

Okec's survey is a valuable one, for it provides a description of the procedures employed in the registration projects and provides evidence of the ways in which these projects can be said to be have achieved (or fallen short of) their goals. He notes that a disproportionately heavy burden of the process fell on the shoulders of the local adjudication committees. Membership on

these committees was voluntary and unpaid, and yet success of the registration schemes depended on local participation and knowledge. In addition to describ- ing the regulations and procedures, he gives figures of numbers of plots adju- dicated, titles issued, and cost per acre estimates.

In the Ruzhumbura Pilot Scheme in Kigezi District, in the extreme south-west corner of the country (see also Lawrance and Obol-Ochola, U22 and U23, below), some 6,600 plots were adjudicated between 1958 and 1962; of these, 6,400 were demarcated and surveyed during the period. Only in 3 percent of the cases did the applicants elect to appeal the decision of the adjudication committee (half were successful, half not). Adjudication and demarcation were done without cost to landowners, and expenses averaged between £25 and £35 (in Uganda shillings) per acre (higher than the figures Lawrance gives). Once these stages were complete, landowners might apply for title and only at this point were they charged fees (£8 per acre). This last step has been the least well-received, and of the 6,400 plots surveyed, only 1,800 have had titles is-sued for them. Okec attributes this failure to a number of factors: a lack of knowledge of the advantages of title, acceptance of adjudication and demarca- tion combined with indifference to registration, inaccessibility of the office where titles are held, and inability to pay the necessary fees--especially on the part of small landholders, who in any case are unlikely to be able to mort- gage their holdings.

Okec also discusses the Shema scheme in Ankole, the subject of an earlier inquiry by Low (see U24, below). Between October 1959 and late 1964, 1,600 applications for adjudication and demarcation were made and 1,560 plots sur-veyed. Of these, only for 370 had titles been issued, a figure comparable to that for the Kigezi District project and for the Bubirabi Pilot Scheme in Bugisu District, in which only 34 titles were issued out of a total of 120 plots adjudicated. In addition, Okec briefly refers to the consolidation scheme carried out in Bufumbira in Kigezi District, noting that the 1,300 plots in the project were owned by 412 individuals and that most holdings averaged 10 plots of approximately 1/4 acre each.

Okec concludes his survey with figures demonstrating that despite the fact that succession procedures are far less cumbersome than in Buganda, title-holders are failing to register successions or even transfers of land. In Kigezi, for example, where 1,800 titles were issued, there have been an esti- mated 300 deaths, but only for 30 have successions been registered. These figures are alarming, for they indicate that despite streamlined procedures and the establishment of up-to-date land registers, even those landholders who have taken the steps and paid the fees for the title itself are likely to ne- glect to see that changes in ownership are recorded. To remedy this situation, Okec believes that education of the public and adequate publicity are needed.

A more detailed discussion of the Kigezi District project is pro- vided by J.C.D. Lawrance :

U22 Lawrance, J.C.D. "A Pilot **Scheme** for Grant of Land Titles in **Uganda.**" Journal **of African Administration** 12 **(1960) :** 135-143.

Lawrance describes the conversion of customary titles to freehold in Kigezi District. Under this pilot project, some 5,50U customary holdings in an area of 70 mi[l] were adjudicated, surveyed, and registered. One of the

purposes in undertaking this project was to test techniques and gather reliable data for future registration schemes, and Lawrance explains carefully the process by which the scheme was carried out, the decisions made regarding ad-judicatory procedures and surveying techniques, the unforeseen problems, and the costs of the project.

Kigezi is a heavily populated area, and various conditions (land short-ages, commercialization of production, de facto individualization of title, and increases in litigation) made it appropriate that the land be registered and individual titles granted to those who requested them. The response of local landholders was such that it was possible to undertake registration of the entire area rather than merely of individual estates. Committees of local elders and other notables were appointed to adjudicate customary land claims, the first step in the process. Once this was done, surveying was carried out, the land registered, and titles issued. It was found that the process was more time-consuming than had been originally anticipated; adjudication committees worked more slowly than government officials had hoped and there were found to be more landholders (and greater fragmentation) than initially thought. There were other difficulties encountered in the use of minimally trained personnel, and in the end the expense (about £10 per title) was greater than planned. Despite these problems, Lawrance concludes that the techniques of adjudication and surveying employed in the Kigezi pilot scheme were sufficiently successful to be applied elsewhere.

**A** very different view of the Kigezi project is provided by Obol-Ochola in his thesis on land tenure systems and proposals for land reforms in Uganda as a whole.

**U23 Obol-Ochola, James Y. "Customary Land Law and the Economic Development of Uganda." LL.M. thesis, University** of Dar es **Salaam,** 1971.

Chapters 6, 7, and 8 are a detailed consideration of the rationale, implementation, and results of the Kigezi adjudication and registration program and are based on an examination of official reports, documents, and court cases and on interviews conducted in the area in 1970 and 1971. Obol-Ochola favors a more equitable distribution of land and other resources than exists at present in Uganda and much of his analysis reflects this belief. Nevertheless, his work is a useful addition to Lawrance's (see above) and provides a very different judgment of the project.

Officials planned the Kigezi project at a time when it was widely held that individual freehold land tenure was the first necessary step to economic development. In addition to remedying local problems of soil erosion, excessive subdivision, and increasing numbers of boundary disputes, the registration program was intended to make land both mortgageable and transferable ana to be the first step toward a unified, national land policy. Although participation in the project was to be on a voluntary basis, chiefs and other local elite were able to persuade virtually everyone in the pilot area to accept the scheme. Obol-Ochola writes that the **mailo** system of Buganda provided a very convincing example of the benefits of registration of individual title, Buganda being generally perceived as the most advanced area of the country at that time and this advantage largely attributed to the land tenure system. What opposition there was to the registration scheme was based on the fears that wholesale

land alienation to Europeans would ensue, that consolidation of holdings would reduce crop variety (though in the event, no consolidation was carried out in this pilot area), and that land taxes would be introduced as a result of registration.

Those who were most readily convinced of the need for land registration were landholders who had acquired their land relatively recently. For this reason (as well as for topographical ones), Ruzhumbura County, an area of resettlement, was chosen as the site for the pilot project. Landholders perceived registration as a means of increasing their security of tenure rather than as enabling them to take out loans for agricultural development. Obol-Ochola emphasizes that it was this need for security, as well as the desire to minimize land disputes, that was especially compelling.

Like Lawrance, Obol-Ochola writes that adjudication proceeded more slowly than anticipated and required a good deal more time of adjudication committee members than had been planned. Communal lands such as pastures posed particular problems for the committees, especially where a part of the land might be farmed on a seasonal basis. Most of these decisions went in favor of the cultivators, the testimony of the chief (who was also a cultivator) being the deciding factor in the committee's decision. A better solution, Obol-Ochola believes, would have been to grant title to these lands to trustees on behalf of the entire group or community.

The registration project achieved its greatest success in the area of reducing land litigation. Obol-Ochola writes that he found no cases of land disputes in the ten years after adjudication in the court records and other reports he examined. The project did not, however, result in marked change in agricultural practices. Subsistence cultivation remains the norm, and cash crops have not been introduced. (Much of the **area** is unsuitable for either coffee or cotton anyway.) Nor has the provision of freehold title resulted in agricultural loans for farmers. Those few that have applied for them have generally been refused by the lending institutions.

It is Obol-Ochola's belief that individual freehold title has not been of benefit to most farmers, and except for providing security of tenure to landholders, there is little to be gained from expensive, time-consuming registration projects. In the long term, he sees the only solution to overcrowding in the expansion of employment opportunities in other sectors of the economy. And instead of individual freehold tenure, he advocates the introduction of a leasehold system in which development conditions are enforced. (Obol-Ochola writes in a similar vein about registration in the conclusion to his eaitec collection, Land Law Reform in East Africa (EA 3), suggesting that if further registration is to be carried out, that only leasehold titles be granted and that the mailo system be abolished altogether in favor of leaseholds with strict development conditions.)

Until recently there has been little opportunity to assess the effects of the Kigezi registration scheme and to test the assertions of Lawrance, on the one hand, and Obol-Ochola, on the other. The Land Tenure Center of the University of Wisconsin, together with the Makerere Institute for Social Research at Makerere University in Kampala, has just finished a study of the Kigezi scheme thirty years after it was initiated. Their findings are scheduled to be published in the fall of 1989.

A similar registration scheme carried out in Shema County in Ankole at about the same time as the Kigezi project encountered other, different problems, and popular reaction against the project was sufficiently strong for an official inquiry to be conducted.

**U24 Uganda. Report of the Commissioner appointed in inquire into the operation of the Land Tenure Scheme in Ankole. Entebbe: Government Printer, 1961.**

Although response to the new measures was poor in most areas, in Shema County in Ankole District, public opinion ran high, with some individuals strongly opposed and others very much in favor of the new land titles. V.C. Low was appointed to look into the situation there, and this report summarizes his findings. The tone of the work is somewhat imperious, and it is clear that Low strongly favors the granting of freehold tenure. Nevertheless, the report is valuable for its delineation of the advantages of individualization of title and the objections to such a scheme on the part of the landholders affected.

In investigations undertaken two years after implementation of the new rules, Low focuses on objections of local people and the degree to which their concerns are valid and merit consideration. One of the most vociferous arguments made against freehold title claimed that land customarily belonged to the **omugabe** (traditional ruler of Ankole), and that to grant freehold title violated his prerogative of land allocation. This claim Low dismisses, countering that even if this had been the case before 1900, occupants of the land had enjoyed **a** certain amount of security and the **omugabe's** right had not been absolute. Other objections to the new system are that it interferes with pre-existing communal rights to land and water, that fees for adjudication and titling are too hign, and that chiefs are taking advantage of new authority they now wield in adjudication and allocation procedures. Low disagrees that fees need to be lowered ana argues that although instances of malpractice on the part of chiefs and other officials must be controlled, he has not found sufficient evidence of their frequency as to demand correction in the system itself. He is more sympathetic to claims that the new individual titles to land will override pre-existing communal claims to land for right-of-way, pasture, and water access. Pointing out that communal rights have not necessarily been extinguished under the mailo system in neighboring Buganda, Low suggests that such rights be recorded as encumbrances against the freehold title. More-over, in order that herdsmen's rights not be disregarded altogether--as is often the case when freehold title is given to cultivators--Low advocates that grazing areas be stabilized, with new areas allocated specifically for pasture and title to them granted to herdsmen.

Low concludes by enumerating the advantages of the Shema scheme, citing the decreased numbers of land disputes, access to credit for land improvement, and boundary fencing that he believes will result from granting of freehold title. He maintains that other, political factors--Uganda was on the eve of independence in 1960--have been responsible for the controversy the scheme has generated and that in general it has operated satisfactorily.

Low's and Lawrance's views very much reflect the prevailing opin- ion--almost universally held in the 1960s and still widely credited

today--that under most circumstances registration of land is a valuable and productive undertaking. A similar view is expressed by G.W. Bakibinga, Commissioner of Lands and Surveys in 1971.

**U25 Bakibinga, G.W. "Changes in Land Policies in Uganda and the Resulting Problems." Paper no. H5. Commonwealth Survey Officers' Conference,** 1971.

In this paper Bakibinga surveys the land tenure situation throughout Uganda in 1971. Of particular interest is his assessment of the disappointing response to the program of land adjudication and survey begun in 1956. (Only in Kigezi and Ankole did District Councils vote to have adjudication and surveying done; for a description of the program as implemented in Kigezi, see Lawrance above.) Bakibinga gives several reasons for the rejection of adjudication: misinformation and misunderstanding about the program, reluctance to convert to individual freehold lands which were held either as clan land or to which communal rights existed (e.g., pastureland), and unwillingness of chiefs to relinquish allocation rights to lands from which they thus derived revenue. Despite this lack of success of the earlier attempt to survey and adjudicate title, Bakibinga recommends tnat more lands be adjudicated and converted to freehold. Conversion will provide greater security of tenure to the landholder, he believes, and, if done systematically throughout the country, will prove cheaper than the patchwork pattern of surveying noncontiguous holdings that has to date prevailed.

Not all discussions of land registration are as favorable as Lawrance's, Low's, and Bakibinga's. An early counter-view is that of Beverley Brock.

**U26 Brock, Beverley. "Customary Land Tenure, 'Individualization' and Agricultural Development: Some Comments on a Conference." East African Journal of Rural Development, vol. 2, no. 2 (1969), pp. 1-27.**

Reacting to the view expressed in a 1966 seminar on land law reform in East Africa that individual freehold title to land is a highly desirable--and even essential--component of an agricultural development program, Brock questions whether registration, an expensive and time-consuming process, is necessary (or even able) to achieve many of the benefits commonly veld to arise from it. Although micro-studies of registered areas in Kenya and elsewhere have provided concrete data to support many of the points made in this paper, this is a valuable contribution to the literature for its willingness, at a relatively early date, to question long-held beliefs in the efficacy of registration and to suggest that changes in the legal form of ownership may not be the best method of tackling problems of agricultural development. Customary tenure systems, the author suggests, are neither as inflexible nor as inappropriate for development as generally assumed.

Security of tenure, for example, does not come only with the grant of a freehold title; most customary tenure systems provide a very real measure of security for landholders. Nor are land markets created only when freehold title is awarded; in any number of areas of Africa individualization of title,

frequently assumed to arise only from freehold, has occurred spontaneously and landholaers may alienate their land as they choose. Freehold in and of itself not only does not necessarily give rise to development but may actually impede its course: unless landowners are required to develop their holdings by other measures such as **a** land tax or the threat of government seizure, freehold title permits them to leave the land idle. Brock also rightly points out that free-hold title **has** not produced easier access to credit for farmers. Many financial institutions continue to refuse loans to small landholders despite their freehold title. The author stresses that it is necessary to distinguish between adjudication and demarcation of land and its actual registration as freehold, a more complicated and expensive process. In some areas it may be sufficient merely to adjudicate customary rights and demarcate the boundaries rather than carry out the full process culminating in the award of freehold title. Finally, and perhaps most importantly, Brock warns that freehold registration, even when accompanied by consolidation, will not eliminate fragmentation of holdings. Fragmentation is not irrational or accidental and will not die out as long as people perceive that few economic opportunities exist off the land and continue to believe that all sons must be provided with land.

In addition to freehold and mailo titles, it is also possible to obtain fifty-year leaseholds on Public Land in Uganda. In the late 1960s, the Ankole Ranching Scheme was designed with USAID sup-port to create large leasehold ranches on Public Land in southwestern **Uganda.** An analysis of some of the technical and economic negotia- tions between USAID and the Government of Uganda conducted at the initial phase of the project is the subject of the following:

**U27 Doornbos, Martin A., and Michael F. Lofchie. "Ranching and Scheming: A Case Study of the Ankole Ranching Scheme." In The State of the Nations: Constraints on Development in** Independent Africa, **edited** by Michael F. **Lofchie, pp. 165-187. Berkeley: University of California Press, 1971.**

The Ankole Ranching Scheme was intended to promote commercial cattle ranching in southwestern Uganda and to provide an example that would-be ranchers in the area might follow. The scheme was both a complex and an expensive undertaking. At the heart of the project was the establishment of one hundred ranches of several thousand acres each to be placed in the hands of "competent ranchers . . . able to undertake large-scale beef production on an economically viable basis" (pp. 16b-67). In addition, the project provided for construction of a broad range of infrastructure and for extension services. These supporting facilities included tsetse-fly eradication; construction of roads, bridges, and valley tanks; perimeter fencing; pasture research; and the creation of an experimental cattle-breeding station nearby.

According to Doornbos and Lofchie, writing soon after the project began, a critical aspect of the scheme, one which they believed would greatly affect its success or failure, was the selection of ranchers. The criteria for selection had been the subject of intense controversy between USAID and the Government of Uganda, with the former demanding that ranches be awarded only to resident owners on the basis of proven ranching ability and the latter insisting that the principle of absentee ownership be accommodated. In the end, the

latter's insistence was honored, with the outcome that "residence would not be required and that individuals who were selected as ranchers would be allowed to place managers in charge of their ranches. As a result, of the first forty ranches allocated, it became possible for approximately fifteen to be awarded, on an absentee basis, to members of a political elite" (p. 168). There was surprising little local opposition, however, largely because most of the elite selected as beneficiaries were men of local origins.

In the event, the political and economic turmoil of the 1970s and early 1980s proved to have a far greater impact on the project than ownership criteria. Because conditions in Uganda were so unsettled, no follow-up research appears to have been conducted on the Ankole Ranching Scheme. In 1988, though, the Museveni administration nominated a commission to study the situation of the leasehold ranches and to make recommendations for the future. Their report, due to appear soon, had not yet been issued as of May 1989.

Difficult living and working conditions in Uganda brought an end to almost all new or continuing research in the country between 1970 and 1985. Instead, there have been several reports and papers that have summarized the situation with regard to land tenure in Uganda.

**U28 Bakashabaruhanga, Paul. "Land Administration." Address delivered to the District Commissioners' Conference, 20 January 1982.**

**U29 U.S. Agency for International Development. Africa Bureau. "Uganda Agricultural Sector Assessment. Appendix B: Land Tenure in Uganda." Washington, DC, March 1982.**

Two important laws affecting land tenure have been enacted in Uganda since independence. The first, the Public Lands Act of 1969, abolished official **mailo,** and these lands became Public Land. The effect of this act was to centralize land administration in Uganda by abolishing those special grants of land to officeholders in the kingdoms of Buganda, Toro, and Ankole. (The monarchies themselves were also abolished at this time.) A second ruling, the Land Reform Decree of 1975, has far more wide-reaching implications. Under this decree, freehold is abolished throughout the country, and all land now becomes State Land, with individuals given the right to apply to the State for long-term leases (99 years) for those lands they occupy. The effect of this new regulation is to end absentee ownership and to abrogate the Busuulu and Envujjo Law. It was not until 1981, however, that the necessary administrative machinery required by this ruling was installed, and compliance with the new provisions has been uneven at best. The AID report suggests that most Ugandans either are unaware of the decree or continue to regard themselves as the legal owners despite the new law. Tnere has been little publicity, and the Land Boards have neither the staff nor the funds to be accurate and systematic in granting leaseholds.

Two recent discussions of conditions in the rural areas, based on local research, are the following:

**U30 U.S. Agency for International Development. The Uganda Social and Institutional Profile. Kampala, 1984.**

For this study of survival strategies and the changes and functioning of the rural economy, the authors undertook an extensive survey of households in four areas of the country: Busoga, Kigezi (Kabale District), Buganda (Masaka District), and Teso. Three types of resources of rural households, labor, land, and capital, were analyzed. Although land tenure type was not considered independently, there are several interesting findings that bear on the mailo system. The authors found that the size of landholdings in all four sample areas was quite small. Most holdings were under 5 acres, and this was particularly marked in Masaka, where 76 percent of all farms were smaller than 5 acres. By way of comparison, in Kigezi, where subdivision of holdings has long been remarked upon, only 55 percent of all farms were less than 5 acres in size. The Masaka figure shows how extensively, at least in this particular district, the earlier large **mailo** estates have been broken into smaller units. The fact that only 5 percent of the ,Masaka population have inherited the land they farm underscores this finding and also testifies to the high volume of land sales in the area. This the authors attribute to the mailo system itself, to the willingness of owners to sell land despite the presence of tenants, and the extent to which the provisions of Land Reform Decree remain unapplied.

U31 Kasfir, Nelson. "Land and Peasants in Weste.n Uganda: **Bushenyi** and **Mbarara** Districts." In **Uganda** Now, **edited** by Holger Bernt Hansen and Michael Twaddle, pp. 158-174. London: James Currey, 1988.

Kasfir's focus is the closing of the rural land frontier (that is, an end to easy availability of land) in two districts in southwestern Uganda. Within this context, he provides much valuable information about the effects of the Public Lands Act of 1969 and the situation with regard to the granting of leaseholds. Drawing on research carried out in Mbarara and Bushenyi Districts in the early 1980s, Kasfir presents a worrisome picture of land negotiations and transfers.

Conditions of increasing scarcity of land, combined with the leasehold provisions of the Public Lands Act, have touched off a rush to lease and fence Public Lands. Tne result is a volatile situation in which official corruption and patronage are on the rise and in which customary tenants face very real risks of expulsion by those more favorably placed to obtain leaseholds. Increasing landlessness is a threat for many, and one of its repercussions has been rising levels of violence and disputes.

For Kasfir, the critical ingredient in this mixture is the closing land frontier, but the provisions of the Public Lands Act which permit land already in use to be leased with the consent and compensation of the customary tenant are also important factors. From his analysis of the situation, it is possible to conclude that registration of leasehold in and of itself is not responsible for these serious problems so much as an end to easily available land and the terms for the establishment of leaseholds as provided for under the Public Lands Act.

The 1975 Land Reform Decree has never been systematically implemented, and there is some debate as to what steps should be taken with regard to its provisions. The situation with regard to **mailo** lands and the land registers is of increasing interest to the government now that conditions have become more settled and was part of a broader analysis of the country's agricultural sector carried out at the instigation of the Bank of Uganda's Agricultural Secretariat.

**U32 Bank of Uganda. Agricultural Secretariat. Working Group on Land Tenure and Soil Conservation. Final Report: Land Tenure and Soil Conservation. Kampala, March 1987.**

In describing the present-day conditions in the **mailo** areas, the authors report that the Land Reform Decree, with its provisions for leaseholds, remains unapplied in these areas and that despite the formal abolition of the Busuulu and Envujjo Law, peasant tenants remain on the holdings and perhaps continue to pay fees of some sort to landowners. Moreover, the land registers are even more out of date than before and some records have been destroyed altogether. Neither landlords nor tenants have been able to do much in recent years to develop their holdings, and many problems and questions remain. The authors recommend that before any systematic application of the Land Reform Decree is carried out, an extensive study of the mailo areas be undertaken and a plan drawn up for the rehabilitation of the land records. They urge a critical reconsideration of the decree and the policies behind it.

## ZAIRE

Although registered land has never surpassed 5 percent of the total land in Zaire, tnere has been a legal basis for registering private land since 1886. This was limited to Europeans until 1953, and was abolished altogether with the advent of a 1973 law and an amendment in 1980. This law madg all land State land, but allowed concessions to those who could demonstrate the ability to develop the land. These concessions are to be surveyed and registered with the State, but are not alienable.

Like most of the literature on land registration in Francophone Africa, material on Zaire is long on discussions of land legislation but short on studies of its effects on agricultural production.

The best summary of land law and registration is provided in a recent study carried out in 1985 for USAID:

**Z1 Salacuse, Jeswald W. The National Land Law System of Zaire." In The National Land Law of Zaire and Indigenous Land Tenure, in Central Bandundu, _____ Zaire, by James C. Riddell, Jeswald W. Salacuse, and David Tabachnick, pp. 1-24.** LTC **Research Paper, no. 92. Madison: Land Tenure Center, University of Wisconsin, 1987.**

Land registration in Zaire has a long history, going back to 1386 when King Leopold of Belgium first began to award concessions to large tracts of "unoccupied" land in his Congo free State to European companies and individuals. Such concessions continued to be legal under the laws of the Belgian Congo, and one estimate is that as of 1944, some 12 million hectares of land had been conceded to European interests. (This represents almost 5 percent of the total land area of the country.) Until 1953, this right to concessions was limited to Europeans alone; subsequent legislation extended this right to Africans as well--although the necessary mechanisms for its implementation were never established.

This system remained in force until 1966 (6 years after independence), when the government passed legislation known as the "Bakajika" law. Intended to regain control of Zaire's lands from the hands of foreign interests, the law empowered the government to retake the "full and free disposition" of all land conceded or granted prior to 30 June 1960. The law did not cancel the rights of concessionaires, but rather gave the government the opportunity to review the status of those rights and to either reaffirm, modify, or abrogate them. The law required holders of grants and concessions to apply to the government so that their grants or concessions mignt be evaluated. Although some reviews of concessions were carried out, the total area evaluated under the Bakajika Law fell far short of the area conceded prior to 1960.

The Bakajika Law was superseded in the early 1970s by a series of new land laws, which state that all land in Zaire is the property of the State, which in

turn has the power to grant concessions for limited periods or in perpetuity (this latter for Zairian citizens only). All such concessions of land must be surveyed and registered (as had been mandated in the past), and are contingent upon the holder's developing the land as required by the State. Concessions are to be for an initial period of five years, during which time the holder must develop the land to the State's satisfaction, following which the State may award a permanent lease for a specific period of time. The law emphasizes that concessions should be made to individuals rather than companies.

According to Salacuse, actual implementation of the law has fallen short of the legal requirements. The local registry at Bandundu, for example, which Salacuse visited in 1985, has inadequate-facilities, staff, and equipment for carrying out the necessary surveying and registration. Nor is it able to inspect concessions after the five-year provisional lease has lapsed to see that the land has actually been developed. In fact, Salacuse speculates that most concession holders lack the capital to develop their holdings to the level required and notes that bribery and forged land certificates are not uncommon.

Salacuse's study is a preliminary survey of Zairian land law, and he suggests that further inquiries be made to ascertain if concession holders are developing their land in ways other, non-registered holders are not and to see if registration is perceived to provide additional security of tenure.

A similar, though briefer, survey of land legislation in Zaire is provided in:

**Z2 Lumpungu, Kamanda. "Le nouveau droit fonciers zairois." Cahiers Economiques et Sociaux 19 (June 1981):** 1-2.

Lumpungu describes the land laws of 1966, 1971, and 1973 and discusses the rationale for their enactment. He also argues that there is a need for codifying customary land rights.

The 1973 Land Law and its effects on the provision of housing in urban areas is the subject of:

**Z3 Paluku, Matumo. "La loi fonciere du 20 juillet** 1973 et **son impact sur 1'habitat." Zaire-Afrique, no. 161 (January 1982) : 31-44.**

The provisions that Paluku discusses in this article are many of the same ones that Salacuse (see Z1, above) focuses on: the requirement that concessions be developed, the need for concessions to be registered to be legally valid, and the distinction between concessions for fixed periods and concessions in perpetuity. Paluku suggests that application of the law in urban areas may not be as entirely beneficial as hoped, and some of his criticisms are applicable to rural areas as well. He points out that concessions may be granted more often to the wealthy and well-connected, those skilled at using the system to their best advantage. He believes that this may lead to speculation ana fraud.

The text of the 1971 Land Law as well as a discussion of its provisions can be found in:

**Z4 Secretariat des** Missions **d'Urbanisme** et **d'Habitat.** Elements de droit urban africain; Manuel pedagogique. Paris, 1972.

The 1971 Law nullifies all titles to land not put into productive use and permits the State to repossess such land. While the law states that the State owns all land, it does not "abolish" customary use and claims.

Description of the pre-1971 system of land laws and registration is furnished by both:

Z5 Massitu, Jean Albert. "Le **cadastre** congolais." Paper presented at the Seminar on Cadastre, Addis Ababa, 25 November-9 December 1970. Addis Ababa, U.N. Economic Commission for Africa.

and

Z6 Phanzu, Valentin. "L'evolution de la propriete immobili-**ere en Republique Democratique du Congo."** **Revue Juridique, Politique, Independance et Cooperation 24:4 (1970): 1210-1213.**

Phanzu **concentrates on a history of land** laws, emphasizing those laws relevant to private property and registration. Massitu stresses the role of the survey and registry offices and their procedures, while also outlining the administrative relationship between land titles and these offices. Security and enhanced investment are cited as advantages of titling.

Much earlier works on registration include:

**Z7 Danhier, M. "Du cadastre et de la transmission de la propriete immobiliere au Congo Beige." Paper** presented at a training conference in Belgium, 3 June 1960. Apeldoorn, **Holland: Office International du Cadastre et du Regime Foncier, 1960.**

Danhier outlines the system of registration then in force in the Belgian Congo on the eve of independence.

An even earlier discussion of registration, from the period when only Europeans might register concessions, is found in:

**Z8 Heyse,** T. **"Belgian Congo-Ruanda** Urundi; Notions generales **sur le** regime **foncier** du Congo **Belge et du Ruanda-Urundi** et legislation sur les terres indigenes." Paper presented **at the** Land **Tenure Symposium** in **Amsterdam,** 26-28 October 1950. Leiden: Universitaire pers Leiden, 1951.

Heyse talks of land classes (indigenous, registered, and domain lands), registration, and the conditions under which indigenous property can be obtained.

These classes are also defined in:

Z9 Dowson, Ernest, and Sheppard, V.L.O. Land Registration. **London: Her Majesty's Stationery Office, 1952.**

As part of a more general discussion of land registration, the authors discuss the history of registration legislation in Francophone Africa (pp. 175-200), detailing the salient points as they apply to Zaire.

Studies of actual instances of registration are rare--as indeed are the examples themselves. Only on the **paysannats** (rural development schemes) was land registered and allocated to Africans during the colonial period. This is discussed in the following paper:

Z10 Democratic Republic of **the** Congo. Ministere de 1'Agriculture. "Land Reform in the Congo." Paper presented at **the** World Land Reform Conference, 20 June-2 July 1966. Rome, Food and Agriculture Organization.

On the **Babua** and Gandajika **paysannats** land was both surveyed and registered as early as 1943 and allocated to individual farmers. On yet other **paysannats** (such as the Luberizi and Kiliba **paysannats** in Uvira territory) the registered land was not allocated to individuals, but rather held jointly by the group. The purpose of **paysannats** was to both increase production and introduce modern agricultural techniques which woula conserve the soil, and all participants, whether allocated land indiviaually or as a group, were subject to numerous requirements governing land use, cultivation techniques, and crop selection. The **paysannats** benefited from the introduction of improved services and facilities, including irrigation, machinery, fertilizers, and marketing cooperatives, and according to the Ministry of Agriculture, yields have been high. (The paper does not mention the fact that the many regulations of the **paysannats** often made them unpopular among the participants.)

Another example, but one indigenously executed, is presented in:

**Z11 Verhaegen, Guy. "Freinages et blocages s'opposant a la reussite de la reforme agraire dans les pays en voie de developpement: Zaire." Paper presented at the 35th INCIDI Study Session, Brussels, 1-5 October** 1973. Brus**sels, Institut International des Civilisations Diffe**rentes.

Verhaegen mentions in passing (pp. 27-2b) a system instituted in the Chefferie Nyweshe whereby anyone who has paid a customary land-use fee can register that land at the chefferie. In return for the payment of 2 zaires, the land is registered on the cadastral plan of the chefferie, with one copy going to the landholaer and another copy kept in the arcnives of the chefferie. The author claims that this system has given its participants a greater sense of security on their lands and has led to improvement of the land.

## ZAMBIA

The impact of the Land (Conversion of Titles) Act of 1975 on agricultural development is the subject of recent literature on Zambian land tenure and land administration. The Act is the major piece of legislation to affect land tenure, and particularly land tenure on State land, since 1975, The Act vests all Zambian land, i.e., State, Reserve, and Trust lands, in the president of the country. It converts all freehold title (occurring primarily on State land) to statutory leasehold and restricts subdivision, subletting, mortgaging, and alienation. Leases are registered and are in force for l0u years, beginning July 1975. Other, previous laws have vested control of Trust and Reserve land in the Office of the President and gave him the power to grant Rights of Occupancy on these lands. Fourteen-year leases on these lands are granted on a sporadic basis by the Commissioner of Lands. But the majority of Trust and Reserve land remains unregistered, and there are almost no data on the total number of hectares registered outside the former freehold areas.

The 1975 Act, and particularly the guidelines for registering land in **Zambia,** are not **a radical** departure from the policies that governed land administration during colonial occupation. These guidelines closely follow the principles established by the English Land Law of 1911. A historical discussion of land policy prior to the 1975 Act can be found in two papers. The first is a review of Zambian land tenure, lana laws, and some of the problems in land administration that prompted the promulgation of the Act, in an annex to a staff paper by the International Bank for Reconstruction and Development:

**ZA1 International Bank for Reconstruction and Development. "Zambia Agricultural and Rural Sector Survey Land Tenure and Rural Development." Agricultural and Rural Sector Survey, Republic of Zambia. IBRD Rpt. no. B41a-za, vol. 2, annex 11, pp. 1-24. Oct. 20, 1975.**

In addition to its historical overview of land tenure and land law in Zambia from the colonial period to 1975, the paper incluaes (and largely focuses on) a discussion of land tenure administration from independence to 1975. Writing in 1975 before the passage of the Land (Conversion of Titles) Act, the authors note that land administration has changed little in the period since Zambia gained independence in 1964. The most significant addition to land law has been the Land Acquisition Act of 1970. This law was devised largely to deal with the post-indepenaence problem of farms being abandoned by non-African owners. Significantly, they note that new changes in land law are on the horizon as a result of the 1973 Zambian Constitution, which rejects the concept of absolute ownership of land (i.e., freehold) by individuals or groups. They

further state that as a result, **a** draft land reform law (i.e., the 1975 Act) designed to convert freenold to leasehold land is under consideration. One of the particular values of this paper in assessing current Zambian land and registration issues is that it allows us to compare the authors' analysis of land issues and their recommendations for policy with the changes enacted by the 1975 Act.

The authors discuss what they perceive as problems with both received and customary land law and outline the provisions of the 1964 Deeds and Registry Act. They also assess the effects of the present (up to 1975) land administration on agricultural development. For example, they conclude that agricultural development on State land is not inhibitea by land administration policies. Focusing on the important issue of security of tenure, they believe that State land is "secure" and that this security is buttressed by registration. On Reserve and Trust lands, however, the authors cite four aspects of the system that adversely affect agricultural development. These are: (1) lack of security of tenure, (2) obstacles in access to land, (3) failure to regulate land markets, and (4) fragmentation of holdings. These four issues make up the main body of discussion in this paper.

The last section of this report presents various proposals for resolving the problems in land tenure and administration. Interestingly, they are in agreement with the philosophy of the Zambian government in general, and in particular with the abolition of freehold tenure. They argue that in order for the government to achieve these objectives, various problems in land administration must first be resolved. Problems of insecurity, inheritance, and fragmentation in customary areas appear to be, for the authors, at the root of agricultural problems.

**A** second, more recent paper provides a discussion of the Lands Act as well as a review of land tenure and administration from the colonial period up to 1982.:

**ZA2** Bruce, *John* W., and **Peter** P. Dorner. "Agricultural Land **Tenure** in **Zambia: Perspectives, Problems and** Opportunities." LTC Research **Paper,** no. 76. Madison: Land Tenure **Center, University of** Wisconsin, October 1982.

Tne variety of customary tenure systems that existed prior to the colonial period continues to exist in **Zambia,** and these systems remain in force for much of the country's land. **A** major division in land tenure and administration during the colonial period was introduced in the country with the creation of a distinction between Trust and Reserve lands, which were worked by Africans and regulated largely according to customary rules, and Crown lands, which were worked by European settlers and regulated by English land laws. This "dualism" continues today with the divisions between Trust and Reserve lands, on one hand, and State lands, on the other. Although white settlers no longer control State lands, government policy continues to favor State lands with special investment, credit, and other agricultural incentives. Foreign agricultural interests in these lands remain strong, now augmented by a growing elite Zambian capitalist class. Bruce and Dorner review the evolution of this dual system of tenure through the colonial period up to 1982. They also provide data on the number of acres in each of the various divisions of land

during the colonial period as well as current data on the type and number of leases on State lands.

The balance of the paper is comprised of two sections: tenure and related issues on State lands, and tenure and related issues on Trust and Reserve lands. In the first section the authors discuss the administrative structure of State lands, noting that State land is allocated largely for commercial farming through a system of long-term, renewable leases. The Land (Conversion of Titles) Act of 1975 regulates the creation, transfer and other dealings with regard to State lands. Bruce and Dorner review in detail the provisions of the Act and **its** impact on the administration of State lands and also discuss the problems of valuation of land in a country that has attempted officially to devalue land. In addition, they describe problems with the administration of leases and delays in surveying land prior to registration.

In the section on the administration of Trust and Reserve lands, they note that Reserve lands are occupies largely by distinct ethnic groups, whereas the Trust land units are occupied by a variety of ethnic groups. Reserve and Trust lands include some 27.3 ana 39 million hectares, respectively, comprising 85 percent of the land area of Zambia. The administration of these lands continues to be regulated by pre-Independence Orders-in-Council. Although these Orders have been supplemented by more recent laws, the authors write that the Orders and the supplements do not add up to a land policy. While it appears that the 1975 Act confirms that this land is vested in the President of the country, it is unclear how the Act applies to Trust and Reserve lands. They suggest that these lands are subject to a different legal regime. The balance of this section reviews in detail the "modern" laws that govern the administration of these lands. The authors discuss land scarcity and security issues and also cover problems of agricultural credit, inheritance and agricultural development.

The authors conclude with a aiscussion of "alternative paths for the future." They note possible changes in the administration of land that might improve its use and productivity. Of particular interest is their discussion of the problems and virtues of modern and customary tenure. For example, continued adherence to customary practices can produce real economies ana avoid unsettling social dislocations. However, they also write that relying on these systems may be detrimental to Zambian agriculture and development. Zambia's customary systems differ markedly, and they have not responded well to the problems raised by commercialization of agriculture. Consequently, the authors believe that a laissez-faire approach would be inappropriate, and that gradual evolution of customary tenure in Zambia will not provide the solution. They suggest a gradual replacement of customary tenure with leasehold and close the paper with suggestions for implementing the recommended changes in customary tenure.

**In** 1970 the United Nations Economic and Social Council, Economic Commission for Africa, sponsored **a** seminar on cadastre. A paper submitted by the government of Zambia provides a brief historical review of land tenure policy and administration prior to the 1975 Land (Conversion of Titles) Act:

**ZA3 Nzatamulilo,** J.C. "**Status of Cadastral Surveys and Land Registration Services of Zambia." Paper presented at**

**the Seminar on Cadastre, Addis Ababa, 25 November-9 December 1970. Addis Ababa: U.N. Economic Commission for Africa.**

Although the purpose of the paper was to document the many problems ana inadequacies of the tenure administration system, its real strength (from the perspective of tnis literature review) lies in the synopsis of the numerous land tenure policies enacted throughout the period from 1911 (Northern Rhodesia Orders in Council) to 1969 (Constitution Amendment Act No. 5). Among other tenure legal instruments, the paper reviews the Zambian (State Lands and Native Reserves) Order 1964, the Zambian (Trust Land) Order 1964, the Zambian (Gwembe District) Order 1964, the Lands and Deeds Registry Ordinance (Cap. 84), the Lands and Deeds Registry (Amendment) Ordinance (Cap 85) , and the Land Survey Ordinance (Cap. 88). The review of these instruments provides an excellent legal background to the the articles that discuss the broad-sweeping changes enacted in 1975.

The above articles deal largely with the land laws as legislative instruments; they discuss the value, significance, and appropriateness of legislative law to resolve various perceived problems. Tne judiciary has also been the site of numerous attempts to regulate and modify land tenure arrangements in Zambia. In an article written in 1973 before the passage of the Land Act, A.M. Susman reviews the problems of the application of customary laws of succession to land held under "English" leasehold arrangements.

**ZA4** Susman, A.M. **"State Land** and Customary Law: The **Application** of Customary Laws of Succession to Land Held under 'English' Tenure." Zambian Law Journal 5 (1973): 127-137.

Susman discusses two court rulings, by J. Chomba in Chimpampwe v. Registrar of Lands and Deeds, and by by C.J. Doyle in Ex parte Njobvu. In these two cases opposite decisions (both in 1971) were rendered by the High Court. The cases are almost identical, in each an African having died intestate possessed of a leasehold estate in land. In each case an administrator was appointed to administer the deceased's estate (as per the Local Courts Act s. 36/1), and the administrator applied to have the land registered under the Lands and Deeds Registry Act. In both cases the Registrar of Lands and Deeds refused to register the land because "an administrator appointed by a local court was not an 'administrator' within the terms of s. 68/1, and because the order of the local court was not a 'document purporting to grant, convey or transfer land or any interest in land' within the terms of s. 4/1." (p. 128) In the case of Chimpampwe, Chomba sided with the Registrar, while in the case of Njobvu, Doyle ruled against the Registrar and ordered him to register the land in question.

These two cases provide the background for Susman's discussion of the extent to which customary law is applicable to State land. He reviews the details of the cases and of the appropriate laws and concludes that customary law is applicable to State land. A local court order of appointment does vest a deceased's leasehold property in his administrator. For this reason, Susman writes that the decision rendered by Doyle in Ex parte Njobvu was correct.

The Land (Conversion of Titles) Act is reviewed and critiqued as **a** legal instrument in:

**ZA5 "Operations of the Lands (Conversion of Titles) Act 1975 with Particular Reference to its Suitability for Agricultural, Commercial and Residential Development of Zambia." Reference no. DAH/ 103/ 16/ 100. N.p.: n.d.**

According to this paper, the Act has several significant flaws. The law requires surveying before a statutory leasehold or customary title can be granted. Valuation, surveying, title,'•and registration are not hanaled by the same agency: valuation of land is performed by the Valuation Department, Ministry of Local Government and Housing, and surveying is performed by the Ministry of Agriculture. The fact that different agencies control different aspects of the entire registration process produces innumerable bureaucratic problems, with the result that provisions of the Act are often ignored.

The paper notes that the government of Zambia does not have the resources to produce proper valuations for each application. A large number of applications are yet to be processed, and a two-year wait for valuation is not uncommon.

Other points of confusion arise from the fact that several articles of the Land Act are not clarified, i.e., the Act does not specify the maximum amount of acreage that one individual can hola. Further, the authors state, the Act cross-cuts or contradicts (without explanation of precedence) other land laws such as the Rent Act and the Land Lord and Tenant Act.

The paper also reviews the impact of the Act on the development of land. Three issues are considered: (1) the abolition of the sale of land for value, (2) the restriction on the sale price for developed land, and (3) the degree to which the Act permits equal access for all to obtain leases. The authors conclude that the Act needs to be amended. As the Act currently reads, massive state intervention is required. But as previously noted, the state does not have the capacity to provide the necessary support and until the state is able to provide an alternative to the Act, its regulations shoula be suspended. As it exists, it is a constraint on development. The paper further concludes that all three categories of land should be unified. This woula foster uniform treatment of all citizens, more equal access to land, and better land utilization and control.

Since promulgation, the Lana Act has been said to have had **a** significant impact on agricultural development; this subject is pursued **in:**

**ZA6 Amankwah, M.A., and M.P. Mvunga. The Land Tenure System of Zambia and Agricultural Development." In Land Policy and Agriculture in Eastern and Southern Africa, edited by J.W. Arntzen, L.D. Ngcongco, and S.D. Turner, pp. 119-126. Tokyo: United Nations University, 1986.**

The authors focus on two issues: security of title and how that security affects agricultural productivity ana growth, and the impact the Act has had on security of title. They write that security of title affects the amount (i.e., in money, time, and labor) of investment in land, and consequently land

productivity. Where title is missing, agricultural productivity suffers. Most of the Lana in Zambia is designated as Trust or Reserve land. On these lands few farmers register and receive title for the land because, according to Mvunga, the process is too cumbersome and costly. Land is not registered until it has been officially surveyed. The cost of surveying is often prohibitive for farmers in the Trust and Reserve areas. The authors note that the Land Act superseded the Trust Land (Adjudication and Titles) Act. This latter document provided for registration of title of rural lands without complying with survey requirements.

Most of the State lands have been surveyed and registered. Although there are few data available, it appears that **in** 1975, the government began a rural reconstruction (settlement) scheme on State land, a project designed to resettle 40,000 people. There is also a high percentage of European farms and settlements on the State lands. As of 1982, there were approximately 740 European commercial farms operating in this area. The authors assert that more investment occurs on State than Trust or Reserve lands because parcels on State land tend to be registered and thus title is more secure. They note that lending institutions withhold loans to farmers who co not have title that can be used as collateral.

The authors have three proposals for assisting the registration process: (1) reenact the Reserve and Trust Land (Adjudication and Titles) Act, (2) increase the number of state surveying facilities, and (3) abandon the fixed boundary system for a general boundary system. They also suggest an increase in the number of loans mace to peasants who do not have title.

One of the central arguments for land consolidation, registration, and titling is that these practices will generate greater security **in** the land and consequently greater investment and productivity. The issue of security in "traditional" land tenure is raised in an article by:

**ZA7 Ng'andwe, Chiselebwe O.M. "African Traditional Land** Tenure **and Agricultural Development: Case Study of the Kunda People** in Jumbe." **African Social** Research, no. 21 **(June 1976), pp. 51-67.**

Writing from an historical perspective, the author uses the case-study approach to describe land tenure prior to the 1975 Land Act. While this paper does not deal directly with registration, it does provide an valuable picture of "traditional" land tenure and discusses the issues associated with security of land.

The author writes that land tenure in Jumbe is evolutionary and that increasingly, without legal instruments, land tenure in Jumbe is shifting from community to individual rights. Further, he notes that mechanisms exist for allocation of land and resolution of disputes, both of which contribute to the general security of, and control over, the land. Ng'andwe asserts that among the Jumbe, community tenure noes not hinder investment by those using the land. Although individual rights under traditional tenure are limited, there is sufficient security of tenure to encourage investment. The lack of investment is more a function of the economic system and less a function of tenure (pp. 56-59). Twelve farmers, who Ng'andwe defines as emergent, were interviewed (in

1972) and they all agreed that their investment in land was limited only by their personal resources and not by the want of security of tenure (p. 60). This point is interesting given that "emergent" farmers are probably more likely than other farmers to have an interest in individual, "secure" title to land.

Ng'anawe raises an interesting argument against registered, "secure" title, pointing out that there is some concern among farmers that registered title will remove flexibility in allocation of land in the rural community. Registered title may produce an increase in the number of absentee landlords, landholders who may not work the land but leave it fallow and unproductive. In addition, registered title could Contribute to growth in the numbers of landless peasants (pp. 60-61). The author concludes by noting that it is doubtful if land tenure in Jumbe will be a major constraint to agricultural development.

A brief review of the survey and registration procedures prior to the 1975 Lands Act appears **in:**

**ZA8 Dale, P.F. In Cadastral Surveys within the Commonwealth, pp. 269-271. London: Her Majesty's Stationery Office, 1976.**

This book, as the title suggests, discusses land surveys within the Commonwealth; the section on Zambia briefly reviews cadastral survey procedures. Some of the criticisms of survey procedures raisea by Dale are similar to the criticisms raised by others in the post-Lands Act period. Specifically, they note the lack of qualified surveyors ana the cumbersome requirements of the law, both of which combine to greatly slow the survey and registration processes.

## ZIMBABWE

Separate freehold areas for Africans, called Native Purchase Areas (NPAs), were first established in what was then Southern Rhodesia in 1930 under the terms of the Land Reapportionment Act. NPAs were scattered tnroughout the country, often located adjacent to reserve areas, and land in them made **available** for purchase by Africans. The earliest title holders were often civil servants, who purchased farms with money saved from salaried positions and as old-age security. After World War II, as applications to purchase this freehold land increased, the Native Land Board began to apply dif-
ferent criteria in allocating the land, more frequently choosing applicants with agricultural background. By 1953, applicants were required to have received formal training in agriculture at a govern-ment agricultural center or to be certified as a Master Farmer.

The area allocated for the NPAs has variea over the years: as originally established in 1930, some 7.5 million acres were set aside--roughly 8 percent or the area of the colony. Various legislation added to and subtracted acreage from the purchase areas, and by 1970, their total area was 3.7 million acres (3.8 percent). Of the almost 45 million acres allocated to Africans in 1970, this rep-resented only 8 percent of the lan[g]. Most of that million acres (almost 40 million) was given over to Tribal Trust Lands, areas of customary tenure.

The Purchase Areas have suffered from both neglect and high ex-pectations at various times in their history. At first it seems to have been largely irrelevant from the government's point of view whether or not the farms actually produced, but by the 1960s, offi-cials looked on them as areas for "advanced" farmers, for those who wished to enter "economic farming." When African farms failed to produce either export crops or surpluses for the national market, critics charged that there was little difference in farming practices and yields between the Purchase Areas ana the Reserves. In the 1970s, during the period of UDI (Unilateral Declaration of In-dependence), the government considered abolishing African freehold altogether, but instead decided to combine European and African free-hold farming areas into the one category of Commercial Land--hoping perhaps to gain credit for the abolition of racial barriers to land ownership while at the same time eliciting the support of the more prosperous African farmers. Since 1980, whether or not there should be freehold land has once again been questioned. Mugabe's government favors national development based on socialist principles, and there would be seem to be little place for freehold land holdings if this policy were to be systematically implemented. Government programs since independence have focused on resettlement of African farmers into former European farming areas, where questions of land tenure have remainea unresolved, and the former African Purchase Lands are again of secondary importance.

Given the political and racial motivations behind the creation of the Purchase Areas and the changing ideas about their role in the country's economy, examination of the effects of registered, individual tenure on agricultural production has been uneven. Indeed, in the early years after their establishment, the NPAs were largely ignored by colonial officials and researchers alike, who focused instead on production in the European areas and in the African reserves. It has only been since the 1960s that social scientists have investigated social and economic activities and agricultural production in the Purchase Areas, and their findings have been mixed, with some researchers concluding that the Purchase Areas have been successes in terms of production levels and the creation of a class of African commercial farmers and others terming the agricultural results disappointing. It is also difficult to generalize acout African registered freehold from the findings in a particular Purchase Area because of the highly variaole quality of Purchase area land and because of the political implications of their creation and continued existence.

The best introduction to the establishment of the NPAs is provided by Robin Palmer's historical study of land policy and racial domination in Southern Rhodesia up to 1936.

**ZI 1 Palmer, Robin. Land and Racial Domination in Rhodesia. Berkeley: University of California Press,** 1977.

Although Robin Palmer focuses on the wider political and economic climate of land distribution in the colony up to 1936, his description of the enactment and implementation of the Land Apportionment Act of 1930 (Chapters 7 and 8) is useful for the background it proviaes on the establishment of the Native Purchase Areas (NPAs). Palmer's discussion, based on archival research in the 1960s, makes it clear that the planning, demarcation, and allotment of the NPAs had less to do with concern about African farm production than with a need to placate Europeans in their demands for racial segregation and exclusive land rights. In their establishment, Palmer concludes, the NPAs were everything a land registration program should seek to avoid.

Setting **aside** land for NPAs was recommended by the Morris Carter Commission, appointed to look into questions of land and racial separation in Southern Rhodesia in 1925. Although previously Africans might (but in practice had almost never managed to) purchase freehold title to lane in predominantly European areas, the Commission urged that specific areas of the colony be set aside in which Africans alone could purcnase and hold freehold title to land. These areas, the NPAs, would provide agricultural land for purchase by African farmers wnile at the same time ending their access to land in the European areas. The Commission recommended that sufficient land be allocated to the NPAs to provide farms of some 100 acres for 250,000 Africans. The land was to be adjacent to the existing reserves, and, in contrast to the reserves, tenure was to be individual rather than communal and holdings not less than 8-10 acres

Not until 1931 were the recommendations of the Commission implemented, and by then the economic situation, both internationally and within Southern Rhodesia, had deteriorated and few Africans possessed sufficient funds to purchase the land. (Had the NPAs been demarcated in 1926, many more Africans

would have been able to take advantage of the opportunity.) The areas set aside for inclusion in the NPAs were generally not the best land in the colony. Of the 7,464,566 acres carved out for the NPAs (7.8 percent of the total area of Southern Rhodesia), some 4 million acres were remote, low-lying, dry, and sometimes tsetse-infested as well. The land was often distant from both the railway and possible markets. Wnereas the best land in the country, the high-land areas, was in European hands, NPA land was in the lower areas, often had poorer soils, and was frequently without any water source at all. A Land Board was appointed to supervise the demarcation and allocation of the areas and the 'construction of wells and roads, but it was understaffed and its work proceeded slowly.

It was envisioned that the NPAs would support a class of African middle-class farmers who would produce exportable products, but the timing for their establishment was unfortunate. Maize prices fell throughout the 1930s, and the market in cattle collapsed. Moreover, the government failed to invest sufficient sums in infrastructure: by 193b, only £13,901 had been spent to drill wells and barely 100 miles of road had been constructed. Instead, large amounts of money had gone to buy out European farmers in the NPA areas, some of whom demanded (and received) highly inflated prices for their land. Nor were credit facilities aaequate; indeed, they were nonexistent. Purchasers were required to deposit 10 percent of the purchase price and to pay the balance within 10 to 15 years; this money had to be raised privately, nowever, for Africans were not eligible for mortgages from the Land Bank as were Europeans. Many Africans objected to buying land that tney Celt was rightfully theirs, and approximately 50,000 squatters remained on the land. But there was also a substantial number of Africans who could ane did take advantage of the opportunity; whereas before 1930 Africans had managed to buy only **4b,966** acres of land, in the five years from 1931 to 1936, some 188,186 acres were purchased. Most of the 548 purchasers failed to become the middle-class farmers the Morris Commission had planned for, though. Rather, buyers were often strangers, urban workers who wished to invest savings for retirement or loyal employees rewarded with NPA land, and tnus often absentee owners or, at best, weekend farmers; in some areas fully 90 percent of the landholders lived elsewhere. In yet other areas, where farms of 5u0 acres had been laid out, the new landowners practiced shifting cultivation.

The earliest published articles on the Purchase Areas are by colonial officials, and they tend to generalize about the entire enterprise rather than to discuss the effects of the Lana Apportionment Act in a specific area. The following article, in addition to providing information about changing requirements for Purchase Area farmers, is useful for its representation of at least one official's attitude towards African farming.

**ZI 2 Powys-Jones,** L. **The Native Purchase Areas of Southern Rhodesia." Journal of African Administration 7 (1955): 20-26.**

A member of the Native Land Board of Southern Rhodesia, Powys-Jones describes the procedures by which Africans may acquire land in the Native Purchase Areas of the colony. To readers thirty years later the tone of the article is often offensive, and Powys-Jones appears to see little need to

alter the existing patterns, which are needlessly cumbersome and obstructive, of land acquisition for Africans. Despite these very real faults, however, the article is useful for its delineation of official procedures.

Initial acquisition of farm land in one of the 87 NPAs is through application. Prospective purchasers must apply to the Land Board, furnishing information as to wnere they hope to buy land, their marital and family status, farm implements and stock already owned, financial status, and level of monthly payments they can afford. Once this application has been filed, the applicant is interviewed by his local Native Commissioner, who decides whether or not he is "a suitable cnaracter and likely to make a good fanner." Applicants are then put on a waiting list and, as farms are surveyed and subdivided, may be fortunate enougn to acquire one.

Once an applicant has taken possession of his farm (after what may be a very long wait), there are more requirements he must fulfill. At first, the farmer is considered to be a lessee unuer an agreement of lease rather than the owner of the farm, and the Land Board oversees that the applicant himself, and not a hired manager, is actually farming the land, tnat he is producing enough to meet the needs of his family, and that he is using the land in a manner that meets with official approval. After three years, the applicant may be granted an agreement of purchase, and arrangements for payments toward the purchase will be made. Only after the farmer has finished these payments to the Land Board is he considered to be the legal owner of the land, and at that point he may sell it. At no time, however, is he free to subaivide the farm. Nor, until about 1952, did Africans receive the actual title deeds to their farms: only photostats were handed over. "rnis proceaure," Powys-Jones judges, "was adopted in the interests of the African farmer himself, because we had evidence that in otner countries where the actual title deed was given, there was much unregistered trafficking in the deeds, with resultant confusion and loss" (p. 25). Recently, however, the Land Board has consented to reverse this policy, and now farmers who obtain ownership are given duplicate original deeds.

Less enlightened, nowever, is another innovation wnich requires prospective farm owners to be certified as "Master Farmers" or to have completed a course of training at one of the government agricultural centers before they may be added to the waiting list. Justification for this new policy appears to be less a desire to assure a certain level of education among farmers than the need to shorten waiting lists that have become ever longer with each year. The result, the author proudly states, has been that for the first time since 1948, the number of applications for land approved in 1953 shows a decline over previous years.

Government policy is evaluated much more harshly by another official, who published his critique after retirement from the Southern Rhodesian colonial service.

**ZI3 Brown, Ken. Land <u>in</u> <u>Southern</u> <u>Rhodesia.</u> London: The Africa Bureau, 9 9**

In this brief description of African landholding patterns and agricultural practices in Southern Rhodesia, Ken Brown focuses largely on the implications of the Land Husbandry Act of 195U, appliea in the reserves rather than in African freehold areas. Nevertheless, the passages that describe conditions

in the Native Purchase Areas bear mention--if only because so many agricultural investigations of the time ignore them altogether and instead direct their attention to the reserve areas exclusively. Brown spent six years in Southern Rhodesia as a Land Development Officer with the Native Agriculture Department working in the Native Purchase Areas, and his discussion of agricultural conditions synthesizes this experience.

Brown charges that although productivity levels in the NPAs are higher than in the reserves, the standard of farming in the freehold areas "leaves much to be desirea." Tne reasons for this are several: the quality of land in the NPAs remains poor and, in many **areas,** is uncultivaole altogether; extension services are inadequate; surveying ano allocation offices have long been woefully understaffed; and a policy of continuous cultivation, advocated by the Native Agriculture Department, is inappropriate given the lack of technical assistance available to farmers. Demand for land in these areas exceeds the rate at which farms are demarcatea and allotted to applicants, a condition that is not merely the result of low levels of funding for this activity but also the effect of a deliberate policy to favor European production and to discourage competition from African farmers. Brown writes that too few freehold farms have sufficient arable land to maintain fertility and provide a reasonably high standard of living at the same time. Although average acreage of farms may appear adequate, in some areas on farms of 200 to 300 acres, 80 percent or more of the land is kopje or mountain (p. 24).

The first systematic evaluation of agricultural production in the NPAs was done in the early 1960s; the results are presented in two separate publications.

**ZI4 Massell, B.F., and** R.W.M. **Johnson.** African Agriculture **in Rhodesia: An Econometric Study. Report R-443-RC. Santa Monica, CA: The Rand Corporation, 1966.**

In this analysis of the factors responsible for the low productivity of African agriculture, Massell and Johnson compare data gathered between 1960 and 1962 from two areas, one a reserve area (Chiweshe Reserve) and the other a purchase area (Mt. Darwin Native Purchase Area). Located north of present-day **Harare,** both areas have similar levels of rainfall and soils. Production yields, however, are markedly higher in Mt. Darwin District, both overall and per acre, with farmers in the purchase **area** producing roughly nine times as much as farmers in Chiweshe.

This difference is only partly attributable to larger average farm holdings of arable land in the purchase areas. (Mt. Darwin farms average six times more arable land than Chiweshe farms.) In order to understand the reasons for this variation, Massell and Johnson analyzed data collected from a sample of 56 farms in Chiweshe and 20 in Mt. Darwin. They found that farmers in the Chiweshe area have a greater proportion of their land under cultivation than do Mt. Darwin farmers. Moreover, although farmers in ooth areas cultivate the same crops, in the Mt. Darwin area they plant more grounanuts and less corn than in Chiweshe, a reflection of the fact that purchase area farmers market a substantially larger portion of their crops. Similarly, Mt. Darwin farmers use more manure on their fields than do those in Chiweshe, althougn the percentage of farmers in each area who apply manure is roughly the same (80-85 percent). The aifference is not that farmers in the purchase area have adopted

a practice unknown to reserves farmers, but rather that they make more use of this practice. Another variation between the two areas is in the use of labor. Farm labor in both areas is centered on the family, but in the Mt. Darwin area farmers are likely to supplement this work force with laborers hired from the nearby reserve, whereas in Chiweshe there is only occasional use of extra labor. In addition, about one-third of the total labor output in Mt. Darwin District is put into various land improvement practices; this does not occur in Chiweshe. Not only do Mt. Darwin farmers cultivate larger areas, they also put in more hours per acre than do Chiweshe farmers.

To explain these variations, Massell and Johnson hypothesize that differences between the two areas in economic opportunity, or exogenous variables, influence approaches to farming, which' In turn affect differences in levels of use "decision variables." Exogenous factors include amount of arable land and of fixed capital as well as type of tenure. The authors assert that freehold land provides greater security of tenure to its owner, and that this security is conducive to investment in the land and very likely accounts, at least in part, for the use of soil improvement techniques in the Mt. Darwin farms. Freehold title also gives farmers better access to credit and may enable them to purchase fertilizer, seeds, and pesticides, all of which may improve yields. (Although Massell and Johnson may well be correct in this, the data they collected neither support or disprove this assertion.) For Chiweshe farmers with too little land, on the other hand, there is little incentive to invest, and most consider it a better strategy to obtain off-farm employment to supplement the family income. Their cropping decisions are dictated by subsistence needs, and cash income derived from off-farm labor rather than market sales of crops.

Massell and Johnson thus find that freehold tenure is only one of a number of external factors that influence farm production, and they conclude that given the structure (and limitations) of the existing African agricultural sector, reserve **area** farmers are probably wise to choose to invest their labor elsewhere, off tne farm. The low returns that Chiweshe farmers are likely to receive for limited amounts of additional labor and land are not worth the in-vestment. Tne authors also suggest that additional extension services may be wasted on farmers whose resources are so constrained.

For his doctoral dissertation, Johnson used the same data from the Mt. Darwin and Chiweshe areas and added to them a third set collected in 1963-64 from Chitowa Purchase Area in Mrewa District. The addition of data from a second purchase area enables him to make corn prisons between purchase **areas** as well as between tnem and the re-serves. He presents many of the **same** findings as in the paper above with Massell, but he is also able to make tne very important point **that not all purchase areas are alike,** that even when soil and climate conaitions are virtually the same, the age of the area may be a factor in production levels.

**2I5 Johnson, R.W.M. The Economics of African Agriculture in Southern Rhodesia." Ph.D. thesis, University of London, 1968.**

All three of the areas Johnson compares in this study are located in the high rainfall **areas** of Mashonaland, and his analysis highlights contrasts and similarities between the freehold and communal tenure farming areas of the

colony. He notes that there are distinct patterns of agriculture in the NPAs as compared to the reserve areas. Although the choice of crops and agricultural methods are largely the same, the larger average farm size in the NPAs requires a greater input of labor. Indeed, Johnson found that the average farm "cultivation group" was 7.22 people per unit in the reserves and 11.82 and 9.3U in the two NPA districts (p. 176), witn the older district having the higher average. Moreover, NPA populations generally have a higher level of education and are less likely to migrate On a seasonal basis--although NPA men may spend their entire working lives off the farm in permanent employment. NPA farms are also more likely to have better implements (and some may even have tractors), to contain larger numbers of cattle, and to sell substantial portions of their crops, most often maize and, to a lesser extent, groundnuts and millet. NPA areas are also likely to be better served by extension workers and to have better roads and fencing. Jonnson classifies the NPA farms as semi-commercial, taking into account the fact that they sell significant portions of their crops and yet do not grow tobacco or cotton, cash crops produced on many European farms in Southern Rhodesia.

Johnson cautions, however, against generalizing about overall levels of productivity. Wide variations in soil types and changes in fertility make such comparisons, even within the NPAs, impossible. Mt. Darwin district, the newer area, has a higher yield of maize per acre than does the older Chitowa area. This difference is due to aeclining levels of fertility in the soils of the older farms and higher yields from the newly cleared land in Mt. Darwin district. Other differences in yields result from the application of manure to the soil, a practice more prevalent in the NPAs, where there are larger numbers of livestock, than in the reserves.

Although Johnson's analysis of the differences between the NPAs and the reserves does not consider registration itself as a variable, it is clear from his discussion that other conditions are more salient than the grant of freehold title. Many of the variations can be seen to oe a result of the initial requirements for acquisition of an NPA farm and the regulations which govern its holding. NPA farmowners must demonstrate a certain economic standing, are forbidden to subdivide their farms (and thus are more likely to contain larger "cultivation groups"), and are better served by extension and transport facilities. Johnson concludes by agreeing that the Morris Carter Commission of 1925 was "fully justified i:, its assumption that a class of yeoman farmers would emerge in Southern Rhodesia under a system of freehold tenure" (p. 343).

**A** less favorable view of agricultural production in the Purchase Areas is provided by A.J.B. Hughes:

**ZI6 Hughes, A.J.B. Development in Rhodesian Tribal Areas; An Overview. Salisbury: Tribal Areas of Rhodesia Re-search Foundation, 1974.**

Hughes' report is a broad survey of agricultural conditions in the African areas of Southern Rhodesia prepared for the Tribal Areas of Rhodesia Research Founaation, an organization established in 1969 to investigate "ways whereby the inhabitants of our tribal areas might be motivated to take more active steps to develop their own areas with whatever outside assistance might be needed" (Foreword, p. x). One chapter is devoted to an evaluation of African Purchase Lands (or APLs, the term by which the NPAs were called after 1970).

In these pages (pp. 223-246), he describes the provisions under which farms may be purchased as well as the agricultural conditions in these areas. In this latter, he draws heavily on the work of Cheater, Bembridge, and Paraiwa (see below).

By 1974, Land Boards had granted freehold title to 4,808 farms in the APLs, while another 4,001 were held under an Agreement of Lease, the intermediate stage in which the holder remains under close supervision of agricultural and other extension officials. Hughes notes that farm holders are older than their counterparts in the reserves and that their families are bigger as well, due largely to a higher rate of polygyny in the APLs. Despite their larger populations, however, APL farms are not especially productive. Income figures drawn from several separate studies show that while a few farms are commercially orientea in their production, most are not, and insteaa produce at a subsistence level and market only small amounts of their crops. Nor have farms remained undiviaea; although subdivision of the farms is prohiolted by law, a great deal of de facto subdivision exists. Most sons of APL farmers have no rights to lance in the reserves, and thus are dependent on their rathers for farm land. Most farmers, of course, are aware of the prohibition against subdivision and deny that it occurs; nevertheless, Hughes believes, the extent of subdivision of rights to land is "quite considerable."

Hughes concludes the section on A?Ls with a discussion of the causes of the disappointing levels of production, but like Powys-Jones finds little to criticize in past government policy. Although ne recognizes that APL land is not of the highest quality, well-situated, or easily developed given existing credit facilities, he does not find these factors determinative. he believes that low production levels are due to too many people on the farms and use of primitive farming techniques. All the same, he notes, farms in the APLs are improvements over those in the reserves: their owners are better-educated; are likely to have additional, off-farm sources of income; and generally possess more modern conveniences such as improved housing and running water. APL farmers, he admits, are self-selected, and he suggests tnat in the future differences between the APLs and the reserves may become even more marked. Hughes recommends that production levels be raised through better extension services and through a program which would encourage sales of farms and alternate livelihoods for individuals who would otherwise remain on the APL farms.

Hughes cites several works, unfortunately unavailable in the United States, which deal with agricultural production in the APLs. They are:

Bembridge, T.J. "**Extension in** a **Rnoaesian** Purcnase **Land Area.**" **M.Sc.** thesis, University of Reading, 1972.

Cheater, A.P. "Rural Capitalism in Rhodesia--Sociological Aspects." Duplicated **paper, n.d.**

Paraiwa, M.G. "An Economic Survey of Zowa and Chitombogwizi APIs." Salisbury: Ministry of Agriculture, 1972.

A.K.H. Weinrich (a.k.a. Sister Mary Aquina) carried out extensive research in the 1960s looking into conditions of African peasant farmers in several different land tenure areas.

**ZI7 Weinrich, A.K.H. African Farmers in Rhodesia; Old and New** Peasant Communities **in Karangaland. London: Oxford University Press, 1975.**

Drawing on research carried out in Rhodesia between 1962 and 1969, Weinrich's monograph compares agricultural conditions and practices in six areas of Karangaland: two areas in the reserves (Tribal Trust Areas, or TTLs), two purchase area sites (one older, one more recently demarcated), and two newly developed irrigation areas. "The aim of this book," she writes, "is to work out the factors which lead to greater satisfaction and security among African peasants" (p. 4) . Her study sets out to test a series of hypotheses, among them that government policy is a major factor in agricultural development, and that this policy is intendea to support racial segregation rather than to raise Africans' standard of living; that settlement patterns affect the supply of labor; that settlers in purchase areas have been chosen to possess appropriate skills; that productivity is a *function* of investment and that if credit is available, yields will increase; that a readiness to invest requires a break with tradition, and that such a break may be related to purchase area settlement; and that access to markets and the freedom to select buyers may affect farmers' eagerness to increase production, while controlled marketing procedures may induce apathy.

Like other researchers, Weinrich finds that agricultural productivity is higher in the purchase areas than elsewhere, the result of a combination of factors not strictly related to the acquisition of individual freenold. Weinrich's research was conducted after new eligibility requirements for purchasing farms had been instituted, and these new demands (that applicants possess a master farmer certificate and capital of £300) affected levels of production. Farmers who were able to purchase farms under the new regulations applied the knowledge they had gained in their training and invested their capital in purchasing larger herds, farm implements, and inputs such as fertilizer, seeds, and pesticides; the result was higher yields for these farmers than in the older purchase area where these requirements had not obtained. (It may be somewhat premature to attribute these higher yields solely to training and capital investment; Johnson explains differences in yields between older and newer purchase areas in terms of declining soil fertility in older areas.) Another factor that is related to level of production is the amount of labor available to a farmer. Shortage of labor can be more of a problem in the purchase areas. Farmers are forbidden to subdivide their farms ana thus sons are more likely to move elsewhere to acquire land. In addition, the dispersed settlement pattern and the newness of the settlement often militate against neighborly assistance. Nevertheless, those farms with the highest levels of production are ones in which large families provide most of the labor. (This may not, however, be an independent variable; farmers with larger amounts of capital to invest in farming are also those most able to afford extra wives and to support additional dependents.)

Two points that Weinrich makes are especially interesting in light of the research on registration in **Uganda.** The first is that it is the farmers with adequate capital to invest who are more likely to prosper than those without, and this capital has more often than not been earned outside the purchase areas. This accords with the finaings of Richards et al. in Uganda (U17), which showed that successful commercial farmers in Buganda generally got their start with savings accumulated outside the agricultural sector. Weinrich also states that although farmers were careful to **make** the payments that brought

them title to the farms, "they saw no reason for paying stamp duties to obtain a certificate of ownership; they thought they had spent quite enough in re-paying their debt to the government" (p. 223). The exception to this are the master farmers. In Uganda a similar problem was found, with farmers reluctant to take the necessary steps to have formal title granted and even less likely to see that successions and other transfers are recorded (see OKec, U21).

Access to capital is especially important given the fact that despite the availability of limited amounts of credit, fanners often choose not to take out loans for improvements. Provisions exist for obtaining credit through cooperatives or from special loan funds, but many farmers do not participate while others have not repaid their loans and so the amount of money available has declined. Farmers may also prefer to avoid cooperatives because they wish to market their crops themselves rather than through the coops. Many sell surplus directly to the TTLs rather than through tormally constituted market-ing channels. Weinrich also notes, though, that substantial portions of the farmers' crops are not marketed at all.

Despite these limitations, Weinrich asserts that "purchase area farmers are at present the most satisfied group of rural Africans who earn a living from the land" (p. 300) , a condition she attributes to two factors: to the amount of available land in the purchase areas and to the satisfaction in buying land. The purchase areas present a strong contrast to the reserves, where land is overcrowded and there is **a real** threat of landlessness.

Weinrich concludes that most successful farmers share several character-istics: they are younger, better-educated, strongly influenced by Christian beliefs, and specially trained in modern agricultural methods. (Acceptance of Christianity, of course, is hardly independent of educational level.) Perhaps the most striking correlation is between agricultural success and possession of a master farmer's certificate. To raise production levels of African farmers throughout the country, she recommends, among other things, the introduction of individual land tenure with minimum permissable holdings; legislation to allow the government to tax heavily or evict all farmers, olack or white, who do not develop their land; and the establishment of more training courses and extension services for African farmers.

Angela Cheater, a sociologist by training, did field research in the 1970s and again just after independence in 1980 in one of the African Purchase Lands, and her work is especially valuable for its perspective on changes in the area over time. Results of her first period of fieldwork are presented **in:**

**ZI8 Cheater, Angela P. "Small-Scale Freehold as a Model for Commercial Agriculture in Rhodesia-Zimbabwe." Zambezia 6 (1978) : 117-127.**

Drawing on her researcn in 1972/73 in Msengezi Purchase Area, **located 96 kilometers** west of present-day Harare, Cheater considers the question of what would be the most efficient and productive size of farm if land in Zimbabwe were to be redistributed to African farmers. Her premise is that individual tenure is the most productive form of landholding, and she argues that the allocation of medium-sized plots will, on the one hand, help alleviate land pressure and landlessness in the reserve areas and, on the other, provide

recipients with an opportunity to raise their agricultural production and income beyond subsistence levels. Medium-sized plots, she believes, are the most productive, allowing holders to apply the experience gained from subsistence-level production while permitting them the opportunity to improve their situations. But she also quite rightly stresses that simply allocating freehold plots of more than 10 acres will have little positive impact without improvements in infrastructure and communications, marketing and pricing policies, extension services, and credit facilities. She also notes that at the same time, urban land must be made **available** for purchase as freehold by Africans; if this is not done, she predicts, most of the new rural freehold farms will be purchased by urban workers who see their situations as insecure and wish to provide for themselves ana their families for the future. (This is what occurred when Native Purchase Areas were first established and made available in the 1930s.)

Nor will it be adequate merely to transfer mecium-sizea plots to African farmers; some form of security of title must be provided. This need for security of tenure in land is crucial, and in her interviews of Msengezi farmers Cheater found that a desire for security was the single most important reason for purchasing a freehold farm. The popularity of tnese freenold farms is evident from rising prices for them. She also suggests that land purchases and individualization of title are not radical departures from customary land tenure practices and that steps in this direction are already spontaneously occurring among various groups.

Cheater followed up her earlier research in Msengezi with a re-study, done in 1980-81, soon after Zimbabwean independence.

**ZI9 Cheater, A.P. "Formal and Informal** Rights to Land in **Zimbabwe's Black Freehold Areas: A Case-Study from Msengezi." Africa 52 (1982): 77-91.**

**This later research is concerned to** measure the effects of the liberation war in Msengezi, a "relatively well-developed rural area." Although the extreme hardships of the war are now largely gone, her findings are instructive, for they give a picture of what is likely to recur here and in comparable areas should economic conditions deteriorate.

Freehold farms in the African Purchase Lands cannot be subdivided, a restriction contained in the Land Apportionment Act of 1930 and one which remains in force today. Despite this legal prohibition, however, de facto subdivision does occur. Cheater found that informal allocation of freehold farms not only occurrea with some frequency but actually increased during periods of unsettled conditions. In her original survey, done in 1973-74, sne found that of the 329 farms in the area, roughly half were cultivated by one or more people in addition to the owner. By 1980-81, the first growing season after independence, three-quarters of the farms fell into this category. Arrangements between farmowners and tenants varies: in some cases the additional cultivators were wives and relatives, while in other instances non-related individuals were allocated land to cultivate in exchange for their labor on the farmer's fields or payment of part of their own crop to the farmer. Cheater gives two causes for this rise in subdivisions of holdings: lack of alternative economic opportunities in troubled times and a shortage of

cash to pay wage labor, an explanation which takes into account the persistence of this pattern into the first growing season after independence.

Cheater writes that these subdivisions are temporary, whether to relatives or unrelated individuals. Among kin, allocations to siblings may be made during the first years after a new owner has inherited the land; in later years, inheritors often manage to rid themselves of these relatives and obligations to them. Landowners "are not overwhelmed by customary expectations, nor flooded by hordes of demanding relatives seeking to sponge off them, as colonial administrators tended to believe. The allocations made follow a definite pattern which sloughs off collateral kin increasingly distant from the landowner's own line of descent, except when such kin are necessary to his own interests . . ." (p. 88). Allocations to unrelated individuals are even more temporary, often made only from season to season.

Yet despite the fact that these subdivisions have no legal validity and are only temporary, Cheater believes that they are likely to persist. A new minimum wage law, enacted by the new government, sets wage levels too high for most black farmers to afford hired farm labor. Farmers are likely to continue to pursue strategies which demand little cash outlay and instead allow them to exchange use rights in land for labor. Although the government can legislate against share-cropping (as it has against subdivision of freehold land), such measures are difficult to enforce. Cheater concludes that informal rights in land will not only continue but also grow in both extent and complexity.

Cheater's most recent publication from her Msengezi research draws on both fieldwork experiences.

**ZI 10 Cheater, Angela. Idioms of Accumulation; Rural Development and Class Formation among Freeholders in Zimbabwe. Gweru: Mambo Press, 1984.**

Using data collected in her two periods of fieldwork in Msengezi purchase area (and discussed in the two articles above), Cheater focuses on farmers' means of accumulating and expressing wealth and on class formation and aiffer- entiation among them. Data for her survey were originally collected in 1973/74 and supplemented by further research carried out in 1980-/1, snortly after fighting had ended and Zimbabwean independence been achieved.

Cheater's work is in many ways complementary to that of Richards et al. in **Uganda** (see U17). Like the **Ugandan** researchers, she is concerned with economic differences between farmers with freehold title to their lands, but she is also interested in how these differences are expressed, whether farmers choose to invest in traditional ways {e.g., in extra wives) or in a more "modern" fashion (e.g., in farm equipment) and how they view their best economic interests--as aligned with other commercial farmers (Europeans) rather than as akin to those of peasant farmers (Africans) in the reserve areas. These two factors--idioms of accumulation and feelings of common interests with European farmers rather than with African peasant producers--Cheater sees as not only statements of economic differentiation among inhabitants of the purchase areas but also as evidence of class formation.

Cheater's study is a valuable contribution to the literature dealing with African agriculture in the purchase areas for several reasons. The first chapters of the book provide detailed information about changing official policies toward the purchase areas from the 1950s on, a period in which the

government first began to provide greater assistance to African farmers in these areas and then later, in the 197us, gave consideration to abolition of African freehold altogether on the grounds that the purchase areas had al- legedly failed to promote African development. The evidence that Cheater has collected, however, shows convincingly that this is not true, that a class of commercial farmers has emerged in at least one purchase area and that the economic interests and strategies of these farmers are more akin to those of European farmers than to those of cultivators in the reserve areas. Purchase area farmers show a willingness to innovate and recognize the need to preserve and even improve the fertility of land. Farmers have introduced new crops and invested in fertilizer. Between 1961 and 1972, increasing amounts of land in Msengezi were devoted to cash crops, most especially cotton. Moreover, farmers' use of fertilizer shows careful attention to both agricultural needs and economic realities: because fertilizer is expensive and scarce, farmers generally limit its application to cash crops such as cotton and maize and do not use it on food crops for domestic consumption.

Another controversial issue that Cheater deals with is the problem of "squatting" on purchase area farms. Subdivision of farms in the purchase areas is of course illegal, and many investigators have charged that it occurs de-spite its prohibition, with large numbers of squatters (as all non-titleholder cultivators are termed) allocated use rights to land in exchange for labor. Cheater argues that the relationship between land use ana the supply of labor is far more complex than merely a question of who has land and who does not. Sources of labor vary, from family and resident kin, to cooperative work groups, to hired laborers, and may be seen as points along a continuum. The decision to employ a particular form of labor is based upon the scale of crop production, the idiom of accumulation (traditional or modern) chosen by the farmer, and the family's developmental cycle. Resiaent laborers are more likely to be strangers, from outside the area, and farmers who hire labor generally prefer outsiders to their own relatives--choosing not to mingle economic considerations with social relations.

Several characteristics are common among successful commercial farmers: they crop more land and are less likely to allocate use rights to others; they employ more permanent resident workers; and they are older (and therefore have more capital) and better-educated than most. None of the farmers in Cheater's survey came to Msengezi directly from subsistence farming in the reserves. Rather, they first worked elsewhere, and in the course of their employment were able to accumulate capital (and sometimes experience) that directly fed into their success as commercial farmers.

Cheater writes that ownership of freehold title--or as she characterizes it, **private** ownership of the means of production--is a key factor, if not the most important one, in the high level of agricultural production and, it fol- lows, the economic differentiation of these farmers. These same farmers, how- ever, now believe their position threatened by the agricultural policy of the new Zimbabwean government, which emphasizes collective farming and resettlement and which they fear ignores their particular needs and interests.

A very harsh judgment of the African Purchase Lands in general is presented by Roger Riddell, who believes that radical land reform is the only solution for land distribution in Zimbabwe and the only way to prevent a situation in which severe inequalities in wealth are perpetuated.

**ZIll Riddell, Roger** C. **The Land Problem in Rhodesia; Alternatives for the Future. Gwelo: Mambo Press, 1978.**

As part of a wider work dealing with land and agriculture in Rhodesia and proposals for radical land reform in the future, Roger Riddell discusses the African Purchase Lands (APLs) and their economic and social role. He provides an overview of the purchase areas and, in contrast to other authors such as Cheater (see **above),** is much more negative in his assessment of their impact and sees little role for them in a reformed economy.

Riddell points out that as of 1977, less than 1 percent of Rhodesia's African cultivators lived in the 66 APLs, comprising only 9 percent of the land area open to Africans and producing only 2.3 percent of the country's total agricultural yield. The purchase areas, he charges, have acted as a cushion, creaming off the more progressive cultivators and providing them with larger farms while condemning the vast majority or African farmers to subsistence-level production in the reserves (or Tribal Trust Lands, TTLs). But not all purchase area farms are commercially successful. Production figures mask great differences in yields between the various purchase areas and between individual farms, and some areas show even lower yields than neignboring TTLs. Moreover, "the creation of the Purchase Areas has done very little to solve the basic problems of the African rural areas. A large proportion of the land is not used and the individual tenure system has not proved to be an adequate base for promoting agricultural development or for making an efficient use of the land within the present economic structure" (p. 53).

In considering how land issues are to be addressed in the future, the Rhodesian National Farmers Union has advocated that new land be opened up to African farmers to relieve land pressure in the reserves, and that these new **areas be made available on a** freehold **basis.** The African Farmers Union of Rhodesia, whose membership is largely composed of purchase area farmers, shares the view that freehold tenure be granted. Riddell, however, rejects this position, claiming that individual freehold title will not only perpetuate the inequalities in Rhodesian society but actually create even greater divisions between rich and poor, landed and landless. dis argument is based both on what he sees as the failure of the APLs to address and alleviate the very real divisions in the country and on the negative example of the Kenya land registration program begun in the 195Us. Quoting from a 1957 working party on land tenure, Riddell charges that "'it has been proved in many countries that the surest way to deprive **a** peasant of his right to land is to give him a secure title and make it freely negotiable.'"

## COUNTRY IDENTIFICATIONS

| | | |
|---|---|---|
| General Africa | A | Madagascar |
| Francophone Africa | **FA** | Malawi |
| East Africa | EA | Mali |
| Angola | | Mauritania |
| Benin | 3 | Mozambique |
| Botswana | BO | Namibia |
| Burkina Faso | | Niger |
| Burundi | BU | Nigeria |
| Cameroon | C | Rwanda |
| Central African Republic | CAR | Senegal |
| Chad | CH | Seychelles |
| Congo | CO | Sierra Leone |
| Ethiopia | ET | Somalia |
| Gabon | G | South Africa |
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| **Ghana** | GH | Swaziland |
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