

**GENERAL -
LAND TENURE**

Shem E. Migot-Adholla and John W. Bruce,
'Introduction: Are Indigenous African Tenure Systems Insecure?',
John W. Bruce and Shem E. Migot-Adholla (Eds), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), 1-13.

Book attempt to assess relative efficiency of indigenous customary land tenure arrangements and state imposed individual tenure in promoting agricultural production. 8 World Bank and Land Tenure Centre case studies 1988-90. Used broad theoretical model describing relationship between tenure security and agricultural output working through land markets, credit and investment. Studies in 1980s showed that indigenous tenure arrangements are dynamic and have historically adapted to economic and technological changes. Over time they experience simultaneous simplification and individualisation of rights whereby households increasingly acquire broader rights of exclusion and transfer as population pressure and levels commercialisation increase. Access to and use of land regulated by intricate customary traditions that vested control in minimal kinship or residential groups in variety of usufructuary arrangements. Families enjoyed fairly clearly defined rights of use over different parcels of land. Family rights transmitted through prevailing rules of succession, which allowed divisible inheritance. Initial rights established by first occupation and investment of labour in clearing and cultivation. As population increased and land frontier diminished, fallow periods became shorter and cultivation of plots relatively continuous. Land increasingly held by households rather than families. Once best farming land occupied, boundaries were more distinctly marked. So long as land cropped, other members excluded but all members of community retained right to graze livestock on stubble and on fallow and unclaimed land and to use other common property resources (CPRs) - pasturage, forests, water resources. In majority of cases, individual and family rights to land have historically become more exclusive, though falling short of private property. Other members of community may have secondary or sequential rights to collection of firewood or products of wild trees and grazing of livestock. Where population growth rapid and commercialisation of agriculture increasing, need for long term improvements in land has hastened emergence of more exclusive individual rights as well as some land sales. As land frontier diminished, inheritance of family land has emerged as most significant method of acquisition of agricultural land.

In recent years land reforms have sought to achieve social justice and promote greater productivity. Gained widespread popularity in Asia and Latin America after 1945. Following reforms, Asian countries achieved impressive rates of growth. On the basis of that experience, development specialists have recommended tenure conversion including individual property rights as means of inducing increased productivity, e.g. Kenya in mid-1950s. Several evaluations of Kenya programme have observed that individualisation has led to land concentration, increased marginalisation and landlessness as people in power take advantage of the less powerful. But these assessments may have over idealised perception of traditional institutions and include influences on inequality that may result from factors separate from land tenure. Thus far quantitative studies undertaken mainly in Asia; book attempt to do this for Africa.

Conclusions from some chapters: Burkina Faso - indigenous systems create no major disincentives to investments or crop production, provide security and highly equitable

distributions. Ghana - land insecurity has not contributed to agricultural inefficiency. Indigenous systems in 3 study regions have been flexible and accommodating to external economic stimuli. Uganda - data shortcomings on pilot scheme make causality problematic. Somalia - registration voluntary, costs high. Senegal - little support that few parcels under theoretically more secure registered ownership has encouraged investment and intensification of production. As elsewhere in Africa, conflict in initial registrations and some appropriation of village lands and subsequent dilution of legal certainty through unregistered dealings and successions

Frank Place, Michael Roth, and Peter Hazell,

‘Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology’,

John W. Bruce and Shem E. Migot-Adholla (Eds), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), 15-39.

Methodology set out in this chapter. Case studies cover variety of ecological and institutional settings. Provide rich opportunities to examine effects of tenure security on investment and output under diverse settings.

John W. Bruce, Shem E. Migot-Adholla, and Joan Atherton,

‘The Findings and their Policy Implications: Institutional Adaptation or Replacement’

John W. Bruce and Shem E. Migot-Adholla (Eds), *Searching for Land Tenure Security in Africa* (Dubuque: Kendall/Hunt, 1994), 251-65.

Conclusion. Vast majority of Africa’s farmers still hold title under indigenous customary land tenure systems, whatever formal legal position might be. In mid-1980s voices in major bi- and multi-lateral donors called for large scale tenure individualisation and title registration programmes to provide tenure security necessary for investment in agriculture. Though literature did not provide convincing empirical proof of benefits of registration, logic of model compelling and tested with impressive results in Thailand. Recognition that formal title did not necessarily mean increase in tenure security and many studies raised questions about effects of title registration. Need to attempt quantitative study of these issues based on survey research and econometric analysis. World Bank studies asked whether customary systems provided insecure tenure, hampered increases in productivity and needed replacement. Land Tenure Centre studies asked whether formal registered tenure provided by nation state has delivered greater security and stimulated agricultural development. World Bank studies tend to confirm hypotheses that customary tenure rights evolve toward stronger, more alienable individual rights as population pressure increases, technologies change and agriculture becomes more commercialised. If customary systems do not break down but evolve, need to re-examine extent to which more intrusive programmes, which seek to replace them, are necessary.

Use of formal credit in study region limited. In 9/10 less than 13% farms received formal credit in 1987-8. So not surprising to find weak relationship between land rights and use of formal credit. Found no significant relationships between use of formal credit and proportion of land held with complete transfer rights. Even in Kenya, where

title widely available, no significant relationship between possession of title and use of formal credit. Conclude that there is little relationship between land rights or land title and use of formal credit in study countries at this stage of their agricultural development. Low incidence of credit in Kenya suggests that transformation of land tenure alone will not lead to development of active rural credit markets. Not possible to make any general assertions regarding effect of land rights on land improvements. Found no significant relationship between land rights and yields. World Bank studies suggest that increasing tenure security is not in itself a sufficient incentive for land improvements and heightened productivity. This partly because land still an abundant good in many parts and so easier to clear and use other land than invest in existing holding and partly because other markets, labour, capital and farm produce not functioning well.

Survey and registration costs very high. Are they effective in increasing investments and productivity? Can they produce same benefits as evolutionary process, but quicker? Land Tenure Centre studies address these questions. Sought out titling programmes and evaluated their effectiveness. Security of tenure equated with danger of loss of access. New factor of state and its titles as source of insecurity. New tenure so conditioned as to cause resentment in Somalia and Uganda conversion to leasehold exposed holders to new dangers. Registration under weak tenure from state does not provide meaningful security and may decrease security. Looked at land disputes, improvements, productivity.

- In generally depressed conditions of agriculture no reason to hope that titling will have an effect. Land market relies on interaction with other markets. Where land scarce or unusually productive, produces cash crops and has good access to markets, registration may have positive effect on land improvements and thus on productivity.
- Giving landholders weak titles constrained by conditions and prohibitions will not have anticipated incentive effects.
- When farmers value title, even if constrained, it is because titles provide greater protection than custom did against arbitrariness of state. Much of titling demand can be seen as pre-emptive rather than felt need for new rules of tenure.
- Even in Kenya, factors such as farm size and market access may overwhelm titling impacts.
- National legislation of tenure reform has limited capacity to change behaviour, as Kenya experience demonstrates.

Kenya studies here show that indigenous values persisted and majority felt they could not sell land without approval of families, reflecting judgement that social security function of land remains paramount and compliance with community mores and access to community mechanisms for coping with hard times still of great importance.

Security of tenure multi-faceted and needs to be used with far more care. Unsuccessful attempts to substitute state titles may reduce security by creating confusion of which powerful may take advantage. Security of title does not by itself result in greater investment or productivity. Effect may be entirely insignificant if farmers overwhelmed by other risks and disincentives like drought or if economic environment stagnant. Titling by the state important to investors because their claims to land lack legitimacy under indigenous systems. Cadastral surveys and titling commonly means by which elites and dominant ethnic groups strip pastoralists and others of resources they need. Rarely does such investment have significant effects on local welfare and resentment and serious social conflict may erupt and environmental degradation may be encouraged. Many African states used titling programmes to distribute land unfairly, so many question whether state can be trusted. Extensive evidence that systematic registration exercises followed by widespread failures to register transfers and successions. Accuracy achieved at considerable cost is lost as position on ground and in minds of local people gradually diverges from that on register. Many smallholders, even after registration, do not sell or mortgage land without consulting family and neighbours, even though able to do so.

Implications of study cast doubt on wisdom and cost effectiveness of large scale, systematic programmes of compulsory titling for smallholders in rainfed agriculture. Need to redirect attention to more incremental approaches to change in tenure systems. Need to redirect support of titling activities toward efforts focused on localities of particular need. Believe task of land tenure policy research for next decade is to elaborate such gradualist approaches, relying to significant extent on incremental patterns. Should be moving away from replacement paradigm toward adaptation paradigm. Latter requires supportive legal and administrative environment for evolutionary change in indigenous law. If this unclear under national law, unlikely to be able to respond to new challenges. Need to review how and on what terms recognition of indigenous land tenure rules is most effective and how dispute settlement mechanisms can best be framed to facilitate process of legal evolution. Rather than rewriting laws, Sara Berry says governments should focus on strengthening institutions for mediation of conflicting interests of farmers and others in rights to rural land.

Adaptation path, though neither simple nor unidirectional, assumes that a market economy will eventually produce a land tenure system resembling Western concept of ownership. Cadastral survey and registration must be done cost effectively and at most efficient point in time. Best used as capstone than attempt to compel tenure change. Best confined to land which has become valuable and is subject of intense competition and disputes (e.g. urban and peri-urban areas) and customary tenure failing to cope with conflicts or land being distributed by state in resettlement project and there is no customary tenure system. Where customary systems provide reasonable tenure security for most holders but some innovators want registered title, sporadic, voluntary registration on user pays basis may be recommended. Need for clear legal recognition of customary rights coupled with highly participatory adjudication process. Need to strengthen registry facilities and upgrade land survey capabilities. Start with high value land in urban and peri-urban areas and expand outwards. Land tenure profoundly political and its control a critical factor in development of African polities and economies.

Thomas J. Bassett,

'Introduction: The Land Question and Agricultural Transformation in Sub-Saharan Africa',

Thomas J. Bassett and Donald E. Crummey (Eds), *Land in African Agrarian Systems* (Madison: University of Wisconsin Press, 1993), 3-31.

Proposals for sweeping changes in agricultural land tenure misconceived. Many have seen indigenous land holding systems as obstacles to increased productivity, believing that private ownership will provide investment security necessary for agricultural efficiency. World Bank funding series of titling projects. Many contend this not panacea and that solutions must transcend World Bank's technocratic and theological approaches and take account of social dynamics that influence how productive resources acquired, used, contested and immobilised. Land titling has not led to significant investments in agriculture or effects on production. Assumption that privatisation of commons will ensure sound land use management effectively refuted. Peters argues for seeing commons systems as embedded systems with multiple or overlapping rights and a combination of individual and group claims. Competition among rights and claims takes place through competition in meanings. Berry emphasises centrality of social identity and political power in obtaining and defending rights in rural land. Multiple claims to same parcel of land result in incomplete privatisation of rights in highly commercialised tree cropping zones of West Africa. This indeterminacy often leads to disputes commonly resolved in favour of those with greatest political power. Wealthy households view uncertain tenure as opportunity to expand holdings.

Chapters reveal how land access, control and management are embedded in social, political and economic structures that fluctuate over time. Stress that land tenure is a political process. First to take broad look at links between land tenure and agricultural performance since Biebuyck 1963. Highlights relationship between power relations and rights in land and how they vary and change under different historical situations. Struggles over productive resources have historically taken place between rich and powerful and underclasses. Meaning and substance of power relations frequently contested. Outcome not pre-determined, underclasses meeting challenges with some success. Tenure reform not cure-all for improving agricultural performance. May be need to modify certain features of indigenous systems when justified. But rather than replace them with European models, tenure reform strategies should build on strengths of indigenous systems. Book calls for pragmatism and respect for flexibility of indigenous systems and seeks to temper powerful forces bent on reforming tenure systems in direction of privatisation on grounds that this is one key to increasing productivity and getting Africa out of crisis.

John W. Bruce,

'Do Indigenous Tenure Systems Constrain Agricultural Development?'

Thomas J. Bassett and Donald E. Crummey (Eds), *Land in African Agrarian Systems* (Madison: University of Wisconsin Press, 1993), 35-56.

Do indigenous land tenure arrangements constrain farmer innovation and investment? Tenure arrangements do not have problems and benefits in abstract, only in terms of specific strategies. Indigenous systems place great emphasis on risk management. Remains to be seen whether greater potential for skewed distribution and landlessness lies with the market or in manipulation of state control over access by political elites. Tenure change must avoid intractable and politically explosive maldistribution of resources that has plagued Latin America and parts of Asia. Policy arena does not belong to proponents of systematic individualisation of tenure in full private ownership. Recent World Bank research calls in question viability and cost-effectiveness of tenure reform generally.

Michael Roth,

'Somalia Land Policies and Tenure Impacts: the Case of the Lower Shebelle',

Thomas J. Bassett and Donald E. Crummey (Eds), *Land in African Agrarian Systems* (Madison: University of Wisconsin Press, 1993), 298-325.

Land tenure in Somalia is in a state of transition as customary land tenure arrangements govern most cultivated land and nearly all pastoral land, although state leasehold tenure based on statutory law is becoming more widespread, particularly in Somalia's two main river valleys, the Shebelle and the Jubba. Land registration in early years was closely linked with government programmes aimed at establishing a modern corporate agriculture. In the 1970s, various laws and programmes to promote the establishment of state farms, cooperatives and large private plantations were passed. These have increased land concentration, displaced some landholders and even decreased the tenure security of landholders without leasehold rights. Compared with customary tenure systems, land rights under state leasehold tenure are more restrictive. Demand for land, particularly high-quality land in Somalia's river valleys, has been rapidly rising because of four external factors: rapid price inflation, foreign assistance and capital development programmes, foreign barriers to Somalia's livestock exports and increasing real crop prices. Describes and evaluates the impacts of government land policy on tenure security and land allocation. The institutional and macroeconomic forces that are increasing demand for land in Somalia's riverine areas are analysed and Somalia's land policy and land legislation that promoted the corporatization of agriculture in the 1970s are evaluated. The results from a study on security of tenure and land registration in the Lower Shebelle are used as a case study of the impacts of the registration process on land allocation and tenure security.

S.P. Reyna and R.E. Downs,

'Introduction',

R.E. Downs and S.P. Reyna (Eds), *Land and Society in Contemporary Africa* (Hanover, NH: University Press of New England, 1988), 1-22.

Book focuses on whether land concentration occurring. Strongly suggests changes emerging in way Africans relate to their land, which are aspects of intricate social transformations. But complexity and incompleteness of information, so cannot be sure how representative findings are. Land tenure systems set of rules concerning people's rights to land together with institutions that administer rights and resultant ways in which people hold land. Colonial policy sometimes worked for preservation of indigenous systems, sometimes for introduction of European land codes. Independent governments have perceived need for national land laws. Often disparage indigenous systems as constraints to commercialisation which need to be removed, as in Kenyan reform. Policies saw agricultural development coming through creation of commercial farms and introduction of parastatals. Such laws on books in most African countries by 1980s. Coexistence of different land codes creates serious ambiguities. Reforms assume that on certain date people will obey Western laws. Strain legitimacy of implementors and the limited resources of African states because few authorities trained to administer them so often in practice implemented by traditional authorities who ensure that the old systems do not disappear. Access to land becoming more restricted with growing populations and commercialisation. Systems become more restrictive by reducing number of social identities qualifying for access to land, which gets reserved for primary claimants only. Women especially vulnerable. As supply decreases, demand grows and prices rise so access increasingly narrowed to those few with money. Modern big men are major actors in accumulation. Land conflict intensifies. A turning point? Some acquiring, some losing land, means of exploiting it changing. Need to design policies to eliminate present ambiguities.

John Middleton,

'Foreword',

R.E. Downs and S.P. Reyna (Eds), *Land and Society in Contemporary Africa* (Hanover, NH: University Press of New England, 1988), ix-xii.

Land tenure a system of relations between people expressed in terms of their mutual rights and obligations with regard to land. Book illustrates how often traditional effective systems of social life overturned by decisions on development by central governments. New elites see land as way to their own profit. Abuses of central power weaken structures of rural communities and destroy ability and will to produce food.

John W. Bruce,

'A Perspective on Indigenous Land Tenure Systems and Land Concentration',
R.E. Downs and S.P. Reyna (Eds), *Land and Society in Contemporary Africa*
(Hanover, NH: University Press of New England, 1988), 23-52.

Access to land, with dramatic exceptions of Kenya and Botswana, still determined by indigenous systems, even where state is nominal owner. Communal tenure been used to cover quite different situations. Not one group but hierarchy of groups is focus of land rights. Tenure change ubiquitous. Once cultivation stabilises and all good land allocated, rules of inheritance come into play. Shifts focus of control down to extended family with crucial decisions on inheritance. Kenya's programme the most ambitious. Remarkably successful as field operation, but impossible to determine how much prosperity owed to tenure reform, how much to other initiatives. Strategy not worked out as planned. Farmers failed to comply with laws and where they have, it is with objectives different from those anticipated. May be questioned whether results justified effort involved. Not anticipated that those with influence would exploit adjudication and consolidation of holdings. They failed to recognise variety of secondary rights under indigenous tenure, so depriving many people, including women. Creation of new landlessness through transactions, some increase in tenancy, major rural-urban migration, partly stimulated by increased landlessness. Sale frequently an act of financial desperation. Tenure reform a cause of landlessness, but its impact on distribution patterns unclear.

Sara Berry,

'Concentration without Privatization?: Some Consequences of Changing Patterns of Rural Land Control in Africa',
R.E. Downs and S.P. Reyna (Eds), *Land and Society in Contemporary Africa*
(Hanover, NH: University Press of New England, 1988), 53-75.

Under customary law the same plot is frequently the object of multiple right holders enjoying multiple rights, which may lead to partial privatisation. A person may accumulate considerable amounts of land over which others still exercise concurrent rights. Access to land in such tenure regimes is regulated through social identity - determined by descent, age, gender etc. Control over land being concentrated in fewer hands. Occurring through the market, or state appropriation, or traditional rules of access. Effects difficult to trace, as multiplicity of rights and interests creates possibility that land use will be affected by several simultaneous processes of social interaction. In Kenya patterns of access not fully determined either by process of registration or by continued exercise of rights based on descent etc. At times registration itself based on socially defined rights of access and local land boards have continued to recognise claims of descent groups or realities of patron-client relations in awarding titles and interpreting them. So purchase of large areas by powerful individuals has led in practice to far less large-scale farming or unequal distribution of agricultural income than early commentators predicted.

Jean-Philippe Platteau,

'The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment',

Development and Change, 27, 1996, 29-86.

Central tenet of ELTR (evolutionary theory of land rights) is that under joint impact of increasing population pressure and market integration, land rights spontaneously evolve towards rising individualisation and that this evolution eventually leads rights holders to press for creation of formalised private property rights. Policy implication is that states need to implement ELTR when land so scarce as to make it source of acute competition. Examines whether establishment of private property rights is an advisable structural reform. Argues that most of beneficial effects usually ascribed to this (e.g. greater security) are grossly over-estimated and that, given its high cost, generally advisable to look for more appropriate solutions that rely on existing informal mechanisms at community level. This accepted by Bruce at Land Tenure Centre (1993). Indigenous land tenure arrangements still have a dominant role to play. ELTR makes two essential points: land arrangements and practices evolving autonomously under pressure of growing land scarcity, and significant shifts which take place are geared towards increased individualisation of tenure rights and transferability of land.

Jean-Philippe Platteau,

Reforming Land Rights in Sub-Saharan Africa: Issues of Efficiency and Equity,

United Nations Research Institute for Social Development, Discussion Paper 60, (Geneva: UNRISD, 1995).

Argued that privatisation provides incentives for agricultural investment, gives farmers access to credit, reduces fragmentation of land holdings and reduces conflicts over land. In fact, such benefits rarely realised. Land registration commonly increases uncertainty and conflict over land rights, especially for groups that had non-formal access to natural resources, elites are able to benefit disproportionately and credit generated is seldom used for productive investment.

Efforts to formalise and enforce private land rights will not necessarily result in increased agricultural production or reduced environmental degradation. Adverse social impacts potentially severe. Private land owners often use land less efficiently than community managers; if they buy for speculation, they may either leave it idle or over-exploit it to move capital quickly.

Growing consensus that titling is a luxury that many African countries can't afford. Land Tenure Centre research calls into question viability and cost effectiveness of comprehensive tenure reform and need to explore community-based solutions. Need for pragmatic and gradualist approach that promotes existing adaptability, avoids regimented model and relies mostly on informal local procedures, which are cheap, equitable and receive consensus.

Catherine André and Jean-Philippe Platteau,

'Land Relations under unbearable Stress: Rwanda caught in the Malthusian Trap',
Seminar on Land Tenure and Tenurial Reform in Africa, London School of
Economics, May 1996.

Contrary to optimistic predictions, the accumulated evidence raises serious doubts about the effectiveness of land titling as a means to enhance agricultural growth and increase security of tenure. Land registration creates room for increased insecurity among the vulnerable, does not cause reversal of fragmentation nor lead to better allocation of land or improve access to credit. So people argue that the state should refrain from costly systematic land titling, instead concentrate on strengthening local capacities for management and settling disputes. Sympathetic to this flexible, evolutionary approach but when land pressures become too strong and there are no alternative outlets, no mechanisms can suppress tensions arising from land scarcity.

Jean-Philippe Platteau,

Formalization and Privatization of Land Rights in Sub-Saharan Africa: A Critique of Current Orthodoxies and Structural Adjustment Programmes,
London School of Economics, Development Economics Research Programme 34
(London: LSE, 1992).

African tenure systems appear to be dynamic arrangements which have come to recognise heritable, long term rights to individuals and households under pressure of rising land values. Evolutionary theory of land rights assumes harmonious mechanism exists whereby land arrangements more or less spontaneously evolve in direction suited to intensification of agricultural production and preservation of soil fertility. Land laws passed by many African countries are on contrary ambivalent, inconsistent, confusing and inapplicable and being badly implemented as result of bureaucratic complexity and political considerations. These constraints increase uncertainty, transaction costs and efficiency losses. Uncontrolled land market transactions likely to have detrimental effects on equity and efficiency.

Patrick McAuslan,

'Making Law Work: Restructuring Land Relations in Africa',
Seminar on Land Tenure and Tenurial Reform in Africa, London School of Economics,
May 1996.

Exploring appropriate role for law in reform of land relations and tenure. Is currently drafting new land law in Tanzania. External pressures now from donors for good governance and the market economy is leading to western type legal solutions. Internal pressures also moving in same direction. Series of conferences on Planning Law in Africa 1991, 1993, 1995 - role of law in land use management. Peer group pressure developing to take planning and land law reform seriously. Pressure to act, in South Africa, Namibia, Zimbabwe, Tanzania, also in part the result of contested democratic politics. Also internal need to restructure land relations and strengthen security of tenure of those on the land, which sit uneasily with external pressures for a market in land. Third pressure is for bolstering the status quo; a new law just for public relations (e.g. in Namibia).

South Africa seeking radical reform through law. Law the primary tool used to create apartheid, now being used to dismantle it. Courts were a check on abuses in South Africa.

Discusses politics of drafting Tanzanian land law. Law still seen as impediment to change in Tanzania, so in past drafting has tended to confer great powers on officials with few safeguards. Presidential Land Commission recommended that villagers should be able to get customary rights of occupancy to land. This would involve giving vast powers to totally unqualified people.

In drafting a new land law for Tanzania, has followed the more detailed South African model of spelling out how powers are to be exercised and so has become involved in policy. Once land law recognises private rights, it must become more specific, clear and detailed. A new land law is a necessary mix of public and private law for a mix of reasons; need to strike right balance. Most challenging task is place of customary law in any reformed law. Must be used as a basis, as laws to abolish customary law in the past have not worked. Women's rights tend to be skirted around. Tanzanian Land Commission didn't see need for great change. Some of draft recommendations of National Land Policy later watered down.

New land laws will mean need for major training for people to both draft and implement land laws. Need to train village leaders. Will require donor support. Challenges: lawyers must adopt more policy oriented and innovative approaches in their work and in mass legal education.

H.W.O. Okoth-Ogendo,

'Reforming Land Tenure in Africa: Conceptual, Methodological and Policy Issues',
Seminar on Land Tenure and Tenurial Reform in Africa, London School of Economics,
May 1996.

Discussing land tenure reform issues which have been around since 1950s, but are more urgent now because of liberalisation and SAPs. People look at what happened in Kenya because of alleged magic of private property, but very little assessment of what has been learned. The most important orthodoxy has been - there is something fundamentally wrong with communal tenure. This has been heard throughout the 20th century. When African agriculture started to deteriorate, it was said to be due to the inherent defects of communal tenure. The Swynnerton Plan mode of reform was tenure *conversion* - to *intensify* African agriculture, rather than redistribute land. Thought it would take 10 years, but not more than 40% of country has been done by now!

Important to understand 'old' tenure in order to understand conversion. Literature says they are 'communal' systems. Argues that Western concept of ownership gives a distorted view. Access and control are the key issues, so analyses are flawed. Much serious mis-description of tenure systems. Great variety of tenure systems which will undergo whole series of stages of transformation. So you can't just change communal to private uniformly. What mechanisms are there to short-circuit?

3-phase Torrens system in Kenya (and elsewhere in English-speaking world, developed in 19th century Australia); systematic adjudication of land rights; consolidation of land parcels; registration in state record of rights to ownership. Conceptual and practical problems have arisen. Questions need to be answered under customary law, but people told to go and find rights amounting to ownership. In fact not 'owners' but people who have assumed some community rights. We now know from anthropologists etc that fragmentation of land holdings was not a bad thing, but the British went for consolidation. Then all hell broke loose! Registration was supposed finally to confirm tenure rights over consolidation process. Became new doctrine of title. If registry says someone is the owner, but society disagrees, what happens?

Many policy makers fixated on security. In the literature e.g. early World Bank reports it was security of the market, control of surplus production, rather than equity or down the generations which mattered. Later became clear that a technical description alone was inadequate.

Policy issues. Need to understand how tenure acts on productivity. How will societies react to laws? Population pressure doesn't produce private property. Flawed model of using tenure reform to solve agricultural problems (e.g. supposed to halt desertification). In Kenya still not clear whether what we're doing is right thing to do. Was it all a waste of money? Not totally useless. Value in alternative uses to which some of programme results could be put - in development planning etc.

Discussion: States are weak in Africa. State law only one of a number of laws. Any debate about reform tends to revolve around state, but need to be aware of great limits on what state can do. Orthodoxy of need for registration, but does not have to be combined with reform etc - could just provide information. 'Communal' decisions over land not always product of adjudication in communal law, so can't easily be mirrored in registry. State law can be sabotaged by customary law.

In Kenya deliberate attempt to impose statutory law has failed. But question of how to deal with land changes. Is there evolution? Two trends common. First, a shift from notion of access to land - pressure on this principle because of population etc. Tendency for de facto inheritance of family to become more common. So inheritance customs not of the same period as customary law. Second, more common than shifts to markets in land is pattern of leasing out of land, sharecropping. Better resourced farmers enter agreements with poorer people - who still manage to retain some rights to land. Need to find method of analysis that builds in evolutionary processes.

Customary system is inclusive, but Lugard, World Bank etc. want exclusivity. Customary system defines who is member of society. Rights to land can be suspended in time. No exclusive rights yet in Kenya. World Bank tells Kenya we know you don't want to break up large farms, but you should make land available. How to get landowners to accept this? Once into leasing, there is political conflict. In past, labour tenants wanted tenure. Landowners don't want this to recur. Accumulation the concern. Trying to make it difficult for tenants to raise these issues. Extremely lethargic leasing. In communal areas, there are methods of leasing that are well understood. More political in the commercial areas.

Thinks tenure conversion should not be extended to the arid and semi-arid areas. Group ranches are being cut up. People don't register sub-divisions, inheritance etc. So the land registry is in a mess, while in Tanzania there is no land registry at all!

Joanne L. Bosworth,

'Land and Society in South Kigezi, Uganda',
D.Phil thesis, University of Oxford, 1995.

Examines controversies surrounding capacity of customary land tenure systems to meet competing economic, political and social demands in study of South Kigezi, peripheral region with high population density and history of labour migration. Customary system adapted in context of economic, political and social transformation rather than evolved in response to demographic pressure and economic change, principally through emergence of a land market, but this has not resulted in individualisation of control over land, which remains constrained by social, ideological and political factors. These factors may also constrain conditions of access in relation to particular users. Claims people make to use, manage and transfer land are related to perceptions of social roles and it is these, rather than land regulations, which ultimately underlie structure of incentives to engage in agricultural production. Functioning of land market appears to be contributing to increasing stratification of land holdings and to marginalisation of certain groups.

Debate persists on whether customary rights provide adequate security to encourage investment or whether formal adjudication and title are necessary. Experiences with title not very successful, demonstrated a number of shortcomings. Largest body of literature is on Kenya. High degree of coercion to effect requisite consolidation before adjudication and registration, abuses of adjudication and high costs of initial programme. Also costs of recurrent administration, failure to maintain registers, polarisation with small number of absentee landowners, rather than emergence of widespread commercial farming, and disincentives to production because of neglect of subordinate rights in registration and titling process.

In Uganda legislation for registration by consent enacted 1958, but proposals for titling rejected as unnecessary and costly. Evidence from single pilot scheme suggests that evidence not clear that registration of title influences investment. Customary tenures proved more adaptable and less inhibiting of investment than expected, capable of adapting to new crops and technologies, and variety of market transactions in land and crops have arisen. Clearly emerged that rural land concentration does not imply privatisation of ownership. In many situations multiple forms of access coexist with exclusivity. Nevertheless, World Bank (1989) continues to support view that traditional tenure systems will need codification and that agricultural modernisation and population pressure will make titling necessary. It supports freehold tenure and registration in Uganda (1993) because freehold necessary to encourage investments in and sound management of land and facilitates use of land as collateral for credit and enhances title holders desire to engage in long term investments. This assumes that relationship between people and land resources can be effectively directed and regulated from above by statutory definition of property rights. But landholding remains deeply embedded in the social structure. Linked to structure of power and changes in power relationships ultimately determine ability of people to exercise claims over land. This demands deeper understanding of means by which rights in custom are

determined. Main issues (Shipton and Goheen 1992) include contestability of custom, multiple and overlapping claims, recurring difficulties of administration, manipulations and shortcomings of titling schemes. This has highlighted problematic that people rarely behave the way planners expect them to and that the influence of government over land claims is necessarily limited. Berry says people's access to land depends on participation in processes of interpretation and adjudication. Ability to exercise claims remains closely linked to membership in social networks. This does not guarantee access to land, but it does blur impact of legally sanctioned processes of exclusion. Even formally registered land remains subject to multiple claims and the power of landholders, including governments, over access to land is less than absolute.

Land policies which seek to privilege or create legal rights of ownership by registering transferable interests and neglecting rights of subordinate users, land registration Kenya, villagisation Tanzania, resettlement Zimbabwe, have curtailed women's rights and enhanced men's. But effect of gender may be mediated by class. Much of potential power of women rests on indispensability of female labour power to agricultural production. While men may have assumed rights to transfer land through sale and inheritance, women sometimes gained greater influence in use and management. Negotiability of custom - gender balance in control of resources is highly contested domain in many African societies. Clear that individuals and groups invest significant resources in seeking to manipulate or reverse gender differentials in land rights.

Lars-Erik Birgegard,

Natural Resource Tenure: A Review of Issues and Experiences with Emphasis on Sub-Saharan Africa,

Swedish University of Agricultural Sciences, International Rural Development Centre, Rural Development Studies 31 (Uppsala 1993).

Bewildering diversity of dynamic tenure systems with a trend towards increased individualisation. Basic issue is whether indigenous systems are obstacle to more efficient and sustainable natural resource use and should be replaced. Kenya experience shows that, contrary to expectations, introduction of formal registration system may lead to increased tenure insecurity. Formal system operates parallel to and partly in conflict with different indigenous systems it failed to replace. In major study of Kenya (Shipton) no significant relationship found between possession of title and use of formal credit. Argument for titling considerably undermined by weakness and slow growth of land markets permitting sales of foreclosed land and difficulties of foreclosing. Kenya experience suggests titling cannot speed up formation of united and more efficient land markets. This because forms and terms for land transfer, including sales, determined by economic, social and cultural factors which are not altered by administrative fiat through titling. Criticism of indigenous systems producing fragmentation not backed up. World Bank study of Ghana, Rwanda, Kenya says fragmentation does not seem to adversely affect agricultural productivity and farm fragmentation often a sensible risk spreading strategy. Though empirical evidence not conclusive, most observers conclude from Kenyan experience that individualisation of tenure for arable land contributes to increased inequality. Women's tenure rights eroded by commercialisation, individualisation, formal titling.

Any tenure reform for arable land should be built on existing systems rather than attempt to replace them. Should not be codified in law because they adapt and change. Formal titling should not be considered for decades to come other than in special situations such as peri-urban areas, irrigation and possibly settlement schemes.

Frank Place and Peter Hazell,

‘Productivity Effects Of Indigenous Land Tenure Systems In Sub-Saharan Africa’,
American Journal of Agricultural Economics, 75, February 1993, 10-19.

Uses household survey data from Ghana, Kenya, Rwanda to test if indigenous land rights systems are constraint on agricultural productivity. Rights which farmers hold over individual parcels of land vary widely and are in many cases surprisingly privatised. Yet, with few exceptions, land rights are not found to be a significant factor in determining investments in land improvements, use of inputs, access to credit, or the productivity of land. These results cast doubt on the need for ambitious land registration and titling programmes at this time.

David A. Atwood,

‘Land Registration in Africa: The Impact on Agricultural Production’,
World Development, 18, 5, 1990, 659-71.

Land rights and land distribution becoming more crucial due to population pressure and rural economic changes. Conventional view that traditional land tenure impedes agricultural development and that land titling or registration is needed to improve land rights of Africans farmers is discussed. 3 assertions made are examined and criticised. Concluded that there are many situations where land titling would not have intended impact, would be too costly or would even be counter-productive. Cheaper and more effective and suitable alternatives to titling are suggested.

Richard Barrows and Michael Roth,

‘Land Tenure and Investment in African Agriculture: Theory and Evidence’,
Journal of Modern African Studies, 28, 1990, 265-97.

Evidence from Kenya, Uganda, Zimbabwe gives little support to hypotheses that individual tenure more efficient than traditional tenure systems. Whether or when traditional systems cease to provide secure property rights and whether individualisation is viable policy option will ultimately depend on specific context.

International Institute for Environment and Development (IIED),
Managing Land Tenure and Resource Access in West Africa: Proceedings of a Regional Workshop held at Gorée, Senegal, November 18-22, 1996 (Saint-Louis, Paris and London: L'Université de Saint-Louis, GRET and IIED, 1997).

Workshop convened within joint programme between British ODA and French Ministry of Cooperation aimed at promoting increased debate about options for more effective and equitable systems of land tenure and resource access. Several reasons why land tenure of rising concern to governments and donors in West Africa: perception that its neglect often at root of failed rural development projects; clarification of tenure rules and more secure rights seen as essential in promoting farm investment and improved productivity; degradation of soils and vegetation may be associated with poorly defined management rights and rules; rising scarcity of natural resources bring more conflict and violence in rural society.

This relatively unedited version of papers for rapid dissemination; book versions in English and French to follow. Papers grouped into: understanding dynamics of change; recent interventions in tenure reform and administration; reconciliation of customary norms and formal rules. Plenary followed by working groups looking at role of state and customary systems, decentralisation and democratisation; assuring security of tenure; conflict, arbitration and negotiation around tenure and resource access. Agreed important to generate debate at all levels, village and district, regional and national. West African tenure systems remarkably diverse. Has been marked shift in approaches since early 1960s. Governments have recognised they often not best placed to manage land directly and that formal legal codes do not fit diverse customary systems. A strong dualism created, causing problems of overlapping and contradictory rules for resolving conflicts. Over last decade much greater acceptance that single set of rules not necessarily needed at national level, but necessary to develop broader set of guiding principles on how to approach tenure and access issues at local level. Question of how to develop best aspects of customary system within principles established at national level. Many different bodies responsible for land administration, real problem in making new laws known and understood.

Land remains very important asset. In past seen as relatively abundant, especially in drier parts of Sahel, but now perceived by most as being under pressure by competing demands. Hence desire to attain clearer and more assured rights to control access to resources. Combined with increase in value due to improved marketing possibilities and decline in social control over land through traditional values. Access to and control over land increasingly contested, especially in areas of significant migration and where new land use patterns deprive seasonal land users of traditional grazing rights. All case studies point to dichotomy between customary tenure (flexible and evolutionary but open to range of pressures from people trying to acquire land) and formal, codified system (inflexible and inappropriate with little relevance for local people). Land tenure and management issues set against background of decentralisation process, in which responsibility for allocating land and resolving disputes a major element. Comes from financial constraints and feeling by governments that they are not well suited to manage land at local level. Important questions of what powers should be allocated at different levels, what linkages with chiefs, how to achieve greater transparency.

Where titling undertaken in East Africa, it has tended to favour rich, educated, commercial interests who have been acquiring land, especially in peri-urban areas. No evidence yet that holding title has led to greater productivity, rather that people buy land for speculative purposes. Need to make information much more available at all levels so people know how systems work. Costs too great for smallholders. Privatisation not necessary for secure access to land. Wide range of mechanisms through which people gain access to land (loans, sharecropping, tenancy) important for allowing flexibility in land use. More attention should be given to tenancy, which is very common but often not formally recognised in law. Pastoral sector largely neglected. Conflicts between herders and farmers usually won by farmers. Herders have seen persistent alienation of resources on which they depend, particularly for dry season and in times of drought. Issue of common property resource management very widely debated within anglophone literature, while *gestion de terroir* experience little known outside francophone circles.

Michael Mortimore,

History and Evolution of Land Tenure and Administration in West Africa,

International Institute for Environment and Development, Issue Paper 71 (London: IIED, 1997).

Discusses pre-colonial tenure relations in anglophone West Africa, impact of British rule on customary tenure of rural land, major past processes continuing to influence dynamics of tenure relations, responses to those dynamics. Colonial policy reluctant to disturb existing tenure systems. Pressures created by Nigerian oil boom and corruption in land administration have undermined concept of trusteeship and began to limit security enjoyed by rural people under customary tenure. Shifts of political power, demographic growth and appropriation of land for cultivation have created crisis of pastoralism with no practicable proposals for protection of pastoralists' rights yet under discussion. Policy choice is between *laissez-faire* strategy allowing historical dynamic of resource tenure to continue and one seeing codification as only way of preserving rights threatened by political and demographic change.

Major processes having impact on tenure relations in rural areas have been saturation of rural space, land division and degradation, migration, market participation, capitalisation, technical and family change, redefinition of ownership, competition and conflict, state intervention. Arrival at saturation point not well marked but a transition as cultivated area extended and supply of land not yet claimed by individuals exhausted. Divisible inheritance has obstructed accumulation of land between generations and emergence of landless. Trend towards smaller holdings. Question of whether large numbers of family holdings, especially in densely populated areas, are slipping below threshold of economic viability. Mobility of farmers and farm labourers allows continuous adjustment of land and labour resources under changing economic circumstances. Fact that tenorial questions have so little impeded economic change endorses adaptability of local institutions. Very little evidence that absence of security of tenure has significantly impeded participation in market production of cash crops. Credit (formal and informal) nearly always given on collateral other than land. Customary tenure has best of both worlds as it favours use of private capital and investments created by family labour. Absence of indebtedness and landlessness on an

Indian scale. Redefinition of ownership in favour of more privatised exclusive rights favours strong at expense of the weak. Great resilience of the family. Violent conflicts between contestants for use of land more frequent in recent years, reflecting inability of market mechanisms to resolve inevitable competition. Argument that radical transformation of customary institutions necessary, as in Kenya, impracticable in West Africa, given large number of holdings. But continuation of evolutionary approach threatens access rights by weaker groups. Earlier solution of protecting custom no longer workable as state has often become instrument of interest groups.

Dualism, formalisation, decentralisation the contending strategic alternatives in future evolution of resource tenure policy. Continuing with dualism has advantages of minimising disturbance and costs. In long run it may prove unsustainable because title offers advantages to those who can afford costs; frequency of transfers will increase; unclear what safeguards customary tenure contains to protect rights against advantaged interests. Formalisation can offer greater government direction, set limits on land holdings, provide debt collateral, but governments are interested parties and not always representative; marginalised, common access and multiple rights certain to be over-ridden; registration, implementation and maintenance costs high; regulations easily circumvented. Decentralisation a popular solution in francophone West Africa. Offers social accountability at community level, but rhetoric does not solve question of representation within community; conflicts embedded within community difficult to settle; disadvantaged groups may lack a protagonist; conflicts from outside cannot be resolved satisfactorily within it. Decentralisation can only provide part of answer. Should not be taken for granted that because land administration successful in anglophone West Africa in the past it can continue indefinitely on present basis. More research and policy debate desirable as evidence suggests West African resource tenure approaching critical point. Severe warnings from elsewhere in Africa on possible consequences of neglect.

Christian Lund,

Land Tenure Disputes and State, Community and Local Law in Burkina Faso,

International Institute for Environment and Development, Issue Paper 70 (London: IIED, 1997).

Land tenure systems changing profoundly throughout Sahel but at different paces. Examines institutional capacity to manage land tenure disputes in two cases of conflict between herders and farmers in Boulgou region of eastern Burkina Faso. Main institution dealing with disputes is *Tribunal Départemental de Conciliation* (TDC), presided over by a Préfet with 4 lay assessors from the community. Law RAF-91 does not address security of village land, i.e. mass of population. First case between Mossi and Bissa farmers and Peul herders involved blocking of a Peul cattle corridor to pasture land. Final outcome was that both corridor and pasture became cultivated and Peul had to move their cattle elsewhere. Illustrated weakness of TDC, which tried but failed to protect corridor. Leaving decision to the community meant that will of the stronger prevailed. Second case between Bissa and Peul involved flooding of agricultural land by a dam. Bissa asked Peul to vacate land allotted to them in 1985, but they refused. Case came before TDC in 1993 and Préfet told litigants to negotiate settlement agreeable to both within a week or he would apply the law. This was bluff

as he had no idea which section he would apply. Peul agreed to surrender some land and Bissa relinquished further claims as both preferred to have influence on outcome and demonstrate goodwill, more from fear of sanctions and ignorance of the law than belief in its legitimacy. Remains to be seen whether TDCs and Préfets will be able to develop legitimate authority in dispute settlement or whether community based law can only develop in shadow of fear of state sanction. Promising way forward would be to encourage state recognition of local agreements but this goes against grain of Burkinabé legislative tradition.

Olivier Dubois,

Rights and Wrongs of Rights to Land and Forest Resources in sub-Saharan Africa: Bridging the Gap between Customary and Formal Rules,
International Institute for Environment and Development, Forest Participation Series Paper 10 (London: IIED, 1997).

Synthesis of recent literature on rights to land and forests in sub-Saharan Africa. Passed through technocratic era down to early 1970s, then, because of failures of top down initiatives, era of participation, but this difficult to implement beyond the local, often applied mechanistically and seen as giving people more responsibility but no greater rights or benefits. Focuses on ways of bridging gap between customary and formal rules and implications for roles and responsibilities of different stakeholders. Growing consensus that transition towards more sustainable forest resource use in sub-Saharan Africa will require change in stakeholder's roles. Rights over land and forests at heart of debate because dualistic situation where formal and customary rules co-exist often unsustainable. Policies aimed at improving tenure security have mostly failed and reinforced existing power structures. Attempts such as formal titling and codification of customary rules have not lived up to expectations. Discusses more recent experiments aimed at bridging gap - adaptive legislation, enabling institutional frameworks, ways to convey information to stakeholders. Efforts should be made to inform stakeholders about their formal rights and duties; rights should not be based on fixed set of rules but defined more on ad hoc basis through process of continued negotiation as ecological, social and economic conditions change; legislation should adapt to the reality rather than reverse; approaches should be progressive, selective, pragmatic. Actions following these principles only in their infancy and likely to be difficult to implement as they challenge status quo and threaten to destabilise power structures.

Catherine Besteman,

'Individualisation and the Assault on Customary Tenure in Africa: Title Registration Programmes and the Case of Somalia',
Africa, 64, 1994, 484-515.

Using data from Somalia and elsewhere challenges assumption that individualisation and registration necessarily result in improved agricultural investment and productivity. On contrary registration programmes have contributed to concentration of ownership, growing landlessness, insecurity of tenure, wealth inequalities and even declining productivity in many areas.

H.W.O. Okoth-Ogendo,

'Some Issues in the Study of Tenure Relations in African Agriculture',
Africa, 59, 1989, 6-17.

Systems of land tenure not just sets of rules concerning rights in land but also involve allocation of power within a society and its exercise with respect to land use. Land may be viewed as a focus for the definition and exercise of rights of access which extend to other productive resources. Access to and control over land are multiplex phenomena that will vary in nature and content with the kind of land use activity in which individuals or groups are involved. Persons in authority obliged to protect interests of subordinates hence no general tendency for agricultural commercialisation and technical change to consolidate land rights in the hands of a few at the expense of many or to replace multiple, varied rights with exclusive forms of control. Appreciation of social philosophy of a people as expressed in their conception of property indispensable to understanding dynamics of production structures. Tenure regimes must be analysed with that appreciation.

Roger Plant,

Land Rights and Minorities,

Minority Rights Group Report, (London: MRG, 1994).

British indirect rule protected or artificially promoted traditional chiefs in whom ownership and control of land vested. General determination to prevent emergence of land market among African farmers. Pastoralists main victims of land settlement and registration policies in Africa. In Kenya, traditional rights of passage along transhumant routes no longer recognised in law. In Tanzania land use and planning policies have led to substantial alienation of traditional pastoral areas.

No longer abundant land reserve and no pressure on land or customary tenure. Changing because of demographic trends and Africa's structural crisis since early 1980s. Land now single most important policy issue throughout continent and source of growing conflicts everywhere. Focus on land titling and registration and generalised emphasis on market forces is accelerating expulsion from land and fuelling ethnic tensions.

Customary tenure generally provided women with effective land security. Tenure reforms, especially registration programmes, have prejudiced women's land security. Result of modern legislation and land titling has been to deny women their tradition right to plot of land given by their husband. Spread of cash crops results in loss of incomes and inheritance.

Matthew Matemba,

'Colonialism and the Disentitlement of Communities',

Africa Resources Trust, Rural Development and Conservation in Africa: Studies in Community Resource Management, (Washington: ART, 1996), 7-10.

In precolonial times land and other natural resources owned communally. Systems of ownership locally based. Use and access governed by multitude of intricate social mechanisms. Traditional healers were ecologists of their day. Colonial modification of

tenure led to conflict over natural resources. Drive to individual ownership had profound effect in destabilising equity creating mechanisms which had previously existed. Resources alienated from communities which had previously enjoyed access to them. Introduction of Western legal systems caused great turmoil.

Kjell J. Havnevik,

'Pressing Land Tenure Issues in Tanzania in Light of Experiences from Other Sub-Saharan African Countries',

Forum for Development Studies, 2, 1995, 267-84.

Replacement of state-dominated model by SAPs led to increased attention on issues related to control of land and land tenure regimes. Loss of state control over rural and agricultural development meant control over land emerged as new and major area of contestation between state and private sector v. smallholders. Future role of customary land tenure regimes v. individualisation registration and titling (IRT). Radical title = ultimate ownership and control. Notion that many customary land regimes cannot provide sufficient security and should be substituted by IRT based on misconception. Confuses notion that regimes are inherently insecure with fact that lack of protection in law has created the insecurity.

Post-1987 Tanzanian attempt to complete demarcation and titling of villages failed. Land Commission showed whole process beset with problems. Existing deemed rights not cleared, so double allocations. Tendency for intensified struggle over land become manifest in most parts of the country, though World Bank disputes this. Cites Platteau (1995) to show that IRT can create additional problems. Reduces risks for some but creates new uncertainties for others, especially women, pastoralist and other groups enjoying subsidiary or usufruct rights to land. Not possible to register multiple rights on land claimable under customary law. Governments unable to record all existing claims on land, so bound to create new uncertainties for vulnerable sections. Good grounds for fearing that land registration process will be manipulated by the elite who alone have ability to use both statutory and customary laws. Cadastral surveys incomplete, lack of record keeping of intervening changes in ownership. Succession and other changes gone unregistered in Uganda and Kenya, destroying utility of records. Absentee ownership most widespread in areas where land market most active. Impact of titling on smallholder access to credit nil or negligible. Does not represent sufficient condition for increased credit-based investment. IRT of common property rights too costly to achieve. Documentation of failure of state ownership and centralised management leads to conclusion that critical role must be vested in user groups at local and village levels.

Issa G. Shivji,

Report on the Karamoja Project,

Oxfam UK/I Uganda, May 1996.

Threats to land by mining activities in Karamoja. Oxfam sponsored visit by Shivji May 1996. Possibility of introducing ITR (individualisation, titling and registration). Experience reviewed in Tanzanian Land Commission. Implies conversion of customary to statutory tenure which many customary users do not understand, nor does it have legitimacy with them. Thus land register hardly ever reflects reality on the ground. Titling invariably gives

rise to disputes leading to conflicts as the better off try to take advantage. Titles facilitate negotiability which allows some members to sell off land to the detriment of women, children and general community interests. Titling and registration involves enormous expenses not easily affordable by local communities. For these reasons ITR has increasingly come under heavy criticism, including by World Bank researchers. Practitioners and academics falling back on customary tenures as better means of providing security of tenure. State has to enact a different form of legal framework to recognise and entrench customary tenures and rights in law.

Diana Hunt,

The Impacts of Individual Land Titling in Mbeere, Eastern Kenya,
Discussion Paper in Economics, 01/96, University of Sussex, January 1996.

Examines impacts of titling in semi-arid, low population density, low farming potential area of eastern Kenya. Argued that impacts likely to be greater than in higher potential, higher population density areas, where titling often formalisation of individual rights already evolved within indigenous system. Provides confirmation that titling does not necessarily lead to a market for farm credit. Shows titling has not had uniform impact on people's sense of security of possession, but implications of this for long-term investment are ambiguous. Some evidence of increase in activity in land market but not all transactions geared to increased efficiency of land use. Unequal distribution of land following titling may create first time land constraint for some households. Titling has created inducement to make long term investments in soil and water conservation. Created need for many to move residence with impetus on house building.

Main arguments for titling include: to reduce uncertainty and disputes, encourage investment and security, raise efficiency, land as collateral for credit. Pushed by Feder and World Bank in 1980s following research in Thailand. USAID supported it because believed shifting cultivation environmentally damaging. But critics reject this: lack of title has not prevented developments in crop mix and cropping practices, indigenous tenure not rigid, surveys can increase disputes. Evidence from Africa shows: title often fails to activate credit market based on land as collateral, possible to design rural credit programmes which don't rely on land as collateral, credit from land title often not used for farming, land markets not driven solely by profit motive, widespread adoption of tree crops shows absence of title does not deter investment in farming, with land scarcity and a free land market it is usually the rich (often absentees) who first exploit gains while the poor and those in temporary economic crisis are induced to sell. Now widely agreed that strength of economic case for titling varies positively with the degree of pressure on land, strength of investment opportunities in agriculture and degree of local demand.

1991 and 1994 Migot-Adholla etc. surveys found land markets in Kenya operating more actively in the former white settler areas, where traditional kinship ties and indigenous norms impose fewer restrictions on land sales. Authors conclude that titling most likely to be justified in settlement areas, where there is high incidence of dispute or where new project interventions require full privatisation. Many conclude that most effective form of policy intervention would be for governments to assist indigenous

systems to operate more effectively e.g. by voluntary registration. Not seeking to make clear cut case for or against titling, but to enhance understanding of range of impacts.

Daniel Wachter,

Farmland Degradation in Developing Countries: the Role of Property Rights and an Assessment of Land Titling as a Policy Intervention,
Land Tenure Centre, University of Wisconsin, Research Paper, (Madison: LTC, 1993).

Tenure insecurity problems differ according to the initial property rights setting: private rights over land (e.g. in Latin American agrarian structures), common rights over land (e.g. the traditional African land management system), state-owned land (e.g. a state farm in a socialist country) or non-property (e.g. frontiers and settlers in tropical forest areas). Land titling as a solution is concerned with more than simply individual freehold land titles; for land resources with unclear or non-existent rights, common property or state ownership are conceivable solutions under certain circumstances. A property rights oriented environmental policy relies fundamentally on the state to perform specific tasks. For land titling to successfully support the objective of land conservation, the state must provide infrastructural services and a strong and impartial legal framework. The state must also avoid creating a distorted structure of agricultural incentives and provide farmers with an enabling environment that goes beyond the provision of clear property rights.

Raymond Noronha,

A Review of the Literature on Land Tenure Systems in Sub-Saharan Africa,
Discussion Paper 43, Agricultural Research Unit, World Bank, July 1985, 227-56.

The 3 major goals are: to clarify land tenure concepts; to examine changes in patterns of land tenure in the light of historical evidence; and to provide a background for further action in the field of research, policy and project design. The first chapters review land tenure patterns before, during and after the colonial period. Factors inducing tenurial change are outlined. Pastoral systems are examined because land tenure systems among pastoralists are fundamentally different from those of agriculturists. Individual tenure and registration systems are discussed as well as 3 areas of research: land tenure systems as constraints on development; crop livestock interaction in the Sudano-Guinean zone; and protection of the rights of pastoralists in zones which are marginal for crop production.

John Hunter and Carl Mabbs-Zeno,

'African Land Tenure',
Agricultural Administration, 23, 2, 1986, 109-22.

Foreign advisors and donor agencies often recommend change in land tenure as an important component of African rural development. These recommendations are founded on experience in developed nations as interpreted by both capitalist and socialist paradigms. The considerable African experience with land reform displays fundamental divergence from these paradigms, resulting both from the unique

institutional composition existing in Africa and from the present relationship of Africa to the rest of the world. Tenure systems have shown greater flexibility than is generally acknowledged, suggesting that efforts to strengthen agricultural performance should not focus on these systems as a constraint to development.

J.W. Arntzen, L.D. Ngcongco and S.D. Turner (Eds),
Land Policy and Agriculture in Eastern and Southern Africa (Tokyo: United Nations University, 1986), 79-89.

Based on papers given at 1982 United Nations University workshop in Botswana. Focused on problems of food production in relation to management of natural resources and environmental considerations. General conclusion that individualisation of tenure does not automatically lead to production increases. H.W. West, in introduction, calls for tenure conversion, for adaptation of existing arrangements to promote modern production requirements, rather than total transformation or so-called tenure reform. Environmental factors need to be explicitly considered in land policy, otherwise future productive capacity of land may be affected. Registration of titles in tribal land almost impossible to achieve because of lack of resources and personnel.

Antony N. Allott,
'Modern Changes in African Land Tenure',
Eugene Cotran and Neville N. Rubin (Eds), *Readings in African Law* (London: Frank Cass, 1970), 236-41.

African customary law evolves spontaneously as institutions respond to changes in the economic environment, e.g. in response to population pressure. Changes in the law take the form of increasing security of title, individualising tenure, registering titles, increasing transfer of interests in land through market mechanisms, and a declining influence of religious sanctions on use of land. Change in land law can also come from above by means of legislation, the introduction of new agricultural techniques and the decisions of appeal courts. The general trend is almost always in the direction of European law.

Martin O. Ijere,
'A Positive Approach to the African Land Tenure Questions',
Agricultural Economics Bulletin for Africa, 16, December 1974, 21-30.

Traditional African land tenure does not hinder agricultural development and land reform and more individual tenure of land would be against the interests of the peasants. Illustrations from Nigeria.

J.H. Holmes,

‘Land Tenure in Private and Mixed-Property Regimes’,

M.D. Young and O.T. Solbrig (Eds), *The World's Savannas: Economic Driving Forces, Ecological Constraints and Policy Options for Sustainable Land Use* (Paris, Carnforth and New York: UNESCO, Parthenon, 1993), 67-79.

The entire spectrum of land tenure regimes in the major savannah zones of the world can be characterised by marked divergences, inequalities, conflicts and instabilities, demanding policies directed towards land redistribution and/or land tenure change. Particularly land tenure systems in savannahs of Latin America and India exhibit marked inequalities and inefficiencies in resource use. In South Africa and, to a lesser extent, in Zimbabwe where inequalities are based on racial distinctions, land distribution is the central issue in any shift in power between racial groups. A major impediment to effective land reform is the lack of cohesive political will among the rural dispossessed. Even with radical change, land reform may still not be accomplished, given the increasing marginalization of the landless poor.

Giovanni Andrea Cornia,

‘Neglected Issues in the Decline of Africa's Agriculture: Land Tenure, Land Distribution and R&D Constraints’,

Giovanni Andrea Cornia and Gerald K. Helleiner (Eds), *From Adjustment to Development in Africa: Conflict, Controversy, Convergence, Consensus?* (Basingstoke: Macmillan, 1994), 214-47.

Policy changes in land distribution, tenure reform and R&D in the traditional crop sector have seldom produced the expected results and therefore need to be carefully addressed. Group titling often presents considerable advantages over other types of property regimes as it allows reductions in the budgetary and political costs of registration. It is desirable to grant land titles that, while ensuring the security of tenure, do not allow completely free transfer rights. Land reform should be decentralised to local levels by masking use of the information and political movements and of the NGOs who are better informed about surplus land and who the poor are. It will be necessary to give greater attention to the specific needs of small farmers. The key to the solution lies in the adaptation of a farmer participatory research approach to enable an understanding of their circumstances, strategies and decisions on resource allocation.

James C. Riddell,

‘Dynamics of Land Tenure and Spontaneous Changes in African Agrarian Systems’
Land Reform, Land Settlement and Cooperatives, (FAO), 1/2, 1988, 39-52.

A constant question in regard to land policy in Africa is whether or not land tenure systems are a block to agrarian development and reform. Examines the basis of concern, its proposed remedies and the changes that have taken place which balance this theoretical picture by spontaneous land tenure changes as revealed in a set of field studies in Burkina Faso, Cameroon, Ghana, Kenya, Lesotho, Madagascar, Niger and Togo. The most common form of land acquisition was by inheritance, followed by

sharecropping. Arguments are put forward in favour of land registration. The majority of farmers do not feel the need for land registration but a registration system would have the benefit of clarifying existing rights. It would also rationalise and clarify transfers and other transactions dealing with land.

E.C. Eboh and J.I. Lemchi,

‘Population Pressure and Indigenous Land Tenure in Eastern Nigeria: Implications for Land Administration and Titling’,

Journal of Rural Development and Administration, 26, 3, 1994, 67-77.

Contributes empirical evidence to the growing debate about whether indigenous land tenure systems are adapting to increasing population pressure. If the land tenure systems are found to be static, then the question of land registration and titling programmes will arise. If it is found that indigenous tenure systems have been adapting, then the question would shift to those strategies that governments can use to facilitate this adjustment process. The population-land conflict in Imo State, Nigeria, is discussed as a case study. Results indicate that the trend towards individual land rights is closely related to increases in population density. Qualitative and quantitative insights substantiate the historical evidence that the indigenous land tenure systems have moved along a continuum in the direction of greater individualisation of land rights. The proposed rural-biased land registration and titling programme would bequeath significant economic benefits to the agricultural sector, including: greater access to farm credit; ownership-induced land development practices; and ameliorated land boundary disputes. The observed flexibility of indigenous tenurial systems provides an opportunity for the introduction of such rural-based land titling programmes. As long as the evolution of land rights remains a fact of rural life, indigenous land tenure systems would promote the emergence of economically efficient and socially beneficial land markets.

Reint J. Bakema (Ed),

‘Land Tenure and Sustainable Land Use’,

Royal Tropical Institute-Amsterdam, Bulletin 332, 1994.

Traditional land tenure systems in Africa are faced with ever more difficult problems of population growth, migration, and rapid modernisation. These systems often fail to cope with the increasing pressure on land. In many countries, governments have tried to assume management of the natural resource base, but ‘modern’ legal systems, including land tenure policies, are inadequate. Unhappy coexistence of two systems especially damaging - states unable to enforce legislation, yet rural population no longer protected by customary law. In the on-going debate about these issues, some schools argue for privatisation of farmland and pastures plus government control of other natural resources; others for revitalisation of traditional land tenure systems, and decentralised, local level management of natural resource base.

Three case studies selected: environmental degradation of the Oku Mountain range in north-west Cameroon where external intervention has played an important role in the rapid transformation of the local knowledge system; a broader discussion of land and

water issues in Sub-Saharan Africa illustrating the values of both traditional and modern systems; and a description of legal and institutional conditions for community-based management of natural resources in Mali.

H.W.O. Okoth-Ogendo,

'Land Tenure, Agrarian Legislation and Environmental Management Systems'.

Reint J. Bakema (Ed), 'Land Tenure and Sustainable Land Use', *Royal Tropical Institute-Amsterdam*, Bulletin 332, 1994, 21-9.

Land and water issues vital for survival, so search for environmental management systems allowing sustainable agriculture should be central to planning. Need to re-examine what has been lost in rush to modernise, including indigenous social and cultural systems of environmental management. Discussion of tenure issues followed by look at agrarian reform legislation. Most modern laws sectorial, bureaucratic, authoritarian. Agricultural bureaucracies enormous and extremely cumbersome, with numerous conflicts and duplication. Such laws have generally failed to generate environmentally sound land use habits and are inaccessible to farmers. Confusion at present in management of environment in which agriculture operates. May not be possible to revert to former situation, but framework of western property law has not made it easier to develop and sustain rural agriculture. Policy makers need to identify positive values of traditional and modern systems and rework them into holistic system that gives local communities control of their resources, while keeping national goals and priorities in view.

Steven W. Lawry,

Tenure Policy and Natural Resource Management in Sahelian West Africa,

Land Tenure Centre, University of Wisconsin, LTC Paper 130 (Madison: LTC, 1990).

State assumption of administrative rights to common properties has reduced the ability of local communities to manage local pastures, forests and fisheries in the Sahel. Some key aspects of current tenure policies are considered for their impacts upon resource management in Sahelian countries: the impact of state ownership of common property resources on local-level resource management; tenure of the holding and resources management; and forest codes and the effects of state control of resource use at the farm level. Three possible models for innovation are examined: national legal reform; model development and testing in the project context; and community-based, bottom-up innovation in land use planning and right recording. Some opportunities for promoting tenure changes conducive to better natural resources management are identified. Case studies of state involvement in resource management in Mali and Niger are added.

Peter D. Little and David W. Brokensha,

'Local Institutions, Tenure and Resource Management in East Africa',

David Anderson and Richard Grove (Eds), *Conservation in Africa: People, Policies and Practice* (Cambridge: Cambridge University Press, 1987), 193-209.

The local management of rangelands and forests in East Africa is studied. In addition to changes in land tenure, the effects of changes in the levels of decision making, wealth differentiation, commercial market linkages, and demographic pressure on resource management are analysed. The cases of range and forest management in the Maasai, Il Chamus, and Mbeere areas in Kenya confirm that change in tenure is only one of the many factors that have implications for resource use. The transformation of the indigenous resource management system traditionally based on a common property basis, is caused by both social and agrarian change. It is shown that these changes have increasingly differentiated producers, restricted their access to resources, created markets for agricultural produce, strained domestic labour supply, and weakened local institutions for managing natural resources.

Trond Vedeld,

Procedural Law: Land Tenure Reforms as a long-term Political Process,

Pastoral Development Network Paper, (ODI), 36b, 1994, 17-22.

Land tenure reforms should be seen as a long-term political process, embedded in the local culture. New property regimes, in order to acquire legitimacy, should then be allowed to evolve through local competition and power struggles within the broader political economy. Tenure issues will probably become central in the emerging political processes of decentralisation and democratisation, where multi-parties provide new channels for voicing views at village level. But, recognising that pastoralists are often minority groups with often weak representation in political parties, pastoral property rights might require particular protection. The building of independent land tenure commissions at district levels with majority representation from the local communities and/or specialised land tenure courts assisted by staff trained in both customary and modern law could facilitate the process.

International Union for the Conservation of Nature and Natural Resources,

'Land Tenure and Pastoral Resource Conservation',

The IUCN Sahel Series (Geneva: IUCN, 1989), 143-52.

The conventional view of the Tragedy of the Commons suggests policies to privatise common pastures, enact stronger laws about resource use and create bureaucracies to impose the laws. Experience has been disappointing, many people, especially the poor, have been dispossessed of their traditional access to pasture, water and trees and made more vulnerable to drought and famine. Recent advances in theory/empirical research casts doubt on this view. Models using game theory show that if individual members of a group can freely negotiate with others to make rules about resource use, and can create institutions to enforce such rules, conservative uses of common resources are likely to emerge and to be maintained. Traditional systems of land tenure should not be ignored. A new approach is needed which recognises existing land tenure systems with

their strengths and weaknesses and which recognises that the level of detail, flexibility and local adaptation required by effective tenure systems probably requires that the role of central government should be reduced and the role of local decision-making bodies increased. Conservation is probably best achieved by giving local institutions the incentives and powers to manage their own local resources. Looks at the current debate about common property resource management in a general way, summarises the theoretical arguments and empirical data and concludes by drawing lessons for policy and practice in the Sahel.

Ian Scoones, Camilla Toulmin and Charles Lane,
'Land Tenure for Pastoral Communities',

M.D. Young and O.T. Solbrig (Eds), *The World's Savannas: Economic Driving Forces, Ecological Constraints and Policy Options for Sustainable Land Use* (Paris, Camforth and New York: UNESCO, Parthenon, 1993), 49-66.

Communal grazing systems in Africa are threatened by demographic pressures, land use regulations, and privatisation. Access of pastoralists to grazing grounds have worsened and traditional rights have been progressively neglected. Consensus among pastoralism, agriculture, and wildlife management should stress the need to develop methods of protecting key resources, especially watering points and strategic reserve grazing areas that are pivotal to the operation of entire grazing systems. Therefore a framework that strengthens local institutional management capacity needs to be established. Several case studies of land management systems are presented. Concludes that a sense of resource ownership is critical for those who depend upon savannah resources for their survival. Consequently, rational land use must be encouraged emphasising management responsibility of local pastoral communities.

Richard Moorehead,

'Land Tenure and Environmental Conflict: The Case of the Inland Niger Delta, Mali',
Jyrki Kakonen (Ed), *Perspectives on Environmental Conflict and International Relations* (London and New York: Pinter, 1992).

Presents data and an argument researched between 1981-8 in the inland delta of the river Niger in Mali. Even if environmental change is the immediate motivator behind the endemic violence surrounding access to resources in the delta, the context and possibility of it arising is closely linked to changes that have taken place in the land tenure system since the turn of the century. This does much to define, during a period of drought, where, when and how environmental conflict takes place in the delta now. It is often overlooked that rural populations living in drought-prone areas have evolved sophisticated strategies to cope with environmental risk, and that they experience difficult periods several times in each generation. These coping strategies include savings mechanisms whereby rural producers accumulate stocks to take them through difficult years, sharing mechanisms between wealthy and poor, and, most importantly, transhumant cycles to gain access to different ecosystems in times of environmental stress, when their own system is not sufficiently productive. Crucial to this latter strategy is a land tenure system which allows rural producers reciprocal access to resources both within and between ecosystems. Sets out the property systems of the

past and their evolution to the present day, including the manner in which their destruction is providing future sources for conflict. The sort of environmental disputes found in the delta today are discussed. An attempt is made to draw lessons for regional and national issues.

**GENERAL -
LAND REFORM**

Klaus Deininger and Shem Migot-Adholla,
'Principles and Evolution of the [World] Bank's Land Policy: Implications for the Ugandan Draft Land Bill',
Land Tenure seminar, Kampala, 2 September 1997.

Examines whether and to what degree international experience can provide guidance and insights for current land debates in Uganda. Looks at overarching objectives to which land rights should contribute; at number of key positions taken by World Bank in 1975 Land Reform Policy Paper, assesses how they have stood test of time and experience; at Bank-supported interventions that have attempted to apply principles; at how this experience might be useful in Uganda.

Clear and unambiguous assignment of land rights will contribute to improved tenure security, emergence of efficiency enhancing markets for land sale and rental, improved access to markets for finance and insurance through ability to use land as collateral in formal credit markets. If land abundant, tenure security can be provided by variety of institutions of which formal title only one. Formal tenure that cannot be enforced may be worth less than membership in a community which provides land to individuals even after temporary absence. Tremendous variations in local tenure arrangements under seemingly uniform 'communal' structure.

Titling generally been justified on basis that use of land as collateral will reduce cost of investment and credit; greater long term security of ownership will increase demand for investment; existence of land markets will allow owners to liquidate returns from investment if they wish. These premises formed basis of Bank's 1975 Land Reform Policy Paper (LRPP). Basis of Bank's land policy is that smallholder agriculture, desirable from equity perspective and on theoretical grounds, is the most efficient form of agricultural production as family farmers do not need to engage in costly supervision of hired labour. Empirical evidence from all parts of world (India, Brazil, Paraguay, Madagascar, South Africa) supports efficiency of family small farmers, while collective farms have performed very badly (Peru, Vietnam, Ethiopia, Nicaragua, Cuba, China).

LRPP viewed registration and titling as main instrument to increase security, contribute to flourishing land market, facilitate use of collateral. While numerous studies have confirmed positive impact of titling, experience has demonstrated that tenure security is not dependent on formal title; lack of title rarely a constraint on efficiency enhancing land transactions but land grabbing a serious consideration if titles awarded; title alone not sufficient to jump start credit market. Also titling not costless and now believed there are more situations than initially assumed where benefits from titling may not warrant costs incurred in establishing sophisticated and highly accurate cadastre with individual freehold titles. Through lengthy and often costly process Bank learned that preconditions for titling to be successful are: existence of formal credit markets and profitable investment opportunities implying demand for credit; collateral arrangements that are enforceable; institutional capacity exists and continuity ensured; where demand for credit does not yet exist, clear quantitative evidence of inadequacy of current tenure arrangements. To avoid land grabbing by the rich, titling has to be systematic and area based rather than on demand; accompanied by massive publicity campaign explaining background and scope and rights of different parties; have clear

mechanisms for dispute resolution on the spot and updating titles and be economically attractive. Many Bank projects either underestimated complexity of technical issues or assumed titling could be initiated even if agreement over complex policy issues not yet reached.

Traditionally Bank viewed communal tenure as equivalent to collective cultivation. To prevent assumed inefficiency, establishment of freehold and subdivision of commons proposed as solution to facilitate economic growth. Results of this advice often disastrous and/or ineffective. Further study has improved Bank's understanding and led to reassessment of recommendations. Efficiency losses more modest than generally assumed because: arable land nearly always cultivated individually; investment disincentives modest in areas of low population density; with increased land scarcity many communal systems recognise property rights to land improvements or compensate for improvements made on redistribution of land; while transactions with outsiders generally prohibited, rental and sale within community normally allowed. Two main potential advantages of communal tenure are: it can be established and administered at fraction of cost of individual titles because less need for sophisticated demarcation and all administration decentralised; it provides insurance substitute and incentive compatible social safety net. In many cases benefits of full blown titling will not be enough to justify costs of establishment and maintenance, e.g. in Kenya where this was neglected and titles became virtually worthless because landowners had no incentive to update them.

Conclusion not that communal tenure systems ideal for all situations, but that previous assessments exaggerated benefits or neglected costs of freehold tenure in areas of low population density and neglected some benefits of communal tenure. Accurate assessment of benefits and costs of communal versus freehold requires lots of information and most easily made by beneficiaries at community level. This implies more appropriate role for policy makers and Bank may be to provide menu of options from which communities can choose and process by which transparency of decisions reached (with comprehensive participation and awareness) can be ensured and let communities decide. Even if freehold title not appropriate, much can be done to improve tenure security by: clarification of community boundaries; giving communities right to administer internal land affairs autonomously but in line with official by-laws ensuring accountability; establishing accessible mechanisms for dispute resolution and enforcement. Benefits from increasing accountability in communal systems may be immense and achieved at fraction of cost and time required to establish freehold title.

Land sales markets will not contribute to enhanced efficiency of agricultural production if: there are significant policy distortions; environmental risk high; markets for credit and insurance incomplete; financial markets underdeveloped. Deleterious impact of land sales markets well illustrated in literature: distress sales by peasants contributed to unequal Indian land distribution. Support for tenancy regulation long abandoned as perverse equity and efficiency effects increasingly obvious. Contributed to evictions, transition to highly mechanised agriculture, extensive ranching or wage labour. Rent controls decreased investment rather than benefiting tenants. Where restrictions on land rental continue, Bank sees their elimination as high priority.

Number of countries (South Africa, Brazil, Columbia) have recently embarked on market assisted land reform. Three mechanisms traditionally used as substitute for land reform have proved quite ineffective: Land Banks not viable if beneficiaries expected to pay full price; frontier settlement no longer seen as way to equalise land distribution; expropriative land reform more successful in creating huge bureaucracies than redistributing land while selection of land and beneficiaries highly politicised. Under new paradigm of market assisted reform, focus is not on physical transfer of land but planning and implementation of productive projects, of which land only one component, by the poor. Selection of land and negotiation of price with seller is responsibility of beneficiaries, often with NGO assistance. This eliminates need for a land reform agency and expropriation. Government provides land purchase grant to eligible beneficiaries, but its role limited to regulatory oversight with implementation through the private sector.

Above provides general principles, but land rights in every country rooted in tradition and history and shaped in complex interaction between agro-ecological environment and human activity. Trying to impose abstract principles without awareness of these roots and extensive process of consultation and consensus building likely to result in laws that cannot be implemented.

In Mexico, 1992 Constitution broke with rigidities of 1915 revolutionary settlement. Allowed members of community to sell within community subject to upper limit, they can regulate internal matters autonomously, even convert title from communal to freehold if majority agree. Has not led to widespread sell off and pauperisation of majority, but allowed increased flexibility without giving up core principles and advantages of communal tenure.

Bolivia illustrates hazards of titling on demand; that inter-regional variations imply need for appropriate approaches; how conflicts arising from superposition of claims can be resolved in systematic manner. Titling was highly arbitrary, taking more than 12 years for average individual without political connections, with poorest groups least able to protect their rights.

Bank's philosophy characterised by reliance on: process of broad consultation and consensus building regarding main policy principles; extensive use of pilots; use of highly decentralised mechanisms for implementation that provide opportunity to respond flexibly to local needs for differentiation.

Land relations in Uganda characterised by great interspatial variation and complex interrelationship of different often competing claims to ownership. Further complicated by need to clarify status of squatters on mailo land and fact that Land Commission granted leaseholds to powerful individuals on supposedly uncultivated public lands outside original mailo areas. Access to urban land often frustrated by confused tenure situation. Need for clarification. New land legislation has 3 very different objectives: to increase tenure security and investment incentives; protect status of customary right holders and other vulnerable groups; reduce costs of transacting land through the market and provide basis for using land as collateral in credit markets.

Problems emerge in proposed treatment of tenants. No distinction between de facto and legal occupants, thus creating parallel market for inheritable tenancies and land ownership. Experience from other countries suggests this unlikely to convey to tenant or owner incentives needed to make long term investment in land. Preferable to have tenant and landlord settle matter in more straightforward and productive way. Case can possibly be made for more systematic clarification and integrated cadastral review at least in mailo areas, where incidence of disputes likely to be high. Clearer definition of ownership without associated tenancy would facilitate emergence of markets for land sales and rentals; allow immediate realisation of investments and avoid pressure on tribunals and costly later litigation; have direct and positive poverty impact. Bank would encourage more systematic approach of simultaneous clarification of property rights and establishment of the cadastre in priority areas.

Latest draft of Bill makes explicit provision for certificate of communal ownership by communities, but potential inconsistencies between communal and individual tenure of communal lands needs to be eliminated and cost implications elaborated more clearly. Only possibility would be to establish period during which only communities could register their properties and get boundaries established, followed by second phase in which remaining public lands could be auctioned off to individuals and communities could decide to move to freehold. 1997 version of Draft Bill considerable improvement on earlier versions, but still needs changes, viz:

- Include provisions for more systematic regularisation of property rights, possibly together with establishment of a cadastre.
- Elaborate details of framework within which land rights would be assigned (or compensation paid) in cases of conflicting or overlapping rights with goal of speedy regularisation.
- Examine likely impact of these on the poor and ensure framework commands popular support by engaging in process of broad, widespread public consultation.
- Once broad framework discussed and agreed, select priority areas where land rights unclear, tenure insecure, potential for development high.
- Conduct pilots to apply procedure to demonstrate it can work, is acceptable to participants and economically justifiable. If results positive, extend process more broadly.
- Publicise communities' options to move towards freehold and clarify how individuals might acquire interests in hitherto unclaimed land not occupied by communities.
- Once remaining issues resolved, conduct pilot to clarify boundaries and award of certificates of customary ownership to communities with aim of rapidly expanding this to whole nation.

Such changes likely to help Uganda achieve more fully underlying aims of Bill and better utilise land while providing safety nets and avoiding social and economic problems associated with widespread landlessness and maldistribution of land.

Jean-Philippe Platteau,

Land Reform and Structural Adjustment in sub-Saharan Africa: Controversies and Guidelines,

FAO Economic and Social Development Paper 107 (Rome: FAO, 1992).

Land becoming scarcer under pressures of population growth and increased commercialisation of agriculture. Old land tenure institutions suited to land abundance need to be adapted. Because they appear to some as constraint on production, source of increasing inequality and food insecurity among the vulnerable, not surprising that land matters have occupied significant place in SAPs. Official position of World Bank still being developed. Many ambiguous, incomplete or contradictory statements. Land reform being actively debated within Bank but without policy statement. Not easy to define exact responsibility of World Bank in changes in land laws in some countries. World Bank began to get involved from 1982. Before that left things alone. Belief that Africa at turning point between extensive and more intensive land management systems as frontier phase exhausted and intensification increases. Falloux 1987 believed many countries required total redrafting of their land laws because inconsistent and ill-equipped to deal with actual situation. Also needed whole machinery of formalised legal land framework. Appeared in SAPs on grounds that improving tenure and use a priority adjustment required. Being rapidly extended. Reforms being pressed for much deeper than for other developing countries. Evidence that World Bank favours any change that helps establish and develop free land market with view to improving efficiency and performance of agriculture. Bound to involve World Bank in politically delicate situations. Will have to exercise considerable pressure to get reforms implemented.

World Bank has endorsed Official Doctrine of Land Reform (ODLR), which says small farms use resources more efficiently than large farms, so promotion of small farm sector can serve both growth and equity objectives. Platteau questions this, but says good case can still be made for establishing egalitarian distribution of ownership. African land rights systems much more complex than sometimes believed to be. Trends from colonial period, individualisation of tenure and increased transactions, continued. Gradual process of wresting of lands from lineage to sub-lineage, to extended family, to nuclear family underway in many countries. Large amounts of resources spent in gaining and protecting access to land could be invested in increasing productivity. When land rights uncertain, the more wealthy and influential in better position to safeguard their existing rights and divest others of their customary rights. World Bank staff or experts called for issuing of titles or registration as top priority. But adjudication and registration complex, expensive, time consuming, need regular updating. Believes titling should not be undertaken when benefits less than costs. But World Bank should bear costs within SAPs. Nationwide registration and formalisation of land rights certainly not justifiable in areas where land abundant or has no commercial value, where land transactions and disputes few, and where other markets

absent or poorly developed. Policy of official registration should not be limited to issuing individual titles, but should also provide for group titles. Not advisable to create completely free markets for sale and rent of land. Would encourage inequalities and food insecurity of most vulnerable. From some writings, possible that World Bank has growing awareness of immense complexity of land issue and need for more flexible approach. Would mean retracing bold steps towards encouraging land market liberalisation. Important for World Bank to be supportive or advisory rather than directive.

Martin Adams,

Land Reform: New Seeds on Old Ground?,

ODI Natural Resource Perspectives, 6, October 1995.

Following initial enthusiasm in post-war period, land reform fell out of favour with donors from early 1970s, though sporadic efforts to redistribute land continued; Ethiopia 1975, Zimbabwe 1980, Philippines 1988. These stemmed from shifts in domestic balance of power between landowners and landless workers and peasants which were quite independent of donor policies. In 1990s decollectivisation and privatisation in former socialist economies and majority rule in South Africa have provided new dimension to land reform. Non-market policies being supported by donors in Philippines, now that Cold War is over. Whereas geographical context and individual country strategies may be new, range of land reform measures being adopted and implementation problems encountered are not.

Wide variation in objectives, circumstances and conduct of land reform. Decisions on whether to proceed are essentially political. In post-1945 restructuring, major objective of land reform was to break up feudal estates and prevent advance of communist revolution. Reforms in East Asia comprehensive, creating class of independent property-owning peasants and alleviating poverty and landlessness. But contexts highly specific, limiting replicability. Enormous variety of land reforms attempted in Latin America 1910-90. Landowners often anticipated reforms by evicting tenants and dismissing labour. To sceptics, reforms merely modernised labour contracts, rather than redistributing land. If Kenyan experience is any guide, redistribution of white-owned lands in Africa can distract governments from resolving major problems of land rights in former African reserves.

Essential, but not sufficient, ingredient for land reform is genuine political commitment and administrative capacity to see process through. Inadequate administrative capacity a recurring problem. Large, widely deployed cadre of well trained staff essential to inform people of entitlements and to facilitate legal processes of land acquisition and distribution. Where adequate land valuation, survey and public land tenure records do not exist, landowners can easily frustrate process of land acquisition. For majority of countries, land reform extremely difficult process to carry through, requiring both centralised political power and well developed grassroots organisation.

Roger Plant,

'Background to Agrarian Reform: Latin America, Asia and Africa',
Marcus Colchester and Larry Lohmann (Eds), *The Struggle for Land and the Fate of the Forests*, (London: Zed Books, 1993), 35-60.

Absolute landlessness becoming cause for concern throughout Africa. Intensive policy debate on extent to which indigenous systems constitute constraints on efficiency of agricultural production. How can customary tenure regimes be best integrated within national land law and policies without prejudicing efficiency of agricultural production? Land reform debate taken different dimensions in former settler colonies: how can highly discriminatory patterns of land use and ownership best be reformed?

In official development circles, policy work on land reform has become apathetic, defeatist, retrospective. Starting point of forward looking analysis is that people who have access to land for their very survival and have no alternative means of subsistence have clear moral right to earn their livelihood from the land. How to translate this principle into enforceable legal right or claim to guide future land policies?

Marcus Colchester,

'The International Response: Policies of the International Agencies',
Marcus Colchester and Larry Lohmann (Eds), *The Struggle for Land and the Fate of the Forests*, (London: Zed Books, 1993), 293-310.

In 1970s MacNamara in World Bank promoted land reform as part of redistribution with growth, but top-down. 1980s saw rise of governments with monetarist policies and massive rise in interest rates. If agrarian reform is to benefit poor, must be under their control; they must control natural resources. Some of main barriers to social justice lie in social orders in Third World: institutionalised injustice, land and wealth concentration, patronage and cronyism, censorship and repression. FAO supposed to take lead role in promoting agrarian reform, but did nothing effective. Instead promoted cash cropping and chemical farming.

World Bank has lent heavily to promote cash crop agriculture for export and by providing funding for agricultural credit schemes, has skewed advantages towards the already rich, inadvertently promoting rising land prices, land speculation and concentration, while displacing farm workers and peasants.

Bank will not support countries which expropriate private property for redistribution. Fear of losing favour has acted as powerful disincentive to African governments. Bank can finance land improvement, including cadastral surveys and registration of title, but not acquisition of land. So won't help to buy out large landowners. Bank's principal commitment is to improved efficiency and production, with poverty alleviation or livelihood issues getting secondary consideration. Bank staff tend to reject redistribution options. Bank has supported very few initiatives that assist genuine agrarian reform. Long term strategy to stimulate creation of markets in land and overcome cultural obstacles to effective mobilisation of land for development. Programmes to break up and commoditise tribal land holdings for ranching schemes in large number of livestock projects. Result has been increasing concentration of land and wealth among tribal elites and politicians, overstocking, fencing, displacement or marginalisation of hunter-gatherers.

1980s Bank's emphasis shifted increasingly towards reliance on market forces and monetarist principles and away from all kinds of state-directed interventions. This corresponded with increasing involvement in policy-based adjustment lending, which overshadowed focus on poverty. But where distribution of land ownership and opportunities is highly skewed, the market works for the benefit of traders, large and medium farmers and multinational corporations, while harming poor peasants and landless workers.

Environmental Department of Bank has led to steps in right direction. Re-evaluation of notion of commons and growing appreciation that communal tenure may make economic and environmental sense and be dynamic and flexible. 1992 advocating that governments guarantee security of land tenure by giving poor farmers rights on land they farm and formalising community rights and strengthening existing institutions should be first line of action. May even be moving to realisation that redistribution reforms are necessary. But will rhetoric mean anything?

Marcus Colchester,

'Future Options: Pushing on a Piece of String',

Marcus Colchester and Larry Lohmann (Eds), *The Struggle for Land and the Fate of the Forests*, (London: Zed Books, 1993), 311-29.

Agencies have promoted processes that have worsened lot of very poor, increasing landlessness and insecurity by promoting rapid modernisation and industrialisation of agriculture. Some land reform in Central America, but basic disparities in wealth and power little changed. In Brazil land reform laws passed but no political will to implement them because higher echelons of government dominated by landowners. In Africa black urban landowning elite taking over large areas for cash cropping, creating local landlessness and poverty.

How best can customary land rights be secured so that process of concentration is curbed, without undermining flexibility and relative autonomy of customary tenure systems which have cushioned Africans from experiencing degree of landlessness common in Asia and Latin America?

Agrarian reform dodged because it challenges power of elites. Where land reforms have been imposed from the top they have rarely worked. Cultural factors frequently overlooked e.g. in resettlement programmes. Dilemma of how much assistance to provide without creating dependency and undermining peasant initiative.

Agrarian reform must be perceived as political process which builds on community initiatives, secures community control of land and involves local peasant organisations in policy making to ensure they have decisive voice in execution of reform programme and influence over wider trade, fiscal and credit policies which shape agrarian change.

H.W.O. Okoth-Ogendo,

'Agrarian Reform in Sub-Saharan Africa: An Assessment of State Responses to the African Agrarian Crisis and Their Implications for Agricultural Development', Thomas J. Bassett and Donald E. Crummey (Eds), *Land in African Agrarian Systems* (Madison: University of Wisconsin Press, 1993), 247-73.

Need to reassess wisdom of agrarian reform policies and programmes. Especially urgent in case of reforms directed at tenure changes. Kenya experience provides no evidence of increase in agricultural production, but resulted in inequalities, emergence of significant landlessness, especially in areas of high land pressure. Liberated peasant has little option but to drift into cities. Group registration in pastoral areas has led to imminent collapse of pastoral economy itself. Benefit of credit did not really materialise.

Donald C. Williams,

'Reconsidering State and Society in Africa: the Institutional Dimension in Land Reform Policies', *Comparative Politics*, 28, 1996, 207-24.

Looks at 3 types of land reform in Africa - registration, redistribution, nationalisation.

Registration in Kenya from late 1950s, but wide gap still exists between official apparatus of land reform and actual patterns of land ownership. Most people continue to seek access to land through descent or personal connections. English property law has failed to have enduring impact. Similar land boards established Botswana 1968 and Lesotho 1979, where state agencies displaced chiefs and there was machinery for voluntary registration of titles. But, as in Kenya, boards overwhelmed by large numbers of unresolved claims. Unable to resolve claims that predate new laws, and so bypassed in favour of elders and chiefs. Similar reforms Cameroon 1974, Malawi 1967, Sudan 1971 but little evidence of widespread compliance, though individuals with preferential access to state bureaucracy or sufficient capital have acquired large tracts of state land in rural and urban areas.

Redistribution in Kenya government used programme to bring about significant alterations in community land tenure rules. Placed enormous financial burdens on c.330,000 settlers. Restrictions on title. Any grievances go to land boards. Many poorer families fallen into debt and face prospect of losing land. Those who sold reduced to tenants or left resettlement areas, replaced by wealthy individuals with connections to ruling party. Zimbabwe programme even more rigid on restrictions with project managers in control. Little security, but settlers liable for taxes, strict destocking regulations and even some of programme costs. In both countries administrative offices have become important sources of patronage due to considerable political manipulation by local party networks.

Nationalisation of customary lands in Senegal 1964, Zambia, Uganda, Somalia 1975, Nigeria 1978, Burkina Faso 1983. Chiefs courts etc eliminated. Despite radical changes, impact on community institutions quite moderate e.g. in Zambia most land continues to be held and exchanged under customary practices. Burkina Faso ruling

party implemented change with much vigour but largely failed to displace powerful chiefs and authority of community institutions. Urban bureaucrats turned reforms to their benefit by concentration of leasehold rights. Abolition of customary law in countryside led to multiplication of conflicts between herders and farmers, migrant farmers and landholding families. Similarly in Senegal, below sub-prefectoral level virtually all transactions in land still rest with local chiefs and Muslim leaders. In Nigeria law has had very uneven impact. In many rural areas tenurial practices largely unaffected, in others new opportunities created for community elites to reassert their influence in local politics. Even elites with access to great resources hindered by resilience of local rules and by arbitrary implementation by state officials.

More wide ranging effects in Uganda, Somalia, Tanzania, Ethiopia. In Uganda redesignation of all land holdings to state controlled rights of occupancy led to removal of squatters from newly designated public lands. Removal pushed by influential elites who have manipulated connections to government offices to gain large tracts of land. New laws also weakened rights of peasants formerly protected under customary law, as they have to obtain recognised leasehold from land boards at great expense. Something similar in Somalia, where new process time-consuming, expensive, full of loopholes for manipulative bureaucrats and clan patrons. Under villagisation in Tanzania, community leaders eliminated, land available only from party-supervised village councils. Peasants increasingly resisted, few had reason to welcome statutory changes. Refusal of courts to adjudicate compensation claims by individuals led to considerable opposition. But continuing resilience of lineage and neighbourhood social organisations in land disputes. Ethiopian reform abolished all pre-existing forms of land tenure. Adjudication over land shifted from local courts controlled by landlords to party tribunals elected by peasant and neighbourhood associations. Impact uneven. Well received and successful where there had been repressive absentee landlordism. Costly litigation eliminated. Elsewhere, especially in north, intransigence and resistance, especially when forced removals began.

Conclusion: proliferation of regulatory mechanisms and bureaucratic agencies accomplished little that was intended. In most cases authority of community institutions not significantly altered. Well placed individuals able to gain new access to favours and local patronage. Meaningful changes only where much money and commitment spent plus pre-existing grievances (Ethiopia, Tanzania, Kenya, Zimbabwe). What is precise impact of African state on land tenure? Some changes, often unintended, of tenurial rules in community institutions.

First, progressive concentration of land rights in people with preferential access to state offices, but opportunities for acquiring land remain centred in manipulation of kinship (Burkina Faso, Kenya, Cameroon, Uganda, Tanzania). Those who acquire land must continue to rely on lineage leaders and home connections to get clearance by land boards (Kenya, Cameroon) or chiefs (western Uganda, northeastern Tanzania).

Second, increased incidence of land alienation, even where laws passed to eliminate this. In Ivory Coast, Nigeria, Burkina Faso chiefs have used authority to assist civil servants and other wealthy elites to obtain certificates of occupancy. In Uganda, virtual market for leaseholds emerged and those with necessary capital have manipulated arrangements with peasants to acquire growing tracts of land, displacing peasants. In

Somalia land sales continued despite law because of security provided by rules of customary tenure.

Third, land reforms have in many cases reinforced position of local lineage authorities who can bridge wide gap between state and community institutions (Cameroon, Kenya, Uganda).

In a context of underfunded administration, success of land reforms has become dependent on acquiescence of traditional leaders, e.g. in Zambia and Cameroon land reform impossible without chiefs sitting on land boards, in Nigeria chiefs critical in establishing rights to land necessary to get certificates of occupancy.

Not apparent that an all-powerful capitalist class is advancing relentlessly and unhindered. Instead, new range of political interactions created within and through new institutions. New dispensations in African land tenure exist primarily as private preserve of political and commercial elites. Higher courts and land boards preoccupied with administering transactions among wealthy individuals, private financial and commercial interests and government agencies, but connections with local communities are uneven. Under most circumstances individuals continue to resort to community institutions that may include customary courts, lineage tribunals and village authorities. Local chiefs and elders have therefore retained their relevance and legitimacy in the local community. They endure because of the resilient nature of kinship.

International Fund for Agricultural Development,
'Access of the Rural Poor to Resources: Land',
IFAD, *The State of World Rural Poverty* (London: IFAD, 1992).

Very limited progress with redistribution under existing land reform laws; success stories are South Korea (1947-50) and China and Taiwan (1949-52). In Africa legal framework providing equitable access to land is lacking, under either communal tenure or private ownership. In patrilineal societies wives clearly have no land rights except through husbands, in matrilineal, land held by matrilineage but administered by men. Landless not main beneficiaries of Kenyan agrarian reform. Land consolidation and registration initially accelerated commodity production, but also led to differentiation and class of landless peasants as illegal privatisation took place and squatters evicted.

Implementing land reform legislation has been fraught with political difficulties at national and local levels. Desirable to opt for decentralised and flexible model of land reform rather than rigid and centrally controlled reform which imposes restrictions on land transfer and renting and use of hired labour. Customary tenure has proved to be rather dynamic, responding to demographic pressure and economic opportunities e.g. tenancy, sharecropping, wage labour. Land registration and other means of individualisation have not led to emergence of thriving land market or to access through inheritance. Land policy should constitute central theme of policy dialogue between donors and recipient countries.

Archie Mafeje,
'Where the Theory doesn't Fit',
Ceres, (FAO), 139, January 1993, 18-23.

Land reform is not an adequate strategy for agricultural development in sub-Saharan Africa. By discussing customary land tenure experiences and issues in sub-Saharan African countries shown that in contrast to Western presuppositions concerning land tenure, sub-Saharan Africa's problems inhibiting agricultural development cannot be solved within the framework of conventional land reform theory. Not access to land, but security of tenure appears to be the issue. New concept of agrarian reform suggested to address land tenure within existing socio-economic and environmental conditions in sub-Saharan Africa.

Nigel Dudley, John Madeley and Sue Stolton (Eds),
Land is Life: Land Reform and Sustainable Agriculture (London: Intermediate Technology Publications, 1992).

Experiences of farmers in Africa, Asia and Latin America indicate that most good agricultural land is owned or controlled by a small minority of rich landowners and, despite years of trying to achieve land reform, this has not occurred in significant ways. The maintenance of a sustainable agricultural system seems increasingly to rely on some form of redistribution of land.

Michael Lipton,
Land Assets and Rural Poverty,
World Bank Staff Working Paper 744, 1985.

Is private access to land the main insurance against rural poverty? Alternative forms of insurance (customary, cooperative, collective or common property terms; off-farm income; access to 'free' spare land) appear to be dwindling, either in availability or in insurance value. In un-irrigated and unreliable rainfed areas, there is no association between land owned or operated and poverty risk. These facts appear to be due to inter-active relations between groups of producers, rather than to statistical relations between farm and income per person. The tenancy relationship, however, does not uniformly increase or reduce poverty. So land reform, especially in well-watered areas, has been much more significant in reducing poverty (and tenure reform much less so) than is often claimed. Illustrated with examples from Africa and Asia.

Fanie Cloete,
'Comparative Lessons for Land Reform in South Africa',
Africa Insight, 22, 4, 1992, 249-58.

Overview of some relevant results achieved with land reform. Addresses experiences of Japan, India and China with land ownership; land reform models in Latin America and Africa: collectivisation in Tanzania and Ethiopia, state ownership and leasehold in Zambia and Zimbabwe, modernisation of indigenous land tenure in Botswana and

private ownership in Kenya. Implications of these comparative land reform experiences for future land reform in South Africa discussed, including that individual private ownership seems to be a viable long term option for successful land reform.

Rekha Bandyopadhyay,

'Global Review of Land Reform: A Critical Perspective',
Economic and Political Weekly, 16 March 1996, 679-91.

In large number of cases large farms more productive than small. Access to technology may not be size neutral. Recent SAPs which stress maximum exploitation of economies of scale may deploy this argument to justify creation of large farms. But socio-economic equity is as important as improvement in productivity. More appropriate to make available critical inputs like water, technology, marketing knowledge to small farmers and improve production than aggregate small holdings resulting in increase in landlessness.

**GENERAL -
LAND AND
PASTORALISM**

John G. Galaty, Anders Hjort af Ornäs, Charles Lane and Daniel Ndagala,
'Introduction',
Nomadic Peoples, 34/35, 1994, 7-21.

On pastoral land crisis in eastern Africa. Want to stimulate reflection and reconsideration of issues relating to land policy. Continent-wide decline in rainfall and state-initiated changes in range use leading to decline in quality of rangeland environment. Most dryland people seeking greater security of access to resources and in rights to land, but land reform and innovations in land tenure often diminish their land rights.

Experiments in villagisation in pastoralist regions had dismal, sometimes catastrophic results. Aim of normalising mobile communities ignored very reasons why arid lands characterised by low pop densities, flexible and opportunistic strategies of resource use and high degrees of residential mobility. Governments appropriated rangeland for game parks and national reserves, state farms and ranches, commercial ranches, often under irrigation. Intense pressure for rural privatisation occurred just as renewed interest raised in systems of common resource management. Current lawlessness of land claims.

Critiques of customary practices ill-founded. Privatisation by enclosure, far from giving security, often sees local people dispossessed by outsiders. Pastoralists losers because their influence, power and skill remain local. Pressured into more marginal lands, which end up being progressively degraded. Then told they're mismanaging resources. Very often privatisation transfers land to absentee landlords, who await rising land prices or use land titles as collateral for loans. Often results in decline in agricultural production.

Vast parks and reserves created from which local people and their livestock excluded. Vital to develop wildlife management strategies which bestow on communities rights to wildlife resources, making them partners in conservation, co-beneficiaries in maintaining wildlife populations and giving them role in administering accompanying industries, especially tourism. Global trend towards individuation and privatisation undoubtedly inappropriate for African rangelands. Governments found it virtually impossible to provide land tenure security for pastoralists. Unless there is dramatic change in national land policies, pastoralists will find it increasingly difficult to secure access to and control use of their own resources. Pastoralists increasingly see need to enter political arena, hence formation of pastoral NGOs, but rich and powerful can harness considerable economic and political force. World Bank-supported trend towards privatisation short-sighted, based on false premises, leads to lower levels of productivity, results in creation of land holdings at scales that are economically and ecologically unviable, speculative fragmentation of community holdings, dispossession of local people, decreases in productivity.

Mark Bradbury, Simon Fisher and Charles Lane,

Working with Pastoralist NGOS and Land Conflicts in Tanzania, A Report on a Workshop held in Terrat, Tanzania 11th-15th December, 1994 (London: IIED, Forest, Trees and People, and Responding to Conflict, 1995).

Conflicts in pastoral areas between pastoralists and government over land rights; between competing land users over access to diminishing resources; between pastoral organisations with different ideas about how to stem the loss of land. Don't manifest themselves as large-scale armed conflicts, more structural and hidden, but violent in their impact of forcing people from their homes.

Survival of pastoralists and hunter gatherers threatened by widespread alienation of communal lands, loss of access to traditional pastures. Driving forces: 1) government policies - pastoralism generally seen as peripheral economic activity, little attention to securing means by which pastoral production can be assured in long term. 2) widely held belief that common land tenure is inefficient and potentially destructive of environment. Policies stem from lack of understanding of rationale behind pastoral production and that pastoralists can effectively manage resources in ecologically sustainable manner. Evidence suggests best use of Africa's savannahs is through mobile livestock production and that indigenous pastoral production systems are best suited for this particular habitat. By sanctioning alienation of land for agricultural production or wildlife conservation, government is undermining sustainable production and ensuring prophesy of destruction is fulfilled.

Policies manifest in villagisation and recent issuing of titles to village land and requirement of formal land use planning. Has resulted in break up of pastoral commons into discrete and potentially exclusive titles. Villagisation imposed alien system of government, effectively disenfranchising many pastoral elders because they were not literate. Also disrupted customary land tenure arrangements.

Liberalisation of economy has resulted in burgeoning of local and foreign businesses, focused primarily on commercial farming, tourism, gem mining. Created environment conducive to land alienation, increased possibilities for marketing agricultural production and encouraged individuals and companies to acquire land for commercial farming. In northern Tanzania, interests of conservationists and tourism have come in conflict with pastoralists and hunter gatherers over use of communal rangelands. Maasai households forcibly removed from protected areas.

New national land policy likely to result in further alienation of pastoral lands. For pastoral groups to continue to manage conflicts over resources, as they have in the past, diversity of customary land tenure arrangements needs to be recognised by the state and local control over land needs to be incorporated into contemporary administrative structures. Encroachment by agriculturalists, titling of pastoral lands, creation of wildlife reserves have combined to push more and more pastoralists onto marginal areas, leading to increasing poverty. Land alienation is increasing poverty among pastoralists and threatening whole way of life; land rights and livelihoods intricately linked. Pastoralists organising into NGOs, going to court, running publicity campaigns, seen as threat by government.

Charles Lane (Ed),

Custodians of the Commons: Pastoral Land Tenure in East and West Africa (London: Kogan Page and Earthscan, 1997).

Series of essays commissioned by UNRISD, covering Kenya, Sudan, Tanzania, Uganda, Mauritania, Senegal and Mali. Introduction by Charles Lane. Concept of land being held in trust now little understood or respected by many African governments and western donors. Result has been overriding of customary pastoral land tenure systems creating insecurity. Pastoralists still thought incapable of efficient land use. Independent governments willingly adopted colonial measures that favour agricultural production and alienation of pastoral lands. Interventions too often based on premise that pastoralists accumulate numbers of livestock beyond economic requirements and that their land tenure systems are structurally incapable of efficient land use. Acceptance of tragedy of the commons argument has led to tacit government and donor support to privatisation of pastoral commons, which has facilitated encroachment by small scale cultivating agriculturalists onto pastoral lands and alienation of pastures for large scale farming and ranches. Privatisation of pastoral resources has resulted in less effective rangeland management. Enforced changes in tenure likely to have profound effect on entire social fabric of society. Evidence to suggest that kinship and other social linkages that once held pastoral land tenure systems together have been either destroyed or severely undermined. Diverse interests within pastoral society and wider economic and political influences are heightening increased divergence between rich and poor herders. Any pastoral land tenure policy that ignores these divisions is unlikely to succeed.

Jon D. Unruh,

'The Relationship between Indigenous Pastoralist Resource Tenure and State Tenure in Somalia',
Geojournal, 36, 1, 1995, 19-26.

Indigenous resource tenure systems in Africa have evolved to meet the constraints and opportunities of often different biophysical environments while facilitating the operation of complex spatial and temporal land use patterns. Traditional systems provide security of tenure in culturally relevant ways that permit adaptation to new circumstances. On the other hand, imposed tenure structures in Africa have often not strengthened individual rights and have often blocked indigenous tenure development and adaptation in response to new situations. Pastoralists in Africa have in particular been negatively affected by the imposition of natural tenure systems which in many cases have served to marginalise nomadic populations with repercussions in land degradation, food security and instability. In Somalia the transient resource rights and resource use arrangements that are critical to transhumant pastoralism were ignored in the formulation of the national tenure regime which favoured crop cultivation. The results were increased land degradation, resource use conflicts, declines in pastoral production and impacts on Somalia's clan alliances which in many cases regulate rational resource access and use.

John G. Galaty,

'The Pastoralist's Dilemma: Common Property and Enclosure in Kenya's Rangeland', Ronnie Vernooy and Katherine M. Kealey (Eds), *Food Systems under Stress in Africa: African-Canadian Research Cooperation: Proceedings of a Workshop held in Ottawa, Ontario, Canada, 7-8 November 1993* (Ottawa: International Development Research Centre, 1994), 100-13.

Despite the need of pastoral communities to practice mobility to benefit from widely dispersed resources, the African rangelands are going through a progressive process of enclosure and privatisation. Privatisation has been supported by the tragedy of the commons arguments and the application of the 'prisoner's dilemma' to stocking decisions. The 'pastoralist's dilemma' however is applicable primarily when common property resources are appropriated during the enclosure process, when rightholders, seeing their land treated as an alienable free good, demand their privatised shares before that share disappears. The 'pastoralist's dilemma' occurs not when rangeland is controlled by communities but when community control is undermined by state or private interests. When the integrity of the community domain is threatened, the individual pastoralist has no choice but to accede to the generalised enclosure of range resources, despite the fact that this is against the individual and collective interests of pastoralists in maintaining higher degrees of mobility and sustaining desirable levels of productivity. Yet communities may well offer the best framework within which local goals and 'development' can be realised.

Richard Moorehead and Charles Lane,

'New Directions in Rangeland and Resource Tenure and Policy', Ian Scoones (Ed), *Living with Uncertainty: New Directions in Pastoral Development in Africa* (London: Intermediate Technology Publications, 1994), 116-33.

In the past pastoral common property resource management has been judged unable to produce higher levels of commercial off-take, to limit stock numbers within the carrying capacity of the land, or to protect land from overuse and so the indigenous land tenure systems of pastoral communities has been seen as an obstacle to increasing production levels of rangeland areas. Such an attitude has been the basis for reform of indigenous tenure systems. However this trend of portraying pastoralists as economically irrational and operating with inherently destructive communal tenure systems has been challenged and is now seen as a flawed basis on which to design future rangeland management strategies. Nevertheless, much of the policy-making continues to stem from the old orthodox viewpoint and it remains to be seen how the new thinking can be adopted by policy makers and put into practice. Discusses the 3 main theories of land tenure: the tragedy of the commons, the property rights school and the assurance problem. Goes on to look at the 3 major processes of political and economic change at present underway in Africa which have profound effects on pastoralists' tenure systems - nationalisation of their resources, sedentarisation of the herders themselves and privatisation of the range. Draws on examples from Mali and Tanzania. Concludes with discussion of the tenure implications of the new approaches to rangeland management and options for the future.

Charles Lane and Richard Moorehead,

Who Should Own the Range? New Thinking on Pastoral Resource Tenure in Drylands Africa, International Institute for Environment and Development, Pastoral Land Tenure Series 3 (London: IIED, 1994).

Pastoralists in dryland Africa are often accused of degrading the resources they use, because they are unable to create and maintain an effective tenure system for managing their natural resources. New thinking about range management and tenure theory are challenging this 'old orthodoxy'. Looks at the implications for tenure issues of the 'non-equilibrium' approach to range management in the light of the 'Tragedy of the Commons', 'Property Rights' and 'Assurance Problem' approaches to resource tenure issues, drawing on case study material from throughout Africa. Argues that pastoralists are well able to manage their natural resources if they are empowered to do so, and an essential pre-requisite for this is secure access rights to range and water. Describes the threat to herders' livelihoods from the creeping privatisation of key pastoral resources and concludes with an agenda for action to support herders' own tenure systems.

Jeremy Swift,

'Dynamic Ecological Systems and the Administration of Pastoral Development', Ian Scoones (Ed), *Living with Uncertainty: New Directions in Pastoral Development in Africa* (London: Intermediate Technology Publications, 1994), 153-73.

Speculates about some potential consequences of new ideas about dynamic ecological systems for the administration of development in pastoral areas. Looks at pastoral organisations and institutions, at three general principles to be followed in designing new forms of administration (flexibility and diversity; subsidiarity; reduction of transaction costs) and at key tasks of pastoral administration. Uses specific examples from Somalia and Lesotho.

Trond Vedeld,

Procedural Law: Land Tenure Reforms as a long-term Political Process, Pastoral Development Network Paper, (ODI), 36b, 1994, 17-22.

Tenure issues will probably become central in the emerging political processes of decentralisation and democratisation, where multi-parties provide new channels for voicing views at village level. But, recognising that pastoralists are often minority groups with often weak representation in political parties, pastoral property rights might require particular protection.

M.D. Young and O.T. Solbrig (Eds),

The World's Savannas: Economic Driving Forces, Ecological Constraints and Policy Options for Sustainable Land Use (Paris, Camforth and New York: UNESCO, Parthenon, 1993).

Aims to assess the ecological, social and economic constraints to savannah development and identify the nature of policy changes necessary to enhance prospects for economic growth and development throughout the savannah regions. Emphasis is on the development of policy recommendations at a national and international level. Fifteen chapters are grouped into 6 sections dealing with: economic and ecological driving forces affecting tropical savannahs; policy principles - ecological constraints, land tenure for pastoral communities and in private and mixed property regimes, national and international influences that drive savannah land use; common property grazing systems (Barabaig, Maasai); dual common property and private property grazing systems (Botswana, India, South Africa, Zimbabwe); private property grazing systems (Australia, Brazil, Venezuela); and providing an environmentally sustainable, economically profitable and socially equitable future for the world's savannahs.

Ian Scoones, Camilla Toulmin and Charles Lane,

'Land Tenure for Pastoral Communities',

M.D. Young and O.T. Solbrig (Eds), *The World's Savannas: Economic Driving Forces, Ecological Constraints and Policy Options for Sustainable Land Use* (Paris, Camforth and New York: UNESCO, Parthenon, 1993), 49-66.

Communal grazing systems in Africa are threatened by demographic pressures, land use regulations and privatisation. Access of pastoralists to grazing grounds has worsened and traditional rights have been progressively neglected. Consensus that pastoralism, agriculture, and wildlife management should stress the need to develop methods of protecting key resources, especially watering points and strategic reserve grazing areas that are pivotal to the operation of entire grazing systems. So a framework that strengthens local institutional management capacity needs to be established. Several case studies of land management systems are presented. Concludes that a sense of resource ownership is critical for those who depend upon savannah resources for their survival. Rational land use must be encouraged emphasising management responsibility of local pastoral communities.

Charles Lane and Jeremy Swift,

East African Pastoralism: Common Land, Common Problems: Report on the Pastoral Land Tenure Workshop, Arusha, Tanzania, 1-3 December 1988,

International Institute for Environment and Development, Working Paper 8 (London: IIED, 1989).

At the workshop threats to rangeland and pastoral livelihoods by widespread land alienation were discussed. Sources of land tenure problems for pastoralists put forward were legal aspects in land conflicts and inappropriate policy which penalises pastoral production and threatens food security. Case studies on Maasai group ranches in Kenya; northern Kenyan pastoralists; Maasai in Tanzania; and Barabaig in Tanzania.

The case studies and discussions centred around the themes of: law and institutions; information, education and training; and policy. An action programme for the organisations involved is briefly outlined and the administrative mechanisms by which the recommendations would be followed up are summarised.

International Union for the Conservation of Nature and Natural Resources,
'Land Tenure and Pastoral Resource Conservation',
The IUCN Sahel Series (Geneva: IUCN, 1989), 143-52.

The conventional view of the tragedy of the commons suggests policies to privatise common pastures, enact stronger laws about resource use and create bureaucracies to impose the laws. Experience has been disappointing. Many people, especially the poor, have been dispossessed of their traditional access to pasture, water and trees and made more vulnerable to drought and famine. Recent advances in theory and empirical research cast doubt on this view. Models using game theory show that if individual members of a group can freely negotiate with others to make rules about resource use and can create institutions to enforce such rules, conservative uses of common resources are likely to emerge and be maintained. Traditional systems of land tenure should not be ignored. A new approach is needed which recognises existing land tenure systems with their strengths and weaknesses and which recognises that the level of detail, flexibility and local adaptation required by effective tenure systems probably requires that the role of central government should be reduced and the role of local decision-making bodies increased. Conservation is probably best achieved by giving local institutions the incentives and powers to manage their own local resources. Looks at the current debate about common property resource management in a general way, summarises the theoretical arguments and empirical data and concludes by drawing lessons for policy and practice in the Sahel.

Jere Lee Gilles and Keith Jamtgaard,
'Overgrazing in Pastoral Areas: The Commons Reconsidered',
Sociologia Ruralis, 21, 2, 1981, 129-41.

The concept of the tragedy of the commons, as popularised by Hardin ('The Tragedy of the Commons,' *Science*, 1968, 162, 1243-8), places the blame for desertification and overgrazing in pastoral areas on the land tenure system. Common ownership of pasture land is seen as the major cause of problem. Examination of the ethnographic literature does not reveal a close relationship between common ownership of pasture and resource depletion. Where large numbers of people share a pasture with low but highly variable yields, common ownership is the most desirable form of land tenure. There are many situations in which common pastures have been managed properly: examples from Switzerland, Peru, and Africa illustrate the basic characteristics of a properly managed common grazing system.

**GENERAL -
LAND AND
WOMEN**

Jean Davison,

'Land and Women's Agricultural Production: The Context',

Jean Davison (Ed), *Agriculture, Women, and Land: The African Experience* (Boulder and London: Westview, 1988), 1-32.

Book examines historic and current gender relations to land. Trend towards land consolidation and growing of cash crops for export continued in post-colonial period, encouraged by growing land market in some countries and need for forex. Less emphasis on food production affects nutritional status of women and children. Women's needs for legal rights to inherit and acquire land in face of increasing scarcity go unrecognised. Men gained access to land as lineage members, women as wives. In countries such as Kenya, where growing land market and population increase has brought land scarcity, women's access has become increasing problem. Colonial notions of male property ownership brought restructuring and intensification of men's control. Customary use rights discouraged in favour of legal measures that gave land parcels to individual male owners, especially consolidation and resettlement schemes.

Kathleen Cloud and Jane B. Knowles,

'Where Can We Go from Here?'

Jean Davison (Ed), *Agriculture, Women, and Land: The African Experience* (Boulder and London: Westview, 1988), 250-64.

Women central element in food systems and lack of reliable access to resources is major constraint to increased food production. Traditional systems left women poorly placed to maintain access to land, labour and capital as systems changed - colonialism, integration into world economy, population rise. Sheer variety and complexity of socio-economic arrangements. Most systems depended on risk-reducing diversified production. Household labour critical factor of production. Because labour only available energy resource, human fertility highly valued. Traditional agricultural systems under tremendous pressure to increase productivity as export crops compete with food crops. Mechanisation of men's labour input may shift, not eliminate, labour bottleneck by expanding demand for women's unmechanised labour in weeding, threshing, processing. Primary constraints are labour scarcity and bottlenecks, lack of access to productivity increasing inputs, insecure control over land and products. Male out-migration, cash cropping, increased primary schooling increasing women's responsibility for production while their access to land and labour becoming increasingly insecure. Demand for women's labour increasing exponentially while returns to labour diminish. Situation extraordinarily complex, no single policy initiatives can reasonably be suggested. Women need expansion of legal rights of access to and control over land which recognises their dual status as legal adults and citizens. Land tenure status composed of several elements - rights to access, different rights to use, different rights to control. Bundle of rights comprising women's land tenure status significantly smaller than that for men, does not contain any of hallmarks of ownership - ability to loan, rent, sell for cash, dispose of by will. Increased inheritance rights part of answer. In leasehold systems, women's protection could be protected by co-registration requirement. Individualisation of title provides special risks for women who never receive title in such programmes. Time running short for making adjustments because land running short.

Susana Lastarria-Cornhiel,

'Impact of Privatization on Gender and Property Rights in Africa',

World Development, 25, 1997, 1317-33.

Focuses on increasing transformation of customary land tenure systems to market based, individualised tenure systems. Unlikely to lead to efficient market systems if women's roles and rights under customary system not well understood or taken account of. Gender a key determinant of who has land rights. Land predominantly allocated to males and transferred inter-generationally through males to nephews (matrilineal) or sons (patrilineal). Women gain access and use rights through male relations (father or husband). Shows how gender diversity has eroded over time, first by colonisation and spread of Islam, more recently by commercialisation of agriculture and land, SAPs, population pressure, urbanisation. Land transferred from abundant resource to scarce commodity with commercial value spurring drive to privatisation. Communal systems tended to grant different rights to different people for single plot of land, more privatised systems concentrate exclusive rights to an individual. Women disadvantaged from acquiring these exclusive rights. Their indirect access to land has resulted in women losing what rights they previously enjoyed under customary systems. These rights do not improve even when land market created because of women's lower access to capital, credit, labour, which prejudices their ability to purchase and develop land. Impact of privatisation far from gender neutral. More effort should be made to design policies that enhance women's rights to land or at least do not prejudice their existing rights.

Shem E. Migot-Adholla and M.E. John,

'Agricultural Production and Women's Right to Land in sub-Saharan Africa',

Development Anthropology Network, 12, 1/2, 1995, 14-29.

Women's access to land has historically been conditioned by that of their male relatives and by the distribution of authority within the household. Presents overview of indigenous African land tenure and agricultural production systems. Examines the transformation of these systems over the last century, assessing the extent to which women in Africa are involved in agricultural production, evaluating the kinds of production related constraints that they face (particularly access to land) and the implications of these constraints on household productivity. Examines the units (e.g. female-headed households) that are appropriate for analysing the productivity of women farmers, and considers policy options required to enhance the productivity of women farmers and questions whether such institutions as the World Bank have organisational structures that allow for meaningful policy interventions.

Joanne Bosworth,

'Land and Society in South Kigezi, Uganda',

D.Phil. thesis, University of Oxford, 1995.

Land policies which seek to privilege or create legal rights of ownership by registering transferable interests and neglecting rights of subordinate users, land registration Kenya, villagisation Tanzania, resettlement Zimbabwe, have curtailed women's rights and enhanced men's. But effect of gender may be mediated by class. Much of potential power

of women rests on indispensability of female labour power to agricultural production. While men may have assumed rights to transfer land through sale and inheritance, women sometimes gained greater influence in use and management. Negotiability of custom - gender balance in control of resources is highly contested domain in many African societies. Clear that individuals and groups invest significant resources in seeking to manipulate or reverse gender differentials in land rights.

Takiwaa Manuh,

Women, the Law and Land Tenure in Africa,

Report for International Development Research Centre, Canada, 238e, October 1989, 26-40.

Relationship between women, the law and various systems of land tenure over time explored in context of women's management of natural resources. Predominance of women in agriculture well known. Particularly under conditions of increasing commodity production for international and domestic markets, agricultural labour force has become feminised. Yet in most African countries women been disadvantaged with respect to land ownership and land use, both by customary and legal systems. Women's needs have usually not been taken into account in resettlement schemes and many female farmers have had little access to land for independent production and to credit facilities to allow them to improve farming practices. Some examples of the coping strategies adopted by women to overcome these problems are presented.

Colleen Lowe Morna, John Araka, Margaret Safo, Souleymane Ouattara, Bonsasa Mbalaka and Sam Wainaina,

'Women Seek Control of the Land they Farm',

African Farmer, 6, December 1991, 29-33.

Access to land in Africa is a problem especially for women, who have been dependent on men in traditional land tenure systems. As women have the interest of the family at heart, they have proved to be better spenders of financial resources and to be able to control the proceeds of land to the benefit of the whole family. As land becomes scarce and women gain opportunities in other areas, such as access to credit or extension services, many women organise themselves, starting to take land reform into their own hands and fighting for equal land tenure rights. Recently these developments gained institutional support and laws were established in some African countries to protect women and children from loss of land. Recommended to promote these progressive developments as land owners are usually men while the actual farmers are women.

Shamin Meer (Ed),

Women, Land and Authority: Perspectives from South Africa, (Cape Town and Oxford: David Philip and Oxfam, 1997).

- Policy makers should understand the complex and nuanced way in which gendered access to resources has been shaped.

- Women's experiences have often been shrouded in unrealistic and gender blind conceptualisations of the household and the community.
- Access to land without incomes will not get women very far: most women do not see full time farming as a possibility, rather farming is one of a range of livelihood strategies.
- Women do not enjoy secure access to land in their own right, but generally only as members of households or through husbands or male relatives.
- So single, widowed or divorced women are often dependent on the whim of a chief to decide about their rights to access and use.
- Some women challenging existing gender order, power of patriarchy and oppressive nature of much 'customary law' and demanding independent rights to land.
- Where households have fragmented, as in parts of South Africa, women are increasingly demanding independent rights to land.
- The introduction of a land market may threaten women's security of tenure.
- Women do not form a monolithic grouping.
- A land reform programme aimed at benefiting women as the 'poorest of the poor' needs to develop criteria for identifying who these women are and not fall into the trap of targeting all rural women as equally deserving.
- In one case a lack of formal legal barriers to women's ownership of land has not created a situation of gender equality.
- Women have different land needs, preferences and priorities to men.
- Women on farms are potentially inhibited from benefiting from land reform.

Bina Agarwal,

A Field of One's Own: Gender and Land Rights in South Asia (Cambridge: Cambridge University Press, 1994).

Why land rights for women is a challenge

Argues that land is the single most important entry point for women's empowerment in South Asia. First chapter makes case for this in general terms and is relevant to elsewhere. The challenge is simply to gain acceptance of the *idea* that women need independent land rights. This is because it challenges ideas of the household as a unit of common interests but also goes further in suggesting that income-generation and employment schemes for women are insufficient. It means admitting new contenders for a share in a highly valuable resource which determines economic well-being and shapes power relations especially in rural areas. It also means extending the conflict over land that has existed between men to men and women, thus bringing it 'into the family's innermost courtyard'. As such it receives little attention in policy formulation. The redistributive land reform that has occurred in South Asia was modelled on the notion of a unitary male-headed household.

Conceptual links

Ownership and control

There is a need to distinguish between law and practice and ownership and control. As in most societies it is men as a gender (even if not all men as individuals) who control wealth-generating property, *whether or not it is privately owned* (e.g. under state, community or clan ownership). This is because of their dominance in traditional and modern institutions as well as in those bodies which perpetuate ownership and control such as the courts.

Women and class

Women are often assumed to be of the same class as their husbands or fathers. However this is problematic as a women's position is more open to change through divorce or widowhood; women are equally vulnerable to some tendencies such as domestic violence; and women are equally affected by inequitable legal rights. Having said that, it is also the case that women of larger, landed households do gain from their husband's position in terms of their overall living standards, lower work burdens, increased social status and the influence they can command in relation to other village women. So property mediates relationships not only between men and women but also between women. This has implications for women's collective action.

Assumptions about women

- i) Ideas about women's role, mobility, sexual freedom etc. determine women's ability to exercise claims and challenge existing inequalities. Ideas about women's rights over property are intimately linked to societies' views on women's sexuality, marriage practices and kinship structures.
- ii) Such ideas and views are perpetuated or challenged through institutions such as the media, schools and religious establishments which are usually dominated by men.
- iii) These ideas vary with class.

Land as property as opposed to other property

In South Asia land is the most valued form of property as it is a productive, wealth creating and livelihood sustaining asset and therefore has been the basis of power and status. But also ancestral land has symbolic meaning and is of ritual importance. In a dispute therefore people are sometimes willing to spend more to retain ancestral land than its market value would justify. Form *and* origin of land are therefore important.

What is meant by land rights

Rights are defined as claims that are legally *and socially* recognised and enforceable. They can be rights of ownership or use and can be vested individuals or in groups. Rights of ownership do not necessarily lead to control, such as the ability to determine land use or how the produce is disposed of. What is best for women depends on the local context. It may be that communal ownership, where all have equal access regardless of sex, may be more beneficial to women than individual ownership where no effective control exists.

Communal lands in South Asia have always contributed in important ways to the livelihoods of rural households especially of poor households. Women's access to communal land can serve as a means of independent economic support. However availability is declining through appropriation by the state and by privatisation. Much land reform has contributed to this. In effect this has deepened class and gender inequality. Rights to privatised land therefore becomes important *but* there is a strong case for protecting the communal nature of any land that still exists in that from *and* it is necessary to explore new arrangement for jointly owned/controlled land for groups of women rather than groups of households. Joint ownership does not imply joint cultivation.

Prospects for non-land based livelihoods

Land is liable to remain at least a part of viable livelihood system for some time. Rural non-farm employment for women tends to be low-paid. Rural non-farm self-employment is itself significantly related to land access. There are therefore more opportunities for men and their out-migration will lead to more female headed households needing access to land.

Why do women need independent rights to land?

i) *The welfare argument*

Control and ownership of land reduces the risk of destitution as it gives *independent and direct* access to economic resources. Women tend to spend more on families and children's welfare than men and children's health is often positively linked to women's earnings and their access to a household garden. Increasing women's earnings and access to land often therefore has direct impact on family welfare.

ii) *The efficiency argument*

Increased production is likely to result through:

- increasing women's access to credit through their having a title and therefore collateral;
- increasing the chances of women investing in improvements in land management because it is theirs;
- smaller farm size leading to increased cropping intensity, higher value crop mix and greater labour intensity;
- increased health which in turn increases productivity;
- increased sustainability owing to women's greater needs to protect sources of fuel, fodder and water.

Some argue that women's ownership will not lead to increased production as they *currently* tend to encounter obstacles that male farmers do not meet such as: access to credit, services, extension advice etc. However the solution lies in providing women farmers with the necessary technical and institutional support not in disinheriting them.

Equality and empowerment argument

Argument centres around need to improve women's position relative to men as a measure of justice. Land rights are important for this as they provide a means to challenge other social and political inequalities in the household and outside in the community and in the market. In many communities the ownership of land determine status, respect and access to decision making. In addition land ownership strengthens women's bargaining position in the household as it can provide a better fall-back position in case of divorce or dispute.

Land is both a practical and strategic issue but it may be that the emphasis needs to be put on the welfare arguments as this might be politically easier to advance. Land is perhaps a more strategic entry point than employment or education as the process of acquiring land rights will require other struggles against many inequalities. Therefore the wide-ranging notion of land issues gives it a transformative potential.

**GENERAL -
LAND: MISC**

Elizabeth Colson,

'The Impact of the Colonial Period on the Definition of Land Rights',
Victor Turner (Ed), *Profiles of Change: African Society and Colonial Rule*
(Cambridge: Cambridge University Press, 1971), 193-215.

Over most of Africa during the precolonial period, men and women conceived of themselves as linked to the land through membership of kinship groups. With changes ushered in by colonial rule, the majority of African communities became aware of a conflict between the old political obligation to maintain general access to adequate resources for all citizens, and the possibility of extracting an individual profit from areas pre-empted under the rule that a person may enjoy the fruits of their labour. Land had become a commodity which could be bought, sold, leased and subdivided.

Max Gluckman,

'Property Rights and Status in African Traditional Law',
Max Gluckman, *Ideas and Proceedings in African Traditional Law* (London: Oxford University Press, 1968), 252-66.

Focusing on the land tenure system of the Lozi of Zambia, Gluckman works out a terminology which emphasises the relationship between hierarchical rights to land and the status hierarchy of African societies. He emphasises that ownership does not imply an exclusive right; it simply indicates that a person has a stronger claim to a piece of land or other property than someone else in a particular dispute. In customary law, ownership cannot be absolute, for the crucial thing about property is the role that it plays in a nexus of specific relationships. Property law in tribal society defines not so much rights of persons over things, as obligations owed between persons in respect of things.

Parker Shipton and Mitzi Goheen,

'Understanding African Land-Holding: Power, Wealth, and Meaning',
Africa, 62, 1992, 307-25.

African land holding complex, variable, fluid, involving overlapping and interlocking claims and responsibilities. Personal land claims always depend on broader social entities. Individual's land rights will be determined by e.g. gender, rank, age, class, caste, occupation. Right to use land does not necessarily imply right to exclude others. Seasonal oscillations mean same land can be used for exclusive farming but with common grazing rights. Customs constantly recreated and disputed. Key terms manipulated to invoke weight of history or popular consensus. As resources become scarcer, individuals shift allegiances. People engage in shifting and straddling between modes of livelihood. Communal and individual tenure unnuanced visions that seldom fit African realities, before or after state intervention.

Problem of translation. 'Ownership', 'property', 'tenure', 'farm' do not translate neatly into most African languages nor neatly reflect rural African ways of thinking about land. They neglect overlapping and contingent rights and duties and ignore temporary rights arising

from seasonal oscillation. Mistake to assume individual titling will automatically provide land holders with better incentives to conserve or develop land.

Embeddedness of land holding in ecological, social, cultural and political life means one tenure regime can seldom be legislated away in favour of another. Only likely to add possibilities of manipulation and confusion between old and new. Neither colonial nor independent governments had resources to carry out bureaucratic tasks of control and tenure reform they set themselves.

Titling programme like Kenya's, begun in hope of producing stable rural middle class, may produce speculation and absentee landlordism instead. Difficulties of keeping records in order over time almost insuperable where literacy not high, no substantial experience with bureaucratic routine, no incentives to comply. Cost of cadastral survey high. Often generates double system of 'official' and 'unofficial' land rights which do little to enhance reputation of official system.

Titling purports to make land usable as collateral for loans by smallholders. But land mortgage systems have failed for nearly a century because it ignores hard realities. Credit means debt. Most agriculture too risky, markets and prices too unreliable to allow reliable loan investment and repayment. Lenders who try to seize defaulter's land can not use or resell it because neighbouring relatives will make life difficult. Farmers tend not to report inheritances, sub-divisions or other transfers to state authorities. So land registers soon become obsolete. Group titling, at village or community level, may be at least as appropriate as individual titling. Claims of subordinate right holders to access tend to be neglected in individual titling programmes. Usually discriminates in favour of more senior right holders and against subordinate holders - women, elders, children, those who rely on herding.

Many failed foreign interventions. A single national land policy does not make sense - needs to take account of varying population densities and varying needs for mobility etc. No level of bureaucratic hierarchy will ever gain full control over land holding; planners should count on different rights continuing to be exercised and challenged at different levels of administration.

Shem Migot-Adholla, Peter Hazell, Benoit Blarel, and Frank Place,
'Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity?',
World Bank Economic Review, 5, 1991, 155-75.

Using cross-sectional evidence from Ghana, Kenya and Rwanda in 1987-8, examine whether indigenous land rights are constraint on productivity. Evidence provided supports hypothesis suggested by historical studies that African indigenous land rights systems have spontaneously evolved from systems of communal control towards individualised rights in response to increases in commercialisation and population pressure. Cross-sectional data on incidence of land improvements and on land yields provide little support for view that limitations under indigenous law on the right to transfer land are a constraint on productivity.

Laurel L. Rose,

The Politics of Harmony: Land Dispute Strategies in Swaziland (Cambridge: Cambridge University Press, 1992).

Analyses how traditional rural elites in Swaziland, as in other parts of Africa, use harmony ideologies to downplay and resolve land disputes. Such disputes could be used by foreign development agents or indigenous new elites as justification for implementing land tenure changes, including a reduction of traditional elites' power based upon land control. The focus is on the political, rather than the economic, dimensions of land tenure and disputes. It searches for links between individual concerns with land use rights and national concerns with land policy. It also examines gender and leadership issues associated with land, showing how women and new elites threaten land interests of men and traditional leaders.

Benoit Blarel, Peter Hazell, Frank Place and John Quiggin,

'The Economics of Farm Fragmentation: Evidence from Ghana and Rwanda',
World Bank Economic Review, 6, 2, May 1992, 233-54.

Farm fragmentation, in which a household operates more than one separate parcel of land, is a common phenomenon in sub-Saharan Africa. Concerned by the perceived cost of fragmented as opposed to consolidated holdings, several countries have implemented land consolidation programmes. These interventions are said to overlook the benefits that land fragmentation can offer farmers in managing risk, in overcoming seasonal labour bottlenecks, and in better matching soil types with necessary food crops. Using household survey data from Ghana and Rwanda, the incidence and causes of fragmentation are discussed, and the relation between fragmentation and land productivity and risk reduction is analysed. Concludes that consolidation programmes are unlikely to lead to significant increases in land productivity and may actually make farmers worse off. Suggests that policy makers should focus instead on reducing the root causes of fragmentation: inefficiencies in land, labour and food markets.

Anon,

'The Dynamics of Privatization of Land Resources in Africa: the Transition as Challenge for Africa',
Rural Progress, (Economic Commission for Africa), 11, 1, 1992, 49-62.

Struggle for resource control and individual ownership of land in sub-Saharan Africa assessed. The land reform proclamation in Ethiopia in 1975 brought significant economic and social changes in rural areas. Land was owned by the state recognising only usufructuary possession of land, tenancy was abolished, hired labour prohibited and various rural institutions were established. To assure the development of sustainable systems of agricultural production privatisation of land resources is recommended. However, there is no single approach towards privatisation of land in Africa as settlement and ownership patterns are uneven and unbalanced, and national land reforms have different effects in the development of land tenure and land use.

Gershon Feder and Raymond Noronha,
'Land Rights Systems and Agricultural Development in Sub-Saharan Africa',
World Bank Research Observer, 2, 2, July 1987, 143-69.

Land rights evolved in response to changing political, social and economic conditions. There is increasing individualisation of ownership and in many areas possession has always been individual. Indigenous systems not inherently equitable. Land sales and mortgaging by individuals observed frequently in many areas though not recognised under formal legal system. Lesson from other parts of world is that efficiency ultimately requires formal recognition of individual land rights. That stage not yet reached in many parts, but in many others justification for a change already exists. Practical problem is the careful analysis of costs and benefits, including equity considerations.

A.S. Oberai,
'Land Settlement Policies and Population Redistribution in Developing Countries: Performance, Problems and Prospects',
International Labour Review, 125, 2, March 1986, 141-61.

The aims and performance of various land settlement programmes in Africa, Asia and Latin America are discussed, in order to assess how far land settlement is an appropriate policy response to problems of population redistribution, unemployment and poverty. The problems encountered can be summarised as retention of settlers, failure to provide non-farm employment, land concentration, social tension between settlers and indigenous population, and high settlement costs. Most settlement programmes had only limited success due to a lack of detailed and comprehensive planning, failure to select the right type of settlers, inadequate land tenure systems, and a lack of sound management and administration. Suggests that resettlement should not simply be a matter of moving people physically but, to motivate the settlers to stay, should embrace more concerted and imaginative planning in the areas of destination.

Mitzi Goheen,
'Chiefs, Sub-Chiefs and Local Control: Negotiations over Land, Struggles over Meaning',
Africa, 62, 1992, 389-411.

Cameroon study of complex relationships, struggles over land and distribution of power among traditional rulers, new elites and national state in Cameroon.