

Land Policy and Agriculture in Eastern and Southern Africa

Edited by J.W. Arntzen, L.D. Ngcongco,
and S.D. Turner



THE UNITED NATIONS UNIVERSITY

LAND POLICY AND AGRICULTURE IN EASTERN AND SOUTHERN AFRICA

**Selected Papers Presented at a Workshop
Held in Gaborone, Botswana, 14–19 February 1982**

Edited by J.W. Arntzen, L.D. Ngcongco, and S.D. Turner

THE UNITED NATIONS UNIVERSITY

The arid and semi-arid lands together constitute about one-third of the earth's land surface but support only about one-eighth of its population. These dry lands contain a significant proportion of the poorest countries of the world.

The United Nations University Arid Lands Sub-programme chose the theme "Assessment of the Application of Existing Knowledge to Arid Lands Problems." A number of research studies and workshops were undertaken in connection with this theme, examining the various interfaces that exist between scientific investigation and the application of its findings, often within a regional context.

Land Policy and Agriculture in Eastern and Southern Africa focuses on the problems of food production, including farming and food policies, in relation to the management of natural resources and environmental considerations.

Although the UNU's special Sub-programme on Arid Lands has now been concluded, the new programme on Resource Policy and Management is maintaining this international dimension in research, training, and dissemination, stressing the interaction of resource management, conservation, and development.

© The United Nations University, 1986

The views expressed in this publication are those of the authors and do not necessarily reflect the views of the United Nations University.

The United Nations University
Toho Seimei Building, 15-1 Shibuya 2-chome, Shibuya-ku, Tokyo 150, Japan
Tel.: (03) 499-2811 Telex: J25442 Cable: UNATUNIV TOKYO

Printed in Japan

NRTS-28/UNUP-604
ISBN 92-808-0604-1
United Nations Sales No. E.86.III.A.6
02000 P

PREFACE

This volume contains a selection of papers presented at a workshop on land policy and agricultural production in eastern and southern African countries, held in Gaborone, Botswana, 14–19 February 1982. The workshop was funded by the United Nations University (UNU).

One of the principal activities of the UNU in its early years was its Natural Resources Programme. In its Resource Policy and Management Sub-programme, the UNU undertook a project on land tenure, policy, and management in Africa, with particular reference to anglophone countries in the eastern and southern parts of the continent and to arid and semi-arid areas. As part of this project, a summary report was prepared by H. West (an edited version appears in this volume); a country-by-country set of working abstracts was produced by A.T. Grove; and an annotated bibliography was compiled by N.D. Mutizwa. The 1982 Gaborone workshop may be seen as a logical follow up to these publications, at which ideas and experiences on land policy, tenure, management, and production issues could be exchanged by civil servants and academics from the countries covered by the UNU project.

After an initial visit to Botswana by a UNU representative, Professor R. Odingo, a local organizing committee was set up to prepare for the workshop. The National Institute of Development Research and Documentation, part of the University of Botswana, agreed to host the workshop in conjunction with the UNU. Arrangements were made for the meeting to be held at the National Museum, Gaborone. The Botswana Ministry of Local Government and Lands gave its active support, as exemplified by the opening of the proceedings by the Vice-President and Minister of Local Government and Lands, the late L.M. Seretse.

One civil servant and one academic were invited from each country in the region. Participants came from Kenya, Uganda, Tanzania, Zambia, Zimbabwe, Malawi, Lesotho, Swaziland, and Botswana. Unfortunately, representatives of Angola

and Mozambique were not able to attend. There were additional participants and observers from Botswana. In total, there were 34 participants and 49 observers. Participants are listed at the end of the volume.

The five-day workshop dealt with many aspects of land policy, including administrative and institutional considerations and social, economic, and environmental implications, both as they determine and as they are influenced by land policy. The last day was used for group discussion on several themes: access to land and its distribution; food production implications of land-tenure systems; financial institutions and credit facilities; and environmental implications of land policy. Recommendations prepared by these groups were then discussed at a final plenary session, at which it was agreed that the local organizing committee should select from its members a sub-committee mandated to produce an edited version of the workshop proceedings.

In implementing this mandate, the three-member editorial committee reviewed all the papers presented at the workshop and, in some cases, proposed revisions for submission to the authors. In most cases, these revisions were subsequently incorporated by the authors. In selecting and further editing papers for this volume, the editorial committee had several concerns, including the overall length of the volume and the need to avoid duplication of materials, particularly with the Botswana papers. Editorial alterations have been intended to achieve brevity without influencing the arguments advanced by the authors.

The committee came to the conclusion that, while the day of discussion and resolutions at the end of the conference, and the discussions during the presentation of papers, were of great assistance to the participants actually present at the workshop, they would be of less value to readers of this volume some years after the event. These discussions and resolutions have, therefore, not been included.

Many persons and institutions contributed to the organization of the workshop. The meeting was funded by the UNU, whose representative, Professor R.S. Odingo, assisted with the preparations. The UNU has also made this publication of the proceedings possible. The local organizing committee consisted of J.W. Arntzen, F. Inganji, B. Machacha, M. Marquardt, L.D. Ngcongco, O. Mohlund, J.B. Opschoor, R. Silitshena, and S.D. Turner. During the workshop, a number of rapporteurs from ministries of the Government of Botswana and from the University of Botswana provided valuable assistance. The National Institute of Development Research and Documentation hosted the workshop, and its typing and printing sections made a major contribution in the preparation of papers. The National Museum kindly made available a conference room, and the University of Botswana and the Botswana Society provided public address equipment. Mr. A. Campbell guided the participants on a field trip through one of eastern Botswana's typical communal areas. The maps in this publication were drawn by the Department of Surveys and Lands, Gaborone. Final typing has been capably done to increasingly urgent deadlines by Ms. M. Hardy.

A number of delays have been experienced in the process of preparing the workshop proceedings for publication. Communication with authors scattered through the African continent and beyond has sometimes been slow, and postal difficulties also meant that the review process carried out by the UNU from Tokyo took almost a year. Further delays have also been caused by the gradual dispersal of the editorial team into three different countries. Despite these delays, we believe that many of the issues discussed remain topical. We hope, therefore, that the proceedings of the 1982 workshop will still be relevant and useful to policymakers, administrators, and students in the field of rural African land tenure and administration.

J.W. Arntzen
Free University, Amsterdam

L.D. Ngcongco
University of Botswana

S.D. Turner
National University of Lesotho

February 1985

OPENING ADDRESS

The Hon. L.M. Seretse

Late Vice-President of Botswana and Minister of Local Government and Lands

Mr. Chairman and participants in this workshop, wish to extend to each one of you a warm and cordial welcome to our country. It is with a great deal of pleasure and interest that Botswana has agreed to host the five-day Workshop on Land Policy and Agricultural Production in Eastern and Southern Africa. We are grateful you came and we hope you will enjoy your stay among the people of Botswana.

It has become apparent that the African continent is richly endowed with natural resources. It is generally known that these resources are located in countries in which per capita income levels are generally low and in which rural poverty is particularly acute. In a number of countries, these resources, particularly land resources, offer the only significant prospect of income generation and employment creation.

Land is a commodity which the Republic of Botswana has in abundance, particularly since our country's area of 582,000 square kilometres is occupied by a population of approximately 936,000 persons. Yet, we have long been aware that such an apparently luxurious position does not relieve us of the complex problems and difficult decisions any nation must face in sharing its land resources and managing their exploitation.

The large and seemingly empty spaces on the map of Botswana would please any spatial planner; and many of them have been tempted to fill these spaces with straight lines and zones of various descriptions. Sometimes this has been done without adequate consideration of the range of interests, often overlapping, which can apply even to apparently remote and empty areas. This is just one reason why we in Botswana, like those in other African countries, are constantly trying to refine our land policies.

In this process we recognize the importance of comparing and exchanging experiences and ideas with our colleagues elsewhere on the continent. It is for such a discussion that, with the as-

sistance of the United Nations University, you have gathered for this workshop.

A principal reason for the importance of the land resource to any society is its capacity for the production of crops and livestock. Therefore, a major theme of this workshop will be the relationship between land policy and agricultural production — in particular, the pressures that the forces of agricultural development bring to bear upon the land and the tenure systems under which it is held and used.

Much of Botswana's land is suited to the production of beef cattle, although with our low rainfall this country must be more land extensive here than some other countries. The low rainfall means also that careful management of the range is critical to sustained production, with the danger of possibly irreversible ecological degradation if overgrazing is permitted. If we wish to develop our livestock industry, we must take account of these factors and develop a land policy that permits the ecologically sound, economically profitable, and socially just utilization of this valuable resource. No doubt you will hear during this workshop about the achievements and setbacks regarding our Tribal Grazing Land Programme, Arable Lands Development Programme, and Communal Area Development Programmes. I am sure that delegates from elsewhere in the region have much experience of their own in this field, which will be of value for them to exchange.

In the eastern areas of Botswana, where the rainfall is slightly higher, the population density is understandably greater and people gain a major part of their subsistence from crop cultivation. In this sector, too, we are faced with issues with which you will all be familiar in your own countries.

As population density increases, and with it the number of cattle and other livestock upon which people depend, the traditional land tenure system comes under a variety of pressures. In some cases, such systems break down, or lose the

social equity which has generally been our heritage in African land tenure. In these cases, land reforms must be made an urgent priority. In other instances, among which I would count Botswana, these pressures do not reach such a critical point and it is more appropriate to speak of the development of land-tenure systems and related institutions. It is, of course, incorrect to suppose that traditional land-tenure systems in Africa stagnated over centuries without adapting to changing conditions. Therefore, we should, where possible, design our policies on tenure systems and administrative structures so that they constitute further steps in the progressive adaptation of these institutions, in a manner consonant with our individual development objectives.

In Botswana, we have already established and developed land boards to administer arable, grazing, residential, and commercial land in the rural areas. These land boards, which largely but not entirely replace chiefs as administrators of rural land, must involve themselves not only in the routine allocation and recording of tenure, but also in land-use planning, that is, if the pressures on arable and grazing areas which I mentioned earlier are to be contained. Again, our experience in meeting problems regarding our land boards is just one instance of similar experience elsewhere in the region which I believe will somewhat feature in your discussions.

One change in land tenure which some people believe to be necessary for increased agricultural

production and enhanced rural prosperity is the introduction of freehold. This change has its advocates in Botswana, as elsewhere. It has not yet been introduced in our rural areas, with the exception of certain freehold farms, declared in colonial times, and the debate as to its desirability continues. Partly the issue is one of security on rural land and how it affects modern investment in agriculture.

Commercial banks do not generally recognize land held communally as collateral for loans that could be used to develop agricultural production. The challenge facing us in this respect is whether we can cause our financial institutions to change or re-examine their lending policies and we modify our tenure in Africa in such a way that investment in agricultural development becomes easier while at the same time maintaining the social security that Africans have for so long recognized in their land.

In making these preliminary remarks, I do not, in fact, need to remind you of the complexity of the issues we must consider in designing appropriate policy for land tenure and agricultural production in our countries. It is your awareness of their complexity and of the need to exchange ideas on these problems that has brought you together.

Without taking any more of your time, ladies and gentlemen, it is now my pleasure to declare this workshop officially open, and may I wish you an enjoyable and productive week's work blessed with abundant rains.

I. A CONCEPTUAL FRAMEWORK FOR LAND POLICY AND AGRICULTURAL DEVELOPMENT

CONTENTS

| | |
|--|------------|
| Preface | v |
| Opening Address | vii |
| I. A Conceptual Framework for Land Policy and Agricultural Development | |
| 1. Land Tenure, Policy, and Management in English-Speaking African Countries H.W. West | 1 |
| 2. Land Tenure and the Developing Society W.L. Dickson | 23 |
| II. Development of Land Policy | |
| 3. Determination of Land Policy in Zimbabwe R.M. Mupawose and E.T. Chengu | 31 |
| 4. Botswana's Land Tenure: Institutional Reform and Policy Formulation B. Machacha | 39 |
| 5. Institutional, Administrative, and Management Aspects of Land Tenure in Zambia C.T.A. Banda | 48 |
| 6. Land Law and Land Policy in Malawi A.T.B. Mbalanje | 52 |
| III. Some Implications of Land Policy and Tenure | |
| 7. Lesotho's Land Policy under the Land Act 1979 and Its Implications for the Agricultural Sector A. Mosaase | 63 |
| 8. Social Implications of Land Reforms in Tanzania S.D. Mtetewaunga | 67 |
| 9. The Legal Superstructure and Agricultural Development: Myths and Realities in Uganda J.A.S. Musisi | 73 |
| 10. The Perils of Land Tenure Reform: The Case of Kenya H.W.O. Okoth-Ogendo | 79 |

IV. Environmental and Institutional Aspects of Land Policy

- 11. Social and Environmental Impacts of Agrarian Reform in Rural Botswana
R.K. Hitchcock and T. Nkwe 93
- 12. Environmental Implications of Land-Use Patterns in the New Villages in Tanzania
W.F.I. Mlay 100
- 13. Environmental Pressure and Land-Use Change in Communal Eastern Botswana:
The Case of Kgatleng
J.W. Arntzen and J.B. Opschoor 108

V. Land Tenure and Agricultural Development

- 14. The Land Tenure System of Zambia and Agricultural Development
M.A. Amankwah and M.P. Mvunga 119
- 15. Land Tenure Systems and Agricultural Production in Malawi
D.W. Nothale 127
- 16. Land Tenure and Agricultural Production in Swaziland
G.T. Magagula 133

VI. Conclusion 143

Appendix: Exchange Rates of Southern and Eastern African Countries

(February 1982) 147

Participants and Contributors148

1. LAND TENURE, POLICY, AND MANAGEMENT IN ENGLISH-SPEAKING AFRICAN COUNTRIES

H.W. West

Assistant Director of Development Studies and Fellow of Wolfson College, Cambridge, UK

Introduction

Intentions and Objectives

The poverty of the third world is increasingly seen as an international issue. There are many facets to this problem. Some of the more fundamental relate to resource endowment, access, and use. This chapter is put forward as a contribution towards the solution of a range of practical questions concerning land-resource use in English-speaking African countries.

It is well known that most African countries south of the Sahara suffer from relatively poor resource endowment. Out of these, 12 countries may be grouped together for present purposes because they exhibit a degree of homogeneity due to some similarity of recent historical experience and of governmental institutions and of an official language inherited from British rule. These countries are: Botswana, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. More significantly, these 12 have, in common with other African countries, similarly inherited traditional African values and concepts relating to land, particularly a very close emotional attachment between social groupings and the land from which they draw their sustenance.

Directly or indirectly, these countries remain heavily dependent on land for the elemental needs of survival, for habitation, subsistence cropping, or for foreign exchange earnings; their socio-political structures have frequently been determined by access to and control over land resources.

It is submitted that, under these circumstances, the many-sided relationship between population and resources must be fundamental and that an understanding of this relationship must form a major part of the base upon which sustainable development may be built. The nature and sig-

nificance of this relationship was sometimes changed or obscured during the colonial period and frequently overlain by "received" ideas, so that it is necessary now to reconceptualize this relationship and to re-articulate it in the modern idiom. It is now intended to analyse and to explore the relationship between land and population, as expressed through resource utilization and decision-making, planning, and practical administration.

This study is largely institutional; its purpose is to take a broad overview of the situation. It is aimed at policy, for which purpose, brevity may be seen as an advantage in itself; but, because of the diversity of experience, a good deal of generalization is inevitable.

It is hoped that the practical and developmental contribution of this volume will lie in its future use as a basis for consultation among African countries concerned and for an educational programme aimed, in the first instance, at the actual or potential policymakers in government service, in universities and in related professional organizations. Much has already been done in some African countries towards translating theoretical conclusions into requirements both for policymaking and for training, but more remains to be done.

A further intention of this chapter is to demonstrate that there is here a major sector of policymaking in which African countries must help themselves — a sector in which the policymaking and implementation effort must be predominantly *internal* — and to indicate the nature of the tenurial and administrative structures required for the purpose.

African Environmental Conditions: Pastoralism and Irrigation

About 60 per cent of the African continent is included in the dry zones and is either arid desert,

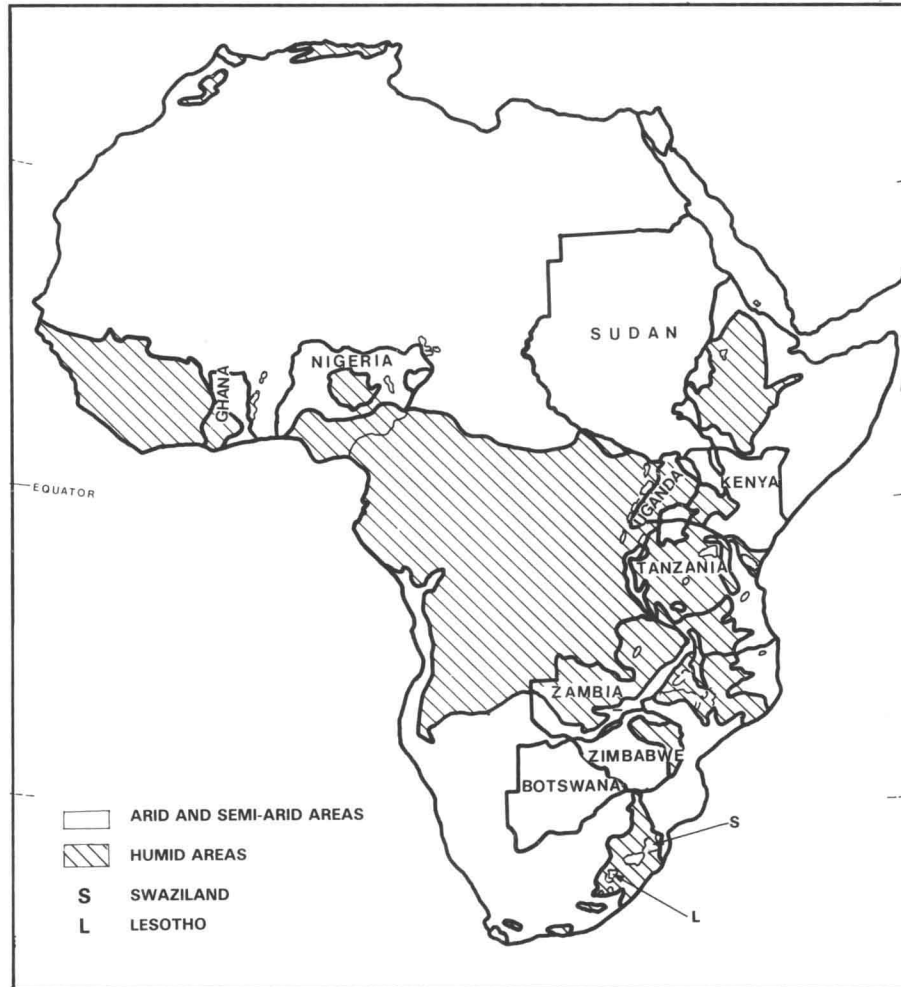


FIGURE. Generalized climatic zones of English-speaking countries in Africa

or semi-arid and liable to degrade to desert conditions. Large areas of five of the countries considered here are within the arid zone and in further areas the seasonality of the rainfall limits agricultural productivity.

Until recently, African communities generally subsisted on small areas of cultivated land of about 0.5 hectares per head. But in the course of the present century, very significant changes have taken place; populations have multiplied by a factor of about 5 and commercial outlets have provided the incentive and agricultural innovations the capacity to farm more land. The market for livestock products, together with the growing number and needs of pastoralists, has led to rapid growth in stock numbers. The result is an increase

in pressure on the resources of semi-arid lands, and local scarcity has begun to give arable land a cash value which it formerly lacked.

In consequence of the changing relationships between land and population, there are dangers to both. Land may be overworked and so lose its productive capacity; while a relatively small group of people might acquire a disproportionate share of the land resources available and so deprive others of the basis of their security.

Most African dry areas are given over to *pastoralism*. Unfenced rangeland extends from the desert margins to include thorn scrub, grasslands, and savannah. While the more arid areas can be utilized only by the hardier animals, cattle and

cultivation occupy the less arid regions. Where pastoralism and shifting cultivation prevail, land rights are generally vested in the family, lineage, or clan, although improvements such as boreholes may be privately owned and individual property rights are appearing in areas of settled cultivation, especially where there is cash cropping. The grazing territories of some pastoral communities extend across international frontiers.

Because of the prestige attached to the possession of large herds, the risks of losses in times of drought and the increasing needs of a growing population for milk and for marriage payments, there has been a general tendency for the numbers of livestock to increase. So long as grazing land is a free resource, there is an incentive for each man to build up his herd. Numbers have multiplied in the course of this century and especially in the period since 1950, partly as a result of disease control. It is widely believed that numbers have now exceeded the capacity of the rangeland to sustain production under current management conditions.

At the same time as herds have been increasing in numbers, cultivators have been encroaching on grazing lands, more particularly on the dry season grazing reserve, which reduces the maximum number of animals that can survive the dry season. On the other hand, governments, and in some cases individuals, by drilling boreholes and excavating reservoirs, have allowed cattle to graze rangeland that would otherwise have been closed to them. However, control over numbers and grazing intensity has rarely been effective. (See Hitchcock and Nkwe, chapter 11.) Furthermore, periods of severe drought can result in herds being isolated near wells, but without adequate grazing in the vicinity or along routes to better watered areas.

From the viewpoint of government there would seem to be advantages in settling pastoralists in defined areas where they can more readily be provided with educational, veterinary, and other services. When attempts have been made to establish ranches for individuals or groups of pastoralists, difficulties have usually arisen because of the pre-existing rights of cultivators, or hunting and collecting groups, in areas which have been thought to be available for allocation. When ranches have been delineated, the pastoralists have been inclined to continue to move, especially in times of unusually severe drought or invasion of pests. Furthermore, there is no certainty that

pastoralists will limit their stock to the number their land is capable of supporting in the long term, even though they have long-term rights to a particular ranch.

Indirect management of rangelands is made possible by the activities of a number of government agencies. The selection of sites for boreholes and reservoirs, veterinary clinics, and marketing centres all affect the distribution of pressure on resources; taxation policy can also influence the numbers of stock.

Probably the greatest changes in pastoral society have resulted from monetization. With the demand for meat from urban centres, the need for money to pay taxes, and the desire to acquire trade goods, the offtake from herds has been increasing and production has been becoming more commercialized. But herd owners are in a weak position in relation to traders and are less secure in some respects than sedentary cultivators. As a result, herds are increasingly falling into the hands of urban traders or villages whose young men have been initiated into the practice of animal husbandry. At the same time, individuals among the leading pastoral families have profited from new opportunities to exert their authority through government structures, and, in general, relations within pastoral societies are becoming more individualistic. Groups are less cohesive than was once the case, and this may add to the problems of developing management systems to sustain production from rangelands.

Whereas pastoral societies can exploit the resources of rangeland through individuals or groups concentrating on the well-being of their own herds, *irrigation*, except on the smallest scale, automatically demands co-operation between those utilizing a source of water for crop cultivation. Unless agreement is reached about the division of water, the resulting inequalities will lead to social dissension. Communal activity is also required for building dams and excavating canals. On the other hand, individual investment in sinking boreholes, levelling plots, and raising perennial crops may also be considerable. As a result, tenurial and management practices have evolved in conjunction with technical innovations to a much greater degree in small-scale irrigation than has been the case in pastoralism. Individual tenure seems to be the rule, with the sale of land becoming an acceptable practice where irrigation has been on a modest scale.

The main problems have arisen in connection with large-scale irrigation schemes which have been planned and put into operation by agencies outside the community. Such schemes, involving heavy investment and advanced technical skills, have frequently been instituted by central governments and implemented by contractors, usually from overseas. Cultivators in areas developed through large irrigation schemes are much less mobile and resilient.

In general, it would seem that the complexity of introducing an irrigation scheme operated by indigenous cultivators demands a period of several years for effective management and production methods to be worked out. In the case of the Sudanese Gezira, survey work was commenced in the first decade of this century and a pilot scheme was in operation before the First World War, but the Sennar Dam was not completed until 1925. It was necessary to acquire the land on a long lease and to work out a system of tenancy agreements, which has been criticized but which has worked reasonably well. Elsewhere, and more recently, funds have been expanded rapidly and suddenly and it would seem that insufficient time and care have been taken to solve technical and planning problems and to ensure the well-being and willing participation of the agricultural communities affected.

Land Tenure

The Meaning and Significance of Tenure

The study of land-tenure systems analyses the socio-political relationships between man and land and between man and man in respect of land. These relationships have always been fundamental in any economy or society, and they remain particularly so in pre-industrial societies where land usually constitutes the primary form of wealth and source of power, an indispensable factor of production and a major determinant of social structure.

In a narrow legal sense, land tenure is concerned merely with the differential distribution of ownership and usufructuary rights in land and water among persons or groups in society. In the much wider sense employed here, it embraces the form and composition of the whole pyramidal power structure relating to land: a power structure which governs access to natural resources, which moulds the incentive, opportunity, equity and reward patterns in land use, which brings together

governmental, planning, professional, corporate, family, and personal endeavours and investment, and which determines the shape of many socio-economic institutions and relationships in land-based societies.

Tenure relationships can regulate the security of the individual or group and hence influence social stability. They can dominate access to credit and to new technologies, and they may also help to determine the levels of capital formation and investment. They may exert considerable influence over income distribution and consumption patterns, over rural employment and the differentials of labour absorption capacity, over the substitution of labour for capital, over the size, manner of extraction, and mode of utilization of the agricultural surplus, and over the intensity of land use.

Tenurial relationships may also present a primary obstacle to economic development, to new enterprises, and to social change. They may reduce or frustrate economic opportunities; legitimize existing inequalities; limit the power of choice and action of families or individuals; or curtail rights of association and prevent the achievement of minimal social and political freedoms.

In particular, property rights can operate as a social support, bringing with them security, confidence, incentive, or group identity. But imbalance will produce dependence and disharmony, and the institutions of private property may come into conflict with human rights and concepts of "social justice." Ownership of land has frequently carried with it control over rural labour, control over the local hierarchy in both formal and informal leadership, control over investment of social overhead capital, over religious institutions, and even over government itself. In a pre-industrial situation a maldistribution of land ownership can cause the polarization of wealth and power, and hence a distorted pattern of income, savings, investment, employment, and internal terms of trade.

For these reasons, land tenure systems should be of central concern for political leaders, economic planners, and architects of social policy, for they link "human" with "natural" resources, and it is only through their examination and analysis that this fundamental relationship may be understood and thereafter planned. In the study of land tenure systems, we have an analytical tool, applicable both to urban and rural land, which enables us to come to grips with a wide range of the deeper structural problems of development.

A search must be made for new and alternative forms of socio-economic organization relating to land. Such organizations are cultural inventions and will reflect cultural values. There is no simple answer; no single system is universally acceptable as ideal and there is no standard formula. Development has been achieved within a variety of systems and hard experience has shown that tenurial institutions can seldom be successfully transferred directly from one country to another.

The Nature of Traditional African Tenure Systems

In this section it is proposed to present a simplified model of the traditional tenure systems thought to have predominated in Africa south of the Sahara during pre-colonial times. A wide range of variations and permutations doubtlessly existed, particularly between cultivating and pastoral economies, and it is necessary now to generalize and to simplify. Nevertheless, many salient characteristics are still evident in current practices.

The systems were based upon the blood relationship between lineage head and lineage member, and the basis of this relationship was social and political. The community was utterly dependent upon land, but land use was only incidental to this relationship. As these societies became more firmly established, the heads of lineages or descent groups were recognized as holding administrative powers over land. These included powers of allocation, revocation, and reallocation amongst their lineage members, and the latter received users, rights for purposes of habitation, cultivation, or grazing only.

The closest possible bond was generated between members of the group and the land from which they drew their sustenance, and it was quite impossible to visualize one without the other. Some groups went further and attached a religious significance to land as the earth-goddess and it is from these traditional "cognatic" (i.e. relating to "cognates" or persons claiming descent from the same ancestor) interests that there arose the concept of land as a sacred family trust. The essentials of this concept are the identification of the land with the family through corporate ownership, the continuity through time of both the family and its land holdings, and the limitations of the powers of the present land user by the rights of both the dead and the unborn.

Land came to be traditionally recognized as the main element providing security and identity for

the group and a high sense of dependence on land was inculcated (Busia 1971). Its emotional and spiritual significance came to evoke a religio-mystical response completely alien to Western commercial values. Clans were seen as belonging to the land, rather than the land belonging to the clans. To be deprived of land was an emotional shock, a psychological trauma, rather than merely an economic loss.

There was a pre-eminence of community interest, yet because it was generally in adequate supply, land was seen as a "free good." In accordance with the concept of a sacred trust, interests in land were not negotiable; to sell land was inconceivable as this would be to defraud generations yet to come. The inalienability of land outside the family became the salient feature of this form of tenure.

Within the descent group each member of marriageable age had a right to the possession and use of a portion of group land. It was obligatory upon the hereditary chief or family head to allocate land on the following general conditions: that the overall distribution of land within the group was equitable and each member received sufficient for his subsistence needs; provided certain social obligations were discharged, that the allottee could remain in possession indefinitely; that the use-right was not transferable, except possibly through a pledge within the group (a form of mortgage in which the mortgagee goes into possession); that investment of labour and latterly even of capital (e.g. on planting tree crops or improving water supply), did not entitle the group member to claim separate ownership of his allotment, but only of his improvement; and that, on the death of the allottee, his successors normally remained in possession. The burial of the dead of several generations on the holding tended strongly to reinforce the successors' claim to continued possession.

With the consent of all its members, a descent group could grant use-rights over unallocated land to "strangers," defined as any persons not belonging to the group concerned. Such a grant was usually conditional upon the payment of periodic dues, not as economic rental but as tribute in acknowledgement of the grantor's superior interest and the subservient position of the "stranger" (Parsons 1970).

This tenurial system operated in conjunction with primitive levels of technology and was normally

associated with a degree of communal land use, very frequently in shifting cultivation. In respect of grazing land (or cultivable land after the harvest), use-rights were generally exercised in common, any separate property right being deemed to apply to the stock rather than to the land. In respect of land for cultivation, the actual user was generally the immediate or nuclear family and, within the nuclear family, cultivation was carried out jointly by family members. In addition, there was likely to be some degree of communal effort outside the nuclear family, particularly in initial clearing and harvesting, probably with the help of the traditional beer-party. But there was usually a limit to spontaneous co-operation of this sort. Communal effort was usually sporadic and reciprocal and should not be allowed to obscure the fact that use-rights were allocated to the nuclear family.

The role of the hereditary chief or family head did not extend to land management, nor was there any concept of resource conservation.

An Evaluation of Traditional Tenure Systems

For the most part, these systems were well adjusted to the physical and biological environment under which they evolved, for under the marginal conditions frequently encountered in Africa, any failure to adjust would quickly have spelt disaster. They may be described as having been in a "stage of symbiotic equilibrium with ecological conditions" (FAO and ILO 1970). The system of shifting cultivation (e.g. the *Citemene* system of Zambia) represents an adjustment to marginal conditions in climate and soils; it is not ecologically harmful provided the cultivation cycle is sufficiently long to allow for the natural rejuvenation of fertility.

These traditional systems were, and residually still remain, integral and inseparable parts of the social structure. Through a close connection with the elemental basis of survival, they offered a means whereby a society could cling to a familiar way of life, closely linked to an enduring past.

These systems were essentially defensive; the group was protected against centrifugal tendencies and against anti-social behaviour by individuals because joint ownership guarded against alienation leading to dispossession of group members and their descendants. Under the degree of population pressure experienced, these systems provided all the security necessary for subsistence cultivation and grazing and did not, in fact, ex-

clude cash cropping when opportunities later presented themselves. The non-negotiability of interests in land continued to provide a defence against the social disruptions to which most individualized systems of tenure have been prone, such as the excessive aggregation of property rights, absentee landlordism, and overburdening indebtedness. The practice of allocating approximately equal shares of land to all lineage members helped to avoid intracommunity jealousy; the systems tended to promote cohesion and harmony by providing a sense of corporate responsibility and mutual aid and they militated against the development of class distinctions and antagonisms. Moreover, the method of allocation produced a small-farm structure in agriculture, and necessarily retained a very large proportion of the population on the land.

When judged on general social or "welfare" criteria, their performance, then, was creditable. Yet, when viewed against more modern production requirements, they will be seen to have provided social security only by limited economic opportunity. They were pre-market, pre-scientific, and pre-capitalist systems, and they were also pre-state (Parsons 1970). How could they be expected to give positive support to the commercialization of agriculture, particularly under conditions of increasing individualizations and to the promotion of higher productivity levels and the accumulation of surplus? How well equipped were they to meet the increasing demands of urbanization or to provide an institutional framework capable of satisfying the needs of society developing within either a mixed or a centrally planned economy?

These systems were inseparable from subsistence or barter economies. Product markets were not highly developed and there was a complete absence of markets in both land and labour. There was also a lack of innovation and negligible capital investment, with very low levels of expertise and standards of living. When viewed against individualistic tendencies, it may be argued that the non-negotiability of land acted as a brake on commercialization and diversification; entrepreneurship and the division of labour were discouraged and the more efficient land user was prevented from acquiring land from the less efficient (Johnson 1972). In these senses, the systems were inclined to be static rather than dynamic.

Corporate ownership sometimes led latterly to the loss of development opportunities and could stifle

personal initiative and industry. The right to use a resource depended merely on birth rather than on ability or capacity for work; neither reward nor penalty was provided in respect of land use and there were no means whereby the idle or incompetent cultivator could be dispossessed. No channels were provided for the investment of capital in agriculture through the extension of agricultural credit from either state, institutional, or private sources. Consequently, the rural sector was starved of development capital and land was seen merely as a facet of kinship, not as an important link in the process of production. Nor was there the knowledge or the initiative necessary to promote the enhancement of fertility levels.

All in all, therefore, the strength of the traditional systems lay in their ability to provide group continuity at a low level of equilibrium. They must be judged to fail when viewed against the quite different and mainly economic criteria upon which more modern requirements have come to be based.

The consequences of the traditional systems of land tenure in Africa have been profound. There can be no doubt that the nature and incidents of "cognatic" tenure (as the traditional African systems are increasingly called) have on the whole prevented the polarization of property rights and the consequential economic and social differentiations that are so apparent in many individualized systems, particularly those in Latin America. With some notable exceptions, which will be considered more fully below, English-speaking African countries have not been characterized by massive inequalities in land ownership and hence in the distribution of wealth and power. Instead, and notwithstanding the changes and innovations of the colonial period, one should be able to discern in these traditional tenure systems a societal foundation upon which it should still be possible to build.

If this is so, it is submitted that African countries south of the Sahara (and other countries in the Pacific and residual enclaves elsewhere) are facing a task which is generally distinct from the types of land reform demanded by most other third world countries. In these latter countries private property rights are the long-established norm and market forces have allowed the accumulation of all-pervading inequalities in land ownership, for which the treatment must be some form of redistribution, either radical or gradualist. By contrast, in

Africa south of the Sahara, cognatic interests have been the established norm, with individualized interests the notable (albeit increasing) exception. In formulating future tenure policy, therefore, this generic distinction should be recognized and one should think not in terms of "land reform" but rather of "tenure conversion," except in those areas where *both* may be required.

The Socio-economic Forces of Tenurial Change

Although the maritime powers of Western Europe first made contact with western Africa south of the Sahara in the late fifteenth century, the main "penetration" of the continent occurred much later, that is, during the latter part of the nineteenth and the early part of the twentieth centuries. The boundaries of most English-speaking African countries were demarcated at this time, with the establishment of colonial and protectorate governments.

The traditional land tenure systems, as hypothetically outlined previously in the section on the nature of traditional African tenure systems, were by this time already undergoing modifications, for example, through the replacement of hereditary chiefs by appointed territorial chiefs. More particularly, these systems had in some areas long been overlain by Islamic notions of property, as in northern Nigeria and the east African seaboard. The early explorers, missionaries, and administrators came into contact with many tenurial variants, lying mostly but not always within the generalized model already outlined, but they had neither the opportunity nor the inclination to study these systems, which were invariably non-statutory and consequently elusive. As a result, they tended to ignore or positively despise them.

Some administrators, without any sympathetic understanding of likely consequences, followed their own convictions and made sweeping alterations (e.g. Sir Harry Johnson in Uganda); others more openly advocated the displacement of traditional systems by English notions of real property law, particularly where this afforded opportunities for white settlement (e.g. Judge Morris Carter in Kenya); yet others who encountered the Islamic overlay tended merely to confirm the existing structures (e.g. Lord Kitchener in the Sudan and Sir Frederick Lugard in northern Nigeria).

As the cultural conflicts inherent in the intermingling of tenurial concepts became more apparent,