

**Draft: 11 December 2000**

**Comparative Institutional Development:  
Lessons from Rural Land Markets in Africa**

Charles C. SOLUDO  
Department of Economics  
University of Nigeria, Nsukka  
Phone: 234 (42) 457041  
E-mail: [csoludo@infoweb.abs.net](mailto:csoludo@infoweb.abs.net)  
[Csoludo@hotmail.com](mailto:Csoludo@hotmail.com)

## I: Introduction

The implications of informal institutions for economic policy is a sore spot for the new institutionalism, because little is known about the evolution, emergence, and decay of informal institutions and how they interact with formal institutions. Most studies either ignore informal institutions or treat them as exogenous variables. From the viewpoint of structural policy, it is of the utmost importance to understand to what extent policy makers can influence directly informal institutions, and within what timeframe; the extent to which informal institutions adjust to formal institutions; and the extent to which the stock of informal institutions will undermine specific public policy initiatives. Questions of this nature are of paramount importance for policies of economic development or transitions to markets...(Eggertsson, 1997:1192).

The fundamental concern of the Hamiltonian political economy and the new institutional economics is 'how to organize so as to attract capital and secure investment'. According to mainstream thinking under this framework, informal organizations and institutions can support commerce and trade, but they cannot support large-scale industrial capital. Ultimately, 'the defense of industrial capital formation requires formal institutions, but only of a particular kind' (emphasis added) (Bates, 1996: 5). And such formal (Western?) institutions are based on property rights systems founded on principles of contractual law and economic efficiency (Migot-Adholla, et al, 1991). Thus, wherever investment and growth stagnate or productivity suffers, the institutionalist would locate ready explanations in the insecurity of property rights and weak enforcement of contracts. To prosper, economies dominated by traditional institutions (including rural African economies) must rapidly 'reform' to adopt or adapt to the more modern, legal-formal institutions.

This orthodoxy has been the organizing framework for land reforms in Africa since the colonial era. Although it is difficult to generalize for the entire Africa given differences in historical, ecological, and cultural circumstances, it is nevertheless fair to state that despite nearly a century of attempts to push towards formal land markets, the traditional institutions still dominate (especially) in the rural areas. Different gradations of formal-indigenous institutions characterize the land markets in individual countries but "in all countries, autochthonous communal land-tenure, private property, and state property now coexist, overlap, and often contradict each other; whereby indigenous communal tenure institutions are at least tolerated" (Kirk, 1999: 35)<sup>1</sup>.

The experiment raises three fundamental issues/questions. First, to what extent do formal market (property rights) institutions deliver the efficiency gains they promise especially in circumstances where effective demand for such institutions are either absent or weak? Are the indigenous institutions well understood and what explains their resilience despite a century-old effort at fostering formal institutions? More fundamentally, how is the evolution and efficacy of formal market institutions shaped by societal forces and exogenous shocks (resistance versus innovation and

---

<sup>1</sup> African approaches to land tenure can be classified into three main types: (a) Countries that allow the acquisition of individual title, such as: Cote d'Ivoire (without any restrictions on the power of the title-holder); Kenya and Malawi (with restrictions on the title-holder); (b) Countries that recognize different types of tenure: Senegal and Sudan (both individual title and nationalization of nontitled lands); Botswana, Ghana, Lesotho, Liberia, Mali, Sierra Leone, Swaziland, Uganda, and Zimbabwe (individual title, indigenous systems and public lands); and Cameroon (individual, group, indigenous systems and public lands); (c) Countries that vest title to land in the state, so that individuals have rights only of use and occupancy: Ethiopia, Mauritania, Nigeria, Tanzania, Zaire, and Zambia. It should be noted however that there is an overlap between countries in groups (b) and (c), where indigenous systems are recognized in group (b), this usually means that the individuals or groups covered by those systems have rights only of occupancy and use (See Feder and Noronha, 1987:150)

assimilation)? What lessons can we learn about institutional development that simultaneously achieves the objectives of efficiency, equity/legitimacy and hence sustainability?

The paper focuses on rural land markets for two reasons. First, the bulk of agricultural production takes place in the rural areas and this rural sector has often been characterized as being stagnant in most countries. Therefore, it provides a good test case for the interaction of formal and indigenous institutions, and their implications for investment and output growth. Second, the rural sector provides a good laboratory to observe the interactions of societal dynamics and external shocks in structuring the development of market institutions. Much of the material presented here come from secondary sources, and complemented with oral interviews with senior officials in the policy institutions in two countries—Nigeria, and Kenya.

The rest of the paper is organized as follows. Section II provides an overview of the characteristics and conceptual framework for thinking about land markets in Africa. In section III, we evaluate the institutional reforms and outcomes in selected African countries and summarize the key conclusions from the survey. Section IV articulates a framework for thinking about institutional development by examining the major lessons learnt from the rural land markets in Africa.

## **II: Characteristics and Conceptual Framework**

### *Characteristics of African land markets*

There are several features of the African land market that have shaped the differences in evolution of land markets relative to other regions of the world and across sub-regions and countries within Africa. First, on the aggregate, Africa is a land abundant region, with average land per person relatively larger than elsewhere in the world. Population is sparsely distributed, making investments in irrigation and transport more expensive than elsewhere. Where land is abundant, it has little market value and thus affects the evolution of market transactions. Second, the region's land ecology has several distinctive features (Voorman, etal, 1999). The kind of volcanic and alluvial soils on which the Green revolution was introduced in Asia are rare in Africa and basement soils are common. For agricultural purposes, large parts of Africa have short or unreliable growing periods, while a large proportion of the land is either marginal (capable of producing only a third to half the productivity of suitable land) or unsuitable for rain-fed productive agriculture. Of the 806 million hectares that are cultivable, about a quarter (200 million) is being utilized, and about half of this cultivated space belongs to the marginal land. Third, huge regional differences exist, and land is very unevenly distributed across regions and countries. Of the 199 million hectares of Africa's reserves of decent land, 93 percent (185 million hectares) are in Central and Southern Africa, and the two regions cultivate about a quarter of the suitable land. In East and West Africa, the situation is dramatically different. East Africa already cultivates about 60 percent of its suitable and very suitable land. The Sahellian region cultivates 99 percent while it is 113 percent in West Africa (Harrison, 1990: 49).

Fourth and tangential to the uneven distribution of land is the fact that population concentration (within and across countries), choice of crops and risk dispersion have been carefully matched to the land (soil) ecology, climatic conditions and availability of alternative means of livelihood. Furthermore, the fragmentation of a typical African country into different (sometimes antagonistic) ethnic groups creates segmentation of another type. Mobility of population across regions is relatively restricted (not by law but by fears of expropriation and safety). Citizens who settle in different cultural-linguistic zones are often considered as 'foreigners' or 'strangers'. Such 'foreigners' in their own countries are often the first to be attacked in any inter-ethnic clashes. Investors generally resist large-scale sunk investments in regions too far from theirs for fears of expropriation. Thus, land abundant locations

coexist with land scarce zones, with differential intensity of market activities in land and hence the evolution of market institutions. These endogenous mechanisms in turn have shaped the differential (multi-speed) evolution of land markets and the associated institutions within and across countries in Africa. As a consequence, land markets are characterized by dualism of several kinds—(rural versus urban; formal-legal versus informal-traditional) and different regions within a country could be at different points on the spectrum of formal-legal versus informal-traditional land tenure systems<sup>2</sup>.

### *Evolutionary nature and endogeneity of land tenure institutions*

The African societies and their institutions have been primarily shaped by endogenous mechanisms of dynamically evolving production processes (from hunting and pastoral production structure, through village settlements, and also towns and urban areas). In the traditional society, the key institutions of the household, the village and the kin group helped to lower the costs of moral hazard and adverse selection (see Collier and Gunning, 1999:6). Within the kin group and the village, there was little privacy and hence near complete information. Membership of the group provided insurance against risks, access to informal credit, and security. In the absence of formal safety nets or social insurance, the kin group or traditional system provided a full package of social support system—based on the extended family system, kin group, and village networks as well as common pool approach to management of productive resources. Lineage rules of inheritance helped to enforce inter-generational transfers. The threat of sanctions which included exclusion from the social structure and its benefits was the major instrument of enforcement of the rules. Even when households have become dispersed geographically in response to risks (to urban areas and other locations) the common inheritance of land in the village and the social support system of the traditional society continues to bind them together. Over time and space, the dynamics of the traditional society has evolved in a manner consistent with the fundamentals driving the demand for change. Such an evolutionary property rights model can be illustrated with the rural land markets in Africa.

The logic of the evolutionary property rights school can be elaborated as in figure 1 below (see Platteau, 1996:35), and Demsetz (1967: 350) gives a succinct statement of the central thesis as follows:

Changes in knowledge result in changes in production functions, market values, and aspirations. New techniques, new ways of doing the same thing—all invoke harmful and beneficial effects to which society has not been accustomed. It is my thesis that the emergence of new property rights takes place in response to the desires of the interacting persons for adjustment to new cost responsibilities. The thesis can be restated in a slightly different fashion: property rights develop to internalize externalities when the gains of internalization become larger than the costs of internalization. Increased internalization, in the main, results from changes in economic values, changes that stem from the development of new technology and the opening of new markets, changes to which old property rights are poorly attuned.

The key point of the thesis is that institutions were subject to competitive pressures and that inefficient institutions would collapse under such competition and is replaced by more suitable ones. In the

---

<sup>2</sup> Land tenure comprises the customary and legal rights that individuals or groups have to land, and the resulting social relationships (Kirk, 1999). These rights may be legally established (formal) or customarily practiced (informal). The African 'indigenous' land rights, though with features of heritability, security and transferability, can be distinguished from the Western property rights systems in two ways. First, the indigenous rights are informally recognized and sanctioned, but often with no legal status. Even when there is legal recognition of 'traditional' or 'indigenous' tenure claims in general, the day-to-day workings of establishing, maintaining, and enforcing one's land rights seldom take place within the formal legal sector, but rather within informal, local institutions. The second difference is that in the indigenous system, individual's rights are conditioned by group rights or secondary rights which are encountered much less often in contemporary Western property systems. Group rights have however become weakened as individual use rights and rights of transfer become widespread (Atwood, 1990: 662).

context of land markets in Africa, the property rights school would point to what is perceived as a fundamental disjunctive between the indigenous system which embodies extensive farming system on the one hand (under a land abundant society), and the requirements of output growth in the context of intensive agriculture on the other hand (under increasing population pressure and land scarcity). In a land abundant society, it has little price; since there is no shared cost associated with its use, there are no externalities. Hence, there is no positive value to society of creating clearly defined property rights. But as competition for the use of land increases due to population growth and/or growth in product demand, 'communal ownership becomes unstable and produces harmful effects in the form of mismanagement and/or over-exploitation of the now valuable resource. Efforts at husbanding and conserving it are discouraged and potential social benefits are lost, simply because property rights are not there to guide incentives to achieve adequate internalization of externalities' (Platteau, 1996: 31). In such a circumstance, the 'old' indigenous institution should give way to a clear assignment of property rights, which, according to Coase (1960) leads to Pareto-optimal outcomes regardless of whom the rights were assigned<sup>3</sup>. In summary, the model makes two major points: first, that land arrangements and practices, far from being static, are evolving autonomously under the pressure of growing land scarcity; and that the significant shifts which thus take place are geared towards increased individualization of tenure rights and increased transferability of land. Figure 1 below captures the two points. It shows how population growth and increased commercialization of agriculture ignite a sequence of effects that eventually result not only in efficient land allocation and high rates of capital accumulation in agriculture but also leads to budgetary savings, social peace and political stability.

This evolutionary model fairly characterizes the actual experience of African societies in the last century (see Kirk, 2000; Migot-Adholla, et al, 1991; Platteau, 1996, pp.32-3). Three broad land tenure systems may be identified based on the process of land intensification as a result of the interplay between population pressure, technological changes, and agricultural commercialization. At the earliest stage, the society transformed from the hunting age (when no one owned the land and there was open access), to one dominated by pastoral and sylvan economies where all land was communally owned. Under communal ownership (common property), the group of authorized users was clearly defined (kinship or village), and there were rules specifying their rights and obligations with respect to the land and its resources. Growing population and commercialization of agriculture (especially since the colonial era when commercial cash crops such as cocoa, oil palm, coffee, cotton, etc were introduced) led to remarkable flexibility in the indigenous land tenure system. The period of fallow shortened and shifting cultivation was replaced by systems of rotation and soil improvement. Demand pressure led to gradual but significant changes in land tenure practices in the direction of enhanced individualization of tenure, larger incidence of land sale transactions (first disguised, then increasingly open), increased use of money in connection with land loans, and a shift from matrilineal to patrilineal inheritance patterns. Such pressures (which were evident even in pre-colonial times in some localized areas of high population density) increased emphasis on individual (or family) appropriation of land for exclusive use while rules of inheritance have evolved towards a more direct transfer between father and sons. Customary modes of land transfer through gifts, exchanges, loans, renting, pledges, or possessory mortgages evolved and intensified. Land sales within the indigenous tenure has also evolved—at first sanctioned only among members of the group (of common descent or residence), later to outsiders with approval of the group or its head, and later in some cases without such consent.

---

<sup>3</sup> Emphasis on clear property rights stemmed from the misunderstanding of the African indigenous land tenure system. The notion of common property was confused with 'open access', and thus the assignment of secure rights was to prevent the so-called 'tragedy of the commons'. In other words, the analysts misunderstood the communal rights to land as general rights to land which fail to exclude others from its use.

The dynamics of indigenous tenure institution has accelerated, depending on the objective conditions of societies, and sometimes in spite of the formal land laws enacted by the state (especially with respect to land transfers).

Platteau (1996: 33-4) underscores the point that the inherent dynamics of the African indigenous tenure system has been ignored or misunderstood by mainstream analysts and policymakers. First, they failed to see that individual tenures can exist under a general system of corporate ownership; that communal arrangements are genuine multi-tenure systems with different land uses calling for different tenures; and that land-use rights, most often to a specific plot of land, are held by individuals or households. Second, the mainstream view fails to understand that the indigenous system is flexible enough to allow the proportion of lands held under relatively well-secured rights of individual possession to increase as the need arises for agricultural intensification and the accompanying long-term investment. Third, it is little understood that the changes that have taken place have often not required radical revision of existing tenure arrangements, nor have they often involved a conscious decision by the community: instead, change has come in an unfolding of the internal logic of indigenous tenure systems in response to new circumstances (see also Bruce 1988).

#### *Land reform as shock to quicken or introduce efficient institution*

Regardless of whether or not the dynamics of indigenous institution was properly understood, two questions persist: how efficient is it in terms of delivering investment in, and growth of, agriculture?; and, when and how does the government intervene to supply the 'required' institutions when the demand pressures exist?

On the first question, the mainstream analysis insist that indigenous tenure does not confer secure property rights, and thus is inappropriate to spur large-scale irreversible investments in agriculture for three reasons (see Sjaastad, 1997: 551). First, the lack of legal title of land reduces its value as collateral, thus increasing the price of capital and reducing the value of investments. Second, high transaction costs in establishing ownership will reduce the value of investments, or, conversely, any residual uncertainty about ownership will have the same effect since future returns may be lost. Third, the absence of a land market means that farmers cannot convert fixed land assets into other forms of assets, thus reducing the value of investment to the farmer.

For policy, two lines of action are possible, depending on how policymakers perceive the speed of adjustment from the existing to the desired. One model assumes that the discrepancy between the existing and required institution does not generate an autonomous response to eliminate the discrepancy. To work, the government has to take significant steps to ensure a complete transformation from communal (indigenous) tenure system to the 'required' formal system through land titling. This aggressive (shock-therapy) approach characterizes the policy in several African states (particularly Kenya, the so-called Africa's test case in land registration). An alternative (evolutionary) model instead envisages a dynamic picture in which indigenous land rights, under the impulse of market forces, are capable of significant autonomous evolution in a beneficial (efficiency-enhancing) direction (see figure 1). In other words, the increased population pressure and commercialization of agriculture would somehow work out their own institutional solution. But while these pressures create demand for institutions of a certain kind, the government is expected to supply them—to formalize and consolidate the newly emerging system of private property rights. Whether under the aggressive reform approach or the evolutionary model, the essential idea is the inevitability of transformation to individual titling and commoditization of land as society matures.

Following this dominant intellectual climate, the African policymakers were convinced that tenure reforms were long overdue. As Bruce, Freudenberger, and Ngaido (1995:1) observe, “In the post-independence decades, almost every African country attempted to reform its indigenous land tenure system...The new elite who came to power...believed that these community-based tenure systems were outmoded and had to be replaced”. Replacement of the existing (outmoded) indigenous tenure system was the key objective, and individual titling or registration was the ‘new institution’-- considered the most effective means of ensuring secured property rights on land and hence increased investment in agriculture.

So far in Africa, such land titling or registration entails legal sanctioning of primary land claims, which are already recognized informally by the local community. It entails taking these claims out of the realm of informal lineage or community land ownership and making them fully legal, formal and individual; measuring precisely the boundaries of each claim; recording claims in a formal, state-administered land records system; and providing a state guarantee to the claim that appears in the land records system (Atwood, 1990: 659).

Although individual countries differ in terms of the specific contents and speed of their tenure reforms, it should be observed that more fundamentally and from the perspective of institutional development, the tenure reforms sought to apply a ‘shock-therapy’ to quicken a process which the evolutionary model predicts would happen anyway (albeit too slowly), or to ‘introduce’ an efficiency-enhancing institution in a context that it did not exist or that did not conduce to its emergence. Where indigenous system was allowed to coexist to some extent with the formal system, it was hoped that it would be absorbed or assimilated by the formal system. Did this experiment in conscious and aggressive institutional development succeed? We examine specific country experiences to shed light on this question.

### **III: Outcome of Land Reforms: Evidence from Selected African Countries**

The 48 Sub-Saharan African countries are as diverse as they are similar. Different histories, ecological and geological features, and development experiences have shaped the evolution of tenure regimes in different countries. Over all, three major typologies of land tenure can be discerned from the region and they are (see Feder and Noronha, 1987: 150-1):

- a) Countries that allow the acquisition of individual title, such as: Cote d’Ivoire (without any restrictions on the power of the title-holder); Kenya and Malawi (with restrictions on the title-holder);
- b) (b) Countries that recognize different types of tenure: Senegal and Sudan (both individual title and nationalization of nontitled lands); Botswana, Ghana, Lesotho, Liberia, Mali, Sierra Leone, Swaziland, Uganda, and Zimbabwe (individual title, indigenous systems and public lands); and Cameroon (individual, group, indigenous systems and public lands);
- c) Countries that vest title to land in the state, so that individuals have rights only of use and occupancy: Ethiopia, Mauritania, Nigeria, Tanzania, Zaire, and Zambia. It should be noted however that there is an overlap between countries in groups (b) and (c), where indigenous systems are recognized in group (b), this usually means that the individuals or groups covered by those systems have rights only of occupancy and use. These countries therefore share the features of countries in (c), such as Botswana and Zimbabwe. In Malawi, indigenous systems are recognized for untitled land. Also, in Ghana the rights of sale of land under indigenous systems are vested in the chiefs— a system, which was introduced by the British.

Evident from the classification is no discernible pattern of approaches to land tenure reforms—either by sub-regions (East, South, West and Central) or across colonial heritage (essentially British and the French). Each group has some mix of both geographical and historical experiences.

Here, we draw inferences from published materials on the experiences of a sample of countries, being careful to select at least one country from each group as follows: Group (a) Kenya; Group (b) Ghana; Cameroon; while for Group (c) we select Ethiopia; Nigeria; Tanzania. Illustrations from South Africa underscore the peculiar experiences of countries with significant settler (foreign) populations such as Namibia; Zimbabwe; Angola; etc where earlier policies of unlimited individual titles have generated socially unacceptable inequality. The selection of countries is mostly based on availability of published country experiences.

The trend that emerges from all the experiences is that there is no clear evidence of greater efficiency of land markets in any of the approaches itemized above, and there is no evidence of differences in productivity of agriculture across tenure systems. We elaborate these points below.

First, formal legislation of land laws and titling/registration has not necessarily increased the depth of the formal land markets, or its efficiency of operation. A relatively efficient land market may be thought of as one characterized by the level of ease of entry into the system and of carrying out land market transactions, both of which depend on the availability of adequate information, secure tenure arrangements, and appropriate registration/recording mechanisms. On the contrary, inefficient land markets could have a number of easily recognizable problems such as: a) overcentralization of management and administration; b) inappropriate, over detailed, and inflexible regulatory and legal frameworks; c) lack or inappropriate use of resources and political will to tackle problems; and, d) administrative systems lacking in efficiency, equity, accountability, and probity (See Farvacque and McAuslan, 1992: vi-viii). As Farvacque and McAuslan illustrate, many of the existing tenure systems in and out of Africa fall under the inefficient category. For example, in Cameroon, they note that it is common for land registration to take between two to seven years, and this may explain why out of an estimated 1,600,000 plots countrywide, only 100,000 (6%) are registered. The process in Ghana is equally complex, with the ownership of land in the hands of the state and the many Stools (customary authorities). In the case of the stool lands, for example, it has been estimated that the tedious process of access to land involves about twenty major steps, and with all its complexity could take several years. These statistics are not unusual for most Sub-Saharan African countries. The authors also note that such cumbersome process is not peculiar to Africa. In Peru, the adjudication process of state lands takes about 43 months and is the result of 207 bureaucratic steps involving 48 different government offices.

Beside the issues of efficiency in the operations of land markets, there is the question of whether differences in the land tenure institutions (as permitted by law) have led to different outcomes—in terms of marketability/transferability of land rights, promotion of investment, securing credit, and impact on inequality. In particular, we examine evolutionary process of institutions and infer whether the rights granted by the legal system are de facto rights. To illuminate this question, we examine some specific country experiences.

#### *Case study one: Kenya and Tanzania*<sup>4</sup>

---

<sup>4</sup> See Pinckney and Kimuyu (1994) for an analysis of a detailed field survey of two similar coffee growing communities in Kenya and Tanzania, and we summarize their key findings below.



Both Kenya and Tanzania are former British colonies and are neighboring east African countries. After political independence, both countries have been two extremes in terms of the kinds of land market institutions which they tried to evolve since the 1950s (freehold, private ownership in Kenya versus state ownership and allocation system in Tanzania). The colonial authorities in Kenya were persuaded by the argument that individual property (as opposed to community) property rights on land would spur growth through increased credit resources, higher security of investment, and increase in land area controlled by the most efficient farmers. They also believed that the emergence of a class of farm owner-operators would lead to political stability (see Swynnerton, 1954). Consequently, the colonial authorities initiated the process of land registration throughout Kenya in 1956, and the government has maintained this policy after independence until today.

Tanzania had a different concern. It was feared that the same process that leads to the concentration of land in the hands of more efficient farmers could lead to landlessness and poverty for a large percentage of the population. Thus, after independence, the government of Tanzania attached greater weight to these equity concerns, and abolished private land titles—with the purchase, rental or sale of land forbidden.

To study the changes through time in the two institutional arrangements, Pinckney and Kimuyu mounted field surveys in two similar coffee growing communities in Kenya and Tanzania, sampling 115 households in each community (25% of community population in each case), and visiting each household at least five times between December 1991 and August 1992 (see Pinckney and Kimuyu, 1994 for detailed description of the history and characteristics of the study areas). Both communities share some characteristics—Kikuyus in Kenya and Chaggas in Tanzania—as the atypically entrepreneurial ethnic groups in both countries, same patrilineal system of inheritance and identical culture, similar agro-ecological features, average household size of six, although the median farm size differs in both locations—two in Kenya and four in Tanzania. The authors investigated the changes in the distribution of land among the families over time, as well as changes in the use of credit and markets for land—to see if the respective policies produced the intended effects.

The findings from the surveys are quite interesting. First, if the mainstream hypothesis is right, the Kenyan community should have more land-secured credit, more active land market and investment, and greater inequality resulting from land concentration over time. The authors are not able to confirm any of these hypotheses, and find ‘virtually no land-secured loans in either location and approximately equal amounts of land sales’. The outcome for Kenya is certainly different from the large impact of titling on land secured loans that Feder et al (1988) found in Thailand.

Second, titling did not enhance security of tenure, and hence there was no additional incentive to invest on land. There was no evidence of small, inefficient farmers selling their farms out to larger, more efficient farmers. This evidence is corroborated by Collier and Gunning (1999: 8) who observed that “land rights have not yet evolved to the point at which land-scarce households can purchase land on a scale sufficient to offset the effects of differential inheritance”.

Third, data on the purchase, sale and inheritance of land show no significant difference between the Kenyan and Tanzanian communities (see appendix table 1). The Kenyan households purchased more land (mostly outside of their community and primarily in the areas formerly farmed by European settlers). Pinckney and Kimuyu conclude that once the distant purchases are excluded from the total purchases by the Kenyan community, the percentage of local land purchased in Kenya and Tanzania as percentage of land held at independence is virtually identical at 8% - 9%. It should be noted however that the private ownership in Kenya has led to an open market in certain locations, especially in the

urban areas and former White Highlands. Land owned in such areas account for about 14% of all land owned by the Kenyan households in the sample.

Fourth, there is no significant difference in inequality as a result of the purchase and sale of land in the two communities, although changes in land inequality have been larger in Kenya. Of recent, the tensions and crisis resulting from the inequality have led to calls and efforts towards land reforms in Kenya—Africa’s test case in land registration (see box 1 below).

**Box 1: Land and Inequality in Kenya: A time bomb waiting for radical reform**

Estimates indicate that Kenya in 1993 had about 240 urban centers with a total population of approximately 5.6 million, up from 4.6 million in 1990. Currently, Nairobi (the capital) has close to two million people, 55% of whom occupy 4 percent of the total residential land, making the demand for land very high.

According to experts, the crisis is caused by the combined effects of unsustainable demographic patterns, especially rapid urbanization, objective limits to available land resources, limited application of scientific knowledge in facilitating sustainable land use, increasing social injustice through unlimited appetite for land, and a blend of incompetence and corruption on the part of Government officials in land allocation. Land ownership, according to public officials and politicians, is true sign of power and wealth, and they will do all they can to influence its allocation. Discretionary allocation of publicly-owned land to individuals has become a means of dispensing political patronage. The law empowers the President, for instance, to allocate public lands to individuals, groups or organizations. The allocation system is so flawed that even the Minister of Lands and Settlement admitted that “the Boards, together with district land tribunals, are not well run and should be streamlined”. So far, no one in government has explained to the landless in Coast Province why they are squatters on their own native lands, yet a few politicians and their allies have been allocated huge chunks of land and have even been issued with title deeds.

The consequence of the extreme equality engendered by the discretionary and distorted land market in Kenya (government allocation of public lands and unlimited private ownership) leads to frequent and violent land disputes—which often cause deaths, court battles and wanton destruction. In a recent clash between traders and Muslim youths over a plot of land in Nairobi’s South B estate (comparable only to the 1992 and 1997 infamous land clashes), Kenyans showed they could do anything when it comes to land matters. The fracas left churches, business enterprises and a mosque razed to the ground.

Why do land issues generate so much heat and tension in Kenya? According to a University lecturer at the University of Nairobi (Washington Olima) “land is the lifeline of every living organism. Man needs it to exist socially, economically and politically. They can till it, give it out as a present, build on it or use it as a collateral. That is why when it comes to land, nobody reasons”. Culturally and socially, land is a status symbol, and to some it offers a diverse source of power, wealth and prestige. ‘Unfortunately, some of these attachments are reflected nowhere in Kenya’s land laws. Thus, land in the country is a time bomb ticking away’. According to an expert—Tom Konyimbih—a university of Nairobi lecturer, ‘it is now necessary to redesign our land laws to conform to Kenya’s socio-economic circumstances which the British law we inherited did not take into account’.

Recently, Kenya has set up the Njonjo Commission to undertake a broad review of land issues and to recommend the main principles of a land policy framework. But Konyimbih cautions that the Commission is not a panacea for ending disputes since no Act of Parliament is fully implementable.

Source: Daily Nation (Daily newspaper published in Kenya): Friday, 8 December, 2000; p.8.

*Case Study 2: Cameroon (Francophone)*<sup>5</sup>

The experience of Cameroon with land reform provides evidence of both persistence of indigenous system as well as some incremental innovation (institutional adaptation).

In 1974, Cameroon passed the Lands Ordinance, and with this the Government hoped to encourage the formation of an agrarian middle class, a group of farmers capable of managing large, mechanized

<sup>5</sup> See Firmin-Sellers and P. Sellers (1999) for evidence on the effects of Cameroon’s 1974 Lands Ordinance.

farms in the rural areas. Titling was the major instrument to achieve this objective. It was believed, as in the case of most reforms in Africa, that private title would enhance individual tenure security, giving farmers an incentive to invest. Furthermore, private title was expected to give farmers access to credit markets (because land could be used as collateral), thus enhancing farmers' capacity to invest.

Has this Ordinance worked as expected? Firmin-Sellers and Sellers (1999) conducted a field survey in two Bamileke kingdoms in the western and northwestern provinces: Babete and Akum over the period 1974- 96. Historically, the Bamileke region is one of the most densely populated areas in Cameroon, and is heavily involved in commercial coffee production and cattle rearing. Increasing land shortage is a feature of the region, thus making the region a test case for the evolutionary theory of land markets. The findings by Firmin-Sellers and Sellers are largely similar to the findings for Kenya and Tanzania. First, the find that the majority of titles to land have been awarded to state elites (politicians and bureaucrats) and businessmen. Fisiy (1992) found that state elites and businessmen claimed nearly 83% of all titles, and the findings by Firmin-Sellers and Sellers confirm this trend (see table 2 below).

**Table 2: Land Titles granted during 1974-96 in Akum and Babete, by occupation and location**

|               | Akum        | Babete       |
|---------------|-------------|--------------|
| Occupation    |             |              |
| • Farmers     | 17 (22.08%) | 49 (24.87%)  |
| • Businessmen | 35 (45.45%) | 125 (63.45%) |
| • Politicians | 25 (32.47)  | 23 (11.68%)  |
|               |             |              |
| Location      |             |              |
| • Urban       | 0 (0%)      | 147 (74.62%) |
| • Peri-urban  | 61 (77.22%) | 42 (21.32%)  |
| • Rural       | 18 (22.78%) | 8 (4.06%)    |

Source: Firmin-Sellers and Sellers (1999: 1118).

In Akum, farmers and rural dwellers received about 22% of the title allocations while businessmen and politicians, and urban/peri-urban dwellers received about 77% of title allocations. Babete allocated a mere 4% to the rural areas.

Second, a large percentage of the population has been unaffected by the Ordinance. Women particularly have lost. Bamileke custom permits men to exercise ownership rights to tree crops while women exercise ownership rights to food crops, and both have access rights to land. But as men expand their economic profit by planting larger numbers of coffee trees, they deprive women's access for food crops, and the titling process has accelerated this marginalization of women. In the northwestern province, only 3.2% of all titles went to women. In Akum, women won only 5.06% of all titles.

Third, only a few successful applicants have used their title to mortgage and/or sell their land, and so gain access to the nascent credit market. Only about 9.03% of title owners used them for commercial transactions.

Fourth, titling is a long, uncertain process, and also very expensive and corrupt. For example, only 6% of all applicants in Cameroon were successful in navigating the titling process. In Babete, only 18.8% of all applicants got the title, after waiting an average of 6.3 years in each case. The Ordinance required the applicants to pay only a small proportion of the associated costs. Since 1989, Cameroon revised the

fee schedule. The official fees for titling a plot of land in Babete and Akum could range from about \$3,000 to \$5,000 (that is, FCFA 208,294 to FCFA 270,941) in the rural and urban areas respectively. This is in addition to several other ‘unofficial’ fees, which, together with the official fees, make titling too expensive for farmers to afford.

Finally, it is not clear that either the formal-legal or the indigenous land tenure system guarantees the security of tenure. In both Babete and Akum, all the farmers interviewed by Firmin-Sellers and Sellers reported that their land rights had been threatened in one way or the other—either by family members trying to sell family land or by neighbors who trespassed established boundaries. Most of the traditional authorities stated that land disputes were common in their own regions or in neighboring regions. For example, land disputes comprised 50% of all cases brought before the Akum village council during 1967-76; and 33% of all cases during 1984-96. A provincial court estimates that land disputes constituted about one-third of all cases brought before it.

However, while the Ordinance has not achieved its stated objectives—neither brought the Western-style property rights to Cameroon’s rural areas, nor generated an agrarian middle class—it has not been altogether useless. Firmin-Sellers and Sellers observe that farmers and state officials have modified the law to satisfy farmers’ perceived needs. Farmers used the Ordinance to obtain concrete boundary markers rather than formal title and such markers were recognized by community members as symbols of an individual’s effective occupation of the land. On the other hand, state administrators modified the Ordinance to protect customary land tenure system. For example, the Ordinance prohibits the titling of under or undeveloped land, but the Bamileke custom obliges the family head to preserve land for his family members’ future use. State administrators have resolved this contradiction in favor of customary law—by registering under or undeveloped land, thereby making the ordinance more attractive to the rural farmers. This would be a case of learning and institutional adaptation.

### *Case study 3: Nigeria<sup>6</sup>.*

A former British colony, Nigeria is Africa’s most populous country (about 120 million people) and with about 250 ethno-linguistic groups. The country is as diverse in socio-cultural terms as it is in terms of agro-ecological zones, and varied population pressures. Customary norms and laws governing land have consequently evolved differently in various parts of the country. Both the evolutionary theory of property rights and religious/cultural practices have shaped the nature of land tenure arrangements--- with the Eastern region evolving more quickly to individual rights due to the severe population pressure, followed by the Western region, and finally the Northern region.

The first attempt to formalize the tenure system in the northern region was the Land and Native Rights Ordinance of 1910 (see Mortimore, 1997: 12-14). This Ordinance gave recognition to all rights under customary law, subject only to the Government’s right to acquire land under compulsion for public purposes. After independence in 1960, the land tenure law was modified in 1962 to significantly extend the codification begun in 1910. The Law recognized statutory rights, and such rights were registered after application, survey and approval by the government, and were held subject to leasehold conditions for 99 years. Furthermore, the Law defined customary tenure—all those systems administered by communities or their leaders, under which the great majority of holdings were held under rights of inheritance derived ultimately from community membership, rights which were defensible in the local courts. But the Law provided for no codification of these rights, and there was no attempt to register titles.

---

<sup>6</sup> See Mortimore (1997); Adedipe, et al (1997); and Arua and Okorji (1997) for an overview of Nigeria’s experience with land tenure reforms.

In 1978, the Federal Government enacted the Land Use Act (LUA). The Act was motivated by the need, as felt within government, to simplify the acquisition of land for development or public purposes. In effect, the Act attempted to consolidate the legal framework in all the states of the Federation by imposing the essentials of the hierarchical system of Northern Nigeria on the community-based and individual-based systems in the South. The stated objectives of the Act are as follows: to stimulate investment in agriculture by enhancing land use security; to curb speculation in urban land; and to make opportunities to occupy land generally available to all Nigerians and thereby bring about increased mobility of human and material resources as well as remove a major source of socio-economic inequality. In effect, the Act intended to rationalize usufructuary rights all over the country and remove the constraints of customary land tenure systems; to optimize land use; to ensure sustained land use; to ensure sustained improvements to land quality; and to enlighten the people on the right to use land (see Arua and Okorji, 1997: 117).

Under the Act, all proprietary rights on land are vested in the State, which can grant user rights to individuals. The Governor of the state can grant statutory right of occupancy (on a leasehold basis for 99 years) for lands in the urban areas, subject to a maximum allocation of 6.5 ha per person. State governors are authorized to designate certain areas as urban land to grant statutory rights of occupancy of fixed periods and rights of access to any person, subject to rental arrangements fixed by and payable to the State. The Local Government Area Chairman allocates the rural lands (customary right of occupancy), to any person or organization for agriculture, grazing, residential or other purposes, subject to a limit of 200 ha for agriculture and 2000 for grazing land. Land is therefore held in trust and administered for the use and common benefit of all Nigerians. The Act however had a mixed reception. Apparently, the egalitarian bent of the Act led the National Association of Nigerian Students (NANS) and the Nigerian Labor Congress (NLC) to welcome it as 'long overdue' and a step towards a more egalitarian society and a gain for the working class. On the other hand, most of the Southern leaders and analysts frowned at what was seen as an attempt to impose the system in the feudal North on the family and individual-based system in the South. Traditional rulers in Oyo state, for example, were said to have regarded the Act as 'an invitation to chaos'.

Did the Act achieve its stated objectives? The evidence is that it has not quite succeeded.

First, the indigenous tenure system still predominates in most parts of the country, contrary to the expectations or prescriptions of the Act. A field survey revealed that only a few people (out of the 250 sampled) were aware of the existence of the Act (Idowu, 1980). Although in theory, about 90 percent of Nigerian land is publicly held and leases of up to 99 years are available, an investor still often ends up having to negotiate with two or three occupiers or 'owners'. Because of the multiple tenure systems in operation, it is very difficult for investors to obtain large, consolidated pieces of land for agriculture and other purposes. In the Eastern part of the country, individual landownership accounts for 43- 89% of the total number of holdings in the area. In spite of the Act, public land holding in the rural areas is of relatively low significance, and often restricted to public institutions such as schools, hospitals, etc. In effect, while the Act public ownership of land, this has yet to be implemented in the rural areas (Arua, et al, 1997).

A recent survey of 'Constraints to Investment in Nigeria' by the World Bank (2000) show that some states also have their own rules governing land acquisition, apart from the Land Use Act. Interviews indicated that state governors could take from 6months to 10 years to approve land transfers, and permission to lease land and use it as security must be approved separately. The survey also shows that the limited land available on the private market is available at perhaps four to five times the price of

state land, but even at that, the acquisition of land with secure tenure still requires the state governor's approval. Investors also report that identifying available land is a major problem in Nigeria because of poor record-keeping, variation in procedures from state to state, and backlog of unresolved title disputes.

As in other parts of Africa, women are largely discriminated against in regard to land allocation. Since the indigenous tenure system still dominates, it also carries the gender inequity associated with it.

From the case studies examined, it is evident that formal property rights institution with regards to land has not succeeded in Africa as expected. We return to the summary of findings and implications for institutional development later. A major finding from the case studies which can be generalized for most (if not all) of Africa is the impact on agricultural productivity.

#### *Land markets and agricultural productivity in Africa*

Empirical evidence from most African countries fails to confirm the expected significant positive relationship between land rights (individual titling) and land improvement or agricultural productivity (Brasselle, Anne-Sophie, et al; Barrows 1973; Besley 1995; Bernstein 1998; Feder and Noronha, 1987; Deininger and Feder; Moor and Nieuwoudt 1996; El-Ghomy, 1993; Vink 1987; Migot-Adholla, et al, 1991; Pinckney and Kimuyu, 1994; Sjaastad, 1997; etc). The case studies surveyed above corroborate this region-wide evidence. Even where significant positive correlation between land registration and investment has occurred, it is not self-evident that causality runs from registration to investment. Reverse causation is also possible. This is because it is quite possible that farmers tend to register land parcels that benefit from comparatively high levels of investment, in which case registration does not stimulate investment even though it is positively related to it (Roth et al, 1994).

On the contrary, there is growing evidence that “indigenous African tenure systems have so far been flexible and responsive to changing economic circumstances” (Migot-Adholla, et al, 1991). Collier and Gunning (1999: 7) observe that traditional land rights in Africa have proved to be less economically damaging and more capable of evolution than had been believed, and that the sub-division of plots assigned on settlement schemes have turned out to be economically efficient. Brasselle and Anne-Sophie conclude that “the traditional village order, where it exists, provides the basic land rights required to stimulate small-scale investment”. Harrison (1992) found that in Zimbabwe, smallholders—without having private title to their land—have achieved rapidly increasing maize yields, and their productive performance is not inferior to that of the biggest commercial farmers in the country. The increasing recognition of the efficiency of the indigenous tenure system may have led to change of views regarding the impact of African tenure system on agriculture. In a World Bank study on Strategy for Nigeria's agricultural growth (see World Bank, 1989), land tenure was never mentioned as a constraint to investment and productivity in the sector. Furthermore, in the most recent collaborative study on Africa (see World Bank, et al, 2000:197), there is a paradoxical twist in which the Report directly dismisses the claim that indigenous tenure system constrains agriculture in Africa (see box 2 below).

### **Box 2: Do Indigenous Land Rights Constrain Agricultural Investment and Productivity?**

Most African farmers still hold their land under indigenous, customary, or communal land tenure systems (not to be confused with open access systems or collective farming). In the past these land tenure systems were alleged to provide insufficient tenure security to induce farmers to make necessary investments in land (World Bank 1974; Harrison 1987). Thus it was thought that the systems contribute to land degradation. But research has shown that such systems tend to allocate secure, inheritable land use rights to families and individuals.

Evidence from rainfed cropping areas suggests that indigenous tenure systems have been flexible and responsive to changing economic circumstances (Place and Hazell 1993; Bruce and Migot-Adholla 1994). Where population pressure and commercialization have increased, indigenous systems have evolved from a system of communal property rights toward one of individualized rights (Migot-Adholla, et al, 1991).

Individualized rights secured by formal title make farmers more creditworthy and so enhance their chances of receiving credit from formal institutions. So why not short-cut the process and replace customary tenure with freehold tenure, combined with large-scale land registration programs providing title to individual holdings? One reason is that modern land administration using formal title is costly to set up and maintain. Moreover, titling does not always result in secure tenure (depending on the quality of the title and respect for law), because national legislation for tenure reform has limited capacity to change behavior where indigenous values on land persist (Bruce, Migot-Adholla, and Atherton, 1994).

Migot-Adholla and others (1991) highlight some circumstances where titling may be worthwhile:

- Where indigenous tenure systems are absent or weak. This is often the case in land settlement areas, but it can also occur after major economic or political upheaval, particularly if traditional lines of authority have been severed.
- Where land disputes are common. This may occur in areas where large numbers of migrants have laid claim to land owned by indigenous groups.
- Where major project interventions are planned that require full privatization of land rights for their success or are likely to weaken the land rights of vulnerable groups. Some irrigation and tree crop projects provide good examples.
- Where population growth and market access have led to an intensification of the farming system, to an individualization of communal tenure, and to high demand for credit from existing credit institutions that could be supported through land title (for example, periurban agriculture).

Source: World Bank, African Development Bank, African Economic Research Consortium, Global Coalition for Africa, and UN-ECA, 2000 (p.197).

### **Summary of conclusions from the evidence**

From the empirical evidence so far, the following conclusions can be made.

First, there is no evidence of differential productivity because of the differential institutional arrangement pertaining to land tenure. Whether under the freehold, individual private ownership, or state controlled, or indigenous system or combinations of these, there is no evidence that any of the institutional arrangements (property rights regime) has produced superior outcomes in terms of agricultural investment, and productivity. Evidence rather suggests that the dynamics of the indigenous institution was poorly studied and wrongly understood. It has evolved in such a manner that has disproved the foundations for foisting the formal-legal system.

Tangential to the above is the fact that though the benefits of Western-style titling programs are difficult to fathom, there is evidence that such programs have immense costs—administrative costs of running the programs and the deadweight loss to society resulting from the gross inefficiencies of the system.

Titling has not necessarily activated the land market in the rural areas. Numerous pervasive rural factor market failures characterize Africa (not only on the land market but also on the labor, credit and insurance markets). Thus, increased land concentration, in so far as it occurs, tends to actually worsen

the imbalance in factor proportions between larger and smaller holdings, with the result that allocative inefficiency increases (see Collier 1983:159 for Kenya). Although skewed land distribution is not necessarily the result of market transactions—but partly results from previous government actions to directly allocate land, evidence across Africa suggests that most land sales are distress acts that ultimately cause landlessness (Platteau, 1996: 54). There is evidence of increasing landlessness and inequity resulting from the titling programs. The case of Kenya—Africa’s test case in land titling—is illustrated in Box 1 above. Broad evidence suggests that “where registration of agricultural land was accelerated in Africa, it secures primarily the rights of influential minorities, such as the urban elite rather than the rural population; those of farmers rather than livestock keepers; and those of male heads of household rather than women” (Kirk: 35).

Second, there is a case of incomplete transformation or resistance to institutions that do not cohere with the underlying objective conditions of the society. In most countries, indigenous (community-based) institution continues to dominate the centrally imposed legal system. Legally sanctioned rights are not necessarily *de facto* rights, as the indigenous or customary rules continue to govern transferability, sale, and purchase of land (irrespective of the prescriptions of the legal system). There is a form of *inertia* and formal institutions do not necessarily *assimilate* the indigenous system as expected. Village elders continue to control land allocation in their areas even after title deeds have been issued or government has nationalized all land—as has been the case in Nigeria, (or see Okoth-Ogendo, 1976, Shipton 1988, 1992; Coldham, 1979, and Moore 1986 for confirmation of similar result in Kenya and Tanzania). The continuous evolution of the indigenous system towards individualization is determined principally by the objective conditions of the society (especially the forces of demand and supply of land)—population pressure, urbanization, etc. Given the progressive evolution towards individualization, some authors question the need for pushing towards formal entitlement as a way to ensure security of tenure.

The evidence from Cameroon, Kenya, Tanzania and Nigeria both confirm and dispute the evolutionary theory of institutional development. Rural dwellers in all these countries possess customary rights to land, but as the evolutionary property rights theory predicts, these rights are not static. They are expected to evolve and change in response to changes in relative factor prices. As land becomes more valuable, farmers find their land claims threatened by family members who seek private title to jointly held land and by neighbors, politicians and businessmen. These threats put pressure on the claimants to demand more secured property rights through titling.

But, the evolutionary theory cannot explain the continued importance of community norms, which, in turn, shape the ways and speed with which customary laws change. To the extent that centrally designed state laws cannot automatically change or eliminate community norms, such state laws cannot effectively impose private property rights outright.

However, there is evidence that institutional adaptation or innovation has occurred, but has had only minimal and sometimes confused effects. Formal land rights coexist with the indigenous system. In some instances, the multiple (often conflicting) property rights regime leads to confusion and inefficiency, but there is also evidence that the supply of formal institution ahead of demand for it has quickened the adaptation or evolution of the indigenous system. Adaptation has been quicker where institutional supply is consistent with the underlying objective conditions and demand for such, especially in the urban areas. In the case of rural land markets in Africa, agents have reacted and adapted to their objective conditions. These objective conditions that have shaped market institutions for land include: abundance or scarcity of land (as contrast between central Africa on one hand; and West and Eastern Africa on the other; geological/ecological conditions of the land/climatic risk and



hence their economic use—determining extent of specialization or diversification with households in more humid forest areas where rainfall is more reliable having greater specialization in one or two crops than households in the Sahelian zone in West Africa). In some other cases, farmers or rural dwellers have adapted the aspects of the formal institution that they find to be immediately useful. For example, Firmin-Sellers and Sellers find that farmers in Cameroon used the 1974 Ordinance to obtain concrete boundary markers for their lands. Even though they did not go for the formal title, which is very expensive to obtain, community members recognized the markers as de facto proof of individuals' effective occupation of the land. The state officials in Cameroon also displayed a form of learning-by-doing: they quickly recognized aspects of the Land Ordinance which were inappropriate or inconsistent with the customary rules of the Bamileke kingdom (that is, the provision forbidding the registration of under and undeveloped lands), and they rightly ignored such provision of the law. Such clever learning by the officials helped to legitimize the laws and convince the farmers that the Ordinance was designed to 'serve their interests'.

The persistence and thriving of indigenous land tenure is partly due to the objective conditions of demand and supply of land, but more so because of the gamut of socio-cultural, political and economic attributes of land. As Lewis (1955:91) observes, "there is probably no country in the world where land is bought and sold solely for its value as a factor of production, and no country where non-economic factors do not frustrate schemes which would otherwise increase output". For the African situation where kinship ties remain strong, and ethnic, local or regional feelings play strong roles in social and political life, there is strong emotional attachment to their ancestral land as a source of identity. The value of land is thus embedded in the social structure and history of the particular society. In effect, land represents more than just an input into agricultural enterprise, and it is almost impossible to abstract from it all the social, ritual, affective and political meanings associated with it (see Platteau, 1996: 50-72). Within this context, there is resistance to commoditizing land in an impersonal inter-individual relations and a code of abstract morality ensuring honest deals among unrelated transactors. Land sales are almost always a consequence of distress conditions, and not the result of normal market transactions. This is understandable especially in the absence of insurance markets, imperfect credit markets, and declining self-insurance capacities of the rural people.

Furthermore, 'considerations for social insurance for immediate family members appear overriding in the land ownership arrangements' in most African communities (Pinckney and Kimuyu, 1994). Market forces are thus interfered with. Legal title allows owners of land behave in an individualistic manner, but the collective social insurance of the extended family system obliges everyone to behave in a collectively responsible manner. Young people could for example sell the land registered in their names, spend the money, thereby leaving their parents and themselves destitute—with the implied obligation of the larger community to care for them. It is to prevent such kinds of selfish behavior which burden is borne by the larger society that the indigenous institution ensures that the community is consulted before such transactions take place. As Platteau (1996:52) observes, such interference of the local communities with the free play of market forces makes a lot of sense in Africa since these communities are ultimately responsible for the well-being of their individual members, and will therefore be called upon to take care of any member who has become destitute through ill-considered decisions. In the rural context without any formal insurance markets, this insurance function of the local community is absolutely essential.

Also, land serves as the last hope of the peasants in terms of livelihood. With the formal sector not growing rapidly to absorb the labor force, and no social insurance mechanism, land 'in the village' becomes the only productive asset as fall back position even for the urbanite. Those who do not succeed in the cities in search of jobs or business simply go back to the village and engage in

subsistence farming. This might explain why Africa has not been a region of violent peasant revolts (see Box 3 below).

### **Box 3: Protecting Peasants' Access to Land**

A characteristic feature of African agriculture is the preponderance of smallholders, who usually have communal rights to land. From one point of view, this arrangement is considered a hindrance to agrarian transformation because it leaves property rights undefined and, therefore, blocks the proper functioning of financial markets in which land would serve as important collateral. 'Commoditization' of land is, therefore, being pushed as part of a process to unleash the market through schemes of land registration, which are already serving as harbingers of land alienation and concentration in the African countryside. Commoditization is also advanced as ensuring clearly defined property rights to encourage better use of land.

There are many reasons to defend the established arrangement for peasant access to land in Africa. First, there are equity considerations. It is this feature of African agriculture that gives promise to relatively egalitarian strategies of agrarian transformation. Second, land alienation caused by commoditization can be politically destabilizing. Africa is not a continent of classical peasant revolt, partly because of these institutional arrangements. Abrupt incursions of market forces can provoke strife along class and ethnic lines that can undermine any strategy for development. Finally, there is the economic argument. Considerable evidence suggests that, contrary to neoliberal opinion, communal ownership of land does not negatively affect the efficient use of land; that properly defined property rights need not be private; and that many small-scale producers reach levels of efficiency in land and labor use that are superior to those of large-scale farming. It is, therefore, possible to envisage strategies of agrarian change in which peasant access to land is not undermined by land registration and privatization. Countries such as Taiwan have demonstrated that high levels of productivity in agriculture can be attained while land alienation and concentration are legally blocked.

Source: Mkandawire and Soludo (1999: 113-4)

Finally, there is evidence that the state however, can play a constructive role by seeking to build upon, rather than negate, the existing customary norms and institutions. In the area of land, the state could aim to register and record extant property rights rather than wholesale application of the Western-style private property rights. In Cameroon's west and northwestern provinces, for example, the state could exploit the community norm, which legitimizes claims protected by boundary markers. In some other places, the legal system might build upon norms legitimizing first occupancy. Policymakers cannot adopt a one-size-shoe-fits-all policy for all areas, and in all nations. Rather, given Africa's multi-cultural and ethnic regions and practices, land laws need to be flexible enough to cater to these differing circumstances.

## **IV: Lessons Learnt: Towards a Model of Developmental Institutional Change**

A broad consensus now exists that market institutions matter for economic performance. Three issues however remain contentious. The first is 'how' such institutions matter, and whether they apply with equal force to all societies at all times irrespective of the level of development. Second, is how to 'introduce' and 'domesticate' such institutions in environments where they do not exist. Third, is whether such institutions come in a form that they are developmental—in the sense of simultaneously ensuring efficiency, equity, and legitimacy (hence sustainability). The survey of African experiences with the introduction of formal land market institution provides some useful lessons on these three questions.

The first lesson is that institutional development in a poor society must simultaneously serve the goals of *efficiency*, *equity* and *legitimacy* for it to be *sustainable*. Institutions exist or need to be created to solve the coordination/market failures that are pervasive, in order to promote 'efficient' market

outcomes. In this sense, institutions are both ‘constraints’ and ‘enabling’—to ensure higher equilibrium outcomes. But institutions also affect the concentration or dispersion of power (economic and political). Given that initial conditions matter, and path dependence is valid, a sustainable institution might be one that ensures for all social and income groups, market outcomes are welfare-enhancing. Without the coercive power of institutions, dynastic poverty/destitution might be concentrated in certain locations and among certain income groups/social classes while wealth and prosperity flourishes in others. If the extent of ‘exclusion’ is deep and the benefits of market outcomes become highly skewed in favor of a tiny percentage of the population, the bulk of the population would not have stake in the system and institutions that underpin it—it would lose its legitimacy and thus unsustainable over the longer term. That was the basis for Karl Marx’s prediction regarding the ‘inherent contradictions’ of the capitalist system—which sounded logical but which was averted by institutions of social insurance—head start programs to ‘enable’ everyone to exercise the political freedoms in the market place.

Also, institutions are both *constitutive* and *legitimizing* in nature. Culture as embedded in the particular history of concrete societies help to explain the inertia or sluggishness observed in the adjustment to the introduction of new institutional arrangements which challenge deep-rooted customs and practices. Douglas (1986:48) provides a crucial statement on this source of inertia by arguing that institutions are stabilized through a legitimizing principle, which is grounded in the ‘naturalization of social classifications’. According to her, naturalization means that “there needs to be an analogy by which the formal structure of a crucial set of social relations is found in the physical world, or in the supernatural world, or in eternity, anywhere, so long as it is not seen as a socially contrived arrangement” In essence, institutions derive their legitimacy from nature and, being naturalized, ‘they are part of the order of the universe and so are ready to stand as the grounds of argument (Douglas, 1986: 52). As it pertains to the land market in Africa, the cult of ancestors can be an important naturalizing principle of land arrangements such that the emotional attachment to land goes beyond its economic importance. This might explain why, despite the dynamic evolution of land markets in the rural areas, ‘the notion of land as a (freely tradable) commodity remains deeply alien to most African people’ (Platteau, 1996: 69). Much of the institutional development in the industrial countries today evolved from the people’s concrete experiences and has been sustained because they cohere with the people’s objective and emotional conditions. Without such a naturalization element, imported institutions might, using the analogy of a seed, germinate but never take root. If the current norms and values are inconsistent with new institutional arrangements, especially if such values include views about fairness or equity, the cost of the new arrangement to the society can be very significant. In this case, whatever the merits of the arrangement in terms of efficiency, it cannot be legitimate or sustainable. Thus, as Bardhan (1989a; 1989b) argues, ‘the question of efficiency-improving institutional change cannot really be separated from that of redistributive institutional change’. Bardhan thus effectively challenges the Walrasian neoclassical economic principle of the separability of equity and efficiency, especially when transaction costs and imperfect information are important. Bromley (1989: 25) puts it more directly that models of institutional change, which ignore as mere transfers the distributional implications of new arrangements are unacceptable.

The African experience so far is that wherever issues of legitimacy or equity have been ignored in implementing the arms-length, Western-style property rights regime with regards to land, severe inequality has emerged and generated socio-political tensions that make current arrangements unsustainable (examples are Zimbabwe, South Africa, Cote d’Ivoire, Kenya, etc). In all these countries that moved much more quickly towards individual titling (while apparently ignoring the equity, constitutive and legitimizing attributes of the institution), there is now strong political movement to reverse the trend and ensure more equitable redistribution of land. Many other countries that have had

hybrids of indigenous and formal institutions in which the state plays active roles in the land market have shown extra sensitivity to the equity issues. The land market in most African countries has therefore straddled these equity-efficiency issues with varying degrees of success. It is certainly a spectrum, with efficiency and equity at both extremes, and where particular countries are located depends on the interplay of political and objective forces in the society. An important lesson here is the potential of a trade-off between equity issues and efficiency considerations in the introduction of new institutions. . The first, efficiency, requires both allocative and X-efficiency criteria to be met, and thus the elimination of ‘distortions’. On the other hand, equity considerations, and even more so, legitimation and sustainability require other arguments in the objective function beside ‘efficiency’. Some of these might require a deliberate ‘distortion’—and allocation in a form that does not necessarily satisfy allocative and X-efficiency criteria. In a sense therefore, some of the inefficiencies observed in the operation of the rural land markets in Africa can be interpreted as the ‘price’ to pay in an attempt to maximize on two objectives at the same time.

The second major lesson is the endogeneity of institutions and social organizations to the society’s material and objective circumstances. In other words, institutions do not grow in a contextual vacuum. The place, the setting, the history, and the moment, all matter, and play decisive roles in the time path and depth of institutional development. State legislations and international development agencies may envision grand programs revisiting African systems of land tenure, but local pressures and competitive struggles actually determine many of the terms and conditions of African land holding (Kirk; Moore 1986, and Feder and Noronha, 1987). On the one hand, the objective conditions include the population pressure and increased demand for land, technological progress and introduction of new improved crop varieties, etc. On the other hand, institutions reflect the bargained social equilibrium among the competing interest groups in society. The poor might have interest in the security of tenure through inheritability. This might be better served through collective rather than individual titles, and thus ensuring continuance of customary overlapping rights. Without a thorough understanding of the nature of the bargaining process that produced certain institutional framework, it is difficult to simply throw it out overnight and replace it with something else in a push-button manner. Bardhan (1989: 1390) has argued that more often, “radical economists have cited some of these production relations as institutional obstacles to development in a poor agrarian economy, overlooking the microeconomic rationale of the formation of these institutions... its simple abolition, as is often demanded on a radical platform, without taking care of the factors that gave rise to the institution in the first place, may not necessarily improve the conditions of the intended beneficiaries of the abolition program”.

The foregoing discussion gives the impression that only demand forces are important in shaping institutional development. This is not entirely true. Supply factors also matter especially given our earlier finding that institutional adaptation or learning takes place. But ultimately, the speed of adaptation depends on how quickly the objective conditions fueling demand for that institution change (demand pressure). A key policy question that remains unresolved is how to create or engineer demand for institutions. Where supply of institutions is made ahead of demand for them (as is the case with formal titling in most African countries) there might exist, initially a tiny enclave sector dominated by the formal institution (urban lands) which would coexist with the dominant indigenous institution (indigenous land tenure system). However, depending on the pressures of demand as in rapidly urbanizing areas, the speed of institutional adaptation or ‘assimilation’ of the indigenous by the formal could quicken.

Supplier-induced demand for institution (as has been the case with African land property rights institution) can generate the familiar agency problem. Politicians, as agents of the voters, might claim to possess ‘superior’ information about what are in the best interest of the voters—in this case the

benefits of movement away from traditional to formal market institutions. But the politicians might also be self-interested suppliers of institutions as they and their friends are often the first beneficiaries of the new institutions--- purchase or confiscation of land in choicy parts of the city, land registration and purchases that enable them purchase unlimited plots of land, etc--- as was clearly the case during the colonial days as well as post-independence period<sup>7</sup>.

The third lesson, derived from the second, is that whereas a case can be made about the universalism of the importance of secured property rights institutions in growth, there is a need for indepth understanding of the dynamics of the local (indigenous) institutions before introducing new ones. It is evident that African indigenous land tenure institutions have been seriously misunderstood or understudied. Atwood (1990: 660) has observed that “African governments and donor organizations currently justify their support of land registration on economic efficiency grounds. Yet, with rare exception, current empirical knowledge of African tenure system comes almost exclusively from non-economists, primarily lawyers, anthropologists, and administrators. Economists’ contributions have been theoretical and deductive, unaccompanied by solid empirical studies”.

The lesson here is that wholesale importation of institutions rationalized on the basis of the results obtained from other environments is unjustified. Specific local conditions matter. For example, much of the evidence regarding the impacts of titling and formal-legal land rights derive from theoretical assumptions and evidence from Asian developing countries. Such results have proved to be unfounded in the African context. Collier and Gunning (1999: 7) corroborate this finding by noting for Africa that ‘Government belief in scale economies proved unfounded: the spontaneous sub-division of the large plots assigned on settlement schemes turned out to be economically efficient. Traditional land rights also proved to be less economically damaging and more capable of evolution than had been believed. Government concern about insecurity of traditional tenure also proved unfounded’. Where our knowledge is incomplete or empirical basis shaky, we should proceed with caution.

Another lesson is that shock therapy may not work in terms of introducing new institutions. The shock therapy approach assumes that we know exactly what works and what doesn’t, and in order to avoid delays or resistance by powerful interest groups, the new policy or institution needs to be implemented with speed while destroying the existing one. In this instance, there might be initial (short-term) costs of adjustment, but with time (medium to longer-term) there would be full adjustment (learning or adaptation), and the benefits of the new institution would more than outweigh the initial costs. The experience of most African countries with almost a century of introducing formal property rights institution in the rural areas provides basis to re-think this model.

First, as noted earlier, there is the problem of incomplete knowledge about what would work in all circumstances and at all times, especially given the persistence of local norms and values which shape the speed of adaptation. Second, it needs to be recognized that ‘rapid change in existing arrangements destroys much of the information (knowledge capital) that societies have built up over time’ (Murrell, 1992). But knowledge proceeds in incremental steps, and the applicability of new institutions might well depend on the value of existing stock of knowledge. But also there are two other dangers. One is that the shock could be so inappropriate and misguided that the initial failure might make it impossible or difficult to reintroduce it again. In some countries (example is Southern Nigeria), the attempt to

---

<sup>7</sup> It is hard to imagine for instance that the push towards titling and formalization of the land market during the colonial period was primarily motivated by the need to achieve efficiency and growth of the colonies. This Agency problem could also explain the differential approaches--- activist versus lakadaisical attitudes of the same colonial master—Britain—in East/Southern Africa (where they settled) as opposed to West Africa where mosquito made it uninhabitable for the colonialists.

forcefully introduce the formal land rights in the rural areas was so unsuccessful that the law is largely ignored or meaningless. Alternatively, the shock could be so devastating that it takes the society to a new, perhaps lower equilibrium trap. In some countries, the new institution (which did not take cognizance of local conditions) caused so much dislocation in the social relations and asset distribution regime. For example, the experience in east and Southern Africa with aggressive formal titling has produced such inequality in Zimbabwe, South Africa, Kenya, etc that the current pressure is to reverse the earlier program. Another reason for caution is the apparent conflict between the need to use institutions to signal commitment to durable property rights and the need for it to be flexible enough to respond to changing circumstances. The signaling role might call for the shock-therapy approach, while flexibility might require incremental steps. Finally, institutional development involves sunk costs and some could be irreversible. A cost-benefit analysis is warranted before full-scale introduction of institutions. It is possible that in many African circumstances, the benefits derived from the titling programs could not justify the huge administrative and other deadweight losses to society incurred in trying to implement the programs.

From the foregoing, three elements emerge on how to introduce new institutions, especially in poor rural societies. The first is gradualism, which proceeds in incremental steps and tempered by evolving empirical knowledge about the local conditions. The second is to allow for multi-speed approach and *principle of subsidiarity*. A one-size-shoe-fits all approach to institutional development for all regions of a country may not work well let alone having one institutional model for all countries. In the case of land markets, enclaves of urban markets coexist with the predominant rural land markets, which are governed by the indigenous institutions. So, different locations should be allowed to move at different speeds. This principle is recognized by multilateral negotiations such as under the WTO (that is, the principle of preferential and differential treatments conditioned by the stage of development). Following from this is the principle of subsidiarity--- allowing local communities to do the things that they can do best, rather than full centralization. In the context of the land market, it would require an institutional development in which the legal system recognizes the local institutions (rather than treat them as 'distortions' to be eliminated), and probably assigns specific tasks to them. That way, the formal institution simply acts to 'enable' indigenous institutions to become more effective in their operations, and allow them to gradually evolve rather than seek to destroy or replace them at once. Third, the sequential steps should seek to balance the twin objectives of efficiency and equity. A point needs to be stressed here. A particular institution may not necessarily have to simultaneously achieve both objectives at the same time. Most market institutions seek to achieve efficiency. But just like the industrial capitalist system developed a system of social insurance and head start programs to cater for the equity issues, the introduction of new market institutions must clearly be sensitive to the nature of social insurance and safety nets in the society. Where a particular local institution (such as the African indigenous land tenure) simultaneously caters to both, its dynamics needs to be carefully understood before advocating for wholesale changes.

The final lesson is that *history, ideas and exogenous shock* matter for institutional development. To the extent that state laws cannot automatically alter community norms, it cannot quickly change customary laws or rules which derive from the norms. It is the norms and culture that shape the ways and speed of adaptation and innovation. But societal norms and culture are not static: they derive mainly from the objective conditions of the society. That is why even in the same country, there could exist enclaves of norms and sub-cultures (e.g. urban versus rural). Thus, one mechanism to quicken the process of adaptation is to exogenously induce fundamental changes in the agents objective conditions and hence their expectation of their future welfare or risks. For example, an agent with an assurance of reliable social safety nets, for instance, could be less attached to the ancestral land for that purpose than one that has no such assurance. Also, new ideas, information or technology could challenge the mental

model of operation and elicit different responses. The example of the impact of colonialism on the land tenure system illustrates the point. Before the advent of colonialism and Christianity, land was not only a factor of production but also had several fetish/religious beliefs associated with it, and land was treated as 'sacred abode of the ancestors'. Sale or lease of ancestral land was somewhat sacrilegious. Colonialism quickened the commercialization of agriculture through the introduction of cash crops (new technology) while Christianity affected the belief system and religious attachment to the land. Due in part to Christianity, the basis for several community sanctions weakened. Both activities not only altered the objective conditions of the people but also affected the mind-set—all of which were required to quicken the process of adaptation.

This brings out one key lesson pertaining to the role of education and information in institutional adaptation. It is true that institutions have to 'evolve' and be 'internalized' as part of the body of society's knowledge bank, norms and civilization. But it is also true that 'exogenous' shocks (such as new ideas, technology, information, etc) can quicken the process of learning and adaptation. This point borrows from the exogenous growth theory, which admits that positive shocks can propel the society above the minimum threshold required for cumulative virtuous circle of growth. Thus, education or infusion of new ideas/technology can play a key role in re-orienting the mind-set. That is where the new wave of globalization (with the new information technology) can quicken the process of learning and adaptation (institutional leapfrogging). But ultimately, the speed of convergence or adaptation depends on the pressures of demand relative to supply. For institutions to be firmly rooted (credible and sustainable), there must be a 'demand' for them. Rapid urbanization is one such source of demand for formalization of land property rights. In Nigeria, the creation of new states and granting capital/urban status to hitherto 'rural' areas increased the speed of 'assimilation' of the informal by the formal institutions. The granting of urban status and the infrastructure development in specific areas led to population surge, and consequent demand for more secured, individual property rights.

A further implication is that as societies open up, and come into contact with other cultures and ideas, there could be induced changes in institutions. Here, globalization can play a positive role in quickening the process of adaptation. Although globalization would not make dualism of economies disappear overnight in poor countries, it could quicken the process of assimilation through knowledge diffusion, and pressures to harmonize with other countries.

## References

- Adedipe, N.O., J.E. Olawoye, E.S. Olarinde, and A. Y. Okediran, 1997. "Rural communal tenure regimes and private landownership in western Nigeria". Land Reform, 1997/2.
- Arua, E.O., and E. C. Okorji, 1997. "Multidimensional analysis of land tenure systems in eastern Nigeria". Land Reform, 1997/2.
- Aron, J., 2000. "Growth and Institutions: A Review of the Evidence". The World Bank Research Observer. Vol. 15, no.1. pp. 99-135
- Atwood, D.A., 1990. "Land Registration in Africa: The Impact on Agricultural Production". World Development, vol. 18, no.5 pp. 659-671.
- Bates, R.H., 1996. "Institutions as Investments". Plenary paper presented at the AERC Biannual Research Workshop. May 25-30. Nairobi.
- Bardhan, P. 1993. "Analytics of the Institutions of Informal Cooperation in Rural Development". World Development, vol. 21, no. 4; pp. 633-639.
- Bardhan, P., 1989. "The New Institutional Economics and Development Theory: A Brief Critical Assessment". World Development, vol. 17, no.9, pp.1389-1395
- Barrows, R.L., 1973. "Individualized Land Tenure and African Agricultural Development: Alternatives for Policy". Mimeo. Land Tenure Center.
- Bernstein, H., 1998. "Social Change in the Southern African Countryside? Land and Production, Poverty and Power". The Journal of Peasant Studies, vol. 25, no.4. pp. 1-32.
- Besley, T., 1995. "Property Rights and Investment Incentives: Theory and Evidence from Ghana". Journal of Political Economy. Vol. 103, no. 5.
- Brasselle, A., F. Gaspart, J.P. Platteau, 1998. "Land Tenure Security and Investment Incentives: Further Puzzling Evidence from Burkina Faso". Mimeo. Centre de Recherche en Economie du Development (CRED), Belgium
- Brautigam, D., 1992. "Land Rights and Agricultural Development in West Africa: A Case Study of Two Chinese Projects". The Journal of Developing Areas 27. Pp. 21-32.
- Bruce, J.W., 1988. "A Perspective on Indigenous Land Tenure Systems and Land Concentration", in R.E. Downs and S.P. Reyna, eds. Land and Society in Contemporary Africa. Hanover, NH, and London: University Press of New England.
- Bruce, J.W., and S.E. Migot-Adholla, 1994. Searching for Land Tenure Security in Africa. Dubuque, IA: Kendall Hunt.
- Bruce, J.W., S.E. Migot-Adholla, and J. Atherton, 1994. "The Findings and Their Policy Implications: Institutional Adaptation or Replacement?" In J.W. Bruce and S.E. Migot-Adholla, eds, Searching for Land Tenure Security in Africa. Dubuque, IA: Kendall Hunt.



- Coase, R.H., 1960. "The Problem of Social Cost". Journal of Law and Economics 3, pp.1-44. October.
- Cohen, J., 1978. "Land Tenure and Rural Development in Africa". Development Discussion Paper No. 44., Harvard Institute for International Development.
- Coldham, S., 1979. "Land Tenure Reform in Kenya: the Limits of the Law". Journal of Modern African Studies, 17 (4), pp.615- 27.
- Collier, P. and J.W. Gunning, 1999. "The Microeconomics of African Growth, 1950-2000". Thematic Paper for the AERC Collaborative Research Project on 'Explaining African Economic Growth, 1950-2000'. Revised May.
- Cousins, B., 1995. "A Role for Common Property Institutions in Land Redistribution Programmes in South Africa". Gatekeeper Series No. 53, International Institute for Environment and Development.
- Deininger, K., 1999. "Making Negotiated Land Reform Work: Initial Experience from Columbia, Brazil and South Africa". World Development. Vol. 27, no.4.
- Deininger, K. and G. Feder, "Land Institutions and Land Markets".
- Eggertsson, T., 1997. "The Old Theory of Economic Policy and the New Institutionalism", World Development. Vol. 25, No.8.
- El-Ghanemy, M.R., 1993. Land, Food and Rural Development in North Africa.
- Farvacque, C., and P. McAuslan, 1992. "Reforming Urban Land Policies and Institutions in Developing Countries". Urban Management Program.
- Feder, G., T. Onchan, Y. Chalamwong, and C. Hongladarom, 1988. Land Policies and Farm Productivity in Thailand. Baltimore: John Hopkins University Press.
- Feder, G., and R. Noronha, 1987. "Land Rights Systems and Agricultural Development in Sub-Saharan Africa". The Research Observer 2, no. 2. The World Bank.
- Fisiy, C., 1992. Power and Privilege in the Administration of Law. African Studies Center, Leiden.
- Firmin-Sellers, K. and P. Sellers, 1999. "Expected Failures and Unexpected Successes of Land Titling in Africa". World Development vol. 27, no.7. pp. 1115- 1128.
- Harrison, P., 1990. "Sustainable Growth in African Agriculture". In The Long-Term Perspective Study of Sub-Saharan Africa: vol. 2, Economic and Sectoral Policy Issues. Washington, DC: World Bank.
- Harrison, P., 1987. The Greening of Africa. London: Paladin Grafton Books.
- Kirk, M., "The Context for Livestock and Crop-Livestock Development in Africa: The Evolving Role of the State in Influencing Property Rights over Grazing Resources in Sub-Saharan Africa".

- McAuslan, P., 1998. "Making Law Work: Restructuring Land Relations in Africa". Development and Change, vol. 29, pp. 525- 552.
- Migot-Adholla, S., P. Hazell, B. Blarel, and F. Place, 1991. "Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity?". The World Bank Economic Review, vol. 5, no. 1.
- Mkandawire, T., and C. C. Soludo, 1999. Our Continent, Our Future: African Perspectives on Structural Adjustment. New Jersey: Africa World Press
- Moor, GM, and WL Nieuwoudt, 1996. "The prospects for improving institutional arrangements and land use in Southern Africa". Development Southern Africa. Vol. 13, no. 1.
- Moore, S.F, 1986. Social facts and Fabrications: Customary Law on Kilimanjaro, 1880-1980. Cambridge: Cambridge University Press.
- Mortimore, M., 1997. "History and evolution of land tenure and administration in West Africa".
- Murrell, P., 1992. "Evolutionary and Radical Approaches to Economic Reform". Economic Planning 25: pp.79-95.
- Nissanke, M., and E. Aryeetey, 1997. "Comparative Institutional Analysis: Sub-Saharan Africa and East Asia". Thematic Paper prepared for presentation at the AERC conference on comparative African and East Asian Development Experiences, 3-6 Nov. 1997. South Africa.
- Okoth-Ogendo, H.W.O., 1976. "African Land Tenure Reform", in J. Heyer, J.K. Maitha, and W.M. Senga, eds. Agricultural Development in Kenya. Nairobi: Oxford University Press, pp. 152-85.
- Pinckney, T.C., and P.K. Kimuyu, 1994. "Land Tenure Reform in East Africa: Good, Bad or Unimportant?". Journal of African Economies, vol. 3, no. 1.
- Place, F. and P. Hazell, 1993. "Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa". American Journal of Agricultural Economics 75 (1): 10-19.
- Platteau, J.P., 1996. "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment". Development and Change vol. 27, pp. 29-86.
- Sanders, J. Shapiro, B., and Ramaswamy, S., 1996. The Economics of Agricultural Technology in Semiarid Sub-Saharan Africa. John Hopkins University Press, Baltimore, MD.
- Shipton, P., 1988. "The Kenyan Land Tenure Reform: Misunderstandings in the Public Creation of Private Property". In R. E. Downs and S. P. Renya, eds. Land and Society in Contemporary Africa. Hanover: University Press of New England. Pp. 91- 135.
- Sjaastad, E., and D.W. Bromley, 1997. "Indigenous Land Rights in Sub-Saharan Africa: Appropriation, Security and Investment Demand". World Development, vol. 25, No. 4.
- Stein, H., 1994. "Theories of Institutions and Economic Reform in Africa". World Development, vol. 22, no.12, pp.1833-1849.

Vink, N., 1987., “Land tenure and commercial farming in the national states: problems and proposals”. Development Southern Africa. Vol. 4, no. 3.

World Bank, 1974. Land Reform. Development Series. Washington, DC.

World Bank, African Development Bank, African Economic Research Consortium, Global Coalition for Africa, and UN-ECA, 2000. Can Africa Claim the 21<sup>st</sup> Century?. Washington, DC: The World Bank.



**Appendix Table 1:  
Transactions in Land from Independence to 1991, by size of Holding at Independence**

|  | Tanzania: Size of Landholding |                |                 | Kenya: Size of Landholding |                |                 |
|--|-------------------------------|----------------|-----------------|----------------------------|----------------|-----------------|
|  | Smallest Tercile              | Middle Tercile | Largest Tercile | Smallest Tercile           | Middle Tercile | Largest Tercile |
| Total area of holdings at independence (acres) | 116                           | 248            | 494             | 61                         | 15             | 277             |
| Transactions through 1976                      |                               |                |                 |                            |                |                 |
| Local purchases                                | 12                            | 13             | 37              | 7                          | 0              | 26              |
| Distant Purchases                              | 0                             | 0              | 0               | 0                          | 1              | 14              |
| Sales  | 0                             | -5             | -5              | 0                          | 0              | 0               |
| Partitions                                     | -5                            | -40            | -153            | -11                        | -29            | -70             |
| Other  | 3                             | 4              | -17             | 4                          | 0              | 0               |
| Total area of holding 1976                     | 126                           | 220            | 356             | 61                         | 87             | 246             |
| Transactions 1977-91                           |                               |                |                 |                            |                |                 |
| Local purchases                                | 6                             | 3              | 0               | 4                          | 2              | 1               |
| Distant purchases                              | 0                             | 0              | 0               | 0                          | 18             | 9               |
| Sales  | 0                             | -2             | -4              | 0                          | 0              | -5              |
| Partitions                                     | -16                           | -48            | -48             | -20                        | -23            | -74             |
| Others   | 6                             | -7             | 4               | 1                          | 0              | -1              |
| Total area of holdings 1991                    | 122                           | 166            | 308             | 46                         | 85             | 176             |
| Total area of local holding 1991               |                               |                |                 |                            |                |                 |
| Net % change in total holdings                 | 4.4                           | -33.2          | -37.7           | -25.3                      | -26.2          | -37.4           |
| % change at annual rate                        | 0.1                           | -1.3           | -1.6            | -1.0                       | -1.1           | -1.7            |
| Net % change in local holdings                 |                               |                |                 | -25.3                      | -42.8          | -44.7           |
| % change at annual rate                        |                               |                |                 | -1.0                       | -2.0           | -2.1            |

Notes: Results are aggregated across 115 households from Kenya and 116 households from Tanzania. Data from independence and 1976 are based on reports in 1991. Earlier years represent holdings of the father of the present head if the present household came into existence after independence. 'Distant purchases' are purchases of land more than 40km from the homestead.

**Figure 1. The Evolutionary Theory of Land Rights**

