

LAND TENURE AND AGRARIAN CHANGE IN KENYA

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This article examines the relationship of formal and informal land-tenure systems to processes of agrarian change. Although it is often assumed that formal legal recognition of private rights in land can help to transform agriculture, causal links between particular tenure systems and agrarian processes are not easily demonstrated. It is difficult to separate the effects of land tenure from those of a host of other influences on agriculture. A number of studies have pointed to causal relationships among high population density, agricultural intensity, and individualisation of land rights (Podolefsky, 1987). Nevertheless, formal privatisation *per se* may have relatively little effect on processes of agrarian change, even in an economy where land is productive and scarce and where its distribution is relatively unequal.

The Kenya highlands are a case in point. In the 1950s Kenya began one of the most ambitious tenure-reform programmes in Africa. It continues today to extend to other parts of the country universal registration of individual freehold titles guaranteed by the state. A quarter century after the tenure reform was completed in Kenya's central highlands, observers dispute its local agrarian consequences, as well as the possible costs and benefits of such a reform elsewhere on the continent. There is little direct evidence here or elsewhere in Africa on whether issuing official land title deeds contributes significantly to higher agricultural productivity.¹

In some parts of the central Kenya highlands formal institutionalisation of individual freehold tenure coincided with expansion of marketed agricultural output among small farmers. In other areas with similar natural environments, significant expansion of commercial agriculture preceded land entitlement. Throughout the highlands observers report trends towards individualisation of land tenure before the official privatisation programme. Nowhere has the Kenyan state had the capacity to keep the land registers up to date since the reform, and informal channels of access to land never ceased to be important. Many of the consequences of the tenure reform have been directly contrary to those the state intended. The question then arises as to exactly how the social organisation of production and of access to land is related to local agrarian processes and to farmers' prosperity or poverty. These issues are the focus of this article.

THE IMPORTANCE OF ACCESS TO LAND

In addition to its immediate economic importance as a source of food and cash income for rural peoples, land is an important social asset in Africa:

Because access to rural land is often a symbol as well as a consequence of membership in a descent group or rural polity, maintaining such access serves to validate membership in the group, as well as vice versa. This, in turn, often entitles a person to make claims on other resources which are controlled either by the group as a whole or by its individual members. [Berry, 1983: 66]

Access to rural land is one means by which rural residents, as well as seasonal and longer-term migrants, maintain local and descent group affiliations. These affiliations remain important in dealing with the new economic opportunities and risks associated with the spread of commercialisation. It is not unusual for claims on rural land to multiply even when the land is relatively unproductive and when claimants' other economic pursuits keep them away from rural areas for much of their lives.

Land tenure itself draws attention not so much to man-land relationships as to the 'man-man relations which create and determine power in land-based societies' (Okoth-Ogendo, this issue). Access to such power arises in association with membership in some unit of production and, as Okoth-Ogendo states, is 'maintained through active participation in the processes of production and reproduction at particular levels of social organisation'.

Land tenure includes both formal and informal rights and obligations associated with particular categories of individuals and groups in relation to land and its products. These rights and obligations concern the acquisition, use, preservation and transfer of specific land or products of the land. Such rights may be disaggregated, so that rights of use, for example, may include cultivating annual or perennial crops, grazing, hunting, collecting fuelwood or water, transiting or building. Rights of transfer can include sales, rentals, gifts, inheritance or mortgages.

Any given land parcel is often subject to overlapping and competing rights and claims. Analysis of trends towards concentration or deconcentration of land holdings therefore must specify precisely what rights are being concentrated or fragmented:

Since different rights to a given piece of land are sometimes held and exercised separately by different [groups of] people, . . . a particular parcel of land may be subject to both concentration and fragmentation at the same time! [Berry, forthcoming]

Western concepts such as titled land 'ownership' often mask the complexities of particular property systems in which rights do not involve absolute jurisdiction or exclusive individual control (Okoth-Ogendo, this issue). Rarely do land rights have an absolute or fully exclusive character: 'they are . . . subject to certain limitations and modalities that are contained in various principles of social organisation, situational contexts, ethical principles, and rules of etiquette' (Biebuyck, 1968: 562-3). Understanding the relationship between land tenure and agrarian change, then, requires attention not just to tenure rules, but to the observed social dynamics of the organisation of agricultural production in particular localities. Rules of land tenure are but one aspect of complex political and economic processes that invite attention to individual life histories and strategies involving farming, trade, education, employment, migration and political participation; local agrarian ecology; the relative rewards to the individual of agricultural and non-agricultural investments; and the interacting influences of local, regional and global economies.

The Kenyan land-tenure reform was based not on an understanding of the dynamics of particular rural political economies, but rather on a number of *a priori* assumptions about the relationship between economic progress and rules of private property. For this and other reasons (see below) the local results often contradicted the aims of the tenure reform.

AGRARIAN AIMS OF KENYA'S TENURE REFORM

In the mid-1940s colonial officials in Kenya witnessed indigenous trends towards land privatisation, but did not agree on whether or not individual tenure would have positive effects on agriculture. Some emphasised the need to block the growth of individual tenure among the Kikuyu because 'outright ownership by ignorant and often avaricious small farmers is the most disastrous thing that can happen to land anywhere', while others assumed that 'a man who owned land would take the trouble to farm it well' (Sorrenson, 1967: 56).

At the time Kikuyu agriculture was affected by severe overcrowding on the reduced territory reserved to them following European alienation of much of their land. Overcrowding, prohibitions on African production of export cash crops, and high emigration rates among adult males seeking wage employment contributed to colonial agricultural decline in Kikuyuland. The 1950s Mau Mau rebellion and the declaration of a state of emergency in Kenya hastened the resolution of British colonial disagreements over land policy (see Sorrenson, 1967).

Kenya's late-colonial land-tenure reform was intended to presage an agrarian revolution along pre-industrial European lines. The programme began in central Kenya under the Swynnerton Plan in the 1950s (see Swynnerton, 1954) and is still being extended to other regions of the country.² It was first undertaken with the advantage of confinement of much of Central Province's African population into fortified emergency villages established to contain the 1950s Mau Mau rebellion (see Sorrenson, 1967, and Swynnerton, 1954). Prompted by the political and economic need to address African rather than European farming interests (see Heyer *et al.*, 1976), the programme involved a series of steps from adjudication of clan and individual rights to consolidation of fragmented holdings, enclosure and, finally, registration of individual freehold titles (see Homan, 1962; Okoth-Ogendo, 1976; and Sorrenson, 1967).

The initial phase of defining and adjudicating clan and individual rights to particular parcels of land involved both clan elders and appointed officials such as assistant chiefs and chiefs. In some parts of central Kenya the adjudication phase was completed in just two or three years, beginning in the late 1950s. In other areas of the country where the programme began later and under very different political and economic circumstances, the adjudication phase itself already has taken up to fifteen years or more and still continues (see A. Fleuret, forthcoming; Brokensha and Glazier, 1973; Glazier, 1985).

In the 1950s the colonial government expected tenure reform to help quell Kikuyu political dissent and to contribute to the formation of a stable African middle class (Sorrenson, 1967). Its other objectives were to replace the uncertainty of customary tenure with a system of individual land titles registered and guaranteed by the state; and to expand cash crop production, improve agricultural techniques and encourage agricultural investment once fragmented holdings were consolidated into units of economic size and once registered titles could be used as security for agricultural loans.

Land consolidation and registration were to encourage the emergence of a class of commercial farmers who would gradually buy out the smaller

subsistence-oriented production units of 'uneconomic' size: '... energetic or rich Africans will be able to acquire more land and bad or poor farmers less, creating a landed and a landless class. This is a normal step in the evolution of a country' (Swynnerton, 1954: 10). Cultivators made landless by this process were to be a source of labour for the larger commercial farms and later for a growing industrial sector.

The specific agrarian aims and assumptions of the Kenyan tenure reform were as follows. First, consolidation of fragmented family land holdings would reduce unproductive use of resources such as labour lost in travel between scattered plots. The labour time gained would be used to intensify agricultural production. The planners assumed that consolidation would make it easier for farmers to guard against crop theft, to rotate crops and to use agricultural equipment. It would also allow agricultural extension agents to give better advice because they would now be able to see all of a farmer's fields. The planners of the reform assumed that 'once secure, compact holdings had been created ... farmers would be much readier to accept the recommendations of agricultural extension workers on farm layouts, cropping patterns, rotational systems, and soil protection works' (Barber, 1970: 11). Second, enclosed pastures would allow higher standards of animal husbandry, use of improved livestock breeds and adoption of a 'mixed farming' approach in which livestock would play a crucial role in maintaining soil fertility. Third, farm improvements would be financed through agricultural credit offered to farmers on the security of land title deeds. And, finally, titles would remove uncertainties regarding claims and therefore eliminate barriers to development of perennial cash crops such as coffee and tea. Cash crops were to stimulate rural economic growth and demand for agricultural wage labour that would employ the landless and nearly landless.

Before considering some agrarian consequences of the tenure reform, let us look briefly at the wider context of agricultural change in Kenya.

AGRARIAN CHANGE IN KENYA

In central Kenya in the late 1950s land entitlement itself was but one of many efforts to transform smallholder agriculture. Also important were improvements in rural transport, communications and agricultural extension services, efforts at soil conservation and the lifting of restrictions on African cultivation of export cash crops such as coffee and tea.

A number of observers attribute the successful growth of Kenya's small-scale agriculture in the late 1950s and the 1960s primarily to 'soft' development options whose potential had been nearly exhausted by the mid-1970s. These included the expansion of cultivated land in fertile regions (where some of the former large-scale European farms were divided and transferred to African farmers), removal of colonial restrictions on African dairy production and export cash crop cultivation, and the widespread adoption of hybrid maize (see Gerhart, 1975; Lofchie, 1986; World Bank, 1982). Use of the 'soft options' contributed to a dramatic shift in the relative contributions of large and small farms to marketed agricultural output between 1958 and 1967. The percentage of marketed agricultural production contributed by small-scale farmers (those with farms under 20 hectares in size) rose from 15

per cent in 1956 to 49 per cent in 1967 (Moris, 1970: 408).

Many state policies and services, however, continue to favour larger farmers. While large-scale coffee farmers, for example, receive at least 90 per cent of the world market price for coffee, small-scale coffee farmers receive no more than 66 per cent (Bates, 1983: 114). Programmes that subsidise agricultural inputs such as fertilisers tend to benefit large-scale farmers at the expense of small-scale farmers (*ibid.*: 116). Agriculture's share of the total development budget is less in the 1980s than it was earlier, and 'a large percentage of the agricultural budget has gone to parastatals with only limited benefit to most smallholders' (Cox, 1984: 170).

Since the mid-1970s Kenya's agricultural growth rates have fluctuated, but on average have fallen below the population growth rate (estimated to be the highest in the world—about 4 per cent per annum). A doubling of world tea prices in 1984 helped Kenya to pay for its food imports during the 1984 drought. Coffee booms associated with poor weather in Brazil and consequent high world market prices in 1977 and 1986 provided substantial infusions of cash into rural areas. Rising oil import costs in the 1970s (world oil prices doubled in 1979) and a decline in world coffee prices in the late 1970s contributed to later economic difficulties. Coffee in the early 1980s accounted for about a third of the total value of marketed agricultural output in Kenya (Government of Kenya, 1981: 97). Kenya's export quotas (2.26 per cent of the world market volume in 1981) under the International Coffee Agreement limit the area under that crop and the government has always legally confined coffee cultivation to particular altitude zones. Small farmers receive unreliable cash returns from coffee due to fluctuations in both world market prices and in prices paid them by their local co-operative societies.³ Farmers also face risks associated with institutions involved in the marketing and pricing of important food crops such as maize and in the distribution of inputs such as improved seed, fertilisers and pesticides. In short, Kenyan agriculture has been more successful than that of many African countries and small-scale farmers have expanded significantly their share of marketed output, but the country also faces economic difficulties common elsewhere on the continent.

AGRARIAN CONSEQUENCES OF TENURE REFORM

One of the assumptions of Kenya's tenure reform was that individual land titles would encourage cultivation of perennial cash crops such as coffee. Barber (1970: 17), however, compares cash crop incomes from four environmentally similar districts in Central Province for the 1950s and early 1960s and points to a striking departure from the expected relationship: '...the largest absolute gain in money income—to judge from the official reporting on the sale of export crops—has been achieved by the district [Meru] which has made the least progress in land consolidation'. Whereas in Meru District only about 10 per cent of the intended area had undergone land registration by mid-1965, in two other Central Province districts the tenure reform had been completed in 1959. Barber attributes Meru's remarkable cash crop receipts before land consolidation and registration to the district's lesser degree of political disruption during the 1950s emergency and to its head

start in coffee cultivation in the colonial period.' Unlike its practice in several other districts in central Kenya, the colonial government in Meru did not withhold from Africans permission to plant export tree crops until they could plant them on registered, consolidated holdings. Farmers did not wait until registration to plant coffee. The case of Meru District, then, undermines the argument that land entitlement and increases in cash crop production are necessarily linked. It suggests that under some conditions agricultural commercialisation and expansion can be achieved independently of freehold title registration.

Similarly, A. Fleuret's (forthcoming: 18–19) study of a Taita community (in eastern Kenya) now undergoing land registration states that 'in general the use of inputs is associated with cash crop production regardless of the [title] status of the farm plot upon which the crop is being cultivated'. If some potential innovators on untitled plots have become reluctant to plant perennial crops or to engage in other capital-intensive activities, their reluctance arises not from the insecurity of indigenous tenure, but from the possibility of tenure reform itself (*ibid.*: 19).

If expansion of cash crops was not a direct result of tenure reform, or the latter a necessary condition for the former, what of the other intended consequences of land entitlement? As indicated in the earlier discussion of overlapping and competing rights in rural land, there are obvious inadequacies in an African tenure reform predicated on wholesale conversion to exclusive titled 'ownership' of rural land. The new system, for example, overlooks customary cultivation rights such as those of an unmarried, divorced or separated woman on her father's, brother's or son's land, or those of a man on his brother's or father's land. These and other competing customary claims provoke disputes over the disposition and control of registered titles (see below).

The boundary disputes and litigation the tenure reform was to have ended flourish at an unprecedented rate in areas where the reform was completed as many as twenty-five years ago. From the time titles were issued in such areas, tenure security has decreased rather than increased.

Several studies have shown there to be a wide gap between the land register and actual patterns of land use and access (Haugerud, 1983; Paterson, 1984; Shipton, forthcoming). In spite of the system of formal titles, individuals continue informally to have overlapping and competing claims to the same parcels of land. Access to land is defined less by title deeds than by relations of descent, affinity, patronage and friendship. The divergence between formal and informal tenure systems grows as the sons of men who received land titles during the tenure reform marry and establish their own families on farms to which they themselves do not hold formal title.⁵

Although tenure reform involved consolidation of scattered plots, processes of population growth, partible inheritance and subdivision promote fragmentation of family land holdings. In addition, farmers often prefer to cultivate scattered parcels in order to exploit different environmental zones, to reduce risks of total crop loss, to grow a wider diversity of crops and to spread their labour requirements more evenly over the annual cycle (cf. Bentley, 1987). While much of Kenya's highland topography limits mechanisation, it is uncertain to what extent foregone opportunities for techno-

logical innovations, and labour time lost in travel between parcels may outweigh the risk reduction and other benefits of fragmentation. (The effects of fragmentation on agricultural productivity merit further research.

After the tenure reform farm sizes often dropped below the so-called 'subsistence minimums' specified in the Swynnerton Plan. The planners of the reform considered 4 acres (1.6 ha) to be the usual minimum necessary in the Kikuyu districts to support a family using the new recommended mixed-farming model. Soon after consolidation, however, in one of the Kikuyu districts, 60 per cent of the holdings were under 4 acres in size and in another district the figure was 46 per cent (Barber, 1970: 20). Government agricultural officers believed such figures presaged disaster for soil fertility, since farmers would have sufficient land for food crops but not for livestock. Coldham (1978a: 71) comments that the land control boards (see below) *do* take seriously the question of whether proposed subdivisions would reduce the productivity of the land, and they often seek advice on this question from agricultural officers. He notes, however, that it is difficult to predict the effect of subdivision on agricultural productivity and that, in most cases, subdivisions are approved, however small the holding that results.

Farmers often ignored guidance on farm layouts (Barber, 1970: 20; Moris, 1970: 109–110, 404), although they used the farm maps to obtain loans and to check whether they had been cheated during land consolidation (Moris, 1970: 100). Many of them sampled agricultural innovations, but few 'integrated such practices into an emergent farming system along the lines assumed by farm management economics' (*ibid.*: 372).

Poor returns to agricultural investment have helped to undermine another of the tenure reform's objectives, namely the emergence of a land market that was to have created a class of commercial farmers who hired the labour of a growing landless group. The landless have increased in number, but neither agriculture nor industry has grown at a sufficient rate to absorb more than a fraction of the youth who make up about half of Kenya's population. Family retention of land for partible inheritance and for subsistence purposes limits the land market in densely settled zones. Land markets in less densely settled zones of lower agricultural potential are more open and it is here that possibilities for individual accumulation are greatest. Individuals who accumulate land, however, tend to do so not for purposes of specialised agricultural investment (as envisaged by the planners of the tenure reform), but for speculation, for sons' inheritance, and for the increase in commercial borrowing power that each additional title deed confers.

Many land sales, subdivisions and successions go unrecorded in the register, though the Kenyan state has attempted to control the land market by requiring that any sales, leases or mortgages first be approved by local land control boards.⁶ As Coldham (1979: 617) notes, 'unregistered dealings will generally be devoid of legal effect, but as long as those involved behave as though they had such validity, customary law will continue to operate *de facto*, at least until challenged by someone prepared to assert his strict legal rights'.

The agricultural credit purposes of land entitlement have proved difficult to accomplish. Since agricultural investments are poorly rewarded, commercial agricultural loans obtainable on the security of title deeds are often

diverted to non-agricultural purposes. Moreover, although a minority of farmers use title deeds to secure agricultural credit from such institutions as the state-owned Agricultural Finance Corporation and commercial banks, 'the banks have found the courts reluctant to allow taking over of land offered by a farmer as his security for a loan' (Moris, 1970: 400).

In short, the Kenyan state has overplayed the value of individual freehold tenure and title registration for agricultural development. Some expansion of small-scale commercial agriculture in central Kenya has occurred independently of formal land privatisation. Registration has not stimulated a capitalist 'agrarian revolution'. To what extent, however, are opportunities for rural economic growth blocked by the patterns of access to rural land that emerge from the interaction of formal and informal tenure systems?

The remainder of this article explores implications of some of these issues in a particular local setting. It examines the relationship between access to land and agrarian change among the Embu, a Bantu people who occupy Mount Kenya's fertile south-eastern foothills. The Embu people are closely related linguistically and culturally to their Kikuyu neighbours on Mount Kenya's southern and western sides, to the Meru subgroups to the east and north-east of Mount Kenya, and to the Mbeere in the lowlands adjacent to Embu territory.

There is great diversity in development levels within and between districts in the Mount Kenya region, but average levels of education, income and agricultural innovation tend to be higher in the Kikuyu districts of Central Province than in the Embu, Mbeere and Meru regions of Eastern Province.⁷ The percentage of small farm households estimated to fall below the World Bank's poverty level of 2,000 shillings per year is lower in Central Province than in all others in the country (World Bank, 1982). The Embu people, though advantaged in comparison to the Mbeere, are sometimes considered poor relations of the Kikuyu, who with 21 per cent of the national population have long dominated the national political economy. The Embu represent just 1.2 per cent of Kenya's total population (Government of Kenya, 1979). Geographic, economic and socio-political ties linking the Embu and Meru to the Kikuyu, however, have helped to give Embu District more influence in Nairobi than its relatively small population size alone might suggest. Moreover, in the colonial period highland Embu was one of the first African areas to receive a number of colonial government programmes to improve smallholder agriculture (see Moris, 1970). The tenure reform discussed above is still under way in the district's Mbeere Division, but was completed in Embu Division (the focus of this article) about twenty-five years ago.

EMBU ECONOMY AND ECOLOGY

Land is central to political, economic and social life in Embu, as among neighbouring peoples such as the Mbeere: '... if *cherchez la vache* is the key to understanding the Nuer (Evans-Pritchard, 1940: 16) its Mbeere counterpart must surely be *cherchez la terre*' (Glazier, 1985: 11). The Embu, Meru and Kikuyu groups who surround Mount Kenya and who occupy some of Kenya's most productive and densely settled agricultural land have long had

important trading ties to neighbouring lowland societies more dependent on livestock (e.g. the Embu with the Mbeere, the Meru with the Tharaka, and the Kikuyu with the Maasai). People have cultivated the fertile highlands east of Mount Kenya for several hundred years.⁸ Sixteenth-century settlers found upper Embu a primeval forest, which was cleared gradually as the population increased and more land was needed for cultivation (see Mwaniki, 1973: 76). Until recent decades the local economy was one in which cattle and labour were relatively scarce and land was relatively abundant. With rising demographic pressure land has become a fiercely contested resource in Embu and in other agrarian societies around Mount Kenya.

Wide fluctuations in annual rainfall and frequent famine were associated with central Kenya's pre-colonial population movements, which included numerous waves of migrants into what are now the uplands of Embu District. Some famine refugees settled in Embu permanently and were adopted by Embu clans, while others eventually returned to their home areas. Significant population movements occurred late in the nineteenth century, for example, when Mbeere immigrants arrived following decimation of their livestock herds by a rinderpest epidemic. Under colonial rule landless Kikuyu immigrants settled in Embu in the 1930s and 1940s (see Embu District Handing Over Report, July 1954). More recently famine in 1980 brought a wave of Kamba and Mbeere migrants to upper Embu to look for work as casual agricultural labourers and to seek cash by selling pottery and crafts in local markets.

Saberwal (1970) associated this region's erratic rainfall and frequent migratory influxes with a loose pre-colonial social structure and flexible culture characterised by the absence of formal political hierarchy or centralisation, weak political integration across neighbourhoods, weakly corporate, non-localised descent groups, strong independence training for young men to fill warrior roles, reliance on self-help to establish and defend one's rights (cf. Fortes and Evans-Pritchard, 1940: 16), use of oaths, ordeals and poisoning as means of social control, and age- and generation-sets and ceremonial sites as means of political integration. Authority was negotiable and loosely defined by personal characteristics and motivations in conjunction with seniority based on age, so that within the homestead respect was accorded fathers and outside of it elders (see also Middleton and Kershaw, 1965; Mwaniki, 1973). Embu kinship ideology has a patrilineal emphasis that is reflected in inheritance, residence patterns, bridewealth, property rights, behavioural norms, kinship terminology and descent categories (see Saberwal, 1970, and Haugerud, 1984).

A man's wealth, principally land and livestock, is at the time of his death divided among each wife's sons. Who receives what is ideally determined by the father just before his death, and the allocation depends on the kind of relationship he has with each son. If a man dies unexpectedly, his brothers and other close male agnates meet to determine the division of property. Among the Embu, as among such groups as the Chagga of Kilimanjaro (Moore, 1975: 126-7), 'a father is under no obligation to give his sons land if they do not behave toward him with the proper respect and deference. . . . Nor is there anything that binds a father to treat his sons equally. Many fathers do not.' The father's right to decide how his wealth is to be

distributed among his sons is an important source of influence and control over their behaviour.

Most (over 90 per cent) of the people of Embu District live in dispersed homesteads rather than in villages, towns or trading centres (Government of Kenya, 1979). The residents of a homestead include a man, his wife or wives, their unmarried children, and possibly his own father or mother or both. It may also include one or more of his married sons and their wives and children, daughters divorced or separated from their husbands, together with their children, or the children of unmarried daughters. Married brothers are seldom co-residents in a compound; this occurs in only two of the eighty-two sample households⁹ and in both of these cases one or both of the brothers are employed part of the year outside the district. In polygynous families (about 16 per cent of the study sample) each wife has her own house, her own gardens, usually her own kitchen (a separate hut) and often her own granary.

Although a nuclear family household structure best fits the requirements of land registration under the tenure reform, this type of household is relatively rare in Embu. Sample households include members of from one to four different generations, with 43 per cent of them consisting of two generations and 45 per cent of three generations. Just over a fifth of the total sample (about half of the two-generation households) are nuclear or elemental families consisting only of a husband, one wife and their unmarried children. Nearly a quarter of the sample households include a separated, divorced or never-married daughter's children; of these households, nearly two thirds (representing 17 per cent of the total sample) include children of daughters who have not married, and the remaining third are children of divorced or separated daughters who have left their husbands' homes. These children tend to fall under the care of their grandmothers when their mothers are employed or when they remarry and leave earlier children behind. Divorced or separated women usually depend on cultivation and settlement rights granted them by a father or brother. They are not guaranteed such rights, however, and their access to them becomes less certain under increasing population density and under the current entitlement programme.

A 'household head' who is the holder of a land title becomes absolute owner under formal law. The household head can designate other individuals as joint proprietors, though this is not often practised. (Most titles are registered under the name of one male.) Kenyan courts 'have shown a certain willingness to entertain the claims of relatives whose land rights do not appear on the adjudication record (Coldham, 1978b: 101). The possible willingness of an official court to consider their claims, however, offers little security to the several categories of individuals whose access to land through a male household head is uncertain.

Interpersonal conflict (provoked by competition over land among other causes) leads to frequent changes in household composition. About a quarter of the sample households experienced substantial changes in membership due to interpersonal conflict during a twenty-month monitoring period. Seventeen per cent of the total sample households lost one or more members for a few weeks to some months, and 10 per cent (eight households) gained one or more members as a result of domestic conflict. In one of the more extreme cases of fluctuation involving several marital separations and reun-

ions in a polygynous household, the number of resident children in the household varied from none to eight, and the number of adults from one to three during the twenty months of monitoring. Changes arising from interpersonal conflict, taken together with those associated with migratory employment and with developmental cycle processes of birth, death and marriage create substantial fluidity in household structure and economic organisation (see Guyer, 1981). The variable land rights and obligations associated with such processes accord poorly with the less flexible official system of individual freehold titles.

Demography and ecology also have important implications for land tenure in Embu. Independently of the tenure reform, for example, rising population densities can contribute to erosion of some individuals' customary land use rights.

The Embu population more than tripled between 1918 (when it stood at about 53,000 people) and 1979 (180,400 people). In the uplands, where the population is concentrated, the average density increased from 220 to 332 persons per square kilometre between 1969 and 1979 (Government of Kenya, 1969 and 1979).¹⁰ Emigration from the district has increased slowly and is far below rates found, for example, in the Kikuyu districts. In part this is because the Embu, unlike the Kikuyu, did not lose land to European settlers in the colonial period, and they continue today to have access to a natural frontier adjacent to the uplands for population expansion. Not all families, however, have access to land in the less densely settled lower zone and most prefer to live in the upper zone if possible.¹¹

Migration into Embu District has contributed to its rising population density. In the colonial period outsiders (especially Kikuyu) from other districts began to purchase land in Embu District, but it has always been easier for them to do so in the less densely settled lowlands than in the uplands (see Moris, 1970: 201; Haugerud, 1984). In 1979, 15 per cent of the district's population was made up of members of ethnic groups other than Embu and Mbeere; most of these are closely related peoples, including Kamba, Kikuyu, Meru and Tharaka (Government of Kenya, 1979).

A pronounced altitude gradient in Embu District defines agro-ecological zones of very different economic potential and encourages farm families to cultivate widely scattered fields. For the portion of the district occupied by the Embu rather than Mbeere people, at least three (partly overlapping) cropping and land-use zones can be defined. As one moves eastwards away from Mount Kenya, these include the upper areas (*ruguru*) where tea is an important export crop (approximately 1,615–2,135 metres in altitude); a middle zone (*ivetti*) with coffee as an export crop 1,370–1,980 m); and a lower zone (*weru*) where cotton has been less successfully introduced as a cash crop (1,160–1,370 m).¹² These three zones are here referred to as tea, coffee and cotton zones, though food crops produced in each occupy larger areas than do export cash crops. As one moves down the altitude gradient there is a rapid decline not only in rainfall, but also in agricultural potential, population density, market development, social and administrative services, and density of road networks. About four times as much land, for example, is available *per capita* in the Embu cotton zone as in the coffee zone (Government of Kenya, 1979). By maintaining access to fields in two or more agro-ecological

zones, farm families can diversify their production, reduce the risk of crop loss and distribute labour requirements more evenly across the annual cycle.

The present study focuses on the lower coffee and upper cotton zones, which comprise a decline from 1,525 to 1,160 metres in altitude across a distance of less than 8 km. The upper portion of this range lies in the heartland area where the Embu people first built homesteads, while the lower portion was formerly used primarily for collective grazing. As is discussed later, tenure reform had very different implications in these two zones.

Most crop production is carried out by hand with hoes and machetes. Twenty per cent of the sample households own animal-traction ploughs (used to prepare land for planting) and some rent these to neighbours. Coffee-zone farmers devote on average 10–20 per cent of their land (about 0.2–0.4 ha) to coffee. The 50 per cent of the cotton-zone residents who do cultivate cotton (a less profitable and less widely grown cash crop than coffee) devote 5–15 per cent of their land to that crop. The remaining hectareage in both zones is used for food crops such as beans, maize, bananas, sorghum, sweet potatoes, white potatoes and cassava. Maize and beans are the principal staples, with most households growing $\frac{1}{2}$ –1 ha of these crops in mixed and single stands. Many farmers practise rotation of nitrogen-fixing legumes with grain and tuber crops. A larger proportion of land is left fallow or used for grazing in the cotton zone, where for historical and environmental reasons, population density and intensity of cultivation are much lower than in the coffee zone.

Cultivation is supplemented by small-scale production of sheep, goats, cattle and poultry. Average livestock holdings per household are about four cows, two or three goats, and one or two sheep. About a third of the sample households own improved breeds of cattle, and three times as many of these households are in the coffee zone as in the cotton zone.

Access to labour required for crop and livestock production and for other tasks in Embu is defined by negotiable and variable relationships within domestic units, as well as by varying capacities to call upon additional labour outside of the domestic unit. Extra-household labour is mobilised through co-operative work parties (in which participants are given gruel, beer or food, but not cash) and by hiring (usually on a daily or piecework basis). Wealthier households are not only the largest users of hired labour (Haugerud, 1988), but many are also better able than the majority to organise large co-operative work parties because they can offer participants greater quantities of beer and food, as well as favours of patronage (e.g. loans of land, cash and food in times of need, and assistance in dealing with government institutions, and securing employment and secondary school places). For many less well-off households co-operative labour is used in periods of peak labour demand in the agricultural cycle, but poorer households are likely to provide other households with more co-operative labour than they receive (see Haugerud, 1988).

Access to labour on demand crucially affects agricultural production, since it can improve a farmer's capacity to adjust, for example, to rainfall uncertainty at critical points in the agricultural cycle by allowing him or her quickly to organise a second planting if late onset of the rains causes seed from the first planting to fail to germinate. Poorer households are less likely to be able to afford the extra seed required for a second planting or to

command the resources to hire labour or to organise large or frequent work parties. Since the mountainous topography of the uplands does not favour mechanisation, agricultural expansion depends largely on a farmer's capacity to expand his or her labour force through use of hired or co-operative labour, or through incorporation of additional family members into the production unit.

While the agricultural potential of the Embu uplands is high (with fertile volcanic soils and adequate rainfall) and export cash crops have been cultivated there for a quarter of a century, diversification into activities outside agriculture is the main source of dynamism in the rural economy. Indeed, diversification into off-farm activities and preferential investment in the latter are hallmarks of contemporary African agriculture (Hart, 1982: 117; Hyden, 1984: 24; Government of Kenya, 1977; Chuta and Liedholm, 1979; Lamb, 1974: 134; P. Fleuret, 1980; Kitching, 1980). In Embu, farmers earn additional income from activities such as charcoal production, beer brewing, tailoring, carpentry, clothing and grain trade, making sisal ropes, or casual agricultural and urban wage labour. In addition, over a quarter of the sample households include at least one full-time salaried employee, and 9 per cent operate small businesses such as butcheries, tea hotels and retail shops.

At one end of the rural wealth scale, cash earned off the farm helps households who have inadequate land to meet minimum food consumption needs. For many households with better agricultural resources it supplements farm income by providing crucial additional cash for children's clothing, education and other expenses. For a wealthy few it is the important link to extra-local markets and institutions that permit accumulation through land purchases and acquisition of commercial loans. Except when it draws essential domestic labour away from crop production in households too poor to hire labour or to purchase any agricultural inputs, off-farm income has some positive but not transforming effects on small-scale agriculture. The wealthiest households which could invest most cash in farm improvements, however, are less likely to invest in farming than in rural trade, rental properties, transport enterprises, children's education and speculative land purchases. As Hart (1982: 117) puts the case for Africa more generally, 'commercial agriculture has not been a vehicle for cumulative capitalist investment, nor has the logic of such accumulation governed agriculture's dominant pattern of organization'.

Agrarian profits are often diverted to payment of school fees, a pattern apparent in upper Embu by the mid-1960s (Moris, 1970: 414). In the early 1980s 400 coffee trees was an approximate minimum necessary to support one child in a private secondary school,¹³ though only about one third of the Embu coffee zone households sampled actually own this many mature coffee trees. Some parents estimate the potential rewards of secondary education to be great enough that they sell their land and livestock and borrow cash from relatives and friends to finance their children's education. Since the actual rewards of educational investment are limited by shrinking employment opportunities and rapidly growing numbers of youthful job seekers, sale of productive assets to finance secondary education may contribute to a net transfer of resources to already privileged segments of the population.

Competition over access to economic resources, particularly land, education and employment, drives the rural economy. Integral to success in this competition and crucial to survival at all levels of wealth is investment in social relations with kin, neighbours, bureaucrats and politicians. Such relations are important to the poor, who must rely on kin, affines and friends for assistance (e.g. borrowing land, livestock, food, cash); for the majority, who exchange labour, land, livestock, cash and food to deal with short-term fluctuations in the availability of these resources; and for the wealthy, who depend upon the good opinion of the community (as well as extra-local political ties) to support and enhance their positions. That is, 'both the acquisition of resources and the defense of property rights depend on the ability to accumulate patrons, dependents and/or loyal supporters, as well as on the command of material wealth *per se*' (Berry, 1983: 64). This is particularly true of land in Kenya.

PRE-REFORM LAND TENURE IN EMBU

Under pre-colonial land tenure in Embu individuals were usually free to cultivate new land in any locality so long as it was not in use by someone else or had not been defined as another person's *runo* land. Under *runo* rights an individual placed an initial claim on a parcel of land by placing stones or planting trees along its boundaries and having it blessed with honey in a ceremony overseen by clan elders; the person was then required to put the land into immediate use to validate his claim. He and each of his patrilineal descendants ideally were entitled to cultivate portions (sing. *mugunda*) of the original parcel (*kuthaka*), though long-term co-residence of a father and all his married sons was not usual. Although land in pre-colonial Embu was inherited by one or more of a man's sons, customary residence practices and the relative abundance of land meant that sons did not need to depend upon inheritance to acquire it. Some sons left their natal homesteads at marriage or some time afterwards to establish new homesteads and acquired rights in land through first clearing or purchase.

Individuals who acquired land through first cultivation (or *runo* rights) or through purchase controlled both use and transfer rights to that property. When the founder died, however, his descendants did not exercise the autonomous use and transfer rights of the founder. Once an individual acquired use rights to a piece of land through inheritance, he was free to plant whatever crops he chose and his lineage exercised no rights in the harvest. Should the individual wish to transfer use rights to another person through tenancy or sale, however, he first had to obtain approval from other members of his lineage. In such transactions rights to trees were negotiated separately and might require extra payment (see also Glazier, 1985: 196–8; Kenyatta, 1965).

Under the Embu distinction between rights to plant seasonal crops and rights to plant perennial crops or trees, trees are associated with more permanent claims to land. As Glazier (1985: 197) notes, 'preventing tenants from growing perennials . . . undermines their ability to wrest control of the land from their hosts; the latter can more easily ask tenants to depart at the end of a growing season.' The tenurial implications of tree planting contri-

buted to the failure of an attempt in the 1930s by the colonial government to encourage planting of trees by distributing seedlings free of charge. Embu farmers refused to plant the seedlings because they believed that doing so would give the government a claim to their land. Fears of government confiscation of their land were reduced when the administration began to charge a small fee for seedlings rather than distributing them free of charge (minutes, Embu Local Native Council).

In Embu, as well as in Kikuyuland and elsewhere in Kenya, rising population densities, commercialisation and other changes were associated with pre-reform trends towards land privatisation.¹⁴ As early as the 1920s some African political leaders in Kenya had demanded that people be allowed title deeds for their land (Moris, 1970: 124). As land became scarcer in Embu purchases increased, as did conflict over corporate land rights activated by individuals representing particular lineages or clans (see Local Native Council minutes, 21–22 May 1941). In the 1930s the Embu District Local Native Council received increasing reports of secret or ‘illegal’ land sales—that is, sales transacted by individuals without the customary approval of other lineage members or witnessing by elders. Early government proposals to alleviate the problem by registering sales were turned down, however, by local chiefs on the Embu Council (Glazier, 1985: 202). Under some circumstances, although the evidence is historically distorted and ambiguous, purchases were redeemable: that is, land could be ‘refunded’ to the seller if the latter returned the total amount of livestock or cash originally paid (see Kenyatta, 1965; Sorrenson, 1967; Glazier, 1985: 200). Glazier (1985) discusses contradictory motivations and outcomes concerning interpretation of this procedure during current land adjudication in Mbeere.

Before tenure reform land in Embu, the Kikuyu districts and elsewhere in Kenya was accumulated by clan elders, government-appointed chiefs,¹⁵ and other influential persons (see Saberwal, 1970; Sorrenson, 1967; Kitching, 1980; Lamb, 1974; Ng’ang’a, 1981). During the tenure reform itself the convergent interests of colonial civil servants and clan elders overseeing land adjudication allowed some individuals to acquire registered holdings of substantially larger than average size, while some of their fellows acquired next to nothing (see Haugerud, 1983: 78–80). Individuals who gained during the tenure reform included those with earlier and better knowledge of the reform procedures and those with the political influence to use that knowledge to their own advantage and that of their future heirs.

During the adjudication period the many land disputes within and between clans were settled by elders who required payment from the litigants, a process in which wealthy and influential disputants used their advantages to acquire larger plots and land in more favourable locations.

The largest consolidated holdings could be acquired in the sparsely populated *weru* zone (now the cotton zone), which had been used primarily as a common grazing ground and as a buffer between the Embu and Mbeere peoples. The few people who lived in this zone when land adjudication began were poorly informed about the meaning of the new government demarcation procedures. Their inadequate knowledge made it easier for better-informed and more influential individuals to acquire large holdings.

Inequality in farm size, however, was an intended outcome of the tenure

reform. To what extent did such inequality produce the intended agrarian benefits?

AGRICULTURAL INNOVATION AND FARM SIZE

One of the assumptions of Kenya's tenure reform under the Swynnerton plan was that freehold titles in a competitive land market would allow an emergent class of commercial farmers gradually to buy out smaller subsistence-oriented production units. Agriculture would benefit by this process because wealthy individuals who could purchase larger land holdings would be better farmers. There is not yet any evidence, however, to support this assumption. From Kenya there is no conclusive data concerning the relationship between farm size and land and labour productivity (see, for example, Hunt, 1984: 257). Nor does available data permit definitive statements about the direction and magnitude of change in the distribution of either income or land ownership (see Collier and Lal, 1984; Kitching, 1980; Njonjo, 1981; Leys, 1971).

Since Embu District was one of the first African areas of Kenya to receive a number of colonial government programmes to improve smallholder agriculture (see Moris, 1970), it is a useful test case of the Swynnerton Plan assumptions concerning agricultural innovation and farm size.

In the study sample of eighty-two farm households, land holdings range from less than 0.5 ha to 61 ha in size (the distribution is skewed, with a mean of 5 and a median of 3 hectares).¹⁶ Average land available *per capita* (in the coffee and cotton zones combined) is about 0.5 ha in both the study sample and in the population of the two administrative units (sublocations) from which the sample was drawn.¹⁷

There are no striking differences in farming techniques among large and small farmers in Embu. There is little evidence that the largest landholders are more likely to invest in agricultural improvements or innovations, though they are somewhat more likely to have superior access to additional means of production such as animal-traction ploughs (in part because ploughs are more suited to the flatter terrain of the cotton zone, where parcels are larger).¹⁸ Use of hybrid maize and chemical fertilisers and ownership of improved livestock breeds are not significantly related to land-holding size. Indeed, smaller land holders appear slightly more likely than large land owners to use chemical fertilisers (although these are applied in quantities well below recommended dosages and on small field areas). Farmers usually apply chemical fertilisers only to coffee or maize. The pattern in Embu, as elsewhere on the continent, is that marketing of crops has increased more rapidly than capitalisation of production (Reyna, forthcoming).

Improved agricultural extension services were to be a benefit of the tenure reform. Extension advice is almost entirely confined to the export cash crops coffee and cotton. While most (88 per cent) of the sample households had been visited at least once by an agricultural extension agent, two thirds of the total sample had received extension advice concerning only coffee or cotton.

Other innovations such as citrus fruits, Napier grass and macadamia nuts are grown by most farmers (often in small quantities) and are not disproportionately represented among the top quintile of land owners.

Although dozens of agrarian innovations (see Moris, 1970) have been

introduced in Embu since the 1950s (and earlier), they have not transformed smallholder agriculture or created an emergent class of larger commercial farmers whose agricultural techniques distinguish them from the majority. Since the single most successful innovation—coffee cultivation—was quickly and widely adopted in various localities in central Kenya before, during or after tenure reform (depending on the location), there is little reason to suppose that tenure *per se* is a major obstacle to adoption of other innovations.

The minority (about 15 per cent) of Embu farm households who consistently produce more food than required to meet their own consumption needs¹⁹ use the same production techniques as the majority (e.g. hoes, machetes, few purchased inputs, scattered plots). The consistent food surplus producers own nearly twice as much land as the majority (with a mean of 9 ha, as compared to 5 ha), although there is no statistically significant correlation between size of landholding and frequency of food surplus production. The consistent food surplus producers, however, do have significantly higher material standards of living, larger numbers of mature coffee trees and better access to both hired and co-operative labour. (Correlations between frequency of food surplus production and each of these last variables are positive and statistically significant.) These patterns suggest that at present access to labour and cash are more important constraints on crop production than is access to land.

In the future, when the cotton zone has exhausted its capacity as a demographic safety valve for the crowded coffee zone, *per capita* land available to coffee- and cotton-zone residents may decline to the point that land becomes the primary constraint on agricultural production. At present, however, those who have the cash or labour to expand their agricultural production can usually do so through purchase, rental or borrowing.

THE LAND MARKET

Agricultural investment is not the primary motive of land purchasers in Embu. Contrary to the expectations of the Swynnerton Plan, farmers accumulate land primarily for speculative purposes, for the future subsistence security of sons, and for the increase in cash borrowing power that each additional title deed confers. In the early 1980s more than half the land purchases in the study sample had under cultivation by themselves and by those to whom they had granted cultivation rights less than two thirds of the total land they owned.

Moreover, individuals who accumulate land through purchase are acquiring fragmented holdings rather than the large consolidated farms that were the goal of the Swynnerton Plan. Among the sample land purchasers with holdings over 6 ha in size in the early 1980s, one has seven separate parcels, another has six, another has four, two have three, one has two, and none has a holding consolidated into a single parcel. Large land holdings (over 6 ha) acquired at the time of first registration rather than through subsequent purchase are slightly less fragmented. In this category still only two out of eleven households have single-parcel holdings, eight have two parcels and one has three parcels. Accumulation of large consolidated holdings is likely to be even more difficult in the future for several reasons: continuing high birth

rates increase tendencies towards fragmentation of holdings to meet subsistence needs; rural land rights remain important to all economic classes as a means of affirming descent group membership and securing access to other resources; and land control boards have the power to block sales (but do not necessarily do so) that would leave families landless or with a holding below the official minimum subsistence acreage.

Officially a free market in land has not been allowed to develop in Kenya, though many sales are unregistered and not approved by land control boards. Registering sales is a costly procedure that involves travel to administrative centres and payment of official and unofficial fees. Land purchases often take years to effect and are fraught with uncertainty. One coffee zone family, for example, spent several years trying to purchase additional land, only to have their cash refunded in the end when sons in the family selling the land refused to turn over the title deed.

Land purchases are a top priority investment for wealthier farmers with incomes from salaries and small businesses.²⁰ The market value of agricultural land exceeds its agricultural value and places its purchase beyond the reach of most small farmers. In the early 1980s the cost of 0.5 ha land in the lower coffee zone, for example, could easily be four or more times the annual net income from 0.5 ha of coffee (which requires five years after planting to reach the stage of marketable berry production). The market value of 0.5 ha maize or beans tends to be lower than that of coffee, except in years of drought and food shortages. Land rentals, which are rare in the research area, are relatively inexpensive (about 250 shillings per ha or \$33 in 1981 prices). Reported land rentals involve non-kin about twice as often as kin.

Quite apart from its agricultural value, land is a cash-generating asset. With title deeds as security, loans that range in size from a few hundred shillings to several hundred thousand shillings are available from institutions such as commercial banks, the Industrial and Commercial Development Corporation, the Agricultural Finance Corporation and the Kenya Government. Such loans are used for non-agricultural as well as agricultural investment (see Smith, 1976). About 15 per cent (225) of 1,545 titles from one portion of the Embu coffee and cotton zones have loan charges applied to them. In the cotton zone more than half the loans (31 out of 50) are taken out by land purchasers rather than by heirs or original owners who acquired the land during the first registration. While loans are nearly as frequently applied to title deeds in the coffee zone, only a small fraction of them (two out of 45 loans among 292 titles in the sampling area) are on titles for purchased land. This difference reflects the much more open land market in the cotton zone. The availability of such loans substantially increases the attractiveness of rural land acquisition for purposes not necessarily related to agriculture.

By mid-1986 nearly 20 per cent of the Embu sample households had purchased land since registration twenty-five years earlier. Land purchasers are disproportionately represented among households who fall in the top quintile of both wealth and land ownership,²¹ and who have children attending secondary school. For example, nearly half of the (24) households with children attending secondary school in 1986 had purchased land since the tenure reform, though only 20 per cent of the total sample households had purchased land. Among those households who own 4 ha or more, one

third have purchased land, while only one of the 45 households owning fewer than 4 ha has purchased land since registration. Over half the land purchasers in the sample (in 1981) fall in the top wealth quintile.

Those who had sold land by the early 1980s are more evenly distributed across wealth ranks than are land purchasers; 57 per cent of them are in the wealthiest half of the sample. The wealth ranks of the nine households who sold land between 1981 and 1986 include two wealthy, two upper middle, four lower middle and one poor. There is little evidence at present that land purchasers acquire land in pronounced disproportion from the poorest people.²² Many land sellers, however, are less privileged than land purchasers; they are less likely, for example, to have children attending secondary school. (Half the land sellers had children in secondary school in 1986, as compared to three quarters of the land purchasers.) Some farmers sell land to meet expenses such as school fees, medical costs or bridewealth. A few sell some of their land in order to purchase additional land in a more preferred location.

Present inequalities in land distribution have arisen in two different ways: (a) from use of political influence to acquire holdings of larger than average size at the time of adjudication and first registration twenty-five years ago, and (b) through subsequent purchase of additional land (especially by those farmers who have access to significant off-farm incomes). Some individuals obtained little or no land at the time of the first registration because their anti-colonial political activities meant they were put in detention camps or were absent as freedom fighters in the forest when land adjudication began. Although some wealthier farmers are accumulating land through purchase, descent-group sanctions and the powers of local land control boards afforded some protection against sales that would leave families either landless or with insufficient hectareage to meet subsistence needs. As rapid population growth continues, however, the landless can only increase in number.

Acquiring cultivation rights on others' plots at present helps some of those with little or no titled land to meet their subsistence needs. Such informal land exchanges are based on cultivation rights the courts are under no obligation to recognise. The future of such rights will also depend on demography and on the dynamics of agricultural expansion and capitalisation.

LAND BORROWING AND LENDING

It is common for individuals to acquire cultivation rights in land to which other households hold formal title. At least three quarters of the sample households report they participate in such borrowing and lending transactions, which are an important means of increasing the diversity of micro-environments a household can exploit, and which help to protect against total crop loss due to pests, disease, flooding or drought in a particular area. Many of the largest land owners allow kin and others to cultivate for their own benefit portions of their land. These practices entail no mandatory payments for use, though token gifts such as a kilo or two of sugar or tea are sometimes presented. The transactions reported (under-reporting is likely) involve kin and non-kin with approximately equal frequency.

Lower population pressure in the cotton zone contributes to higher rates of borrowing and lending in that zone as compared to the coffee zone (see Haugerud, 1984: 354). Coffee-zone residents are more likely to borrow land across zones than are cotton-zone residents. Coffee-zone residents also own substantial land in the cotton zone, though cotton-zone residents own little land in the coffee zone. In the cotton zone some land owners allow an unspecified public to have grazing rights on their uncultivated land (i.e. individual arrangements with the owner are unnecessary) and other members of the public take advantage of absentee owners for such purposes.

Should technological or other changes make agricultural investment more rewarding in the long run and lead larger land owners to expand their own farm enterprises, many smaller land owners would lose cultivation and grazing rights and possibly suffer declining subsistence standards. Even without large-scale agricultural investment in Embu, the formal system of freehold titles itself already threatens subsistence security and provokes conflict over control of land title deeds.

DISPUTES OVER LAND TITLES

One of the purposes of land title registration was to encourage agricultural investment by reducing litigation and removing uncertainties regarding claims to land. Again the outcome has been contrary to that intended. Growing conflict over access to and disposition of land titles divides families and strains the resources of all levels of the Kenyan legal system, from local elders and assistant chiefs to government courts. The legal battles multiply as tenure reform is extended to other areas of Kenya, as title holders default on commercial loans and as more transfers go unrecorded in the registry.

Determining who among many family members with competing customary claims to a particular piece of land should have legal title to it is a growing source of interpersonal conflict. Even agreeing on who actually does hold the title to a given piece of land is not always straightforward, given the possibilities for exploiting illiteracy and the inconsistency of names individuals use at different stages of life. Land control board files contain numerous cases of theft and forgery of title deeds, many of them between fathers and sons or between brothers. Most title deeds are not even collected from the land registry office until some years after they are formally issued. Obtaining them requires a number of trips to the district headquarters and payment of official and unofficial fees. Getting the official title deed then is often an effort postponed until a subdivision, inheritance, sale or loan application is pending. The access to commercial loans which land title deeds confer, however, is one of the more compelling reasons *not* to ignore the formal legalities of the register.

The following case illustrates the type of family conflict provoked by the insecurity of tenure associated with the possibility of using title deeds as security for commercial loans. This instance also illustrates how descent-group control over land diminished when an individual acquires land using his own resources rather than those of the descent group (here bridewealth livestock received for a sister).

In one family, when a father was unable to repay a commercial loan

attached to his title deed, one of his sons repaid the loan and in addition paid his father a purchase fee for the land itself. Another son, however, contested his brother's ownership and held that he too had a right to a portion of the father's land. Local elders hearing the case asked whether the first son had used any of the goats received for his sister's bridewealth to pay for the land. His mother confirmed that her son had purchased the land entirely through his own private means. The elders decided that the land did belong to the son who had both paid his father's commercial loan debt and paid his father a purchase fee. They left it to the son himself to decide whether or not to give a portion of the farm to his brother as a gift. The two brothers did not find this solution satisfactory and were granted permission by the elders to forward the case to the lower government court in the area. Each then hired an attorney and the case was pending before the court when field research ended.

In another case a widowed father's remarriage provoked intense conflict with his sons over the father's intention to sell some of his land. He had previously sold some land (and livestock) to finance his elder son's secondary education, but when he made plans to sell still more land in order to pay both the son's school fees and bridewealth for his second wife, both his sons protested. The older son was displeased with his father's second marriage because any sons produced by the second wife could threaten his and his brother's claims to both their family's land parcels. The second wife complained that her husband was giving financial priority to school fees for his first wife's sons and ignoring the needs of her own young children for nursery school fees and clothing. Tension in the home led the oldest son to spend his boarding school holidays with neighbours rather than at home. The first son held the title deed for his family's 1.6 ha coffee-zone parcel (which his father had registered in the name of his then infant son at the time of land adjudication). The father himself held title to 1.6 ha unoccupied and uncultivated land in the cotton zone. When the father requested the son to exchange land parcels with him, the son refused. The father wanted the elder son to share some of his land with his younger brother, and argued that some of the younger brother's land had already been sold to finance the elder son's education. One day the two sons beat their father's new wife and forced their father and stepmother to move to the unoccupied land in the cotton zone. The father then discontinued payment of his son's school fees. The son left school to work on the coffee-zone farm with his younger brother and soon married.

Since most land titles are issued to males, it is usually men who have exclusive legal right to sell land. Local land control boards, however, frequently deal with cases in which wives or sons file complaints to prevent a man from selling land essential to a family's subsistence or land sons expect to inherit. The following letter to a land control board in Embu is typical.²³

Dear Sir,

Re: Objection to sale of land parcel no. ____

Registered in the name of _____

I am the legally and lawfully married (certificate with me) wife of Mr _____ and I understand from reliable sources he is intending to sell the above piece of land which is approximately 3 (three) acres. The grounds for my appeal/objection are as follows: 1. My husband and I have nine (9) children of whom four (4) are

boys. 2. We haven't got any other piece of land to live in because even the 1/8 acre point we had was sold by him. 3. The three acre land we have has coffee (about 300 stems) in two _____ Farmer Cooperative Society Ltd shares—one belonging to my husband _____ and the other belonging to our first born son _____ son of _____. 4. The sales of this coffee help our children's school fees, clothing, and other necessities of life. The money we get helps me to bring up children, and buy food as the land is not very good for maize and beans. 5. If therefore the land is sold or any part thereof, we shall not only miss children's education and our daily bread but we shall live like homeless birds in the air. 6. Since my husband has an illegal wife, he may think of selling the land secretly without my knowledge. It is for these reasons that our children and I object to the sale very strongly.

Yours faithfully, _____
wife of _____

If the writer of this letter is successful, the land registrar will place on the husband's title deed an official restriction blocking sale of the land.

Indeed, official 'cautions', prohibitory orders or restrictions blocking any sales are found on approximately 2.5 per cent of 1,117 contiguous titles in the Embu coffee and cotton zones. This is a small but important percentage, since the objections formally recorded represent only a fraction of the actual conflicts over land sales.

Land litigation and post-reform tenure insecurity can have negative effects on agricultural productivity. Individuals invest substantial energies in defence and acquisition of land titles, and in negotiating with kin and others rights of cultivation, inheritance, building and transfer.

Winners and losers in land conflicts cannot be categorised easily, but it is certain that those with better education and jobs are better placed than the majority to deal successfully with the state bureaucracies involved in land litigation. Among the elite too, however, access to agrarian resources such as land, credit and fertilisers involves sectional competition, jealousy and attempts to block rivals' economic advance.

Local land control boards are left to determine the balance between the award of land (through transfer of titles) to larger farmers (ostensibly to encourage agrarian entrepreneurship), or to small farmers to help to guarantee their capacity to meet subsistence needs (see Coldham, 1978a: 65).²⁴ Shipton (forthcoming: 36) suggests that among the Kenya Luo the outcome is that 'boards are not effectively preventing the concentration of holdings by blocking sales and mortgages by very small landholders, as formally empowered in the Land Control Act of 1967'. Land control boards do reject some socially undesirable transactions; Coldham (1978a: 72) cites evidence that land control boards generally reject proposed sales 'if the applicant has no other land to go to or if his family objects'. The board's power to block sales on behalf of the seller's kin is a reminder of pre-reform legal restrictions on sales without the approval of other descent group members.

Today kin group rights are reasserted as lineage descendants of the individual in whose name the title was first registered later place their own competing claims on his land. A few families settle such claims by formally registering transfers, and many others resolve claims informally. As officially unrecorded land transactions multiply in the post-reform era, 'the fact that the dealings in question are void will not prevent there arising . . . a large

number of disputes, disputes of the type and complexity that existed in many areas before land adjudication and that land adjudication was designed to stop' (Coldham, 1978a: 74). In short, one of the consequences of land adjudication and tenure reform may be the necessity for readjudication.

SUMMARY AND CONCLUSIONS

Trends towards land privatisation, increasing purchases, litigation and erosion of customary use rights were present in Kenya some decades before official privatisation occurred. These tendencies were associated here and elsewhere on the continent with rising population densities, commercialisation of agriculture and growing opportunities for wealth accumulation by colonial chiefs and other notables. Tenure reform in Kenya has not successfully institutionalised exclusive private control of land, nor has entitlement been a necessary prerequisite for expansion of commercial agriculture.

Kenya's formal and informal tenure systems interact in an unpredictable and disruptive manner. Uncertainty and conflict regarding claims to titled land persist and there is a wide divergence between the land register and actual patterns of use and access (e.g. unrecorded sales, subdivisions and succession). Conflict arises over who of many family members with competing customary claims to a particular piece of land should have legal title to it. Individuals continue to have overlapping access to the same parcels of rural land, and different persons within a household often enter into separate informal transactions of borrowing or renting land from members of other households. Cultivation of scattered family plots continues for reasons related to both ecology and social organisation.

The nuclear family household structure that best fits the requirements of land registration is relatively rare in Embu (about 20 per cent of the study sample). The official system of individual freehold titles poorly accommodates flexible and negotiable land rights and obligations associated with extended families and with frequent changes in household composition.

Unregistered land transactions are common and become part of a complex web of claims and counter-claims in both formal and informal legal contexts. Conflict over titles and transfers of rural land consume much of the time of local elders, assistant chiefs, chiefs, divisional and district officers, land control boards and government courts. Few, if any, African nations would be better able than Kenya, however, to keep land registers current or to effect local compliance with or understanding of an official system of individual freehold tenure.

The expansion of commercial agriculture in central Kenya has not required registration of individual freehold titles and the post-reform land market itself has not encouraged agrarian entrepreneurship. Although the planners of the tenure reform expected an unequal land distribution to produce agrarian benefits, the largest land owners are not the most innovative or productive farmers and agricultural investment is not the primary motivation of accumulating land through purchase. Accumulation of land titles both confers substantial economic advantage (e.g. access to commercial credit used for non-agricultural as well as agricultural purposes) and reflects prior

political influence and wealth (often including income from trade or wage employment).

The minority of Embu households (about 20 per cent of the sample) who have purchased land since first registration twenty-five years ago are disproportionately represented in the top quintile of wealth and land ownership, and are more likely than are non-purchasers to have children enrolled in secondary school. Land sellers are more evenly distributed across wealth ranks, and although some sales do threaten households' subsistence security, there is little evidence at present that land purchasers acquire land in pronounced disproportion from the poorest people. If larger land owners were to decide to expand their farm enterprises, the subsistence standards and cultivation and grazing rights of many smaller farmers would be threatened.

To what extent does individual energy consumed in negotiating, contesting and defending rights in land negatively affect agriculture? Although defence of property rights obviously consumes time that farmers could use more productively, the extent to which farmers otherwise would invest in agricultural expansion is a matter of conjecture. At present in Africa pervasive economic, political and legal uncertainties lead individuals to invest their energies in securing access to productive resources, rather than in expanding productive capacity (Berry, 1983, 1985, this issue). In both agricultural and non-agricultural pursuits unproductive patterns of resource accumulation, use and management multiply since individuals cannot count on the security of property rights, on the stability of profits or on the loyalty of customers, co-workers, constituents or even kin (Berry, 1985). These wider conditions and the complex processes of social transformation they entail suggest that changes in a single set of circumstances such as land tenure rules are unlikely to have substantial or predictable effects on agriculture.

Although land rights affect agricultural performance and practices, they do so in ways that do not favour standardised tenure prescriptions (such as freehold title registration) to correct agrarian ills. African states are limited in their administrative capacity effectively to improve tenure security through official privatisation. Official privatisation is likely to be accompanied by conflicting systems of formal and informal land tenure. In addition, agricultural performance is tied to the opportunity costs to farmers of on-farm and off-farm labour, and to complex relations of dependence and exchange among rural individuals with respect to land, food, cash, labour and political favours. If opportunities for rural economic growth are blocked by the social organisation of access to land, they are blocked also by a host of interrelated processes governing access to other key economic resources.

Careful comparative research might identify cross-cultural regularities in the relationship among various forms of land tenure, agriculture, demography and socio-political organisation. For scholars and policy makers alike, however, there remains the old problem of how to distinguish between causal or functional relationships and historical coincidence.

APPENDIX: METHODOLOGY

Research methods and techniques used in the Embu field study are described

elsewhere (Haugerud, 1984: 425–36). Briefly, these involved two and a half years of participant observation, formal surveys and structured and unstructured interviews, as well as use of local archival materials. The sample of eighty-two farm households was selected publicly by drawing names in the manner of a lottery at a local *baraza* (meeting) held outdoors, chaired by the two assistant chiefs of the study sublocations and attended by residents of the area. The survey sample households are very close to the population parameters in such characteristics as age and sex structure, education and *per capita* land availability (Haugerud, 1984).

Interviews were conducted in Kiambu, Swahili and English, depending on interviewees' education and background. Research assistants who helped with much of the interviewing were female and male university and secondary school students (all of whom had passed their O-level or A-level exams, most of them with distinction), as well as an older nurse and male secondary school teacher with their own families. Where possible, research assistants' age and sex were matched to the particular characteristics and requirements of interview topics and respondents.

Each sample household was formally interviewed about thirty to thirty-five times using questionnaires (it was visited informally on other occasions). Those interviewed in most of the questionnaire surveys were female and male household heads and spouses, with assistance from other responsible adults in the household. In addition, less structured interviews on a number of topics were conducted with elders, headmen, chiefs, government officials, politicians and other residents.

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NOTES

¹ For reviews, see Bruce (1985) and Feder and Noronha (1987).

² By 1984 over 5.26 million hectares, covering most of Kenya's high potential agricultural land, were under individual titles (Lofchie, 1986: 224).

³ Cash returns to small-scale coffee farmers vary not only over time but also from one co-operative society to the next at any given point in time. Local prices depend in part on the quality of local coffee processing and on the honesty and skills of co-operative society officials. In some parts of Embu District, for example, returns to coffee farmers were five to ten times higher than those in the field study area.

⁴ African coffee production in central Kenya began first in Embu (the research area discussed later in this paper) and Meru in the 1930s, since these districts were farther removed than those of the Kikuyu from European coffee estates. African coffee production in the Kikuyu areas was not encouraged until late in the colonial period. Substantial coffee planting in Embu preceded land consolidation; by the end of 1953 Embu already had about 188 hectares of coffee (Moris,

1970: 97). Coffee co-operative societies in Embu were disrupted somewhat during the emergency as 'many of the officers, committeemen, and growers from the co-operative were detained' *ibid.*: 97)

⁵ In addition, the inaccuracy of the registry was assured at the outset since some original titles were issued in the names of deceased persons 'on grounds that widows are not heirs and minors cannot be landowners' (A. Fleuret, forthcoming: 27).

⁶ Coldham (1978a: 64-8) states that the system of local land control boards 'was characterized by its decentralization, its dependence on local representation and its exclusion of the courts'. The composition of the boards includes both local residents and government officials; more than half the members must be 'owners or occupiers of agricultural land within the jurisdiction of the board'. Board members tend to be relatively well-educated individuals who have both agricultural and off-farm incomes.

⁷ What is now Embu District was in the colonial period first part of Kenia Province, then Kikuyu Province and later Central Province. At the close of the colonial period the district's boundaries were redefined so that the western parts occupied by the Kikuyu (Ndia and Gicugu) became a separate district (Kirinyagga) and remained part of Central Province. The redefined Embu District (including Embu and Mbeere divisions) became part of Eastern Province.

⁸ The proto-Embu people arrived in Mount Kenya's south-eastern foothills as part of a series of Bantu migrations of multiple origins from the north-east and east that continued into central Kenya until late in the nineteenth century (see Middleton and Kershaw, 1965: 13-15).

⁹ The household here includes those individuals who occupy and manage a given farm parcel and who share production and consumption activities associated with that and sometimes additional parcels. (See Haugerud, 1984, for explanation of treatment of households segmented as a result of polygyny or other reasons.) The sex and age structure of the survey sample (739 individuals in eighty-two households) is almost identical to that of the district population (*ibid.*: 45, 54).

¹⁰ These figures are for Runyenje's Division, the higher-altitude portion of the district occupied by the Embu rather than the Mbeere people. Tea and coffee zones make up most of Runyenje's Division, while cotton, mullet and livestock zones make up the remaining lower-altitude parts of the district occupied primarily by the Mbeere people.

¹¹ Although by 1962 about 30 per cent of the Kikuyu were counted outside their home districts, by 1969 only about 6 per cent of the Embu population lived outside their home district. Among those Embu who had emigrated the largest numbers in 1979 were living in Nairobi. Male migrants predominated, with a 1979 sex ratio (males per 100 females) of 167.4 for Embu people living in Nairobi (Government of Kenya, 1979). The sex ratio within the district in 1979 was 94.5.

¹² In the study sample of eighty-two households, all of those in the coffee zone cultivate coffee, but just over half of those living in the cotton zone grow cotton.

The terms the Embu use to refer to these zones are to an extent relative, so that, for example, the term *weru*, meaning a relatively flat, dry landscape, is applied by tea-zone residents to the lower portions of the coffee zone, by lower coffee-zone residents to grasslands of the upper cotton zone, and by upper cotton-zone residents to the still lower altitude, flatter and drier regions occupied by the Mbeere people.

¹³ School fees are lower in government schools, but admission is more selective. In 1980 well over two thirds of the sample children who were enrolled in secondary school were in private rather than public schools.

¹⁴ See Sorrenson (1967: 56-61), on other parts of Kenya, see Coldham (1978b: 95), A. Fleuret (forthcoming: 8-9) and Shipton (forthcoming: 20-21). For cases elsewhere in Africa, see Downs and Reyna (forthcoming).

¹⁵ British indirect rule introduced formal political hierarchy into the non-centralised Embu polity through imposition of local chiefs who had no necessary claim to customary authority. In the mid-1920s the British established Local Native Councils, composed primarily of the new chiefs under the autonomy of British administrative officers such as the district commissioner, district officer and agricultural officer.

¹⁶ In the study sample there is neither a linear nor a non-linear relationship between land acreage and household size. Pearson's rho is 0.03 and is not statistically significant. A test of linearity indicates no non-linear relationship between the two variables either.

In addition, there is no statistically significant relationship between wealth (a score that excludes land) and household size, or between wealth and dependency ratio (ratio of consumers to producers in a household).

¹⁷ Since inter-zone land exchanges and ownership in more than one zone are common, the *per capita* figure given is for the coffee and cotton zones combined. *Per capita* land available in the survey sample ($N = 82$ households composed of 739 individuals) is 0.59 ha, and that of the population of the two administrative units or sublocations (which had a combined total population of 7,899 in 1979) from which the sample was drawn is 0.52 ha.

If *per capita* land availability is calculated for each zone separately, however, 0.18 ha is available per person in the coffee zone and 0.84 ha per person in the cotton zone.

¹⁸ Forty per cent of the sample households used mechanised land preparation in the 1980 short rains; 34 per cent of those who did so fell in the top quintile of land ownership (owners of more than 6 ha of land). In that season 14 per cent of the total sample used their own ploughs, 20 per cent hired them, 1 per cent borrowed a plough, and 4 per cent hired a tractor.

¹⁹ This category includes households who produced the staples maize and beans in excess of consumption requirements in at least six of the eight crop seasons monitored. (The eight crop seasons counted here include four seasons for maize plus four for beans during four consecutive rainy seasons between 1978 and 1981; see Haugerud, 1988).

²⁰ Land purchasers enjoy a higher material standard of living than do non-purchasers; in the study sample land purchasers included, for example, the only owners of automobiles, gas cookers and pressure lamps. Anne Fleuret (forthcoming: 20, 24) finds land purchasers in Taita in eastern Kenya also have significant sources of off-farm income and relatively high material standards of living.

²¹ Chi-square is significant at the 0.001 level in both instances. The gamma correlation coefficient is 0.83 in the case of the relationship between land acreage owned and ownership of some purchased land, and 0.66 for the relationship between wealth rank and ownership of some purchased land. (These figures are for the early 1980s.) Wealth ranks are based on an additive scale of fourteen material assets weighted according to their cash value when new (see Haugerud, 1984).

²² Anne Fleuret (forthcoming) finds the same to be true in Taita in eastern Kenya.

²³ Handwritten letter, file 86, Embu North Land Control Board, January 1979. (Errors in original.)

²⁴ In Botswana too, as Comaroff (1980) discusses, local land control boards have been left to define the balance between conflicting social and economic aims of land legislation.

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Résumé

Bail foncier et changement agraire au Kenya

Cet article examine la relation des systèmes de bail foncier officiels et officieux par rapport au processus de changement agraire. Bien qu'on suppose fréquemment que la reconnaissance légale officielle des droits privés fonciers puisse faciliter la transformation de l'agriculture, il est difficile de démontrer les liens moins officiels entre les systèmes particuliers de bail et le processus agraire. Il est difficile de séparer les effets du bail foncier de ceux entraînés par une multitude d'autres influences sur l'agriculture. L'histoire agraire des hautsplateaux du Kenya est un cas particulier. Des données provenant de la Région Embu sont utilisées pour démontrer les problèmes analytiques impliqués.