NEW GUINEA RESEARCH BULLETIN

Number 40

LAND TENURE AND ECONOMIC DEVELOPMENT:
PROBLEMS AND POLICIES IN PAPUA-NEW GUINEA AND KENYA

Land problems in Papua-New Guinea by S. Rowton Simpson

Land demarcation and disputes in the Chimbu District of the New Guinea Highlands by R.L. Hide

Land problems and land policies in Kenya and Papua-New Guinea: a comparative historical perspective to 1963 by A.M. Healy

Land reform in Kenya by J.K. Kinyanjui

March 1971

Published by the New Guinea Research Unit,
The Australian National University,
P.O. Box 4, Canberra, A.C.T.

and

P.O. Box 1238, Boroko, Papua-New Guinea
THE AUSTRALIAN NATIONAL UNIVERSITY

Research School of Pacific Studies

New Guinea Research Unit Committee

O.H.K. Spate, Chairman, Director of the School

J.W. Davidson, Department of Pacific History

A.L. Epstein, Department of Anthropology and Sociology

E.K. Fisk, Department of Economics

Marie Reay, Department of Anthropology and Sociology

Marion W. Ward, New Guinea Research Unit

Editor, New Guinea Research Bulletin

Marion W. Ward

Editorial assistant

Susan Tarua

March 1971
Preface

This Bulletin is a collection of four papers on land tenure, particularly its relation to economic development. The paper by R.L. Hide deals solely with Papua-New Guinea and that by J.K. Kinyanjui concentrates on Kenya, while A.M. Healy's consists of a broad historical comparison of land policies in Kenya and Papua-New Guinea. S. Rowton Simpson's paper focuses on recommendations for reform in Papua-New Guinea, but draws on the experience of many African countries, including Kenya. Because impending legislation dealing with land reform in Papua-New Guinea has been greatly influenced by Kenya's experience, it is felt that departure from the normal New Guinea Research Bulletin practice of concentration on Papua-New Guinea alone is justified. It is hoped that this connection of papers will create further discussion on this most important aspect of Papua-New Guinea's development.

Part I is a slightly edited version of the 'Report on land problems in Papua-New Guinea' which Mr Simpson prepared at the request of the Administration during a visit in May and June 1969. Mr Simpson is Land Tenure Advisor of the British Ministry of Overseas Development. Acknowledgment is made to the Department of External Territories in Canberra for permission to publish his report.

An earlier version of Part II was read by Mr Hide at the Third Waigani Seminar on 'Land tenure and indigenous group enterprise in Melanesia', which was held at Port Moresby in May 1969. Mr Hide's fieldwork for this paper, as a research assistant with the New Guinea Research Unit of the Australian National University, was carried out in the Chimbu District between December 1967 and April 1968, with a brief return visit in October 1968.

The comparative study in Part III was originally prepared by Dr Healy in 1963-64. He was induced to revise it for publication here in view of the official report on land tenure by Mr Simpson. It complements the Simpson Report.

Part IV by Mr Kinyanjui was also presented at the Third Waigani Seminar in May 1969, and gives one assessment of the current state of land reform in Kenya. Mr Kinyanjui is Assistant Director of the Land Adjudication Department in Nairobi.
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>vii</td>
</tr>
<tr>
<td><strong>Part I</strong></td>
<td></td>
</tr>
<tr>
<td>Land problems in Papua-New Guinea</td>
<td>1</td>
</tr>
<tr>
<td>by S. Rowton Simpson</td>
<td></td>
</tr>
<tr>
<td>Appendix</td>
<td></td>
</tr>
<tr>
<td>Brief history of land demarcation in</td>
<td>30</td>
</tr>
<tr>
<td>Papua-New Guinea</td>
<td></td>
</tr>
<tr>
<td>Bibliography</td>
<td>35</td>
</tr>
<tr>
<td><strong>Part II</strong></td>
<td></td>
</tr>
<tr>
<td>Land demarcation and disputes in the Chimbu</td>
<td>37</td>
</tr>
<tr>
<td>District of the New Guinea Highlands</td>
<td></td>
</tr>
<tr>
<td>by R.L. Hide</td>
<td></td>
</tr>
<tr>
<td>Bibliography</td>
<td>60</td>
</tr>
<tr>
<td><strong>Plates</strong></td>
<td></td>
</tr>
<tr>
<td>1 Nimai demarcation, 1968: marking boundaries</td>
<td>50</td>
</tr>
<tr>
<td>with targets</td>
<td></td>
</tr>
<tr>
<td>2 Nimai demarcation committee members</td>
<td>54</td>
</tr>
<tr>
<td>positioning a cement boundary marker</td>
<td></td>
</tr>
<tr>
<td><strong>Tables</strong></td>
<td></td>
</tr>
<tr>
<td>1 Chimbu demarcation committees, 1968</td>
<td>42</td>
</tr>
<tr>
<td>2 Sequence of Nimai demarcation, 1967-68</td>
<td>49</td>
</tr>
<tr>
<td>3 Nimai demarcation, 1968</td>
<td>51</td>
</tr>
<tr>
<td>4 Outcome of Nimai demarcation</td>
<td>51</td>
</tr>
<tr>
<td><strong>Diagrams</strong></td>
<td></td>
</tr>
<tr>
<td>1 Nimai segmentation and population</td>
<td>46</td>
</tr>
<tr>
<td>2 Information channels at the Madang</td>
<td>58</td>
</tr>
<tr>
<td>instruction course</td>
<td></td>
</tr>
</tbody>
</table>
Maps

1. Chimbu District adjudication areas, 1967
2. Nimai territory, 1968

Part III
Land problems and land policies in Kenya and Papua-New Guinea: a comparative historical perspective to 1963 by A.M. Healy

Appendix
Summary of adjudication procedure in Kenya

Bibliography

Part IV
Land reform in Kenya by J.K. Kinyanjui

Bibliography

Index
Part I

Land problems in Papua-New Guinea

S. Rowton Simpson
Introduction

For those concerned with land policy and administration, it is of prime importance to consider clearly the nature and purpose of registration of title, and what it can be expected to do in the general scheme of developing an undeveloped country. It is essentially a procedural device, and I must make clear at the outset the distinction between 'procedure' and 'policy'. Policy is decided by policy makers who have political authority and may or may not take expert advice. The execution of policy, however, is often dependent on procedure and, indeed, a policy may be defeated if the required mechanical processes are inadequate. Procedure is the field of the expert. Whether or not to encourage individualisation of customary tenure is a policy matter for political decision, and I am unable to offer any firm opinion on it.2 But land ownership, whether it emerges by natural evolution or is brought on by policy, demands special procedure, particularly where dealing is concerned. It can be said with some assurance that the present procedure in Papua-New Guinea is unlikely to facilitate any policy aimed at individualisation. For example, the fee simple of English land law is not an attractive or even an intelligible substitute for ownership under customary law, especially as it requires expensive legal assistance to conduct a registered dealing, instead of a cheap and apparently effective customary process such as is common in the Gazelle Peninsula. The right sort of law must be provided for keeping simple registers, and more effective provision made for their compilation.

1 The terms of reference for my investigation in Papua-New Guinea were to examine (i) the functions and functioning of the Land Titles Commission with special regard to (a) the system of demarcation, (b) adjudication, (c) the system of conversion of titles (including communally owned land), (d) the dealing with these titles when placed upon the register books, and (e) whether it is desirable and feasible to separate the judicial and executive functions at present carried out by the Land Titles Commission; and (ii) the procedures for registration of leases. The time available for this investigation was unavoidably much too brief. I realise that only too easily I may have formed a wrong impression or missed a vital point or drawn a wrong conclusion, but I did discuss a draft of this report with various officials in Port Moresby and I have endeavoured to meet the suggestions which were made.

2 See pp.21-3.
To explain the connection between registration of title (the mechanical process) and individualisation of customary tenure (a policy matter), I will, at the risk of over-simplification, confine myself to three main points which I will call:

(i) registration of title as a conveyancing device,
(ii) the cult of the economic man, and
(iii) registration of title in the process of tenure conversion.

(i) **Registration of title as a conveyancing device**

Registration of title is a process whereby the government maintains a register of parcels of land showing all the relevant particulars affecting their ownership, and guarantees these particulars to be complete and correct. The register is the final authority, and transactions are effected only by making an entry in the register. It is a simple procedure with simple forms, and makes dealing in land easy, quick, cheap and certain.

Registration of title was introduced into England - and into Australia under the Torrens system - to overcome the shortcomings of private conveyancing which was (and still is) a laborious process involving elaborate investigation of title for every transaction. Registration of title was designed to facilitate conveyancing and it has generally been considered as a technique to be adopted or rejected on its merits in order to prove (not change) title and simplify dealing.

This point must be emphasised because it is frequently assumed that registration of title will itself automatically produce good development and indeed is essential to it. It should be remembered that after more than one hundred years of registration, there are only 2,500,000 titles on the English register. These are mainly urban, and most English farming land is unregistered but nevertheless well farmed. All the cocoa, palm oil and ground nuts of West Africa have been produced without registration of title, as have coffee in the Chagga country of Tanzania and cloves in Zanzibar. Registration of title is not a panacea for all tenurial ills nor indeed is it an end in itself. It is merely an administrative tool which is only useful for the particular job for which it is designed. It is only a means to an end, which is the best development of the land in a manner fair to those who do the development. In Papua-New Guinea little attention has been given to how the register will be used after registration and whether the existing procedures are suited to the new sort of landowner who now has a registered title. The Land Titles Commissioners themselves naturally tend to regard registration as the final objective since their duty is to resolve land disputes and they are not concerned with day-to-day dealing or the operation of the register after it has been compiled.

(ii) **The cult of the economic man**

Customary tenure is alleged to be one of the principal obstacles to agricultural advance, and the East Africa Royal Commission 1953-55
argued that rural economic and social progress would only be achieved by changing tribal African into economic man. Land was to play a leading part in this process, particularly through the individualisation of land ownership and the creation of 'a degree of mobility in the transfer and disposition of land which, without ignoring existing property rights, will enable access to land for its economic use'.

It was thought that the law should establish grounds for confidence that existing property rights will not be arbitrarily disturbed. It should then provide for a process whereby exclusive individual ownership of land can be registered where it already exists, and helped into being where it does not, and for the application of this process in specific areas.

Mr R.J.M. Swynnerton, Assistant Director of Agriculture in Kenya at that time, said this of agricultural development in relation to land tenure:

Sound agricultural development is dependent upon a system of land tenure which will make available to the African farmers a unit of land and a system of farming whose production will support a family at a level, taking into account perquisites derived from the farm, comparable with other occupations. He must be provided with such security of tenure, through an indefeasible title, as will encourage him to invest his labour and profits in the development of his farm, and as will enable him to offer it as a security against such financial credits as he may wish to secure from such sources as may be open to him.

(Swynnerton 1955:9)

This appears to have been the thesis which set Papua-New Guinea so resolutely on the course it adopted in 1962, as a major policy decision, but the processes chosen to effect it differed materially from those used in Kenya.

It was a major policy decision because individualisation of tenure strikes at the very root of tribal society. The traditionalist will view it with regret, if not suspicion and resentment, or even resistance. The process may be accelerated or 'brought on' by government, but a premature application of the obstetrical forceps, however well intentioned, may lead to stillbirth. There have been many abortive attempts in Kenya in the past ten years which have cost much in time, effort and money. Papua-New Guinea can benefit from this experience.

Individualisation of tenure also precludes the operation of the customary social security system which assures every member of the

2. Cmd 9475 (1955:350). Emphasis added to stress a vital point which has been far too widely ignored even in Kenya itself.
landholding group, no matter how old or how long absent, some share of the group land whenever he requires it for his own subsistence. But such a system depends on a plentiful supply of land and it can no longer operate effectively when population increases to the extent that the land is fully utilised. Another form of social security must then be arranged (as in Europe), and anything which ensures more production from the land - even perhaps a reform of customary tenure - must contribute more to the common good than a system which militates against good land use.

(iii) **Registration of title in the process of tenure conversion**

Registration of title was used in Kenya to substitute the provisions of a simple statutory law for the vagaries and uncertainties of customary law and so not only confer the long-term security of tenure which any form of permanent improvement demands, but also enable land to be easily and safely transferred - the mobility so strongly advocated by the East African Royal Commission as being essential to the proper development of land. But in any case, processes of dealing begin to develop when land acquires an economic value, as it rapidly does when it is no longer as freely available as air or water yet is just as indispensable to human existence. Unless some form of registration is introduced when dealing starts, methods of private conveyancing develop which will almost certainly be inefficient and lead to all the misfortunes which flow from clouded titles. Thus registration of title has its place in its own right, apart from inducing tenure conversion. This may well be very relevant to conditions in the Gazelle Peninsula where there is already much dealing under customary law.

Moreover, in the early stages of private ownership, dealing should be subject to control to avoid the situation in India and Burma where it was rapidly proved that there is no surer way of depriving a peasant of his land than to give him a good title and make it as readily transferable as a bank note. Effective control is only possible through a system of registration - which is a further reason for introducing it as quickly as possible.

**Diversity of conditions**

The immense diversity of conditions in any territory, and often within a single district, must be considered in the introduction of the appropriate land policies. In an article which I wrote in 1954 I made the following broad distinctions between:

(i) Areas in which not only is any action as to land tenure quite unnecessary, but interference might well create suspicion.

(ii) Areas in which nothing more is required than the efforts and exhortations of agricultural and administrative
of officers to guide or direct matters along the right lines, but in which the application of any formal rules or legislation would be premature.

(iii) Areas which are fully ready for regulation.
(iv) Areas where action has been too long postponed and lost ground may be difficult to recover, perhaps literally as well as metaphorically.

(Simpson 1954:63)

In Papua-New Guinea there are obviously many areas where action is as yet unnecessary or at least where nothing more is required than the efforts and exhortations of agricultural and administrative officers. There are also areas such as Port Moresby and Rabaul where action has been too long postponed and where the provision of a complete register of landowners (Administration, customary and private) would solve a number of present difficulties. But the difficult problem is in the third category: how to choose the areas which are fully ready for regulation, bearing in mind the virtues of registration as a conveyancing device as well as its use (not nearly so well tested) for converting customary tenure.

The present situation in Papua-New Guinea

The hard facts are simple and brief: only 252 land tenure conversions have been completed, of which the majority are under systematic schemes.\(^1\) There has only been one dealing in converted land. No certificates have yet been issued under the Land Registration (Communally Owned Land) Ordinance. It is evident that as yet there is no popular demand for action under the system and so far as dealing is concerned it has had practically no effect.

Whalan (1969) suggested that there were three possible courses of action: (i) do nothing and hope that all will solve itself (he called this the ostrich or head-in-sand attitude); (ii) do something by patching and mending the existing legal framework (he called this papering over the cracks); and (iii) undertake a thorough recasting of title concept and approach. He suggested that this is not only what should be done but what must be done.

The first choice can be ruled out at once, but the second and third are not quite so clear-cut as Whalan suggested. Although a new concept is needed, some patching and mending is inevitable. It would not be sensible to dismantle the massive organisation which has been built up; instead, we must try to redirect its efforts where they have gone wrong. It is difficult for me, in such a brief visit, to judge what is politically or even administratively feasible, and therefore many of the following suggestions must necessarily be only tentative at this stage.

\(^1\) See pp.12-13.
Background and history of demarcation

The Appendix\textsuperscript{1} was prepared in Papua-New Guinea to give the background and history of demarcation and it appears to give all the relevant facts. In particular, it should be noted that by 1 May 1969 no fewer than 536 areas had been declared for adjudication apparently with scant regard for local conditions and, as we have seen, with very little result so far as final title is concerned. Also the statement that reliance was placed upon experience in British colonial territories\textsuperscript{2} could be misleading, if it implies that their practices were adopted. Kenya is the only place where anything comparable with the Papua-New Guinea demarcation process has been attempted, but there are certain fundamental differences between the two (in particular, Papua-New Guinea's treatment of customary tenure) which I shall try to bring out in the following remarks on the ordinances concerned.

Land Titles Commission Ordinance 1962-1967

Although that part of the Ordinance which set up a permanent Land Titles Commission was directly derived from the Fiji Native Lands Ordinance, the idea of a permanent commission must have originated in the Maori Land Court of New Zealand which was set up in 1862 (as the Native Land Court) to be the custodian of native interests. The first duty of that court was to inquire into and establish titles to customary lands. But, of course, the circumstances in New Zealand of a minority indigenous community requiring protection against an established and dominant immigrant government were completely different from the position in Papua-New Guinea where, in the not-too-distant future, an indigenous government will be in power. Such a court might have been contemplated for the protection of the aborigines in Australia, but it was ill-suited to the situation in Papua-New Guinea.

Yet a strong case can be made for having a permanent court composed of specialists in land work. Inquiry into customary land interests requires experienced administrative field staff rather than lawyers, and a process more flexible than the ordinary court process. It is more in the nature of arbitration than of judgment based on judicial principles. The intensive knowledge of the commissioners and the care and detail shown in their records are most impressive and certainly appear to justify the Commission's existence. Moreover, the Commission has specific functions to perform (under, for example, the Land Ordinance) which it might well be inconvenient to pass to the ordinary courts. It looks to me as if we must retain the Land Titles Commission and therefore the Ordinance which sets it up.

The practice of constantly amending ordinances to meet any change of mind or policy (which seems such a feature of local legislation) is to

\textsuperscript{1} See pp.30-4. \textsuperscript{2} See p.31.
be deprecated. This Ordinance has already been amended five times and it is now difficult to determine what was the law at any particular time. Nevertheless, it must be amended yet again (or repealed and re-enacted) to make clear that it does no more than set up special machinery for the determination of land disputes, which is its real purpose as declared in its preamble.

Thus, if its 'demarcation committees' are formally turned into adjudication committees with power to adjudicate upon and decide in accordance with recognised customary law any question referred to them by the Commission, and if, for the moment, the policy of positive individualisation is ignored, they can very usefully be 'structured' into the system for settling land disputes. Appeal from their decision should lie to the Commission.

The Ordinance should also be amended to remove from the Commission any functions which are not judicial, for it is generally agreed that there is no reason why an independent judicial tribunal should be responsible for administrative and executive functions. What areas should be adjudicated, for example, depends on administrative, social and economic considerations with virtually no judicial considerations at all, and the declaration of such areas should be a matter for the Administration (as it will be under the proposed new legislation). The areas to be declared under the amended Land Titles Commission Ordinance will, however, be the areas of jurisdiction of the respective 'permanent committees' and not areas for the systematic ascertainment of individual rights, for which a special process must be provided.

The Administrator (or the Administrator-in-Council) rather than the Commissioner should be made the responsible authority for the adjustment of existing declared areas (now to be the jurisdictional areas of the permanent committees) with power not only to vary but to cancel declared areas, notwithstanding that they were declared by the Chief Commissioner. By this expedient the whole matter can be brought back into perspective, for it may be better to cancel some declarations rather than to let them 'wither on the vine', a practice which must leave many people not knowing where they stand.

In many cases the settlement of boundaries between landholding groups is more of an administrative than a judicial process, particularly where no boundary has ever been formally determined because land not yet taken up still lies between the groups. This sort of no-man's-land ought to have been adjudged Administration rather than group land, but it is too late for that now. All that can now be done is to watch its development carefully with a view to ensuring its best use.

When such decisions cover only a disputed part and not the whole of a boundary, they should not be recorded in any registry of title, unless

---

1 As suggested by Hide, p.59.  
2 See p.17.
merely as a repository for their safe keeping. The place for them should continue to be the District Lands Office where they have hitherto been kept. If, however, a complete boundary is decided and properly surveyed and there is a land register for that locality, provision could be made for the area enclosed to be recorded on the register as customary land with or without group representatives.¹

Land Registration (Communally Owned Land) Ordinance 1962

Under the provisions of this Ordinance a process of unregulated private conveyancing, not even supported by a deeds register, is being established with incredible energy and effort. This can only be disastrous if the principles of registration of title and Torrens¹ whole thesis have any validity at all.

Moreover, markstones (cements), which are a surveyor's tool and only effective if supported by survey, are being implanted in huge quantities. Apparently 25,000 parcels have now been marked out in the Rabaul area, of which 12,500 are individually owned. The totally unsupported turning mark, of a sort which is so easy to move, can only lead to dispute, however much its placing is witnessed. Some sort of boundary marking in length by methods devised by landowners themselves to indicate their boundaries might be effective, but the surveyor's peg, without survey, will be fatal. This process must be halted until either some survey (which can be absolutely minimal) or some form of boundary marking in length is arranged.

Fortunately nothing has yet reached the register under the Land Registration (Communally Owned Land) Ordinance 1962 (nor did it under the Native Land Registration Ordinance 1952 which preceded it). However, the Registrar is about to issue certificates under the Schedule to the Ordinance in respect of individual customary titles and these certificates will have the appearance of a Torrens certificate and indeed its effect - with the prospect of unregistered private conveyancing developing without guidance against the background of an uncertain and changing law. The Tolais certainly are now 'dealing-minded' because 43 out of 133 parcels at Rakunat are held ikulya (by purchase). If these individual dealings are to be regulated at all, they must be regulated and recorded within the framework of an appropriate law; if not, they must be left alone. There is no half-way house. A registered individual customary title is a contradiction in terms.

I think that the mistake must have come about in the following way. The original Native Land Registration Ordinance 1952 was derived from the Native Lands Ordinance which set up the Native Lands Commission in Fiji. But whereas the Fijian Ordinance expressly provided that the

¹ As suggested on p.20.
Commission should inquire into 'the title to all lands claimed by mataqali or other divisions or subdivisions of the people', the Papua-New Guinea Native Land Registration Ordinance provided that the Commission should determine 'the rightful and hereditary property of natives and native communities'. This enabled individual ownership to be recorded in Papua-New Guinea, while in Fiji the process was confined to landowning groups.

In 1962 the Land Titles Commission Ordinance replaced the Native Land Registration Ordinance 1952. It set up the Land Titles Commission and also made provision for demarcation committees (based on the Kenya committee system). Customary titles were to be registered under the Land Registration (Communally Owned Land) Ordinance even where they were in respect of individual holdings and a certificate was prescribed under the Regulations. The stage was thus set for the registration of customary individual title, although the real intention of the framers of the Ordinance was merely to ensure that the enormous amount of detailed work done by the Commissioners under the Native Land Registration Ordinance to determine group holdings should be effectively recorded. It was not contemplated that individual holdings would be recorded, although the wording of the Ordinance made this possible.

The Land Registration (Communally Owned Land) Ordinance should be repealed and the group-owning determination should be brought into the Land Titles Commission Ordinance (or the ordinance which provides for systematic adjudication).  

Land (Tenure Conversion) Ordinance 1963-1967

For the purpose of converting customary tenure, a special - and unique - ordinance has been devised with a long preamble which sets out the theme enunciated above by the East Africa Royal Commission.  

Policy based on this theme was rigorously pursued in Kenya but, significantly, not in Uganda and Tanganyika which were also the subject of the same recommendation.

The Land (Tenure Conversion) Ordinance provides an elaborate and lengthy process whereby a person can obtain an individual Torrens title. It is completely sporadic and is the sort of process which was described by Dowson and Sheppard (1956) as 'vicious in principle, as it means that each holding is given isolated consideration when it happens to come up for registration instead of conflicting claims of neighbours all being thrashed out at the same time'. Yet there are strong and apparently compelling arguments for some sort of sporadic process. Agricultural officers, for example, are always particularly keen to get title for

---

1 See pp.19-20 for some comments on how group holdings can be registered.
2 See pp.4-5.
the most progressive farmers, so that they can set a pattern. However, not only is the sporadic process disproportionately costly but it has been found, on the one hand, that lone individual conversions may not in practice eliminate custom because members of the clan continue to exercise customary rights in the converted holding. If, on the other hand, the individual holder successfully resists custom, he may be excluded from the social framework with its inbuilt system of social services; far from setting a shining example, he is an object of dislike, regarded as a failure rather than a success. Systematic conversion with full clan understanding and support is more likely to overcome these difficulties. Nevertheless, the sporadic process obviously must be retained in Papua-New Guinea, if only to give title to the individuals carving farms out of the jungle in the Lae area, although even there the report of the 1968 United Nations Visiting Mission cast doubts on the efficiency of the programme and suggested (1968:77) that 'individual freehold titles should not be created unless the area is likely to be an economic holding, not only at present, but in the foreseeable future'. The decision must presumably turn on the ecology of the area and the type of farmers it is proposed to encourage. But one can only view with misgiving the carving of large personal holdings out of fully occupied tribal lands, as at Mt Hagen. However, the provisions in the Ordinance are stringent enough to enable every consideration to be taken into account, although it may not always be clearly understood what the considerations are; indeed, opinions differ as to what they should be.

It seems therefore that the Land (Tenure Conversion) Ordinance should remain provided that there is also legislation for systematic adjudication. A minor amendment is required to enable survey fees to be charged should this be considered desirable, and there must be some clear thinking on policy. Apart from sporadic conversion, there are two other situations to be specially considered. Firstly, there is the systematic conversion of part of the tribal area and, secondly, there is the position in the Gazelle Peninsula where systematic conversion to individual holdings is being effected on a vast scale under the heading of 'communal tenure'.

Obviously the systematic conversion of part of the tribal area into individual holdings on a planned layout is a highly desirable process if title means anything at all. This is being done at Popondetta and is the sort of process which the original framers of the 1963 legislation apparently had in mind. It demonstrates how that legislation could be used for systematic adjudication but, of course, that desirable purpose was wholly lost sight of when mass declarations of adjudication areas were introduced without any regard for the title needs in the area declared.

---

1 As suggested on pp.17-20.
Systematic conversion of the sort at Popondetta might be supported by land-use legislation to apply to freehold land some of the sanctions which derive from contract in respect of leases of Administration land, and thus enforce good land use. However, this would be a powerful deterrent to conversion and probably is not practical politics at present. In any case, far more important than compulsion are sympathetic and practical extension services and, above all, the economic circumstances which make development worthwhile. If, as has been suggested (Gray 1969:3), it is really possible to get more income from regular work on the road than from heavier work on one's own plantation (with all the worries and the risks that beset the planter or farmer anywhere), then there is clearly not much future in this sort of enterprise. The world is scattered with enterprises that have failed, although not a few have been successful. Incidentally, legislation should at once be introduced in order to cope with unused land which is held in private ownership. Few situations are potentially more explosive than unused (or badly used) land artificially kept beyond the reach of land-hungry people.

And what is to be the policy in regard to the sort of layout found at Rakunat and repeated on a big scale throughout the Rabaul area? The Director of the Department of Agriculture, Stock and Fisheries (DASF) says that the land produces about as much as it could under any other system of farming. Can the layout in fact be improved even if it were practicable to make alterations? The pattern is irregular and many of the holdings could be called uneconomic. Is there any point in fixing by registration what some might call a rural slum? DASF proposes that title shall be withheld from sub-economic plots, but in this connection the following extract from the Report of Working Party on African Land Tenure 1957-58 (1958:19) is relevant:

It would, of course, be possible to provide that any person within a Native Land Unit might apply for the recognition of his ownership by an ad hoc Committee and for him afterwards to be registered as the proprietor, but it is difficult to see how such recognition and registration could be confined to good farmers or good farming units. The essence of the system which we propose is that ownership is established by proving long occupation to the satisfaction of the traditional land authorities; size of holding and standards of farming are irrelevant factors which in no way affect the right to be entered in the Record of Existing Rights. Neglected fragments are recorded equally with well-planned farms. The process of adjudication must be applied equally to all and it would be unjust to allow recognition of one owner, a good farmer, and refuse another because, for instance, his holding was too small. It might well be the only land he owned.

What about title as distinct from production? Landowners and the Commission apparently believe that what is being done will prevent
disputes and facilitate conveyancing, and so perhaps there is a genuine need for registration of title for this its true purpose. However, there is no half-way stage and, indeed, there is no reason why these titles (where supported by adequate survey) should not go straight into the register with proper provision for dealing subject to such restrictions and control as may be required. But the present process introduces a written certificate with no procedure for maintaining it. A written certificate is a new dimension in custom, a 'European practice', and one which wide experience has shown to be wrong for land dealing if unsupported by registration. The process has now gone too far for it to be possible to turn back, and it is therefore essential to introduce a simple statute which can make registration of title - in its fullest sense - a practical proposition in the Rabaul area, or wherever circumstances demand it.

Real Property Ordinance 1913-1955 and Land Registration Ordinance 1924-1955

It seems odd that there should still be two registration ordinances, one for Papua and the other for New Guinea, but they are virtually the same. The Real Property Ordinance of Papua is a typical old-fashioned Torrens Act derived mainly from the Queensland Act. Indeed, the Queensland Act was applied to Papua until it was replaced by this Ordinance. The Ordinance comprises 158 sections and could well do with revision on the lines of the Victoria Act of 1954, but even then it is doubtful if this sort of Act could ever be really suitable for titles deriving from customary tenure. The Torrens system only registers Crown grants and is not suited to the 'recognition' of an existing interest which derives not from the Crown but from customary law. Moreover, the Torrens system does not provide for the registration of Crown (or Administration) land.

At the moment there are two laws in force in Papua-New Guinea - received English land law and customary law. In a recent paper (Simpson 1969) I explained how unsuitable English land law was for export and also how unlikely it was that customary law alone would be able to develop into a satisfactory system. The problem is how to get from these two sources a unified system which contains what is essential to transactions in land and which is free from the drawbacks of English law and the obsolete elements of customary law.

The position in West Africa illustrates what happens if this is not done. It is well summed up by Park (1963). Writing of the co-existence of English and customary land law, he says:

---

1 Of which there are only three basic sorts: outright disposition (whether by sale, gift or exchange), disposition for a time (i.e. leasing), and charging to secure a loan.
In places the situation has been little short of chaotic, with quite small tracts of land being weighed down by a remarkable quantity of hard fought litigation. This has resulted in a few statutes, which attempt to clarify the position with regard to particularly confused places, but in the long run a much more drastic approach is needed. The present confusion of English and customary rules must be eradicated completely, and replaced by a simpler scheme applied universally throughout large areas, an eventually, perhaps, throughout the whole country. A scheme of that type, involving compulsory and systematic registration of title to land, was recommended for Lagos in a report by a Commissioner published in 1957. A Bill to implement that report has been drafted and issued, but as yet it has not been enacted and appears, regrettably, to have been shelved.

(Park 1963:138)

This Bill was enacted in 1964 although it has not yet been brought into operation.

Proposed Registered Land Act

The Kenya Registered Land Act 1963 was based on the Lagos Bill and this is the Act to which Guise (1969) invited attention.\(^1\) It establishes a complete code of Property Law which provides firstly, the machinery of registration, and secondly, all that is considered necessary for the practical needs of landowners with regard to the security and proof of title and the creation and transfer of interests in land. It does not matter whether these interests stemmed, in the first instance, from a Crown grant or from a title under customary law. The same law now applies to each - and that law is clearly set out in the Registered Land Act which, it is claimed, can be readily understood by any educated person. An Act on these lines should be introduced into Papua-New Guinea.

The following quotation may help to clarify the idea and explain the underlying principles of this legislation. The Working Party on the Lagos Registered Land Bill, having pointed out that the Western Region Property and Conveyancing Law 1955 (which most unwisely repeated most of the provisions of the English Law of Property Act 1925) is applied only to land which is not held under customary law unless the parties to a transaction agree otherwise, said:

Thus the Western Region Property and Conveyancing Law keeps open the gap between customary tenure and tenure under English law. One of the principal objects of our Bill is to close that gap. We do this by making provision for the compilation and maintenance of a Land Register which will show the ownership, whether

\(^1\) It is described by Kinyanjui on pp.131-2.
Crown or private, of every parcel of land. This ownership is not an 'estate in land' but is 'absolute ownership' and is the platform on which all other interests stand. It takes the place of the legal estate of the fee simple absolute in possession under the English Law of Property Act 1925. Out of this 'absolute ownership' can be created registrable rights in land. These are leases, charges, easements, profits and restrictive agreements, and they take the place of the legal estate of the term of years absolute and the various legal interests of the English Act. Anything not on the Register and which is not an 'overriding interest' creates no right or interest in land, though it can have effect as a contract. Thus there will no longer be 'legal and equitable owners' but, instead, there will be registered owners (i.e., 'proprietors') who by registration can create the interests provided for in the bill.

(Federation of Nigeria 1960:4)

It is essential to decentralise and to provide for District Registries and for simple forms and procedures which the Registry staff can themselves help landowners to use. Only the sight of a land registry in Malaysia or the Sudan or at Kiambu in Kenya will really indicate the sort of service that can be given and how popular it is. It should be noted that this law will not interfere with inheritance, which must be dealt with on its own - and the sooner the better. Griffin (1969) advocated that a commission be appointed similar to one recently appointed in Kenya where the Attorney-General is quoted as saying 'a uniform law of succession is after all an essential prerequisite to sound economic development. Furthermore, in the circumstances of Kenya, the success of our land registration programme depends to a large extent on the introduction of a uniform law of succession' (Griffin 1969:5). Much attention has recently been given to this in Malawi and their Wills and Inheritance Act 1967 would repay study.

I believe the introduction of this new land law is essential. Apart from its practical utility, its propaganda possibilities are considerable and it might go a long way towards dispelling suspicion. It would be similar to that which Mr Chatterton had in mind when, in his closing address at the Third Waigani Seminar on 'Land tenure and indigenous group enterprise in Melanesia', he advocated some simple common form of law bearing the same relationship to customary tenure as Pidgin English bears to native languages. This land law can be surprisingly simple, but still remain entirely adequate for all landowners in Papua-New Guinea, whether they originally held by custom or in fee simple. It will, I hope, meet the need which Sack postulated when he said (1969:11), 'What we need is a common legal platform to replace the artificial quasi International Private Law situation, where we have different sets of rules for different sets of people in the same country'. But the titles under this system will nevertheless be just as 'indefeasible', or more correctly 'unimpeachable', as a Torrens title - a valuable attribute which Sack appeared to underrate.
The production of this law should not be very difficult. It is true it took over two years of discussion in Kenya, where there was a strongly established legal profession and there was much argument and debate, but in Malawi a Bill was prepared in a fortnight, presented to Parliament by President Banda himself (who is not a lawyer), and pushed through as the remedy for its customary tenure problems. In the Bahamas (where conveyancing is no unsophisticated process) a draft Bill was prepared within a fortnight, and in Ethiopia a fortnight sufficed to adapt it to the Civil Law (instead of English law) after an American Peace Corps lawyer had prepared a preliminary version; neither of these two Bills has yet been enacted.

**Systematic adjudication**

As a feed-in to the Registered Land Act, provision for systematic adjudication is imperative and, incidentally, is most needed in towns such as Port Moresby and Rabaul where there are still areas in which the title is as yet undetermined. Systematic adjudication is the process whereby all the land rights throughout a designated area are authoritatively ascertained by an officer expressly appointed for the purpose. It established with certainty and finality what rights exist and by whom they are exercised. This process (under the name of 'settlement') was introduced into the Sudan by the very first ordinance to be placed on its statute books, and provision for it is now made in Part II of the Land Settlement and Registration Ordinance 1925 from which, with various alterations, most of the subsequent adjudication ordinances have been derived.¹

Provision is made for the declaration of an 'adjudication area' and the appointment of an adjudication officer and such demarcation, survey and recording officers as may be necessary. The adjudication officer is in charge of the whole proceedings and has judicial powers. The duty of the demarcation officer is to see that claimants to land indicate their boundaries and he is also required to demarcate roads and any unclaimed land. The survey officer (who must have the necessary technical qualifications) draws a map of the area and the recording officer records the claimant to each parcel and admits his ownership if his claim is undisputed and accords with the principles of adjudication laid down in the Ordinance. If there is a dispute as to boundary or title, the demarcation or recording officer, as the case may be, attempts to compose it, but if he fails he refers the dispute to the adjudication officer who then hears it following a civil suit procedure.

The process was described in detail in Annex C to the Report of the Conference on African Land Tenure in East and Central Africa (1956). It shows (1956:32) why provision was made for the appointment ad hoc of a particular officer suited to a particular adjudication:

¹ See Simpson (1969:6-8) for further details.
It is obvious that the qualifications and experience required in an adjudication officer will vary according to the size and difficulty of the declared adjudication area. When the whole idea is new, and a big area containing native rights of some complexity is involved, it is specially important that somebody should be chosen who is sure to command the confidence of the people, for a setback in the beginning might discredit the whole process. The work itself, however, is essentially judicial in nature and some legal qualification or experience is desirable, but that obtained in district administration may be adequate.

It was suggested, however, in a discussion at the end of my visit to Papua-New Guinea, that as the Land Titles Commission has been permanently set up as responsible for settling all land disputes and adjudication committees will also be permanently available, the adjudication officer should merely be in executive charge of the proceedings, the committees should be responsible for adjudication, and any disputed case should be referred to the appropriate Land Titles Commissioner. This idea requires consideration, but such an adjudication officer might be merely the fifth wheel on the coach.

The need for very careful selection of areas for adjudication must be specially stressed. In Kenya they have gone too far too fast and the following passage from the Lawrance Mission Report (which is a detailed analysis of the whole process to date) is apposite:

Under the existing Act the Minister, at the request of a local authority, may apply the Land Adjudication Act to any area in which it appears expedient to him that the rights in land should be ascertained, consolidated and registered. The area to which the Act is applied is known as the 'adjudication area' and in practice, to avoid successive applications of the Act, usually comprises a whole district. We deprecate this practice. It makes the application orders virtually meaningless, though from the way in which the application section is framed it was clearly intended that applications should be both selective and realistic. Some correlation between areas declared and areas actually adjudicated should be expected, but in fact there is practically none, and an examination of the application orders gives no indication of what has been accomplished, nor even of what is in progress. This is because the Act has been applied to a whole district even where there was no immediate intention of starting work on any appreciable scale, let alone of completing the whole district within a reasonable time. This is not a fault of the law, but of the way in which it has been operated and in this we suggest a change. We suggest that the new Act should only be applied to those areas where adjudication will actually take place within a year or so; if adjudication is not completed within that time some explanation will be needed and, if necessary, the area may have to be withdrawn. We need say no more here than to urge
careful and cautious consideration of each proposal. If the process of registration is set in train in the wrong place or the wrong circumstances, much money, energy and time may be wasted to no practical purpose; worse still, if it is applied without proper preparation of the area with due attention to the planning considerations involved, it may have the effect of fixing indelibly on the ground a pattern of land holdings inimical to good land use, and that at great cost in boundary marking and survey generally. Great care must be taken to avoid undesirable or premature application, but even so it will still be possible for mistakes to be made and it is therefore necessary to make provision in the Act to enable an adjudication area to be withdrawn from adjudication if for any reason it is found to be unready.

(Republic of Kenya 1965-66:45)

This passage might well be read, marked, learned and inwardly digested by all those concerned with land registration in Papua-New Guinea.

It would be possible to provide in the Land Titles Commission Ordinance for this special process of systematic adjudication, but a provision in a separate Act is to be preferred. Two of the latest examples which will be found useful are the Malawi Customary Land (Development) Act 1967 and the Kenya Land Adjudication Act 1968, but the latter provides for appeal to the Minister - which is an unfortunate aberration. In Papua-New Guinea there should be appeal to the Chief Commissioner only - and not to the Court. The question of whether, after the register has been compiled, the Court should be able to rectify an erroneous first registration (as it could, for example, in the Sudan) can be hotly debated but the Lawrance Mission Report is relevant here:

As the law now stands the adjudication register, prepared as a result of the adjudication officer's decisions on disputed cases, is as uncompromisingly final as was the Domesday Book completed in England in 1086 and so called by the conquered English because there was no appeal from it. Although clerical errors in the adjudication register may be corrected, no court and no administrative authority may otherwise question it and the first registration based on it. We are convinced that this situation is unsatisfactory and, indeed, dangerous. The Working Party on African Land Tenure which discussed this point at length recorded the opinion 'that to allow the first registration to be open to challenge would endanger the whole process', but we believe that it ought to be possible for the High Court to revise a first registration, because the wrong person may sometimes be entered, by fraud or by mistake, and there ought to be power to put right what can be proved to be wrong.

(Republic of Kenya 1965-66:53)
Customary land and registration

Customary land (i.e., land held under customary law) is generally unregistered, even when clan or subclan boundaries have been determined. As has been suggested, these records should be kept in the District Land Office, as they now are. However, if boundaries have been adequately demarcated and surveyed, the customary 'holding' can be put on the Land Register and shown as Customary Land (by name when that is known) 'without group representatives' if group representatives have not been ascertained. In this case its use and occupation will be regulated by custom and there can be no registered dealing with it; it, or parts of it, can be later declared for systematic adjudication if that process is desirable. But if group representatives have been ascertained, they will be named as proprietors in the Register. (Special provision, of course, must be made for this in the law - the Lagos Registered Land Bill shows how.) In this case its use and occupation continue to be regulated by custom, but the group through their representatives can effect a transaction in it, in the same way as can a registered trustee. For example, they could sell or lease the whole or part of it, in which case the part affected could no longer be subject to customary occupation. They could lease the land to a co-operative society, which in its turn could sublease to individual members. They could, if they wished, partition the land among their individual members, and thus 'convert' the tenure.

Acquisition by the Administration

These processes would make the acquisition of land by the Administration much simpler, for they would provide machinery for ascertaining with whom to treat when acquiring land under sections 16 or 18 of the Land Ordinance and for formally determining that land is unowned under section 83 (instead of allowing this to be assumed unless there is a claim). This nowadays may not make much difference in practice, but the proposed Registered Land Ordinance will provide for all land - Administration as well as private - to be shown on the Land Register and this is a big advantage in land administration.

Procedures for registration of leases

Concerning the procedures for registration of leases, I was myself at one time responsible for a scheme of disposition whereby the leases of building plots or government land were always auctioned (by a system of premium bidding). Under this scheme tens of thousands of plots were successfully disposed of and registered in a very much shorter time than appears to be the case in Papua-New Guinea. An auction scheme, restricted if necessary to chosen applicants, might be considered at least for those occasions, and there must be many, when it is virtually impossible to distinguish between applicants of equal merit. It would certainly save time and might sometimes be fairer when the choice can otherwise be made only on some irrelevant factor or by casting lots. Moreover, only the true value of the lease can be realised by an auction system.
The reference of each lease to the Administrator wastes a great deal of time and should be abandoned. There are fully adequate safeguards already and, in any case, if anyone is aggrieved he would have no difficulty in bringing it to the attention of the appropriate authority.

As regards the actual registration of leases, this will fall into line if the new procedure is adopted.

**Control of dealing**

The control of dealing under section 75 of the Land Ordinance 1962 provides that land shall not be dealt with without the approval of the Administrator. This power has been delegated to the Director of Lands, but delegation to the district level (as in the Sudan) might be preferable. In any case, if customary titles are to be converted in any numbers and there is to be real dealing, it is imperative (for reasons already indicated)\(^1\) to consider a control ordinance on Kenya lines, or there is a useful Malawi precedent in the Local Land Boards Act 1967.\(^2\) The enactment of such legislation will go a long way towards allaying the genuine anxieties of those who at present have a say in land matters and who fear that individualisation is not in their best interest. The suggested process will allow them to retain some control as long as it is considered necessary, and the restriction can be progressively relaxed as the need for it passes.

**Development of native land by present owners**

Under this seemingly innocent heading is asked what in modern jargon can be called the jackpot question: whether custom gives sufficient security of tenure and alone can effectively cope with the dealing which inevitably develops when land acquires an economic value. To what extent are the costly procedures of registered title necessary?

It is impossible to answer this question with authority. Major economic developments have taken place under customary tenure, including the Chagga coffee-growing scheme in Tanzania which was started and brought to an astonishing state of efficient production and marketing by the efforts of one devoted man. His vigour and personality had far more effect than any tenurial change. Similarly the Kipsigis in Kenya transformed their agriculture under the guidance of an imaginative agricultural officer, but resolutely resisted registration of title for many years, even after its benefits were obvious elsewhere. The world-famous Gezira scheme in the Sudan depends on annual cultivating tenancies and not on freehold ownership, although it should be noted that the

---

1 See p.6.

2 The question was examined in detail by the Lawrance Mission (Republic of Kenya 1965-66:78-82).
existing interests in the land were systematically ascertained and recorded before the scheme began and so, from the beginning, the scheme rested on a basis of sound title. This is fundamental. If such a policy had been pursued in Papua-New Guinea, many of today's problems would not have arisen.

The writings on the subject are no more encouraging. The Fourth Report on Land Reform by the Food and Agriculture Organisation (1966) set out the pros and cons of individualisation at length in a balanced presentation which reached no positive conclusion and ended by remarking that few present African governments had firmly committed themselves either to promote or not to promote individualisation. Worse still, Crocombe (1964) concluded that individualisation and registration, far from promoting production, actually inhibited it and gave figures to prove it.

Even more significant and more depressing is the fact that the Five-year Plan for Papua-New Guinea (Territory of Papua and New Guinea 1968) did not mention land tenure. It presaged a big programme of indigenous development but nowhere suggested that customary tenure offered any obstacle. This may be because planners notoriously do not concern themselves with title; they assume that any necessary steps in that direction will be taken, just as they assume a general background of ordinary law and order. But from all this it could be argued that the emphasis on individual tenure and title is misplaced and that perhaps the whole idea of tenure conversion should be abandoned.

Nevertheless, the independent government of Kenya has adopted and pursued a policy of individualisation as being absolutely essential to economic progress and Kinyanjui enthusiastically praises it.¹ Certainly consolidation and registration have worked wonders in the Kikuyu areas where extensive fragmentation was such an obstacle to good agriculture, but it is doubtful if there are comparable areas in Papua-New Guinea. In some other areas of Kenya (which may be more comparable) Mr Kinyanjui would be the first to agree that the benefits of registration are dubious.

However, the Malawi government has also adopted a policy similar to that in Kenya, although conditions are by no means the same. President Banda, when introducing bills of similar content to the legislation being advocated for Papua-New Guinea, claimed that they 'will revolutionise our agriculture and transform our country from a poor one into a rich one'. In reference to the Customary Land (Development) Bill (which contains the provisions for systematic adjudication of the sort now recommended for Papua-New Guinea) he said:

Our present methods of land holding and land cultivation are uneconomic and wasteful. They put responsibility on no one.

¹ See Part IV.
No one is responsible here and now for uneconomic and wasted use of land because no one holds land as an individual. Land is held in common. They say 'everybody's baby is nobody's baby at all'. We have to put a stop to this, even if only gradually, otherwise there will not be and there will never be any development in this country in the real sense of the word.¹

But it should be noted that the new procedure is as yet untried in Malawi and these brave words have no more probative force than does the preamble to the Land (Tenure Conversion) Ordinance which expresses similar belief in individual ownership.

In any case, it is very difficult to estimate exactly what effect registration of title has, quite apart from how much individualisation can proceed without it. The British Ministry of Overseas Development has been trying to study the economic and social effects of registration of title but has found it almost impossible to separate it from all the other factors involved in land reform - and land reform itself is hard enough to evaluate. The Lawrance Mission (Republic of Kenya 1965-66) recorded that they had been unable to appraise the social effects of the land reform programme in Kenya and that, on the economic side, most of the advantages and disadvantages of the consolidation and registration processes defied expression in quantitative terms and so could not be measured accurately against the cost of the operation. In Papua-New Guinea itself there is little experience from which to draw conclusions. The group-holding exercise conducted, for example, in the highlands is not individualisation, but is nevertheless apparently serving a useful purpose. The Gazelle Peninsula operation indicates that under customary tenure extensive individualisation has already occurred (which it is then so strangely proposed to record under the Communally Owned Land Ordinance). But, of course, there is no consolidation (which indeed appears unnecessary) and this was one of the main benefits conferred by the process in the Kikuyu area of Kenya.

In the light of this indecisive evidence, it is not possible to offer any firm opinion on the policy of individualisation as such. But the benefits of registration of title should not be considered only in that connection. Registration of title substitutes certain law for uncertain custom and virtually obliterates litigation on land matters with substantial savings in time and money. This is a solid social and economic benefit which should not be discounted. The simple practical form of registration now recommended is needed in its own right where individualisation has already taken place naturally, quite apart from where it is to be actively encouraged. It should, for example, be possible for the agreements which the Special Commissioner² is effecting in

¹ Malawi Hansard, 4 April 1967, p.403. See also Simpson (1967).
² The Special Commissioner was appointed in November 1967 to effect agreements with persons who were questioning the terms on which the Administration had acquired land in the Gazelle Peninsula.
the Gazelle Peninsula to result in registered title; otherwise they may easily be disputed once again in the future.

Once a proper process for the expeditious ascertainment of interests in land has been devised and the right box has been constructed for containing the title which recognises those interests, then everything will begin to fall into place. There is still a long way to go in devising the right procedure and making it work, but there can be no doubt that it is vitally needed.

Urban areas and agricultural land for Europeans

Similar principles are concerned in the direct leasing of land by indigenes to expatriates in the towns or in respect of agricultural land, and I wish to make only two points. The first is that before any agreements are made by anybody, title must be ascertained and the leases must be made by registered owners (whether they be group representatives of individuals) in accordance with a clear and simple law. Agreements of any sort, whether with the Administration or private persons, should only be made by owners of ascertained and recorded rights.

My second point concerns the principle of direct leasing by indigenes to expatriates. I see no objection at all to the landlord-tenant relationship if the landlord makes some positive contribution in the way of management and improvement. The English Agricultural Holdings Acts, for example, provide for an extremely healthy relationship between landlord and tenant and more than half the farming land in England is tenant-held. Similarly, in towns the landlord of a house or flat, by maintaining accommodation, satisfies the need of persons who do not wish to buy. But I doubt both the ethics and economics of a rentier income enjoyed by a person who contributes nothing whatsoever to the land from which he derives the income; particularly where he derives it merely because an ancestor at some particular point in time happened to be established as the 'owner' of land which he had never really used and which was actually part of the uncommitted 'national' (had there been a nation) reserve. By all means keep the land for the people, but do not think that this has been done merely by paying some individual an annual rent. Of course, the indigenous people are unlikely to appreciate this point until they themselves constitute the government.

I am more than doubtful if it is desirable to introduce the English building lease whereby a lessee of vacant land is required to build to a certain standard and then, years later, hand back land and building in good condition.¹ It is only too likely to add landlord-tenant tensions to racial tensions. The subject is too involved to ventilate here, but the fact that in Britain it has been considered necessary to

¹ See Oram (1970).
empower a lessee to buy the reversion compulsorily should indicate some of the snags that lie in this arrangement. The original policy in Papua-New Guinea that government should acquire was wise. It is no less wise because certain interested persons see a chance of making money, or even merely political capital, for it is a good tub-thumping theme. Do not let the present Administration sell the pass; if they do their successors will rue the day.

Much the same arguments apply to agricultural land. If the 'people' wish to retain their interests, by all means let them do so by leasing the land from them and recording them as the owners of the reversion. The length of the lease should be related to the duration of the purpose for which it will be used and may be for a short term, but the reversion at the end of a long lease, say ninety-nine years, has little practical value, and lessors must be made to realise that it gives them no control over the land outside the terms of the lease. Preferably the landowners should lease to the Administration which will then sublease. Agricultural land, however, is a means of production, very often the only means, and if it is to be removed from people who have no other resources, they are not properly compensated merely by the payment of an annual rent. A capital payment (which can just as easily be made on taking a lease as it can be on a purchase) should be available to set up an alternative livelihood - if not at once, then when the time comes. In any case, the payment of rent down the years creates great difficulty as owners die and heirs have to be determined; much money will stick to the wrong hands as it passes and it does no good other than to salve the conscience of those who have, in fact, appropriated the land just as effectively as if they had bought it. Partnership schemes and nucleus plantations are, of course, to be encouraged, but the time has come to stop further alien exploitation, even if it is merely for a time by way of lease. Participation by Papuans and New Guineans can, and must, be arranged.

Prescription and limitation

There appears to be exceptional uncertainty as regards title in Papua-New Guinea. Even titles which were generally accepted are called in question. I know of no newly independent country which has not respected title, although in some countries much of it stemmed in the first instance from similar transactions to those in Papua-New Guinea. In Malawi, for example, such titles were investigated towards the end of the nineteenth century. What were called 'certificates of claim' were issued in respect of those considered to be sound, and to this day these certificates remain the root of title. All titles in Blantyre, which is larger, I think, than Port Moresby, stem from three such certificates. The position would be chaotic if these could now be challenged.

As I mentioned in a paper presented in 1967,¹ a simple law of prescription and limitation has a very valuable function to perform:

¹ Also mentioned in Simpson (1957).
Prescription is the name given to the legal rule which enables a right or title to be gained by lapse of time. It is either (a) positive, i.e., long possession confers a positive title, or (b) negative, i.e. the title obtained arises merely because the real owner has, after a certain length of time, been barred of his remedy because he has not pursued it within the time laid down by statute. In English law prescription (by which is meant only positive prescription) is confined to the acquisition of such rights as easements and profits and is firmly distinguished from limitation whereby title to the land itself is obtained by 'adverse possession'. This negative approach whereby the rightful owner merely loses his rights because of his negligence in asserting them makes the matter more complicated than the positive approach of, for example, the Sudan law whereby peaceable, public and uninterrupted possession without the permission of any lawful owner actually confers ownership.

However, whether negative or positive, it is generally agreed by writers on English land law that, as Megarry and Wade [1959:954] say, 'some such principle is necessary to every system of law' and Professor Cheshire [1962:783], having said 'It is an evil if a dispossessed owner were allowed after any interval of time, however long, to commence proceedings for recovery', goes on to quote a remark of Lord St Leonards made in a case in 1852: 'All statutes of limitation have for their object the prevention of the rearing up of claims at great distances of time when evidences are lost: and in all well-regulated countries the quieting of possession is held an important point of policy.'

(Simpson 1968:300)

If some such provision were to be made in Papua-New Guinea and if it were to be remembered that the rules of evidence cannot sensibly be disregarded in a court of law (as distinct from land adjudication proceedings in the field), some local problems would be solved. Some unused Administration land might be lost, but there would be no nonsense about occupied land. And where genuine hardship can be proved, let any payment made be ex gratia - which is what it is - and not of right. And let it also be remembered that there must be not a few persons in the world today who would like to reopen land sales made by their forbears - if only the law were stupid enough to allow them to do so. Yesterday's price often seems unfair in the light of today's development.

Local government model land use record rule

A model rule (dated 8 July 1968) has been provided under the Local Government Ordinance which in effect enables a council to 'adjudicate' claims by custom to rights in land and then to keep a register of those rights. I understand that three councils have adopted the rule. I did
not have time to investigate the purpose or intention of the rule, but it looks to me to be so likely to create further confusion in this sensitive and difficult field that I think I must record the alarm I felt on seeing it. I would earnestly suggest its reconsideration.

**Land appeals before the Supreme Court**

Finally, I must mention a problem which is of the utmost importance and which must be resolved immediately. I refer to the fact that, according to figures which I have been given, there are approximately 105 properties under appeal awaiting hearing by the Supreme Court. I would urge that every effort be made to dispose of these appeals and, if necessary, that the government should consider the appointment of a special acting judge to deal solely with land appeals.

**Recommendations**

Having discussed the Report with various interested persons both in Canberra and in Papua-New Guinea, my recommendations are as follows.

1. That an approach be made to the Ministry of Overseas Development to obtain the services of Mr J.T. Fleming for some three months.

2. That a party be sent to Kenya to study the Kenya system of registration of title (which is what I recommend for adoption in Papua-New Guinea) and that this party should also study the Kenya practice of consolidation and adjudication.

3. That a working party be set up to draft a bill which will provide for the creation and maintenance of a land register showing, in areas where it is needed, the title to all land whether private, Administration or customary (although the bulk of customary land will remain unregistered). This Bill will also provide for all the needs of a landowner in regard to dealing and will be equally suited to landowners whose title derives from custom or from a fee simple. The Kenya Registered Land Act 1963 or the Malawi Registered Land Act 1968 are suitable precedents. I cannot be a member of the working party but would be willing to advise at the end. It should be noted that the Bill will provide for District registries with a view to bringing registration to the people.

4. That the Land Titles Commission Ordinance 1962-1968 be amended
   (i) to substitute the Administrator for the Commissioner as the authority (under section 17) for the declaration of adjudication areas and to enable him to cancel preceding declarations, notwithstanding that they were made by the Commissioner;
   (ii) to turn the demarcation committees into adjudication committees with power to adjudicate upon and decide in
accordance with recognised customary law and question referred to them by the Commissioner.

5. That provision be made for systematic adjudication in specially declared areas by a 'standard adjudication party' (see Annex C of the Report of the Conference on African Land Tenure in East and Central Africa) operating with or without a committee. Provision should be made to enable customary land to be registered and provision must also be made for group representatives to be appointed, an idea which must be carefully explained and canvassed. The following is a list of Ordinances or Acts which may be consulted:

- Sudan Land Settlement and Registration Ordinance 1925,
- Lagos Registered Land Act 1965,
- Malawi Customary Land (Development) Act 1967,
- British Solomon Islands Protectorate Land and Titles Ordinance 1968,
- Turks and Caicos Land Adjudication Law 1968.

6. That the Land Registration (Communally Owned Land) Ordinance 1962 be repealed and that the action now being taken to issue 'individual' certificates of title be stopped.

7. That the process of marking boundary turning points with 'cements' unsupported by survey or any other form of boundary marking be discontinued until (a) such time as there is some survey, however simple - chain and compass even if not too well done may be enough, and (b) the people realise that the end product of this operation is individual title which will be held on the simple system proposed in my third recommendation.

8. That the Land (Tenure Conversion) Ordinance 1963-1967 be retained for special cases but should be amended to enable survey fees to be charged when this is considered desirable.

9. That Part VII of the Land Ordinance be repealed and that an ordinance be enacted to set up local bodies for the control of land dealings on the lines of the Malawi Local Land Boards Act 1967 or on one of the several other precedents which are available.

10. That an inquiry be made to consider major questions in respect of the making of wills and inheritance, possibly on the lines of the Malawi Wills and Inheritance Act 1967.

11. That a simple Prescription and Limitation Ordinance (possibly on the lines of the Sudan Prescription and Limitation Ordinance 1928) be considered as a necessary part of the Legislative equipment of a country as advanced as Papua-New Guinea - or provision can be made for this in the Registered Land Act itself, as has been done in Malawi.
12. That reference to the Administrator on the grant of leases be discontinued.

13. That a system of auction of building plots be considered.

14. That Port Moresby and Rabaul be systematically adjudicated as soon as the Ordinances are ready.

15. That the Local Government Model Land Use Record Rule be withdrawn.

16. That every effort be made to dispose of outstanding land appeals and that, if necessary, a special acting judge be appointed to deal solely with land appeals and remain in office until the outstanding appeals are completed.
Appendix

Brief history of land demarcation in Papua-New Guinea

The demarcation system is relatively new to Papua-New Guinea. It was introduced by legislation in 1962 when the Land Titles Commission Ordinance 1962 (no. 5 of 1963) was passed. This Ordinance was brought into operation on 23 May 1963.

Lands were classified as follows:

(a) native land;
(b) freehold land;
(c) Crown land (Papua) or Administration land (New Guinea), including in each case land leased to indigenous and non-indigenous inhabitants; and
(d) ownerless land.

The Territory of Papua has a total area of 22,299,796 hectares, of which 774,061 are alienated. The Territory of New Guinea has a total area of 23,869,237 hectares, of which 696,754 are alienated. The balance in either case is native-owned or waste and vacant. All unalienated land is regarded as native-owned until it has been demonstrated by prescribed procedures that it is unoccupied and unclaimed. Any land of which there are no owners is liable to be taken over by the Administration.

A Torrens-type system of registered titles in interests in non-native land was provided for in Papua under the Real Property Ordinance 1913-1955 and in New Guinea under the Lands Registration Ordinance 1924-1955. In addition, the New Guinea Land Titles Restoration Ordinance 1951-1962 enabled the compilation of new registers and official records relating to land in place of those lost or destroyed during World War II.

At the same stage, there was provision for the investigation and recording of rights and interests in native land under the Native Land Registration Ordinance 1952, which required the Native Lands Commission set up under it to inquire into and determine what land was the rightful and hereditary property of indigenous individuals or communities by

1 Produced by the Administration of Papua-New Guinea as a background paper for Mr S. Rowton Simpson.
native customary right and those by whom, and the shares in which, that land was owned. The Ordinances provided for the registration of the Commission's decisions by the Registrar of Titles in the Register of Native Land established by the Ordinance and for the survey, by a qualified surveyor, of the boundaries of land determined by the Commission. The owners of such land could be required to mark off the boundaries and to maintain them until the survey was made.

Proceedings under the Native Land Registration Ordinance 1952 were initiated either by the Commission or by claimants applying to the Commission. The Index kept in respect of those proceedings shows that between 1952 and 1963 (when it was closed down) 472 claims were recorded. Many decisions made by Commissioners were not entered in the Index. Decisions made in the Gazelle Peninsula, in particular, are conspicuously absent; yet in this area procedures very similar to demarcation were used in the settlement of claims during Native Lands Commission times. In fact, there were no registrations made by the Registrar of Titles under these Ordinances and it is not known if any survey was made specifically to carry out the provisions of the Ordinances.

The Land Titles Commission Ordinance 1962 established the Commission bearing that name as an independent judicial tribunal to determine rights to land, particularly native land. It also provided for the Commission to declare adjudication areas and to appoint demarcation committees to assist in, and prospectively to be the vehicle for, the determination of customary rights to land within such an area; the committees were to consist of at least three members of whom a majority were to be indigenes. However, the Commission was empowered to carry out all or any of the functions of a committee.

Legislation passed at the same time included the Lands Registration (Communally Owned Land) Ordinance 1962, which provided for the registration of communal rights to land as directed by the Commission, and the Land (Tenure Conversion) Ordinance 1963, which enabled customary ownership to be converted to individual registered title.

Since 1963 the Land Titles Commission Ordinance has been amended several times: twice in 1965 (nos 43 and 54 of 1965); in 1966 (no.20 of 1967); in 1967 (no.41 of 1967); and twice in 1968 (nos 67 of 1968 and 10 of 1969). Section 20 of the original Ordinance is the only section altered by these amendments insofar as they affect demarcation. Provision was made for the appointment of a chairman to committees and for payments to be made to members.

In introducing the demarcation system to Papua-New Guinea, reliance was placed upon experience in British colonial territories in general and there were no local pilot projects or test runs to ascertain whether the experience gained elsewhere made the system suitable for conditions in Papua-New Guinea.
Although the demarcation system was new to Papua-New Guinea in 1963, the basic structure of the Land Titles Commission, the organisation responsible for implementing the system, was already well established. Under the New Guinea Land Titles Restoration Ordinance 1952-1962, the Commissioner of Titles, Mr C.P. McCubbery, had a fully-operating staff, including administrative, drafting and field personnel, although none of the field personnel were licensed surveyors. At the same time, the Native Land Commission had a Senior Commissioner and nine other Commissioners, all specialists in native customary land tenure. It also had the experience and records of ten years of native claims to interests in land throughout both Papua and New Guinea. The Land Titles Commission Ordinance 1962 amalgamated the two organisations and the Commissioners of the former Native Land Commission became Commissioners under the new Commission, with the then Commissioner of Titles, Mr McCubbery, as the Chief Land Titles Commissioner. The New Guinea Land Titles Restoration Ordinance was also amended so that the jurisdiction under it, which was formerly exercised by the Commissioner of Titles, became exercisable by the Chief Land Titles Commissioner of the new Commission.

Until the retirement of Mr McCubbery in January 1965, only three adjudication areas were declared under the provisions of section 17 of the Ordinance. These were the presently existing no.1 Rakunat and no.2 Matupit Island, and also a third area in the Central District named Pari, to which no number was given. The declaration of Pari was revoked a few months later. Committees were appointed for both Rakunat and Matupit Island in January 1964 and the demarcation of these two areas proceeded. Until Mr McCubbery's retirement, no further formal action was taken in relation to demarcation in other areas, but the formidable task of settling on suitable adjudication areas and selecting appropriate members of committees was commenced.

After the appointment of Mr D.J. Kelliher as Chief Commissioner in February 1965, the pace quickened. From April 1965, the declaration of adjudication areas proceeded steadily. Some were areas of manageable size but others were vast, and the boundaries of the latter type appear to have been based on the boundaries of districts and, within districts, on the boundaries of census divisions. By September 1966, the whole of the land mass of Papua-New Guinea was included in gazetted adjudication areas. At that stage, the total number was 493. The intention was that the total number of adjudication areas would increase, as some which were initially declared would be found to be unwieldy and would be broken down into smaller and more manageable areas.

The process of appointing committees went on at the same time as the gazetted of the sundry adjudication areas, but because of the difficulty in selecting appropriate members of each committee, this process soon lagged behind the declaration areas. At some stage, probably during the first half of 1967, the device was conceived of classifying committees into two types, namely:
(a) full committees, which would be representative of all land-
owning groups and which would be expected to perform the
functions of the demarcation committee within the limits of
the local situation; and
(b) primary committees, which would consist only of a chairman
and two other members but which initially would not perform
the functions of a demarcation committee. A primary com-
mittee, of course, could be expanded at any time into a
full committee by appointing fresh members to it.

In July 1967 it was decided that full committees would continue to
be appointed in accordance with the previous procedures but that, with
regard to primary committees, a traditional leader would be appointed
as chairman and the other two members would represent differing sections
of the community. The main function of the primary committee was to
provide the Commission with a direct means of communication with the
people so that knowledge of the demarcation process could be dissemi-
nated throughout the country. The chairman and members of the primary
committees were sent to Rabaul, Madang or some other area where demar-
cation committees were operating intensively, for a period of two or
three weeks, so that they could observe and be made familiar with the
demarcation process. It was envisaged that primary committees would be
appointed for all adjudication areas which were considered to be worth-
while by 30 September 1967.

No attempt was made to appoint even a primary committee in respect
of all adjudication areas which had been gazetted; in fact, on 1 May
1969, of the 536 areas declared, full committees have been appointed
for 349, primary committees for 126, and no committees have been
appointed for 61.

There is wide variance in the attitudes of people towards demarca-
tion. In the Gazelle Peninsula and in the coastal area of the Madang
District, the people are most favourably disposed towards demarcation.
A possible explanation for this is that road access in these areas is
well developed and agricultural extension officers have obtained good
results there. The people of the various districts of Papua are, in
general, indifferent towards demarcation. In the highlands districts
the intensity of feeling over tribal claims to land is still suffici-
t entry strong to inhibit any real progress in demarcation. Demand for
demarcation, speaking generally, is confined to numerous limited local-
ities where the prospect of cash cropping has caught the local interest.

Details of adjudication areas which have been completed or which are
about to be completed are as follows: Rakunat no.1 (133 blocks, 363
acres) has been adjudicated, surveyed and lodged for registration;
Rabaul no.113 (80 native blocks, plus alienated, total 2,700 acres) has
been adjudicated and the survey is proceeding; the adjudication of
Aronis-Baranis Mad.16 (333 blocks, 2,800 acres) was completed in 1966
and the survey is still awaited; Olon no.97 (4 blocks, 1,008 acres) has
had its adjudication completed and reviewed and it awaits survey; six areas in the Gazelle Peninsula, nos 88, 89, 90, 91, 92 and 93 (total 2,960 blocks, 6,476 acres) have just had their adjudication completed and are ready for survey; by 31 December 1969, a further fourteen areas in the Gazelle Peninsula (number of blocks not yet settled, 13,843 acres) and one in New Ireland (308 blocks, area not fixed) will be adjudicated and ready for survey. All other adjudication areas can be considered still to be in the incomplete stage.
Bibliography


Simpson, S.R., 1954. 'Land tenure: some explanations and definitions', *Journal of African Administration*, vol.6, no.2, pp.50-64.


-- 1967. 'New land law in Malawi', *Journal of Administration Overseas*, vol.6, no.4, pp.221-8.


Part II

Land demarcation and disputes in the Chimbu District of the New Guinea Highlands

R.L. Hide
Introduction

The Land Titles Commission Ordinance 1962, which is based primarily upon British colonial precedents in Africa (Crocombe and Hide 1970), gave the Land Titles Commission exclusive jurisdiction to decide customary ownership of land (section 15(1)), and provided for the determination of customary rights by the demarcation process (sections 17-25). Demarcation committees had to be appointed in declared adjudication areas where all customary rights to land were to be determined. These committees had to prepare a plan of the area and mark boundaries on the ground; and the Commission had to investigate the completed plan, settle disputed claims, and make a final adjudication record. After this was done, land could either be registered under the Land Registration (Communally Owned Land) Ordinance 1962 or converted to individual title under the Land (Tenure Conversion) Ordinance 1963. Since the then Minister for Territories considered that Papua-New Guinea customary tenures were unsuitable 'for any system of agriculture which results in substantial and permanent improvements to land', conversion has been officially regarded as the ultimate aim of the demarcation process.

In this study I first trace the development of demarcation in the Chimbu District between 1965 (when the legislation was first implemented in this area) and 1967, and then describe and analyse more closely the early stages of the process during 1968 among one tribe, the Nimai, in the Sinasina sub-district.

Early development of Chimbu demarcation, 1965-67

In 1965, the Eastern Highlands District was divided into 31 adjudication areas, 13 of which were within the borders of the Chimbu sub-district,
as it then was (see Map 1). No specific criteria determined the boundaries of the areas: some followed linguistic groupings, some census divisions, and some were no more than convenient lines drawn on the map. In Chimbu they ranged in size from 47 square miles to almost 300, and in population from 4,000 to over 25,000.

Demarcation committees were first nominated, on a trial basis, in only the areas where land problems were particularly pressing, the intention being to settle some of the long-standing land disputes. Thus, as early as August 1965, the Waiye-Digibe Local Government Council selected a committee of eight members.¹ This committee, however, never operated, and, when the Chimbu adjudication areas were gazetted,² it became policy to appoint committees in all areas, irrespective of the degree of economic development or the extent of pressing land disputes.

The tasks of introducing the Chimbu people to the idea of demarcation and arranging for the nomination of committees was mainly borne by the Administration, working, where possible, through local government councils. According to the Chief Land Titles Commissioner (Kelliher 1966), each committee was to consist of not less than three members (all indigenes), and each adjudication area was to be assessed by a Commissioner or a Deputy Commissioner, who 'tentatively determines who constitutes the landowning groups'. The whole adjudication process was to be explained to each landowning group whose members would be 'asked to select one of their leaders as their representative on the demarcation committee'.

The size of the first four Chimbu committees appointed suggests that the latter two requirements were not initially met. The smallest, Kup, had seven members, and Gembogl, the largest, only sixteen members. Their average representation was one member per 1,176 people and per 10.5 square miles. The committees were generally unsuccessful. In August and September 1966, the Kup and West Koronigl committees of the Kerowagi sub-district attempted, with committees from the Minj sub-district of the Western Highlands, to mark the border between the two districts, an area with a long history of inter-tribal dispute. Marking progressed for several weeks under the close supervision of Administration officers; then an inter-tribal fight developed on the border, two lives were lost, and demarcation ceased. Hostilities continued until compensation payments were made.

The Gembogl committee at the head of the Chimbu valley was also operating at the end of 1966, but without close supervision. Its

¹ The impetus apparently came from a council request two months earlier for the appointment of an extra Land Titles Commissioner 'because a large number of Chimbu people were disputing the ownership of land' (Waiye-Digibe Local Government Council files, letter dated 10 May 1965).
Map 1. Chimbu District adjudication areas, 1967
activities focused on disputed land, and although several areas were marked and traverses taken by a survey assistant, no accurate record of these operations remains.

Following official reappraisal in late 1966, it was decided that committees would consist of representatives from each subclan (the social group which, as a rule, forms the basis of the Administration's census units), and within six months, most Chimbu demarcation committees were nominated in this way. Committees officially appointed by 1968 (including Sinasina, but excluding Gembogl, East and West Koronigl, and Kup, which had not been adjusted) averaged one member per 108 people and per 1.58 square miles. Table 1 summarises the position of Chimbu demarcation committees at the beginning of 1968.

Table 1
Chimbu demarcation committees, 1968

<table>
<thead>
<tr>
<th>Committee</th>
<th>Date appointed*</th>
<th>No. of members**</th>
<th>Representation of one member***</th>
<th>Extent of operations#</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiye-Dom (adjusted)</td>
<td>25 May 1967</td>
<td>8</td>
<td>7.00 2,250</td>
<td>Very little, 1967-68</td>
</tr>
<tr>
<td></td>
<td>19 October 1967</td>
<td>104</td>
<td>0.54 173</td>
<td></td>
</tr>
<tr>
<td>Yonggamugl (adjusted)</td>
<td>3 August 1967</td>
<td>53</td>
<td>0.88 170</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td></td>
<td>19 October 1967</td>
<td>105</td>
<td>0.44 86</td>
<td></td>
</tr>
<tr>
<td>Gembogl</td>
<td>8 September 1966</td>
<td>16</td>
<td>8.81 1,188</td>
<td>Ceased after starting in 1966</td>
</tr>
<tr>
<td>East Koronigl</td>
<td>8 September 1966</td>
<td>8</td>
<td>13.25 1,250</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>West Koronigl</td>
<td>8 September 1966</td>
<td>8</td>
<td>6.62 1,125</td>
<td>Ceased after starting in 1966</td>
</tr>
<tr>
<td>Kup</td>
<td>8 September 1966</td>
<td>7</td>
<td>13.57 1,143</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Sinasina</td>
<td>Not yet appointed</td>
<td>140+</td>
<td>0.46 157</td>
<td>Started 1967, continuing 1968</td>
</tr>
<tr>
<td>Chuave</td>
<td>25 May 1967</td>
<td>95</td>
<td>0.60 84</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Nambaiyufa</td>
<td>25 May 1967</td>
<td>99</td>
<td>0.50 71</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Elimbari</td>
<td>25 May 1967</td>
<td>135</td>
<td>0.70 96</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Gumine</td>
<td>25 May 1967</td>
<td>178</td>
<td>0.94 102</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Karimui</td>
<td>31 August 1967</td>
<td>35</td>
<td>8.54 108</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Nomane-Manigl</td>
<td>31 August 1967</td>
<td>193</td>
<td>1.45 93</td>
<td>Not known (probably none)</td>
</tr>
<tr>
<td>Karimui Extension</td>
<td>Not yet appointed</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Upper Purari</td>
<td>Not yet appointed</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

* Source: table inset on map entitled 'Chimbu District', Land Titles Commission, drawn by N.L. Hopper, 30 August 1967
** Source: Government Gazettes for the dates of appointment.
# Sources: Chimbu District Office, Kundia, files 35-16-IA and 35-16-18, Administration officers, and members of the demarcation committees.

1 One of the two graduates, from the short-lived Land Titles Commission survey course held at Rabaul, who were employed by the Chimbu councils to work with their demarcation committees.

2 Exclusion of the Karimui area, which is atypical of the Chimbu District (see Wagner 1967:1-37), would mean the same average representation by population, but lower representation by area to one member per 0.71 square miles.
By mid-1967, all Chimbu committees had either been, or were being, appointed, but none was active. Indeed, at a meeting of the Kerowagi committees in early 1967, members of the East Koronigl committee explained that they had not done any marking because they had received no instruction about their functions. Other Kerowagi members, such as those at Gembogl, apparently had their own views of their functions, for the minutes taken by an Administration officer record that they 'still do not fully understand their role - they repeatedly said that when hearing "land courts" they must have some authority to enforce their decisions, compel witnesses to appear, and for their own protection'. They also asked for payment and some form of badge or uniform to signify their status as committee members.

During a two-week visit to Chimbu in the latter part of 1967, the Madang Land Titles Commissioner decided to concentrate on only two committees, the Waie-Dom and the Sinasina, and to instruct their members to mark subclan boundaries. The latter decision was based upon Administration officers' recommendations and the Commissioner's reading of Brookfield and Brown (1963). It was hoped that by concentrating initially on such boundaries (which were believed to be the least disputed) the people would come to understand the process and appreciate the benefits of demarcation, thus allowing the later determination of clan boundaries (regarded as the most contentious) and, if they so wished, the marking of land claimed by individuals. During the Commissioner's visit, instruction talks were given at central points primarily in the Waie-Dom and Sinasina areas. Two chairmen were appointed for these committees, both local government councillors from other areas, and they, with a junior Administration officer seconded to supervise demarcation, were sent to Madang for a week to observe committees at work. On their return, they held a series of follow-up meetings with the two committees and some marking was accomplished in the south of Sinasina and in the Dom area south of the Wahgi. By the end of 1967, however, the supervisory officer was engaged in other duties, and marking stopped mainly, it appeared, in anticipation of the Commission's instruction course which a number of committee members were to attend at Madang.

Demarcation by the Nimai: a case study

The Nimai are one of the seven tribal groupings among the 25,000 people in the Sinasina adjudication area. Covering over seventy square

---

1 Minutes of Kerowagi demarcation committee meeting, 10 February 1967.
2 Minutes of Kerowagi demarcation committee meeting, 27 February 1967.
3 In June 1967, Chimbu came under the jurisdiction of the Madang Land Titles Commission.
4 Personal communication: Madang Land Titles Commissioner, 18 April 1968.
miles, this area lies to the south-east of Kundiawa, the headquarters of the Chimbu District, and most of the people speak dialects of the Sinasina language which is closely related to that spoken by the central Chimbu (Deibler and Trefry 1963: end graph and map). A small demarcation committee of 21 members was first nominated by the Sinasina Local Government Council in 1966, but representation was later increased until, by 1968, the committee numbered 140 members (although not officially appointed). Thirteen of these members represented the Nimai who number 2,000 people.

The Nimai territory of 7.5 square miles rises from 5,700 feet in the north to 8,500 feet on the forested Suai scarp in the south (see Map 2). With a population density of 266 persons per square mile (or an average, for all land, of 2.4 acres per capita), cultivable land is by no means plentiful - although not as scarce as in some parts of central Chimbu where densities as high as 524 persons per square mile have been recorded (Brookfield and Brown 1963:119). Sweet potato is the major crop, supplemented by bananas, taro, sugar cane, and many varieties of greens. Coffee, introduced in the mid-1950s, is extensively grown below c. 6,500 feet but has presented problems to Nimai pig husbandry practices which have not yet been successfully solved. The pattern and location of settlement have changed markedly in the past twenty years. In the early 1950s, the Nimai were settled in some twenty named hamlets, the majority of which were sited on easily defended ridgetops over 6,500 feet in the southern part of the territory. Today the focus of settlement is the large village of Koge, containing over 200 houses divided into four clan quarters, which is sited at 6,000 feet at the place where the side-road from the Highlands Highway forks to circle the Sinasina region. Of the six hamlets outside this village, only three remain in the higher part of the territory. Koge itself is well served by both Catholic and Lutheran mission stations, and the Sinasina Local Government Council offices and an Administration base camp lie on the Northern Nimai border.

The Nimai tribe has a segmentary structure similar to that of the central Chimbu (Brookfield and Brown 1963:8-14).

---

2 See p.42.
4 The most recent impetus for the change in settlement was initiated by the Sinasina Local Government Council. The Village Planning Rule (no.4 of 1967) gave the council power to declare land a residential area, and councillors may prohibit residence outside a declared village for more than four days a month.
The tribe is divided into four clans, which are further subdivided into fifteen named subclans. Three of the clans (A, C and D) form part of a phratry (of which the remaining part - Kirine - has been absorbed into the neighbouring Dingga tribe), while the fourth, B, is said to be descended from a daughter of the original founder of clan A. Although
Diagram 1

**Nimai segmentation and population**

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Clan</th>
<th>Subclan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A Dugal (786)</td>
<td>1 Domkane (259)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 Togma (353)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 Tsil (174)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B Ogole (164)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 Yaumapala (76)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 Garenbia (46)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 Barikane (42)</td>
</tr>
<tr>
<td></td>
<td>C Bomai (773)</td>
<td>1 Kwikane (167)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 Naurebia (151)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 Omunkamen (181)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 Tinebia (73)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 Wabeibia (138)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 Wainekomena (63)</td>
</tr>
<tr>
<td></td>
<td>D Waula (277)</td>
<td>1 Gunakane (127)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 Golunkane (79)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 Yuwikane (71)</td>
</tr>
<tr>
<td>Nimai (2,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dingga</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kraha</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kirine (Nimaikane)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


The phratry structure is conceived of in terms of an agnatic ideology, the living members of a subclan cannot trace their relationships to the subclan's founder. Significantly, the Nimai claim (and marriage histories support them) that until about ten years ago they formed a single exogamous unit. Intermarriage is now permitted between some of the clans.

The present borders of Nimai territory perpetuate their position relative to neighbouring tribes at the time the Administration imposed peace in the late 1930s. Thus a block of about thirty-five acres of Nimai land, which lies detached from their main northern border within Tabari territory, is all that remained to them in that area after defeat. The most fought-over land was in the lower northern half of the territory, and thus most border disputes today are with the Dingga to the west, the Tabari to the north, and the Kere to the east.

Within the tribal territory, the pattern of segment holdings and principles of tenure are similar to those described by Brookfield and Brown (1963:38-42, 98-9) for the central Chimbu. Very briefly, clan sub-territories are identified, but in all cases there are outliers
among the holdings of other clans. Running roughly from north to south, clan holdings afford access to almost the entire altitudinal range of Nimai territory. Subclan holdings are fragmented and dispersed, as are the holdings of individuals. Thus, for example, the small subclan D2 has six blocks of holdings ranging from one at the lowest part of the tribal territory in the north to an area of pandanus nut groves on the ridge in the south, in addition to common rights with the rest of clan D in a portion of forest. All cultivable land is usually divided among individual claimants, the owner being referred to as the gaba nim.¹ Such rights are acquired by the first clearing and cultivation by inheritance or by gift.

The thirteen Nimai committee members each represented one subclan, with the exception of the clan B member, who, due to his clan's small size, was chosen to represent the whole clan. Although my fieldwork was too short to gain a full understanding of the status of each committee member in his respective group, certain observations about members can be made. All were middle-aged or older men without formal schooling, although five could speak some Pidgin English. Eight had previously worked outside the district for one contrast period of eighteen months or more. Prior to the establishment of the Sinasina Local Government Council in 1965, five had been village officials (tultuls, etc.), and since then, three had held minor council positions (such as ward or school committee men). Although none of them were, or had been, councillors, two were the elder brothers of two of the then three Nimai councillors.² Data from the neighbouring Dingga and Kere tribes, who had nominated 14 and 6 committee members respectively, confirmed the impression gained from the Nimai of a relatively high proportion of members who were previously village officials: 5 Kere and 7 Dingga members had held such posts. Although 8 Nimai members lived in the central village of Koge, where there were about twenty small trade stores, none was involved in these entrepreneurial activities, although all except one had some cash income from coffee.

Nimai committee members did not start to mark boundaries until January 1968, by which time they had received demarcation information from three sources: the Administration, through the council; an instruction talk given by the Madang Commissioner; and the Administration officer supervising demarcation. Since such information had been received intermittently it was not surprising that members emphasised what they expected to learn from the forthcoming Madang instruction course, although only one of them was scheduled to attend. Thus, 'now we are ignorant, later when the school is finished we will know what

¹ Literally 'ground father'; cf. magan nim (Brookfield and Brown 1963:38).
² It might be rewarding to investigate the distribution of minor council positions among councillors kinsmen.
the "true fashion" of demarcation is and begin work', was a common refrain in January.\textsuperscript{1} The comments of four members, however, revealed at least one way in which they viewed demarcation: all expressed dissatisfaction with certain borders, and considered that areas of land were occupied by the 'wrong' persons. They saw demarcation as the 'road' by which these could be 'straightened' or corrected. The Dingga and Kere members were more explicit in response to questions about their functions and the purpose of demarcation. Twelve Dingga members immediately talked about areas of disputed land, the reasons for such disputes and how they would settle them. One member recounted how his group had been 'strong during the fighting times and gained much land which we have now planted with coffee and other things.... What can we do when those we took it from want to take it back? They must pay us...'

Five Kere members also talked about disputes, two specifically mentioning that their past experience as village officials would enable them to settle these more easily. Although impressionistic, this evidence suggests a widespread concern among the Nimai and their neighbours with disputed land. I do not believe that this was simply due to what could be interpreted as a new opportunity for acquiring land. Most members were realistic about the causes of disputes and obstacles to their settlement. The most frequently mentioned problem was land acquired by conquest during pre-colonial times, to which, most admitted, the previous occupants still had, or might make, a claim. But they foresaw difficulties in returning such land, since so much of it had been improved (\textit{graun i gat bilas} or \textit{graun i gat bisnis}, as contrasted to \textit{graun istap nating}), in particular, planted with coffee.

Between December 1967 and April 1968, the Nimai members attended seven formal committee meetings\textsuperscript{2} and, between meetings, worked on sixteen separate days marking, or attempting to mark, boundaries.\textsuperscript{3} As Table 2 shows, extensive marking began after January 1968 when one Nimai member returned from the Madang instruction course.

\textsuperscript{1} It is interesting to compare this with Salisbury's (1966:321) comment that 'There was in my experience intense interest among the Siane in establishing what the "true" story was, and in discussing the true meaning of each event of the story'.

\textsuperscript{2} Five of these were timed: the average meeting required 3.25 hours in attendance and travelling time per member. On the basis that 10 at least of the 13 Nimai members attended all seven meetings, the total time spent by them at formal meetings was about 227.5 man-hours.

\textsuperscript{3} On nine days of marking, an average of 30.5 men spent an average of 3.5 hours on demarcation work. I estimate that the total time spent by the Nimai during sixteen days of marking approximated 1,708 man-hours.
Between meetings (generally held every two weeks), the Chief Commissioner's view was that

quiet talks take place between or among members representing adjacent or co-mingled landowning groups.... The purpose...is to agree on common boundaries. Once accord has been reached, those boundaries are marked with temporary markers.... New committees are directed not to attempt to settle hotly disputed boundaries for the first six months or so.... Boundaries which cannot be agreed to...are not marked at this stage.... [This work] produces the material for discussion and action at the formal committee meetings.

(Kelliher 1967:1)

Since most formal meetings did not deal with matters arising from committee members' activities between meetings, they are not discussed here. It is, however, worth mentioning a significant contrast between the five meetings conducted by the supervisory Administration officer and the two run by the committee chairman (a councillor from central Chimbu) and, in his absence, the Nimai themselves. Both these latter meetings followed closely the pattern observed during the Madang instruction course. In particular, they began with prayers, and since Pidgin English was not used, discussion proceeded faster and involved members who otherwise did not speak.

During the sixteen days that Nimai committee members worked between meetings, thirty-five boundaries or plots of land were discussed, inspected, and in some cases temporarily marked with *taŋgets* (cordyline). The following procedure was assumed during these operations.

After discussions among interested persons, which were usually held at night in the men's houses, word was passed around that the 'land committee' (*gaba komiti*) would mark a particular boundary or discuss a particular piece of land. Next morning, the relevant committee members, claimants to the land in question, and other interested

---

**Table 2**

*Sequence of Nimai demarcation, 1967-68*

<table>
<thead>
<tr>
<th>Month</th>
<th>Event</th>
<th>Month</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 December 1967</td>
<td>Meeting</td>
<td>10 March 1968</td>
<td>Marking</td>
</tr>
<tr>
<td>4 January 1968</td>
<td>Meeting (abortive)</td>
<td>11 March</td>
<td>Marking</td>
</tr>
<tr>
<td>11 January</td>
<td>Meeting</td>
<td>14 March</td>
<td>Meeting</td>
</tr>
<tr>
<td>13 January</td>
<td>Marking</td>
<td>15 March</td>
<td>Marking</td>
</tr>
<tr>
<td>22-25 January</td>
<td>Instruction course, Madang</td>
<td>20 March</td>
<td>Meeting</td>
</tr>
<tr>
<td>8 February</td>
<td>Meeting</td>
<td>21 March</td>
<td>Marking</td>
</tr>
<tr>
<td>9 February</td>
<td>Marking</td>
<td>3 April</td>
<td>Marking</td>
</tr>
<tr>
<td>10 February</td>
<td>Marking</td>
<td>11 April</td>
<td>Meeting</td>
</tr>
<tr>
<td>15 February</td>
<td>Meeting</td>
<td>16 April</td>
<td>Marking</td>
</tr>
<tr>
<td>21 February</td>
<td>Marking</td>
<td>18 April</td>
<td>Marking</td>
</tr>
<tr>
<td>24 February</td>
<td>Marking</td>
<td>20 April</td>
<td>Marking</td>
</tr>
<tr>
<td>27 February</td>
<td>Marking</td>
<td>23 April</td>
<td>Marking</td>
</tr>
<tr>
<td></td>
<td></td>
<td>24 April</td>
<td>Marking</td>
</tr>
</tbody>
</table>
persons gathered outside one of the men's houses in Koge village. Intense discussion took place, often lasting more than an hour and involving as many as forty men. After discussion, the marking party walked to the land in question, where the exact location of boundary marks and the history of ownership were discussed further. Where agreement was reached, the respective right-holders usually shook hands, and the marking party cleared the undergrowth along the boundary line. Then, with meticulous attention by the right-holders and committee members to accurate alignment, *targets* were planted at short intervals along the border (see Plate 1). Where agreement was not reached, argument often threatened to lead to physical violence; in such cases committee members and others usually mediated, stopped the marking, and either led the marking party elsewhere or disbanded it. No committee member (or other person) attempted to co-ordinate or direct these activities. Although all thirteen Nimai members were not present on all occasions, at least two who did not represent the individuals or groups concerned were usually present, and often performed the function of neutral 'mediators'.

Plate 1. Nimai demarcation 1968: marking boundaries with *targets*
Analysis of the 35 cases of Nimai demarcation shows four important features. Firstly, the committee members did not start in one corner of the tribal territory and work methodically across it; neither did they attempt to mark the complete boundaries of any one plot. Instead they were highly selective, concerning themselves with short, unconnected lengths of boundary, or specific plots of land, all of which were scattered, mainly in the northern half of Nimai territory below c. 6,200 feet. Secondly, a large majority of cases (27, see Table 3) concerned disputed land. Far from avoiding areas of dispute, the committee members concentrated on them from the beginning (this partly explains the scatter of demarcation). Thirdly, a majority of cases (25) were between claimants belonging to different clans. Had members concentrated upon subclan holdings in accordance with the Commission's instructions, a much larger proportion of cases between claimants of the same clan might have been expected. Finally, the 'success rate' was not high; barely half the cases were settled and the land involved marked without continuing disagreement about certain rights; one-third of cases were not marked at all (see Table 4).

Table 3
Nimai demarcation, 1968

<table>
<thead>
<tr>
<th>Cases of demarcation</th>
<th>Total</th>
<th>Cases involving disputed land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between members of different tribes</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Between members of different clans (within the tribe)</td>
<td>23</td>
<td>17</td>
</tr>
<tr>
<td>Between members of different subclans (within the same clan)</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Within the subclan</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
<td>27</td>
</tr>
</tbody>
</table>

Table 4
Outcome of Nimai demarcation

<table>
<thead>
<tr>
<th>Cases</th>
<th>Marked</th>
<th>Not marked</th>
<th>Partially marked*</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inter-tribe</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Inter-clan</td>
<td>11</td>
<td>8</td>
<td>4</td>
<td>23</td>
</tr>
<tr>
<td>Inter-subclan</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Intra-subclan</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>12</td>
<td>6</td>
<td>35</td>
</tr>
</tbody>
</table>

* Cases where, despite agreement about the location of boundaries and the identity of the primary right-holders, disagreement continued over certain rights, such as those to coffee trees.

Disregarding, for the moment, the reason the Nimai committee members concentrated on disputed land, what kinds of disputes did they attempt to settle through the demarcation process? The majority fall into the following broad categories, which are correlated with the group affiliation of the disputing parties: (i) 11 cases of encroachment on fallow land, 8 of which were inter-clan; (ii) 6 cases of attempts by 'land-owners' (gaba nim) to reclaim land planted with coffee by others, all
of which were within the same clan; and (iii) 5 cases of attempts to regain land lost as a result of previous fighting, all of which were inter-clan.

As Brown and Brookfield (1959:24) found in central Chimbu, most land disputes occur 'when land is ready for recultivation after fallow, and a neighbour or group of neighbours either move in, or extend their own clearing into the claim of another'. Such encroachment is possible because the precision with which land claims are defined is related to the intensity with which the land is used: the longer land remains under fallow the less precise become the claims and, consequently, the greater the possibility of encroachment. Nimai tenure, like that of Naregu, 'cannot be looked on as permanent. Not only is it necessary for each claimant to exercise his rights, but he must do so when his neighbours exercise theirs, if he is not to risk becoming the victim of successful encroachment' (Brown and Brookfield 1959:25). The following example illustrates one such attempt which demarcation committee members were not able to settle.

Members of subclan A3 started to clear an area of between ten- and fifteen-year-old fallow adjacent to their border with the Dingga tribe, who immediately disputed their claim to the land. After a violent argument both groups decided to go to the Administration, despite a Dingga demarcation committee member's attempt to persuade them to discuss the matter before the committee members of both groups. In the event, they were told by the Administration officer to bring the dispute before the formal committee meeting scheduled for the following day. This they did, and were then advised to attempt settlement through their respective committee members.

A meeting was held on the disputed land, supervised by a Dingga committee member (a participant in the Madang instruction course) who did not belong to the Dingga segment involved. Over forty people were present, the Dingga on one side of a path, the Nimai on the other, and the major claimants seated in the centre. The 'hearing' began with a prayer, and an exhortation that they had come to talk and not to fight. Evidence from both sides was then heard. The dispute hinged, not on the location of a boundary, but on the nature of rights granted by a deceased A3 man, who had been married to a Dingga woman. This man's son admitted that his father had invited his wife's Dingga relatives to garden with him when the land in question had last been cultivated, but denied that the land had been ceded to the Dingga, which was what the latter claimed. Discussion continued for almost two hours without either side weakening, and eventually the Dingga committee member closed the hearing, advising both sides to consider the matter further before attempting settlement again.

The ambiguity created by less precise claims in long fallow thus provides the opportunity for encroachment, but why were so many of the Nimai cases between members of different clans? I suggest that fellow clan members have less need to resort to encroachment since requests for the use of land within the clan, and particularly within the sub-clan, are more likely to be granted than requests outside the clan. Until recently the Nimai formed a single exogamous unit: thus the four clans are not 'stitched together by frequent intermarriage', as are many clans in central Chimbu (Brown 1964:338). This absence of affinal ties between Nimai clans inhibits inter-clan transfers of land rights. Finally, inter-clan disputes before the cessation of fighting did, though to a lesser degree than inter-tribal warfare, result in some territorial conquest and dispossession. At the clan level, then,
man-land ratios may have been adjusted by such fighting. If this was so, inter-clan encroachment may be viewed as an alternative, or substitute, means of adjustment that has, in recent years, come to play an increasingly important part in redistributing land among the clans.\footnote{Since the Nimaï split into several exogamous units about ten years ago, it would seem likely that an increasing number of affinal relationships will provide a less contentious means of transferring rights to land between members of different clans in the future.}

As Brown and Brookfield (1959:24-5) showed for the Naregu, it is usual for the encroaching party to gain 'either a part of what he seeks, or else to be permitted to complete the present cultivation cycle before withdrawing'.

That previous fighting between clans sometimes resulted in territorial acquisition is underlined by the fact that the five demarcation attempts to regain such land were all inter-clan. Should, however, the Nimaï disregard the Commission's instructions not to reopen discussion on borders previously subject to arbitration by Administration officers, they will undoubtedly raise at least three such cases between themselves and neighbouring tribes. Nonetheless, the inter-clan cases can be complex enough, as the following example shows.

At some time in the past, clan B granted members of clan A rights within the former's large holding on the north-eastern Nimaï border with the Tabari tribe. During a fight between the two clans (apparently over a woman) in 1963, a man of clan B was killed and his clansmen refused to allow clan A the use of the land they had previously been granted. Clan A appealed to the Administration, claims were lodged with the Land Titles Commission, but a hearing was never held. The Administration, however, established a boundary between the two clans (to prevent further violence) which left clan B in control of the land.

By 1968, relations between the two clans had improved to the extent that A clansmen were using the disputed land for pig commonage. The land, however, had been under long fallow, and, with a pig ceremonial scheduled for the following year, clan A wished to bring it under cultivation. They thus approached clan B with the suggestion that they use demarcation to 'correct' their boundary. Clan B agreed to move the boundary in favour of A, but demanded that in return they concede them land which they (clan B) had previously held within the large block of A holdings on the western Nimaï border. Here clan B's rights derived from the time they had fought in alliance with clan A against the Dingga and driven the latter off this land. They had subsequently lost these rights after their quarrel.

With both clans in apparent agreement, the new boundaries were marked by their demarcation committee members (the only complication being two small plots of coffee planted by A clansmen on the land which B clansmen were resuming). Clan A immediately moved onto their reacquired land and began cultivation.\footnote{Subdivision into individual plots was supervised by the three demarcation committee members of clan A.}

Eight months later, under the supervision of the committee chairman, the committee members attempted to replace the temporary markers with cement posts (the first time this had been done in Nimaï territory - see Plate 2 for one positioning on a different border). Immediately, an A clansman raised objections to B's claims and a long and increasingly heated argument broke out, which was climaxed by the committee member for clan B shoulder­

cement post and breaking off the talks. As he left, he shouted a reminder to the men
of clan A that both they and his clan held similarly strategic positions on the opposite borders on Nimai territory, A facing the Dingga, and B the Tabari. Since they did not want his clan holding land among them, they could defend themselves against the Dingga - his clan would certainly not help them.1 As a parting shot, he said that his clan would now take back the land they had given to clan A.

The chairman of the demarcation committee then spent a long evening reconciling the two groups. I believe his success was mainly due to the fact that clan A, having already cultivated the land that they had regained, were not prepared to lose their investment, and thus brought pressure to bear on their clanmates who were unwilling to concede clan B's claims.

Plate 2. Nimai demarcation committee members positioning a cement boundary marker

The six cases of landowners attempting to regain land on which others have planted coffee reflect the relative ease with which rights to use land can be obtained within the clan, even though the owner and user belong to different subclans. When coffee was first introduced, the

1 Cf. Brown's (1962:62) suggestion that one of the functions of scattered land holdings of segments within Chimbu tribal territories may have been to facilitate defence: 'any attack on a part of a tribe threatens the land of many segments, and they join together in defence.'
Nimai probably did not foresee its value and thus raised no objections to plantings on borrowed land. Today its value is fully realised, and landowners - partly because they resent seeing others benefit from resources which they consider to be theirs, partly because they see an opportunity for gain, and perhaps (although I cannot document this) partly because they are short of other land suitable for coffee - are agitating for the return of such land through demarcation. This is illustrated by the following example.

Three men of subclan C5 attempted to regain less than an acre of land which was entirely planted with mature coffee owned by five men of subclan C3. The major C3 planter had assisted one of the C5 landowners with a bride payment in the past and in return had been granted use of the land. None of the planters disputed the C3 claims to the land, but they did demand compensation for their coffee trees. A pig, a goat, and $14 were collected by the landowners but the planters (one of whom was the councillor of clan C) decided that this was insufficient. Further discussion followed and the landowners eventually decided that the planters could retain control of the coffee until it died, after which the land should return to them. They also ordered the C3 men not to plant any more coffee or casuarinas on the land.

As mentioned, only half the cases of Nimai demarcation resulted in boundary marking without continuing dispute over certain rights. Given that 27 of the 35 cases were disputed from the outset, I suggest that some of the obstacles to settlement can best be understood in terms of the ambiguous role of the committee members. Officially, each member is the representative of his subclan and his function is to supervise the boundary marking of the lands claimed by members of his group. This is, as Lynch (1969:57) remarked, 'on the face of it, a purely routine administrative function'. But, of course, there are complicating factors. Not only do Nimai committee members' groups range in size from 63 to 353 persons, but their holdings are fragmented. Some boundaries are imprecisely defined and attempted marking may, therefore, occasion disputes, while others are already disputed due to previous fighting or encroachment. Lynch was thus correct in saying (1969:57) that 'there can be no doubt that there is or will be a great deal of mediatory (i.e., sub-magisterial) functions involved'. The role of the committee member as mediator is well illustrated in the case of disputed fallow land between the Nimai and Dingga tribes already described. There the Dingga member was exceptionally well placed to act as mediator, for not only had he attended the Madang instruction course and was thus able to introduce such procedures as the initial prayers to the 'hearing', but more importantly his affiliation vis-à-vis the disputing groups was ambiguous. Although nominally Dingga, he had no close interest in the disputed land, and he belonged to a previously Nimai segment which had been absorbed by the Dingga (see Diagram 1). He was also married to a Nimai woman. Nonetheless, his mediatory role allowed him to do no more than bring the two groups together and supervise the hearing of both sides' claims. He did not attempt in any way to arbitrate a decision. Since neither side weakened, he had no alternative but to break off the meeting and ask both parties to consider the matter
further. Despite such limitations, his role was clearly differentiated from that of the two committee members of the disputing parties, both of whom closely supported their respective subclan claimants. Their role as representatives prohibited them from mediating, at least in the initial stages of the dispute.

The extent to which a committee member acts as representative-claimant or as mediator depends both upon his interests in the land under review and his relationships to the parties involved. In contrast to the model of mediation above, the following case shows the committee member as direct claimant.

The father of a Nimai committee member adopted the infant son of a Dingga man killed during inter-tribal fighting. This child and the committee member grew up as brothers until their father died, after which the adopted son gradually shifted his allegiance to another subclan of the same clan. Members of this subclan contributed the major portion of his bride payment.

By 1968, he was an old man, without children, and he decided to transfer some of the land which he had inherited from his father by adoption to one of the men who had contributed to his bride payment. This was vigorously resisted by his 'brother', the demarcation committee member, who declared that the land was not his to give, and that it should remain within the subclan. The dispute was not settled.

The Nimai response to demarcation

The preceding analysis of Nimai demarcation during four months of 1968 confirms in some detail earlier comments by several writers (Brown 1969:190, Lalor 1968:16, Lynch 1969:57-8) that demarcation committees, instead of restricting themselves to their primary 'administrative' function of marking customary land boundaries on the ground, have been settling, or at least attempting to settle, disputed land claims, an activity which by law is the prerogative of the Land Titles Commission. Indeed, both the Nimai data and the accounts of early demarcation from other parts of the Chimbu District suggest that highland committee members have interpreted their role primarily in terms of the 'sub-magisterial' functions mentioned by Lynch (1969:57). This is an interesting development, although hardly surprising as Bohannan (1965:38-9) noted that colonial law is marked by at least two legal cultures, a situation which he characterised as 'a systematic misunderstanding between the two cultures within the single power system'. Risking over-simplification, I would argue that three factors are most important for understanding the Nimai's response to demarcation: (i) the segmentary nature of their social organisation, which cannot be adequately

---

1 Cf. Salisbury (1964a:170): 'filiation is not the relationship which establishes clan membership...ceremonies [i.e. initiation and bride-payment] are the crucial symbolic statement of group membership, and it is the payment for the ceremonies which determines clan membership.'

2 See pp.42-3.
considered apart from their land use system and high population density; (ii) the effects of over thirty years of colonial rule; and (iii) the extent and accuracy of their information about the aims and procedures of demarcation.

The hierarchy of groups within the Nimai tribe has already been briefly described, and I need emphasise here only that this segmentary grouping of units has no 'governmental structure' (Brown 1964:336), or in Bohannan's words, no 'unicentric power system'; thus 'all situations of dispute that occur between people not within the same domestic unit ipso facto occur between two more-or-less equal power units' (Bohannan 1965:39). Consequently, as Bohannan noted, disputes can only be settled by 'some form of compromise' rather than by 'decisions' unless, of course, the opposing groups resort to open force. That this structure is still dominant in Nimai organisation is evident in the demarcation data, particularly in the problem of the committee members' role. Before pacification, disputes very often resulted in fighting between groups at all levels - although the seriousness of such conflicts depended upon which levels were opposed - and such fighting brought territorial gains and losses.

The elimination of fighting as a 'decision-making' process in the late 1930s was of major importance for land tenure, and we must briefly consider whether a sufficiently effective alternative has been developed. From the start, the Administration encouraged people to bring all serious disputes before field officers for hearing in Courts for Native Affairs. Although the Native Affairs Regulations included (until 1951) powers to decide cases of land ownership and use, these were rarely (only one recorded case) used in the Chimbu region - officers preferred to 'arbitrate' (a quicker and less formal procedure) and usually recorded their decisions in village books. Village officials were appointed and encouraged to settle minor disputes in informal courts (Reay 1964:246-7), although they had 'no statutory authority to adjudicate disputes involving native custom' (Salisbury 1964b:228). The available evidence shows that, in the case of land disputes, village officials achieved settlement through compromises (Brown and Brookfield 1959:24-5, Bookfield and Brown 1963:137, 139). In the early 1950s, border disputes proved so troublesome that Administration policy was to mark tribal boundaries with quadruple rows of casuarinas. But disputes continued to be brought before Administration officers, and Brookfield and Brown (1963:147-8) concluded that 'boundary litigation has replaced frontier wars'. Some attempts were made to use committees of neutral village officials as arbitration councils, but from 1957 to 1963 the majority of serious disputes were forwarded to the Native Lands Commission for hearing. No Commissioner was appointed to the highlands until 1959, and it was

---

1 Cf. Brown (1964:350): '[Chimbu] groups mobilise in opposition to parallel groups or segments.'
1960 before he could visit Chimbu, by which time there were over twenty outstanding claims listed for hearing, and probably hundreds not listed. Three were heard before the Land Titles Commission Ordinance became law in 1963. A further three have been heard since then. Administration officers, without legal powers to hear cases of land ownership, did continue to arbitrate in some cases after 1957, although increasingly from 1965 they deferred any land disputes brought before them for future consideration and settlement through the demarcation process. It seems doubtful whether an effective procedure for the settlement of land disputes had been developed in the Chimbu region by 1968. Not only had a backlog of unresolved disputes built up, but also those occurring within the previous two or three years had been passed on to the demarcation committees. Both situations are exemplified in cases described earlier.

A further major result of the colonial period was important changes in land use, especially with the introduction of coffee. As the Nimai material shows, changing ideas of land and crop evaluation are clearly reflected in the pattern of disputes.

Finally, there is the difficult question of how effectively the Nimai acquired demarcation information. I shall consider only the Madang instruction course which was attended by twenty-three committee members from Chimbu, and myself as an observer. This lasted four days, and consisted of 1.5 hours of instruction in the field, 5 hours of observing two committee meetings and 3 hours of classroom instruction. It was conducted by three indigenous staff members of the Madang Land Titles Commission and all instructions, most questions, and most of the proceedings at the two meetings were in Pidgin English. Generally, although not always, one of the Pidgin-speaking Chimbu members interpreted into one of the Chimbu or Sinasina dialects as two-thirds of his companions did not understand Pidgin English. Diagram 2 illustrates both the stages and languages through which demarcation information was passed.

Diagram 2

Information channels at the Madang instruction course

| Stage I | Source of information (legislation) |
| Stage II | First transmitter (Commissioner) |
| Stage III | Second transmitter (course instructors) |
| Stage IV | Receivers (Chimbu committee members) |

1 See Brookfield (1966a), (1966b) and (1968).
I assume that each time information has to be transmitted 'interference' is likely to modify or distort the original 'message'. The possibility of distortion in the Madang situation was clearly increased by the fact that not only did each transmission involve the use of a different language, but both transmitters and receivers were further differentiated by their respective cultural experience, particularly their knowledge of their tenure systems. The following example illustrates the kind of distortion that occurred.

During instruction in the field, an instructor described how twelve subclans, each apparently holding a single block of territory within the small adjudication area, had successfully marked their borders. A Sinasina committee member compared the Madang situation with that in Chimbu, stressing the far greater population in the highlands and the fact that the holdings of groups were intermingled. Puzzled by the single blocks of land, he asked: 'Look, I'm a Dingga, but I'm married to a Nima woman whose father gave me ground on which I have gardens. What happens in this case?' The instructor replied: 'There are many different customs throughout the country, but with demarcation you must choose which group you belong to.' The instructor returned to the same 'principle' during classroom instruction. When the Chimbus replied in the affirmative to his question as to whether a husband could use his wife's father's land, he stated: 'If the couple go and work on the wife's father's land then they must lose their rights to the husband's land.' To which a Chimbu member replied: 'We didn't have this law before. If the demarcation committee goes and talks like this there will be trouble.' The instructor explained: 'One man cannot control two lands: either that of his father or that of his wife's father, not both at the same time. Suppose there are two subclans, each with a plot of ground inside each other's boundaries, they can exchange these plots if they want to.

I do not know if tenure was as clear-cut as this near Madang prior to demarcation, or whether demarcation has imposed a set of new restrictions on the customary means of holding and acquiring both usufruct and title to land. The Chimbu members, however, were well aware that such ideas conflicted sharply with their 'custom', but their attempts to explain this were unsuccessful. It is impossible to say how much this feedback failure was due to linguistic problems, and how much to cultural differences reinforced by the instructor's commitment to a dogmatic message.

Conclusion

In conclusion, it is worth recalling Crocombe's dictum (1968:33) that 'tenure reforms can only be justified if the expected economic and social benefits to be derived from them exceed the economic and social costs of executing them'. The Nima, like others in many parts of New Guinea, are attempting to integrate the cultivation of cash crops into their subsistence economy, and the extent of disputed land claims is a tenure reflection of this and interrelated processes. It is essential that land titles legislation should assist rather than hinder this development. Finally, I might suggest that the way in which the Nima, and others, utilised the demarcation procedure indicates that some structured means for settling land disputes is an urgent requirement. The committee members have shown clearly their understanding that such means will require at least a minimum of authority.
Bibliography


-- 1968. 'The money that grows on trees', Australian Geographical Studies, vol.6, no.2, pp.97-119.


Deibler, E. and Trefry, D., 1963. Languages of the Chimbu Sub-district, Department of Information and Extension Services and Summer Institute of Linguistics, Port Moresby.

Kelliher, D.J., 1966. 'Functions of the Land Titles Commission', 24 April, Port Moresby, roneed.

-- 1967. 'The fundamental mechanics of the demarcation process', Land Titles Commission, Lae, roneed.
Lalor, W.A., 1968. 'Area of research in the land law of the Territory', paper presented to First New Guinea Legal Research Council Seminar, Canberra.


Part III

Land problems and land policies in Kenya and Papua-New Guinea: a comparative historical perspective to 1963

A.M. Healy
Landholding among technologically primitive peoples

Land always has been, and remains, the ultimate source of wealth. It possesses the unique qualities of being totally immovable and inherently indestructible (in an absolute sense), and it is therefore the most covered form of property, even in technologically advanced societies. From the appropriation of land according to a recognition of individual rights springs the fundamental economic notion of wealth.¹

Among primitive peoples the importance of land is all-pervading. Because religious, social, political and economic customs and institutions are closely interrelated, the forms of land tenure reflect the structure and functions of the various elements in a society. Generally, such peoples hold land under systems of communal exclusiveness, within which various types of individual usufruct are allowed; this usufruct often shades into what might be called ownership (transferable). Where land is abundant, the areas of tribal possession or of clan tenure may be vaguely recognised, and individuals and their families may be able to select pockets for their use, either permanent or seasonal: 'A man who clears the forest, breaks the ground and plants crops is left in undisturbed possession of the land so long as he continues to use it' (Liversage 1945:4).

However, this system was suitable only where a small range of crops was planted year after year, and where a high infant death rate allowed adults to count indefinitely on adequate reserves of forest land for clearing. It seemed to be intrinsically ill-adapted to sudden change, whether brought on by population pressure, natural disaster, or the intrusion of foreign methods and institutions.

Some scholars and officials believed that tribal tenure in the strict sense (as distinct from tribal occupation of particular areas) had a greater capacity for adaptation than individual tenure: tribal tenure depended on some measure of central control, with a chief or headman allocating land for certain purposes in return for the assumption of definite obligations by the usufructuary. This system was similar in many respects to mediaeval feudal tenure in Europe (although different in a technical sense in that change to land enclosure would have to

¹ This follows the views of the great legal analysts and historians, Pollock and Maitland.
include areas of bush-fallow instead of crop rotation by strips). Such a system existed - and to a degree still exists - in a few parts of East Africa, for example, among the Baganda of Uganda (Meek 1949:132), but it was by no means typical. Indeed, most of the land tenure systems of this area - and of Papua-New Guinea - traditionally fell within the broad pattern of non-authoritarian sharing.

Although there were no reciprocal obligations between rulers and ruled, this does not mean that in systems of the Papua-New Guinea or Kenya pattern (broadly of the segmentary social type) there was no reciprocity or no conception of individual rights: incipient forms of individualism did - and do - exist. Among the Kenya Kamba, for example, individual rights to land were definitely recognised by the clearing of an area of waste. Even at an early stage of British Administration, land could be sold (for cash), but one may suspect that the nature of the rights transferred was complex (Hobley 1910:82-4).

The Kikuyu of the Kenya highlands bought their land from the nomadic Dorobo, and Leakey (1952:9-10) stated that individuals and their families owned land - whatever ownership may be taken to be in a non-exchange economy. However, Middleton (1953:52) stated that the prime ownership unit was the joint family, which held a ridge of land, the use of which was allocated to individuals. Land outside the ridge could be acquired by individuals and what amounted to the sale of land by individuals was noted. On the other hand, the semi-pastoral Nandi, who followed a homestead pattern of habitation, had cultivable areas shared by several families, with individual holdings scattered within these areas (Huntingford 1953:17). However, in all these cases it is difficult to know precisely what the individual rights were, and it is probably reasonable to regard them as existing within a broadly communal system of land possession and allocation.

Such a system, while adequate even for subsistence only under customary conditions, did not, under those conditions, lack merit. Brookfield and Brown (1962) found a good balance between land rights and productivity in the Eastern Highlands of Papua-New Guinea; and in East Africa the 1953-55 Royal Commission gave a balanced assessment:

We see repeated principles which we have already noted among the pastoral tribes - the unrestricted right of the individual to run stock on what is held to be the common asset of land; the right of all in the clan to claim to be supported from the clan's land; and the understanding that ownership, if such an idea exists at all, is vested in the community, so that sale, mortgage, capital value, lease and rental were terms unknown. There was, moreover, in the system, a certain egalitarianism, a conception that the various members of the society accept a fair share in what belongs to the whole; and this feature is evident not only in the communal grazing but also in the distribution of land. Some land would grow good maize and other
land only sugar cane or rice, and often the dispersion of an individual holding over a wide area was due to the attempt to give each member a share of each type of soil.¹

Post-European instability of traditional systems

The advantages mentioned above presupposed a stability in basic institutions and ideas that could not persist with the introduction of Western ideas, which were promoted by the mere intrusion of Europeans. New ideas have to be accepted only by individuals, or new ambitions generated, for the traditional system to begin disintegrating. The acceptance of new ideas is eventually inevitable, although it is hastened by physical pressures such as those caused by a reduced death rate and increased competition for land, or simply by a realisation of the new economic desirability of high potential land.

In Western Europe change of this kind was spread over many thousands of years, and kept pace with social evolution and the development of more complex technologies. Some African peoples, such as the Baganda, who had achieved a measure of centralised authority, had developed their concepts and practices from the locally communal to the tribal stage, and had some notion of individual possession of land in return for duties to the king or chief. At all levels such societies were several steps along the way towards the conversion of tenure to individual ownership.

However, the tribes of Kenya - and Papua-New Guinea - lacked central authorities. Thus, while there was some conception of individual possession or usufruct of the land within a system of shifting cultivation, there was apparently no structure through which rapid change could be achieved. Pressures towards change meant - or mean - an abrupt jump through several stages of development no matter what system of agricultural production is envisaged. For example, even if better farming and cash cropping can be combined with communal tenure, its planning and organisation necessitate the creation of alien forms of central authority and liaison. Where so-called communal tenure and an exchange economy have been combined - as, apparently, in Israel - all the procedures of a modern state have been accepted and the whole agricultural system planned. This type of communal tenure differs radically from that defined above - as do the marxist 'collectives' - and evidence seems to indicate that the efficient introduction of this type of productive unit

¹ Cmd 9475 (1955:285). Here the term 'individual holding' must be interpreted in the context of what has already been said. Incidentally, the crops quoted here are all non-indigenous to East Africa.
among peasant populations is even more difficult than the individualisation of tenure.\(^1\)

With this background, the problems which the Kenya government had to face after World War II - and which the Papua-New Guinea Administration is beginning to face - can be more adequately appreciated. It has been recognised as basic to the development of a modern state that peasant farmers be raised above the level of subsistence, so that the land will support a bigger population at a higher living standard, and contribute to revenue through the raising of capital and the reduction of imports.

**Broad social comparisons**

The prime purpose of this study is to consider agrarian change in Kenya as a possible model for change in Papua-New Guinea.\(^2\) The comparison at first glance may seem improbable, even exotic, but there are remarkable parallels between the two countries, and their agrarian problems are more similar than are those of Papua-New Guinea and Polynesia or South-east Asia.

The indigenous social similarities between Kenya and Papua-New Guinea have already been indicated. But land and other policies necessarily have to be produced in an intercultural, interracial situation which in Kenya was - and is - more confused than that in Papua-New Guinea. This made the task of government in Kenya harder and considerably more individual. For administrative convenience the time-honoured division was into Europeans, Asians, Arabs and Africans. This in itself would have posed enough problems even if each community were internally homogeneous, but each community was also divided within itself. The Europeans were broadly divided into English- and Afrikaans-speaking; the latter tended to settle in farming 'colonies' of their own around particular up-country towns recognised as predominantly Boer by origin. The English-speaking Europeans were divided occupationally and residentially into true 'settlers' (on the land), and business and professional men in the three main towns of Nairobi, Mombasa and Nakuru.

The Indian community reproduced in miniature the myriad religious and social subdivisions which plagued their original land.\(^3\) For

---

\(^{1}\) Rothstein (1950:189) described the complex organisational structure that was needed in Russia; and this followed the expropriation of the nobles and the capitalist kulaks, rather than starting from scratch, as in an underdeveloped area.

\(^{2}\) 'Agrarian' is sometimes restricted in usage to more developed systems of tenure; here it means simply 'pertaining to cultivated land'.

\(^{3}\) Wilson (1961:101) noted that Mombasa alone had more than twenty separate Asian communities sufficiently distinct to maintain their own social centres.
example, East Africa was the principal headquarters of the Ismailis, and other groups maintained their own identities. The Indians were engaged almost exclusively in commerce; they were excluded from land purchases - until 1960 - in order not to introduce further confusion into an already difficult situation.1

The Arabs occupied the coastal strip which, throughout the colonial period, was leased from the Sultan of Zanzibar although governed as an integral part of Kenya (it was incorporated by treaty in 1962). Over many centuries, partly through their extensive slave trade routes, the Arabs had contact with African peoples, with the result that the true Swahili-speaking peoples of the coast and the near hinterland form a rather indeterminate mixed-race group united only by their common language (a Bantu grammar with a largely Arabic vocabulary) and religion (Muslim).2

The composition of peoples classified as 'African' reflects a long history of constant formation, movement and re-formation. Kenya was the northern limit of the Bantu peoples: several million Bantu agriculturists settled in the eastern highlands and near Lake Victoria (the Kikuyu were by far the most numerous). The Hamitic peoples, such as the Galla and Somali, were nomadic pastoralists in the north and north-east of the country. Ethnically these people were much closer to Europeans than to the Bantu, being classified as Caucasoid (white), but socially and economically they belong with the Africans. Hamitic influences have long existed in East Africa, and early Hamitic mixture with Negroid types probably produced the Bantu. Another major group, the Nilotes, of mixed physical type, were cattle herders. The most notable of these in Kenya were the Luo of north-east Lake Victoria. Finally, there were the Nilo-Hamitic peoples (such as the Masai), who had a much stronger and more recent Hamitic strain - with noticeably 'European' features - and who were traditionally semi-nomadic pastoralists.

These divisions among the African peoples were not only those of blood, physique and language, but they had economic relevance: the Hamitic peoples mostly ran large numbers of scraggy cattle over poorly watered and even semi-desert country, while the Bantu practised shifting cultivation on the better land and ran cattle, sheep and goats as a sideline.3 Yet none of these divisions was particularly significant

---

1 The famous Devonshire White Paper (Cmd 1922 (1923:9)) set out this principle, while at the same time stating the more positive one of paramountcy of African interests.
2 For elaboration see Wilson (1961:98).
3 For a condensed account, see Huntingford and Bell (1950:1-3, 95-7). This brief description ignores other important groups: for example, the Dorobo, timid hunting people who preceded the present inhabitants, still
for the coherent organisation of agricultural improvement. Kings or chiefs were almost non-existent - officials appointed their own 'government chiefs' - and authority over the disposition and usage of the land derived from informal meetings of clan elders or other relatively small social groups. Thus social fragmentation was probably as great in Kenya as in Papua-New Guinea, and its reform for more productive farming presents very similar problems.

However, the range of traditional economic activity among the Kenyan groups presented serious problems, for land and agricultural policies had to encompass not only the concentrated highland agriculturalists but also the pastoralists wandering over vast areas of scrub and semi-desert. In Papua-New Guinea, on the other hand, almost all the peoples were agriculturalists, with relatively fixed modes of habitation and cultivation; the major difference was in the crops grown - sago, banana and taro predominating in coastal areas and sweet potato in the highlands. Moreover, the range of altitude, as well as the range of ecological zones, was greater in Kenya.

This range of peoples and of land types and problems was equalled by landholding methods, which cover those described for segmentary societies in Middleton and Tait (1958), although within the general limits of communal tenure. For example, land among the Konkomba of Togoland usually 'belonged' to a lineage, but parts of the communal land regularly cultivated by a man tended to pass to his sons (Tait, in Middleton and Tait 1958:180-1). In other instances, many lineages were dispersed, and constituted only the cores of local groups, particularly where the economic, ritual, or political significance of land was not so marked (Middleton and Tait 1958:9). For example, the Nilotic Luo unit usually consisted of the head of a household and his immediate family, with its own independent circles of huts and cattle bomas; among the Kikuyu, landholding by the githaka or lineage unit was more formalised. There was thus considerable variation in land tenure and farming practices within the broad pattern.

The traditional social and economic situation in Kenya presented problems in change and adaptation, from the viewpoint of official planners, at least as difficult as those in Papua-New Guinea. There is a notable tendency in Papua-New Guinea to explain away administrative failures or tardiness by appeals to the complexity of problems - usually amounting to an argument about the number of languages - and the difficulties of the country. It is unfortunate that, in the past, such excuses were not examined more critically. To say this is not to

---

3 (continued)

survive in pockets in the highland forests. Thus Lipscomb (1955:16) argued that African land claims have always involved the dispossession of others, and that all significant groups are immigrants.
judge the past by the patent needs and accepted standards of today, but simply to point to an historical factor which continues to influence the approach to problems in Papua-New Guinea. In contrast, continuing public attention was given in Kenya to the land question. Partly this was due to obvious troubles in the African lands, and to pressures by and against the European settlers; but it also owed much to a tradition of scholarly surveillance, and to the government's readiness to instigate and support periodic public inquiries. This tradition has been lacking in the Australian administration of Papua-New Guinea: all the major premises have been accepted unquestioningly by most people.²

Other similarities and differences will become apparent with the following outline of Kenya experience in relation to land.

Kenya land development - the European emphasis

The opening up of Kenya followed shortly after that of Papua-New Guinea - at least as far as the allocation of land to settlers was concerned - but it was undertaken much more vigorously. The British East Africa Company, which had been established on the familiar lines of a developmental chartered company in 1888, was liquidated in 1895, and Kenya became a part of the East Africa Protectorate, which included Uganda. In the late 1890s it was administered by a commissioner responsible to the Foreign Office through the consul-general in Zanzibar. The Foreign Office's unfamiliarity with the problems raised by a raw and technologically backward country partly explains its erratic policy towards the land question. In about 1898 a few Europeans began to grow fruit and vegetables near Nairobi. This was the beginning of 'new' farming in Kenya, although the settlement of Europeans was officially informal until the railway from Mombasa reached Lake Victoria in 1901.

Long before European settlement was thought feasible in Kenya, travellers reported that much of the highlands was empty.³ This was a mistake, or rather a misinterpretation of what was observed, which was repeated in many tropical colonies: shifting cultivation, particularly in a country where many different groups had been moving around for many years, meant that large stretches of land lay uncultivated for a long time, while tribes or lineage groups retained to their own satisfaction an interest in them. At all events, Europeans long defended

---

¹ For interesting comments on this point relevant to Kenya, see Perham and Huxley (1954: 86, 95, 102).
² The only really able assessment of Australia's record, Mair (1948), was criticised on all sides as biased, ill-informed and unappreciative, and it was hastily 'buried'. See Healy (1970).
³ See, for example, Thomson (1885).
their settlement in Kenya on the basis that when they moved in Africans were not using the land they took - with the exception of one or two strips near Nairobi - and that the land Africans were occupying was being appallingly misused.¹

Undoubtedly African methods were very crude and wasteful, and there was thus an obvious rationale for the development of the country by Europeans; this was in line with principles later made famous as 'the dual mandate'. In addition, Kenya's climate, vast rolling downs, and unmatched big-game shooting opportunities all appealed to vigorous elements of the English landowning class. The man who saw this clearly was Sir Charles Eliot, appointed H.M. Commissioner for East Africa in 1900. Eliot was made independent of the controlling shackles of Zanzibar, and he fully used his freedom.

Effects on African interests

A man of great learning and culture, with a deep knowledge of several civilisations, Eliot was repelled by what he saw as the savagery of the African. His work lay in a 'raw, ramshackle, crude and poverty-stricken country with no tradition, history or pretence to civilisation' (Huxley 1953:75). He saw the African population only in terms of 'brutal barbarism', from which it was the mission of whites to drag them by a kind of vague assimilation; the Africans could and would be civilised by working on European estates (Eliot 1905). In addition, it was only by this means that it seemed possible to convert East Africa into an asset and make the expensive Uganda railway pay. Such were the attractions of Kenya that wealthy landowners rather than mere farmers were attracted:

the end of the South African war brought settlers from not only Britain but South Africa and even Australasia. Those from the mother country, seeking refuge from the changing social structure of Britain, were uncommon emigrants: men of substance, the raw material Gibbon Wakefield had earlier sought in vain for his Australasian settlements. They came with capital to develop and supervise; but they came without their labourers.

(Madden 1959:387)

These were men of the type - or rather above the type - MacGregor had vainly sought for Papua-New Guinea in the 1890s (MacGregor 1894-95:213).

As Africans were regarded largely as potential labourers, official attention quickly focused on the development of the European parts of the highlands: the African areas were places which it was best not to investigate too closely. By the early years of the twentieth century,

¹ See Huxley (1953:71-4). Lugard remarked on the emptiness of the highland areas through which he travelled in 1890, and it was he who first suggested white settlement, to his later regret.
alienation was out of hand. Hailey and others have trenchantly criti-
cised this aspect of the British administration of the period. The idea
of African 'reserves', not subject to alienation more or less just grew,
and they were given statutory recognition only in 1915.\textsuperscript{1} Unfortunately,
all reserved lands were classified as Crown lands, so that Africans
understandably felt some concern for their security of tenure. Little
was done to clarify the position or to alleviate their fears during the
1920s. Indeed, legal interpretation increased fears, for in 1921 a
court defined Africans as tenants-at-will of the Crown - an unfortunate
and anomalous transfer of English terminology. This history of almost
unbelievable administrative muddle is explainable only when one looks
at settler influence and official concentration on settler problems.
The further the division of African and European lands went, the greater
was the tendency to regard African problems largely in terms of how they
impinged on European development (Hailey 1957:715-17).

To some extent this division was natural, not only because of the
distinction between cash and subsistence economies, but also because,
partly as a result of this distinction, much of the land taken over by
Europeans differed from that which suited African methods of gardening
(Huxley 1953:72). There was thus a kind of automatic ecological divi-
sion, allied to an economic division, and the cash-producing efforts of
Europeans absorbed most attention.

Where difficulties with Africans arose, negotiations - often only
semi-official - were conducted with leaders, although virtually no
individual had the right to dispose of land. The only formal treaties
were those with the Masai in 1904 and 1911, whereby land which restricted
European development along the railway was exchanged for areas elsewhere.

Ignoring, for the moment, ultimate political implications which could
not have been foreseen at the time, this policy had its rational elements.
Wealthy Europeans such as Lord Delamere needed adequate indirect assist-
ance, such as large and unfragmented areas of land and access to transport,
for them to embark on heavy preliminary expenditure. This expenditure
was necessary not so much from a capital investment as from an experi-
mental viewpoint: Delamere spent years living in a mud hut and mortgaged
his English properties in order to produce strains of grain crops and
stock animals which gave estate farming a chance of success. This laid
the basis for cash cropping and for an exchange economy into which the
Africans were later drawn.\textsuperscript{2}

On the other hand, because of dependence on such development in the
early days, official economic and political attitudes were moulded by
almost total dependence on the European element. The Africans in the

\textsuperscript{1} The boundaries of the reserves were laid down in 1926.
\textsuperscript{2} Missionaries were the first to introduce coffee, later to become a
basic African cash crop, near Nairobi in 1901.
reserves were left to their subsistence until population pressures and land abuse compelled the attention of the central government. Whether finance would have allowed much to have been done in earlier days is debatable, for not until 1929 did the first Colonial Welfare Act declare that backward colonies might occasionally need a little financial assistance. This principle, now so obvious and so widely accepted, was strongly resisted even in the 1930s. It is possible that, even had the development or at least the preservation of the African lands been considered, little could have been done, and priority would still have been given to European farming, on the success of which the Treasury depended.

Most of the attention given to agricultural practice and to land tenure was directed to the European highlands. The Europeans wanted freehold title and the end of rent revision and other aspects of government control; and because of their forceful leadership and economic position their complaints were kept to the fore. It is significant that when Meek discussed (1949:84) African lands he began at 1933, when the famous Carter Commission reported.

The growth of the African land problem

Not surprisingly, the European possession of much good land, and the impoverishment of that still held by Africans, eventually drove the question of the African lands into prominence; but it came about indirectly by the steady and cumulative filtering of squatters on to European estates. By 1932 there were about 150,000 labourer-tenants living on European estates, and they appeared to have assumed a kind of quasi-legal status. In addition, a small class of landless Africans was already drifting in to a few towns.

Moreover, there was the problem of reconciling the principle laid down in the Devonshire White Paper of 1923 of the paramountcy of African interests with the glaring inequalities in land distribution and opportunity. (Admittedly, the Devonshire principle had referred specifically to the claims of the Indians, but its repercussions extended beyond them.) As late as 1932, 27.5 per cent of the 10,345 square miles of land reserved to Europeans was not in use, and only 11.8 per cent was under cultivation. Probably only about 20 per cent was suitable for cultivation, but during the 1930s this still left large areas of undeveloped land.

---

1 Admittedly, settler colonies such as Kenya indirectly asked for a metropolitan 'hands-off' policy of this kind, for settlers constantly complained about 'interference' from Whitehall.
2 See, for example, the 1908 paper on land tenure in East Africa (Cmd 4117) and Meek (1949:78).
3 Cmd 4556 (1934:378).
In the early 1900s uncultivated land had little significance because large areas of good or potentially good land were unused, and the African population was small and apparently in decline (this impression was influenced by severe epidemics of rinderpest and sleeping sickness during the 1890s). At that time the African population was estimated at not more than one million (Huxley 1953:73), but by the end of the 1930s it was estimated (with sample counts) to be more than 3½ millions: on these figures it had trebled in thirty years, and the increase was proceeding in geometric progression (Meek 1949:77).  

The effects of population pressure were already evident in several areas, notably the Kikuyu and Kavirondo districts. Land shortage among Kikuyu was already assuming political overtones by about 1930, with complaints to the government about alienation. The Kikuyu were especially sensitive for they had a long boundary with some of the best European lands, segments of which lay idle. In 1933 the Carter Commission, appointed to investigate the land problem, received more than 400 letters from Kikuyu alone.

In addition, by this time Africans in the densely populated districts had already embarked on an exchange economy - but at the clear expense of the land. The introduction of aeroplane flights enabled interested Europeans to gain an accurate but forbidding impression of the extent to which erosion had already progressed, and this undoubtedly influenced attitudes (for example, the pioneer estate-holder, Colonel E.W. Grogan, had first become conscious of the African land problem by seeing it from the air).

Some work was done in these areas to combat the obviously growing problem; but it was unsystematic, partly because even agriculturalists did not agree on the nature or size of the difficulties. Better seed was distributed in some areas and a few model plots were laid out on government land, but nothing fundamental or aggressive was done. Officers stationed in densely populated areas had views on the land question, but they had little impact on central government; for example, a District Commissioner stationed among the Kikuyu suggested a registration programme for githaka land, but to no effect.  

Because of European pressure, such central government consideration as was given to African lands by the early 1930s was largely designed to improve 'security' of tenure. Other questions, such as the sufficiency of lands for an expanding population, and the flexibility of

---

1 This rather gloomy assessment was more than borne out by experience, for by the late 1950s the African population was officially quoted at about 6½ million; but a census in 1962 showed that there were no fewer than 8 million Africans. The problem had in fact been underestimated.

2 Cmd 4556 (1934:423).
landholding systems, remained in the background. For example, the Lands Trust Ordinance of 1930 was largely designed to allay African fears aroused by the earlier legislation and its judicial interpretation, but it did not touch upon the basic and growing difficulties.

The Carter Commission and individual tenure

In June 1932 Sir Morris Carter was appointed to chair a commission on the land question; its prime object was to resolve the conflict between European and African claims, and to fix the boundaries with justice to both groups (while preserving the exclusive rights of Europeans and Africans within their own areas).¹ The terms of reference were actually broader, but this was the most contentious issue. However, the first proposition which the Commission was asked to investigate was 'the needs of the native population, present and prospective, with respect to land, whether to be held on tribal or on individual tenure'. During its work the Commission considered most aspects of African tenure and land usage to a degree not previously attempted.² At the same time, the Carter Commission decided to assess the claims and needs of the separate tribes rather than those of the entire African population.³

Within these limits the Commission said much that was new. It recognised that the African population was very badly distributed within its own lands, and that the fixing of boundaries had led to rigid non-traditional barriers (in other words, movements and readjustments within the African reserves were envisaged). As a result, certain densely populated areas adjoining the White Highlands, notably Kikuyu and Kavirondo districts, were becoming exhausted; therefore, a programme to promote more skilful land use was needed.⁴

On the other hand, the Commission anticipated that a better balance of population within the congested areas would only be achieved very gradually. This was the general opinion at the time: evolution rather than revolution was sought, for the basic solution - the Commission felt - was the tedious one of educating the Africans in the better use of their land. At the same time, change could not proceed without guidance:

² Previous inquiries, such as Cmd 4117 of 1908 ('Tenure of land in the East Africa Protectorate'), were concerned with the alienation of African land, rather than African landholding itself.
⁴ Cmd 4556 (1934:349-50).
the institution of settled government, the fixation of boundaries, the introduction of money, the increase of population, and the general industrialisation of the country have caused and are causing profound changes, and even disintegration of native law and custom. The function of government cannot be discharged merely by marking and proclaiming the changes as they occur. Conscious regulation is necessary. It may be impossible to resist the currents of change, but at least an attempt should be made to direct them into the desired channels.\(^1\)

The tone of this passage indicates that the Commission was not particularly sanguine about the prospects for this recommendation. But it pointed out that a few advanced Africans were already trying to use better methods on the land. In the Kiambu region of Kikuyu country, near Nairobi, 'a considerable degree of individualism had already appeared, quite exceptional to tribalism'; it was not quite individual tenure, as brothers farmed together, but it was well on the way to being so. The Commission saw individualisation as a means of achieving fluidity and a better distribution of the land. The possibility that this movement would gradually spread, creating a vast confused array of methods of change and legal and economic complications, led the Commission to reiterate the need for official intervention: 'history does not lead us to expect that the land problems of any people can be settled by a spontaneous evolution of custom, and some direction by authority is necessary'.\(^2\)

In brief, since the introduction of European government and European concepts had created the problem, it was the responsibility of government to solve it. On the question of the procedure to be adopted, the Commission was not so clear: proposals should only be framed after research by central government. It emphasised that no regulation of prevailing usages should be attempted without 'prolonged deliberation' and close consultation with the Africans. The way could be prepared by example, education and experiment, but the concurrence of the Africans was vital. The Commission therefore looked to the local councils to pronounce on proposals from the central government. Councils themselves could not have the power to alter custom, but they should be given the right to make formal declarations that custom had already altered, so that a measure of uniformity could be preserved. The Commission summed up the general line that policy should follow: 'the tenure of each reserve should be built on the basis of the native custom obtaining therein, but it should be progressively guided in the direction of private tenure, proceeding through the group and family towards the individual holding.'\(^3\)

\(^1\) Cm 4556 (1934:421).
\(^2\) Cm 4556 (1934:359). Also see Cm 4556 (1934:149-50) (Kiambu).
\(^3\) Cm 4556 (1934:420-2, 531, para 1650). Also see comments in Cm 9475 (1955:53-7).
Despite their caution - which with hindsight appears absurdly misplaced - these views were extremely advanced for their time, they showed much courageous foresight, and their presentation paved the way for later action.

Resistance to bold policies of change

As this section of the Commission's report depended on and contained a number of imponderables, it is hardly surprising that other sections received better treatment from government. For example - as Carter recognised - a landless class would almost certainly be created, and this would create further problems if there were no industries or other occupational openings. Such difficulties pointed the way to a policy of 'wait and see', which, by and large, is what the British and Kenya governments did. Indeed, the idea of deliberate central guidance towards individual tenure ran counter to the whole weight of intellectual opinion at the time: Leakey, who had been brought up among the Kikuyu, testified to the Commission that it would be dangerous to modify custom by rule. The idea was - following Malinowski and his functional anthropologists - that land was such an integral part of social structure and religious belief that arbitrary alterations could cause a complete collapse. (Indeed, even in 1961 a noted African lawyer specialising in West African tenure was still warning of this.)

It was therefore felt during the late 1930s and early 1940s that little or nothing should be done until the central authorities were sufficiently conversant with the structures they were proposing to change. The appearance in 1938 of Hailey's *An African Survey*, while clarifying the extent of the problem, possibly reinforced the idea that caution and 'hasten slowly' were the watchwords. Hailey clearly saw the problem as one of gradual change through local regulation and central co-ordination, on the analogies suggested by English history.

Indeed, the government was both conceptually and organisationally unprepared to give effect to anything as radical as meddling with customary tenure. It was an unfortunate corollary of the 'gradualism' in the Carter Report that no detailed administrative arrangements to promote individualisation of tenure were suggested. Thus the emphasis on the security of tribal lands, rather than change within them, continued.

---

2 Hailey headed a committee at the Colonial Office studying post-war problems, of which land tenure was one of the major ones considered; Meek originally produced his book (1949) for this committee.
3 See his introduction to Meek (1949:ix-xxvi) in this vein.
4 For succinct comments, see *Cmd* 9475 (1955:397).
In 1938-39 a series of Orders in Council gave effect to the land classifications recommended by Carter, and confirmed both Europeans and Africans permanently in the possession of specified areas. The European and African areas were redefined but the adjustments involved were neither large nor significant. More important were the four divisions introduced within the areas recognised as African or African-priority areas: class A comprised the existing reserves as amended; class B lands were those added to the reserves for economic or temporary reasons; class C were native leasehold areas, to be held on individual tenure by detribalised Africans - an index to the extent of social change even in the 1930s; and class D comprised areas in which Africans were to have equal rights with other races in the acquisition of land. One of the major changes, intended to reassure the Africans, was formal categorisation of the reserves as native lands rather than Crown lands. In addition, all the reserve lands were brought under a Lands Trust Board, which was set up to protect the interests of Africans in the various land classes. Local land boards were established below this Board to provide for consultation and review within each tribal area. To set apart any reserve land for public purposes required prior consultation with the local native councils concerned. A rather less satisfactory feature of the legislation was the elimination of all traditional African rights or claims to land outside the reserves: the intention was to move squatters off European land, but almost immediately the government found it difficult to locate adequate land onto which they could be moved (Meek 1949:87-8).

**Positive steps to improve the land**

Although general security was enhanced and Africans were given statutory rights to review proposed changes in advance, these provisions hardly affected the more urgent need for better land utilisation. Through attempts to combat soil deterioration in the more densely populated areas, official attention was again drawn to the tenure question. A number of 'reconditioning officers' were appointed between 1930 and 1935 to introduce mixed farming as a method both of reducing erosion and of inculcating more scientific methods of stock control. For this to succeed, however, permanency of tenure was required, as well as provision against fragmentation (Clayton 1959:146; Meek 1949:90). With a substantial loan and grant from the Colonial Development Fund, the Machakos Local Native Council successfully reconditioned 100,000 acres of land. Many local councils passed resolutions which controlled the cutting down of forest and required occupiers of sloping land to use terracing, walls and contour ploughing. These measures seriously restricted the freedom of shifting cultivation, and gave those improving the land a more definite stake in the areas they tended. In this way, better farming implied a trend to personal rights in land. Also in the late 1930s, officials in the Central and Nyanza districts, where the problems were most acute, actively began to preach the idea of individual 'small-holdings', to be occupied and worked more or less permanently by single family units of four or five people (Hennings 1952:122).
This was a good example of British pragmatism at work, for officials were able to experiment and observe from area to area, and much tolerance was shown towards local initiative and prerogatives. This experience was to prove invaluable after World War II. The intention was that the more go-ahead peasants would lead the others: in effect, education by example and stimulation through competition. But, as the Carter Commission had noted, this type of movement could not be allowed to establish its own momentum; in a rather unco-ordinated way officials attempted to promote and guide it.

In these densely populated areas other factors also promoted change, including the infiltration of European ideas and the growth of crops for sale as well as subsistence. In the Kiambu area of Kikuyu country, complete freedom to transfer land was already established before World War II - to such an extent that experts were worried that marked inequalities would appear. Africans possessed of economic acumen were buying ploughs and planting large areas of the public domain with wheat, maize and wattles. The rise of agricultural debt and of a landless class of paupers was feared by officials. At the same time, until the war intervened, the government was uncertain what to do. Clearly some regulation was called for, but it was recognised that central legislation having general application would interfere with evolution according to the particular customary needs of each area. Hence such regulation as was attempted was achieved by guidance through the local councils. A number of Kikuyu councils passed resolutions in favour of the registration of titles and the recording of all land transactions. Because later innovations have blunted perspective, it is easy now to underestimate the significance of these changes: they meant that the basic concepts determining African attitudes to land were already in rapid transition in these areas. In the coastal areas among the Swahili-speaking peoples, where Arab influence had extended over several centuries, more or less permanent individual tenure had taken hold. Up-country, however, an even more radical process was to occur by 1950. As Meek noted (1951:9), traditional African land usage depended on certain possessory rights, to which the concepts of English real property law did not apply:\footnote{This fact still clouds discussion of indigenous customary land usage. There persists a tendency to use the term 'ownership' where, in any Western sense, it is quite inapplicable. See, for example, New Guinea Annual Report 1957-58:55.}

They [native systems of tenure] should rather be defined in terms of rights. The head of a household exercises rights of control over plots of his wives and sons; the head of a lineage exercises rights over unallocated lineage lands; the village elders exercise rights of control when new land is brought under cultivation.... Some persons only possess rights as long as they use them. Others again only possess potential rights....
Even where the notion of exchange of rights between individuals existed in the past, the redemption of those rights by an equivalent payment had been automatic. Now entire communities had to recognise that individuals could retain land permanently, sell it permanently, and make it irrevocably heritable. In some ways the acceptance of these new concepts was facilitated in the Central and Nyanza districts by the influence of contiguous European areas. In other ways European influence could be regarded as a deterrent, for the Africans blamed all their troubles on this very point: their fathers had allowed Europeans rights which had been converted into ownership and permanent alienation. At all events this galling example gave a lead to the more perceptive Africans, and a few had moved towards small-holder farming by the early 1940s.

The general policy of fixed individual farming appeared to have been accepted by government, with reservations about the pace and degree of individualisation. In 1936 the Governor, Sir Joseph Byrne, summarised admirably the broad objectives towards which policy was now directed:

The essential elements of the new system include the replacement of shifting agriculture by a fixed agriculture which will maintain continuous production from a smaller area, leading to a more balanced dietary; the prevention of soil erosion; and the reconditioning of the eroded lands.... Small holdings organized within the native system of land tenure, of a size to provide a reasonable return and run on up-to-date rotational lines, provide the method by which the progressive cultivator can go forward himself and at the same time demonstrate to others the proper use of the land.

(Meek 1949:98-9)

Was individualisation really necessary?

By the late 1930s some authorities began to question whether guidance towards individual tenure was the right policy for African societies, and whether it was not rather a misplaced and unquestioning transfer of a process accepted in the West. In other words, individual tenure and individual farming accorded with the type of social evolution which had occurred among European communities; but was there any reason why better farming in Africa could not be reconciled with the preservation of communal systems of land usage?

Experts on African economics such as Professor W.M. Macmillan came to regard individualisation of tenure as reactionary, and as introducing the relics of nineteenth century thought into a totally unsuitable situation. In the nineteenth century, individual tenure had been regarded as 'the natural, sufficient, and only possible way of advance' (Macmillan 1949:125), an integral part of the broad contemporary faith - incorporated in British imperialism - in worldwide 'progress' towards superior European ways. Maine (1876), for example, enunciated, as a general
principle, that communal property led to individual property, and that this process was an integral part of social and economic development.

Macmillan argued that the application of this principle in a particular instance had led to undesirable consequences. He cited the famous Glen Grey Act (1894) in the Cape: under this, with admirable motives, the government tried to give a stake in the land back to Africans by securing to them holdings with surveyed title on an individual basis. However, the maximum size of the holdings was fixed at 8½ acres, and little was done to ensure that progressive agricultural practices were introduced; the result was that the reserves rapidly deteriorated. Macmillan contended that the individualisation programme was responsible, and that scientific farming could be introduced only on large estates. 'Small-holdings can never reap the full benefit of the technical developments of scientific agriculture.' (Macmillan 1949:248)

This seemed to imply, particularly in densely settled areas, some form of adaptation of communal usufruct to secure co-operative effort over substantial consolidated areas.

In countries such as Kenya, arguments of this kind seemed to provide a refuge for the faint-hearted. They gained support from the prevailing view in the Colonial Office that little or nothing could be done in tenure conversion - as distinct from soil conservation - until more study had been done (Meek 1949:98). Officials were appalled by the sheer size of the task: 'there was a tendency to avoid the whole problem simply because of its inherent complication and the obvious political risks of interfering in such an explosive matter as land ownership' (Aldev 1960:5-6). Field officers and others increasingly resisted regulation towards individual tenure. The Cambridge Colonial Conference of 1949 rejected the need for individualisation, believing that communal effort would achieve better farming. An international land tenure symposium, held in Amsterdam in 1950, reverted to the pre-war argument that precipitate policies to stimulate a change to individual ownership among primitive peoples could lead to the destruction of 'viable social values'. Thus the immediate post-war emphasis was again on the improvement of farming methods rather than on the systems under which the land was held and used.

**Beginnings of a new approach, 1946**

At the end of World War II the Kenya government, responding to the obvious need for more urgent change, prepared a ten-year development programme on African land utilisation and settlement in new areas. The question of tenure policy was left in abeyance, and the emphasis fell on such problems as soil improvement and irrigation measures. Concomitantly, the African Land Development Organisation (Aldev) was set up with representatives from central departments concerned with African lands, members of the Legislative Council, and representatives of the provincial administration. One of its prime purposes was to co-ordinate policy making and administration between the central departments, and between
central and district administrations. Aldev willingly accepted the view that it did not, and should not, constitute a new central authority handing down decisions to the district staffs, but that its settlement officers should be responsible to the District Commissioners. In order to avoid clashes, men with a close interest in farming, who would cooperate with the specialist Aldev officers, were selected especially for areas of unusual complexity. While their local prerogatives were not infringed, district staff were induced to pay closer attention to the basic agricultural problems of their districts. Aldev achieved smooth executive co-ordination, and provided a medium through which changing policies could be discussed. In addition, it exercised financial control over the £3m (stg) programme, and provided technical services for surveys, road-building and irrigation works in the more remote areas.

Aldev was frequently criticised as an expensive and redundant extra department, so it limited its role to promoting new ideas and new programmes in particular areas, and left the district and provincial staffs to implement them. Because of its vital co-ordinating function, however, it was through Aldev that the limitations of the rather confused post-war policy on land tenure became apparent. Initially Aldev concentrated on the notion of resettlement as a solution to African land problems - a notion which had been discussed pre-war and which African political dissatisfaction over the White Highlands helped to perpetuate. However,

this mistaken belief in new land as a panacea cost Aldev several fruitless years of investigation in unlikely places, and led to a sense of frustration which was only sloughed off when it became clear that the root of the evil which had to be tackled was not over-population, but mismanagement of the land.

(Aldev 1960:2)

Thus over the ten years of the development programme the emphasis shifted from resettlement of 'surplus' population, to the reconditioning of the existing lands, to the introduction of more intensive farming. This change was accompanied by, and in part encouraged, the adoption of more positive attitudes towards African land tenure in areas being farmed.

Spontaneous individualisation

This change was influenced by observation of the work of scores of progressive Africans in each of the more heavily populated districts

---

1 At the time, £1 stg equalled £Aust.1.5.0.
2 Of course, the European areas were not seriously threatened at that time, but African political attitudes sustained the idea of resettlement as a solution to land problems.
who abandoned traditional farming to become isolated cash crop cultivators. As the government itself was only too ready to point out, the difficulties these pioneers faced were forbidding, for changes in traditional law and custom always lag behind the conditions impelling them; to a degree, therefore, the initial individualists had to circumvent customary restrictions (Hennings 1952:133).

In the Upper Nyeri district of Kikuyuland, one of the most beautiful, and potentially one of the most productive, places in the world (Lipscomb 1955:53), a man who consolidated several fragments of land (even by forms of customary purchase) and expended effort and money on development, could find that the original possessors, by returning the payments, could redeem their rights (Lipscomb 1955:54). To overcome this problem the Nyeri District Council in 1942 established voluntary local registration of land transactions, whether outright or redeemable sales, or tenancy. After the war, 20 or 30 transactions were registered with the Council each year, almost all of them outright sales in which the buyer wished to establish indisputable ownership (Hennings 1952:130). However, the position of custom remained clouded: it was possible, for example, that if the transaction was questioned, the local tribunal administering Kikuyu custom could set aside the buyer's rights. The Council wished to abolish the tribunal's right to do this, but the Administration long remained reluctant to sanction such a move because it would appear to detract from the standing and competence of the court. Despite the resulting uncertainty, some Kikuyu went ahead with consolidation and cash cropping, and their success eventually encouraged bolder official policy. As Hennings (1952:127) wrote of Nyeri in 1952:

Considerable numbers of Kikuyu...have now accepted as a fact that there are great advantages in having one consolidated holding farmed on an improved system instead of a lot of small plots scattered about, and increasing numbers have been able to act on this conviction.... Today the visitor to these locations will see, not the usual Kikuyu patchwork of small cultivated strips, but a countryside...made up of grass paddocks and fields, fenced and hedged, where cattle and grass already play a part in the farming system.

Other pioneering efforts concerned government more directly, and generally involved resettlement. Aldev redeveloped an area known as Makueni, a piece of tsetse-infested, waterless, thornbush country in the Kamba land unit: it sank bores for water, cleared the bush, inoculated the cattle against trypanosomiasis carried by the tsetse fly, and drove off the rhinoceroses which had previously monopolised the area.

It was more difficult to overcome the opposition to resettlement of the Kamba themselves, particularly the elders. However, a number of young men were prepared to risk the displeasure of the elders and of their wives, and danger to their livestock, in order to obtain an individual holding in a community provided with roads, irrigation,
bush-clearing equipment, and follow-up assistance by the government. The original plan was group cultivation by communities of about twenty families, but as this proved unpopular with the younger Kamba, individual farms of about twenty acres each were established.

A set of rules for the scheme was drawn up by the District Council and central government. Every holding was registered and surveyed, and the man to whom it was allocated remained in possession as long as he abided by the rules for improved farming. Teams of African surveyors marked out the cleared areas on a grid pattern, with boundaries and roads following the contours: the cost of this was about £0.1.3 an acre. Applicants assisted with preliminary work in order for them to understand some of the problems involved, and also to test their persistence. After allocation of farms, they were allowed to gradually introduce their cattle, build houses and sheds, and plant their first five acres of crops (ploughed free by the government). The farming system was based on a simple alternation of grass leys and farmyard manure. Each man had to keep between 5 and 8 cattle, and to store silage for the dry season. The government provided rations for each family until the first harvest.

Families began moving in during 1947, and by 1955 almost 1,300 resettled families - over 8,000 people - were living in the Makueni area. The early opposition of the Kamba elders had by then disappeared, a sound community spirit had developed, and the economic results were impressive. Indeed, the stock capacity of the land was far greater than predicted. However, criticisms were made, both inside and outside the Administration. For example, by 1955 the complete cost of resettlement per family was more than £200 stg and this cost could not be justified more generally. The Administration argued that costs had been high because it was a new venture, and that, with experience, expenses could be reduced in subsequent schemes to, say, £100 per family; the important fact, however, was that a large area of previously unused and unusable land had been brought into production. On the other hand, the implication was that Makueni could not - and would not - be a prototype for general solutions to the land tenure problems.¹

Probably the most interesting success in the early stages of better land utilisation occurred among the Kipsigis people north-east of Lake Victoria. Their acceptance of land enclosure and of individualisation was most interesting because, firstly, they were primarily pastoralists and not agriculturists, and, secondly, they were not suffering from land pressures as were many of the Bantu tribes to the south.

Most of their land was common pasture for cattle and small stock, and individuals used pieces of land for their own purposes by consent of the elders. There was no traditional concept of ownership either

by individuals or clans. Yet in some areas, even before World War II, agriculture was practised; and where cultivable land was restricted, the rights of individuals tending certain areas were recognised as long as they maintained cultivation. Such men could transfer these rights to their children without reference to other relatives. Here, the absence of clan or family 'rights', such as existed among the Bantu, may have facilitated the adoption of individual ownership: virtually the only customary barrier to be broken was the consultative function of the elders in the disposition of common land.

The Kipsigis' enclosure movement developed without opposition, without fuss and largely without written records:

This process has entirely changed the face of most of Kipsigis district over the last ten years. Where before there were large expanses of unfenced common land, interspersed with small grain-fields near the scattered huts, the countryside is now made up almost entirely of fields, hedged or fenced, and individually owned.... This remarkable revolution was carried through mainly by agreement under the eyes of the Kokwet elders and the chiefs [appointed by the government]. It resulted apparently from a genuine and widespread change of outlook after a comparatively short period; the realization, emphasised continually by Government officers, that limitation of stock was inevitable in a limited land; that a man who limited his stock must protect himself against his neighbours who did not; and that the only way to do this was by fencing in his own share of the common pasture. The result has been general enclosure.

(Hennings 1952:125)

Attempts at a communal approach

While progress in these areas accompanied the individualisation of tenure, there were also attempts to promote better farming on a communal basis. Post-war opinion among many agricultural officials was that by farming several holdings as single blocks the best use could be made of the land through rationalising planning, management, scientific working, and marketing. However, so many new factors were introduced into farming on this assumption that it represented an extension of the European co-operative principle rather than a reinforcement of the traditional communal system. Group farms were tried in Kenya in the less congested districts, but the problems encountered were even greater than those facing systems of individual tenure.

For example, in areas such as Kikuyuland, where it was difficult to consolidate scattered strips for single holdings, it was even more difficult to persuade larger numbers to agree to consolidate even more strips for a group farm. Large family groups occupying a single block of land seemed to offer the best prospect for communal working, but the Kikuyu were even more suspicious of this approach than they were of individualisation, which at least seemed to promise security.
The management problem was also severe: much more complicated planning and accounting were required to organise work, cropping, marketing and accounts on group farms than on individual farms. Thus, group farms established among the Kipsigis and the Nilotic Luo depended heavily on European assistance. Credit problems also arose, for the risks of default were spread more widely, and by the early 1950s none of the group farms had qualified as co-operative societies.

In general, the conclusion in Kenya was that improved farming on a communal basis was very much more complex and difficult to control than that based on individual tenure, and that if group farming did develop it should grow out of small-holdings, through agreed pooling of resources. This finding automatically vitiated the argument that communal farming was more in accord with custom and could be more easily integrated with traditional usages.

Reappraisal of individual farming

By the early 1950s progress on individualisation schemes allowed the government to reassess the general position and to attempt to clarify future policy. This procedure was in accord with typical British pragmatism in the conduct of colonial affairs: allow recommended developments to take place on a small scale, largely in accordance with local wants and under the aegis of local staff rather than the control of central legislation; then examine the trends and results in order to determine the ways in which government might rapidly impel the most effective changes. It was obvious that much research was required to determine the best size of holding for each locality: in the fertile, high rainfall areas a farm of 5 to 8 acres was as much as a family could manage, but in the drier areas, such as Makueni, holdings could average 25 to 30 acres. Furthermore, no single system of farming would suit every ecological zone in the country, so that many technical agricultural problems had to be faced before a general policy could be confidently adopted: this would take time, even assuming that all systems incorporated good soil conservation, the use of livestock, and the alternation of grass and plough. Even allowing that adequate ecological systems for small-holdings could be designed, the farmers still had to be persuaded to use them. This required mass education on a previously undreamed-of scale.

The economic problem was also serious, although apparently not so intractable as the human one. If a programme were to be promoted on a large scale, specific financial assistance would have to be provided, for without good ploughs, carts, buildings, water supplies and fences, only a minority would have a real chance of success. As a partial answer to this problem, Africans by the end of the 1940s were able to obtain loans of up to £100 stg on application to the District Commissioner through the local council, on the security only of their good character if that was all they had to offer.
The problem which promoted most uncertainty, and which seemed to lie outside the province of government, was the persistence of customary rights and usages. Most officers were understandably reluctant to meddle directly with land questions which could be politically explosive. What had been achieved had been done through precept, by exceptionally progressive Africans prepared to risk the disapproval of the older men. But a comprehensive small-holding policy could hardly be adopted by government if influential Africans continued to insist on traditional prerogatives, with the right to return improved land to the original possessors, or to divide a holding among all sons.

All these problems were clearly recognised by the Administration, so it is little wonder that there had been hesitation after World War II. Yet by the early 1950s it was as clearly recognised that inaction was not going to solve the country's economic problems or raise the living standards of the peasants, and that bold analyses and even bolder resulting policies were necessary.

At the Colonial Office a committee under the chairmanship of Lord Hailey had continued to emphasise the primacy of the land tenure problem; and in 1947 Sir Philip Mitchell, then Governor of Kenya and a man with vast field experience, submitted a notable memorandum (Mitchell 1947) which brought Kenya's agrarian problems into focus. In 1951 Mitchell called upon the Colonial Secretary for advice and assistance. This led directly to the appointment, in February 1953, of a Royal Commission to consider the economic problems of East Africa, with particular reference to the land question.

While the intervention of outside authorities was welcomed in Kenya, responsibility for developing appropriate policies was not abdicated. Indeed, there was a balance between outside ideas and pressures and those generated within the country. For example, many in the Colonial Office still emphasised the need for close study of indigenous systems before they were tampered with in any way. Specialists pointed out that it was too easy to assume that all African peoples had basically similar types of communal landholdings, and that the registration of claims to land, especially where there was no real land pressure, could 'freeze' the land situation in a mould unsuitable for further development. Moreover, even the argument that secure title provided a basis for the allocation of credit could be illusory if land had insufficient value, either because of its intrinsic poorness or because of slack demand.

While recognising these and other difficulties, the Kenya government saw that land would have to be apportioned more equitably, and that this

could be done only through its adoption of definite plans and targets for the whole country. It was on such issues as the poor distribution of land that the time-honoured policies of gradual adjustment and non-interference with indigenous prerogatives broke down. Despite successes with progressive individuals in reforming tenure and introducing better farming, most African groups remained conservatively oriented as much from political as from customary motives: they feared that any intrusion by central government into their landholding arrangements would only herald, in some way, their eventual dispossession. Curiously, the outbreak of the Mau Mau movement, which partly originated in Kikuyu resentment over land problems, led to conditions which made reform easier: large numbers of Kikuyu were aligned on the side of the government, and the most intransigent opponents of reform were discredited.

Thus the Emergency made the government realise how desperate the Kikuyu in particular had become over land deprivation. The Kikuyu were economically the most ambitious and astute of the Kenya tribes, so that although they had particular reasons for resentment, they had equally strong reasons to support change. This provided a weapon with which the government could overcome hesitation and resistance both within and outside its ranks. The measures adopted derived from those gradually developed in the informal systems of individualisation. They had, however, to be directed to more definite objects and to be placed within a comprehensive economic and administrative framework.

Blueprint for change: the Swynnerton Plan

The result was the Swynnerton Plan for African Agriculture, prepared under the direction of the Assistant Director of Agriculture - after whom it was named - and published in 1954. Under the Plan the major highland areas were all to be converted from rather confused, erosion-conducting patterns of usufruct to individual small-holdings. They were to be for both subsistence and cash cropping, and of such a size that every family would be able to support itself and have an annual income of £100 stg. Swynnerton estimated that the highlands, on this basis, would support at least 600,000 families. Extension officers were to advise on the layout and planting of the farms, on terracing and water supplies, and on all other agricultural aspects of conversion and production.

This Plan was admirable because it brought together all the thoughts and experiments of others, and integrated them within a comprehensive scheme providing for conservation, for individual security, and for dramatically improved standards of living. On the other hand, it did not solve the administrative and legal problems which would have to be faced if the Plan were to be implemented. In particular, Mitchell had asked in his 1951 dispatch how far the government should assist the change of tribal systems of tenure; and this was one of the main questions which the Royal Commission had to investigate. To that extent, therefore, Swynnerton 'jumped the gun' with his Plan; but he recognised
that the problem of systematic individualisation could not be left in 
abeyance during the 2½ years of the Commission's inquiry, for unplanned 
conversion would further complicate the already tangled tenure pattern.

Thus, for some years legal arrangements which should perhaps have 
accompanied such a Plan were nebulous, although the provisions which 
were eventually incorporated in statutes derived from the procedures 
gradually built up before 1956. By then the Plan had passed its crucial 
test among Kikuyu severely affected by the Emergency, and consolidation 
was complete in several districts of the Central Province. African 
enthusiasm was so great that it was almost impossible for the Agricu-
ture Department to provide enough African surveyors and other staff and 
facilities for follow-up work, particularly in assisting farmers with 
layouts in order to ensure optimum returns.¹

The Report of the East Africa Royal Commission affirmed in very 
forthright terms that Kenya had been proceeding along the right lines, 
but that those lines would have to be formalised and brought within a 
new administrative and economic philosophy. The Commission saw that 
living standards could never be raised as long as the government per-
petuated the paternalistic attitudes designed to protect African rights, 
enshrined in such legislation as the pre-war Native Lands Trust Ordi-
nance. The adoption of an exchange economy was essential, and this 
meant the promotion of economic mobility, in land as in other resources. 
Approaches along tribal lines were seen to be incompatible with these 
aims, as were various claims to exclusiveness in the use of the land. 
The Commission's solution was to recommend the progressive encoura-
gement of the individualisation of title in African lands. The Commission 
emphasised that the support of those concerned with tribal lands was 
esential, but that the initiative lay with the government, to ensure 
that policy was not left simply to 'evolution'. De jure rights to land 
would have to replace de facto occupation throughout the country. Ulti-
mately customary controls and prerogatives would be replaced by 
individual title backed by central government law.

Concerning the methods to be adopted, the Commission commended the 
system of adjudication and registration which had been applied in the 
Sudan since 1898. The dangers in this system were clearly recognised; 
for example, it was noted that in some places security of title had 
only trapped peasants into heavy debt, and enormous holdings became 
concentrated in the hands of a few. The Commission recommended legis-
lation to overcome these difficulties, such as the registration only of 
specified agencies for credit, restrictions on holdings by individuals 
above a certain acreage, and controls on subsequent fragmentation and 
on contracts between owners and tenants. Central government specialists 
would be required to administer such a programme, together with local

land boards representing primarily traditional land authorities and progressive opinion as well as a few technical officers.\footnote{For a summary, see \textit{Journal of African Administration} (1956), vol.8, no.2, pp.69-74.}

One criticism of the recommendations of the Royal Commission harked back to those of the 1930s; namely, that they represented an anachronistic borrowing of European experience, the applicability of which was highly dubious. For example, it was said that the inspiration for the suggested reforms derived from principles enunciated in the eighteenth century by Adam Smith: that is, they represented a form of sanguine optimism which implied that, once each man had his own permanent stake in the land, public and private interests would coincide to provide co-ordinated and self-generating economic development.\footnote{For a succinct commentary on Smith, which has some relevance here, see Bowle (1947:441), where he notes that 'Adam Smith in fact imported an optimistic version of Natural Law into the field of economics. The comprehensive and organic view of the economic system...was reinforced with an assumption that its working will enhance the realisation of humane ideas'.}

Such a criticism of the tenure change envisaged by the Commission was hardly just, for the Commission saw the reform of tenure as merely a basic but essential step in a comprehensive scheme of planned economic development - a concept which is the very antithesis of that propounded by Adam Smith. Smith and most of the political economists who followed him were inclined to be cynical about government action as an economic determinant; in view of the state of administration in their time, this view was pardonable. But all of the programmes of tenure change in East Africa depended on promotion, control, and follow-up activity by a highly efficient bureaucracy. Such an approach invalidated the idea of the individualisation of tenure as an anachronistic procedure. Officials, both through internal 'line' discussion and through a succession of able published papers,\footnote{For example, see Branney (1959), Clayton (1959), Hennings (1952), Homan (1958, 1962), McEntee (1960), Pedrasa (1956), Rowling (1951), Wilson (1956).} demonstrated that they fully appreciated the need for a multistranded but co-ordinated policy, with a dual emphasis on clear central planning and full local participation. Land tenure complexities, within a developing cash economy and associated social readjustments, could not be left to the winds of change. Official attitudes of this kind represented an extension of the traditional British philosophy of colonial administration, which had always stressed cultural rapprochement at the local level, with appropriate 'feed-back' for policy definition at the centre. This form of interaction was not recognised as vital in the working out of a more systematic lands policy.
Government follows the Royal Commission report

The Administration, in accordance with warnings expressed by the Commission, was unwilling to push too fast; but in 1956 it began to formalise the tenure conversion process within the bounds of the still applicable Native Lands Trust Ordinance. Under that legislation, a set of land tenure rules was drawn up, giving legal sanction to what was still only an administrative procedure. The inherent inconsistency of this procedure with the persistence of African law was something of an anomaly, but some steps had to be taken. As an official analyst stated:

It was therefore a very delicate task, no matter how enthusiastic the Africans might be for the change, to transform the tenurial system from that existing under traditional native law to a purely Western one, whilst native law, so recently reinforced, was still theoretically in operation.

(Branney 1959:213)

Under these interim land tenure rules, the unit chosen as a basis for the procedure was usually very small. In each unit a local committee was set up - after full publicity about its intended activities - to ascertain and record individual rights claimed, and to arrange the exchange and consolidation of holdings. Representatives on these committees were chosen by the clan or subclan, so that what was done had both the appearance and the reality of a popular decision. Although the committees were designed to abolish the old system of rights in land, they always included the elders so that their traditional prerogatives in allocating the lands under customary law were continued. These men had a thorough knowledge of local land history, and their participation in the consolidation process guaranteed that there would be no recriminations later. Although administrative and 'specialist' officers gave advice, the actual processes were completely controlled by the committees, so that the allocation of holdings was equitable in both size and quality of the parcels of land. Such committees, it was freely admitted, were able to do this much more quickly, and with a better grasp of the factors involved, than any professional 'outsider'

(Branney 1959:217).

This appeared to eliminate at least one of the major difficulties of introducing a Torrens-type system into a country where the land had long been occupied partly under unspecified permissive rights accorded on a short-term basis by each community. Obviously Torrens had had no difficulty in South Australia in the 1850s, for an educated group of people had just taken over vast stretches of previously unoccupied land: registration simply went with allocation. In Britain the application of the Torrens system presented few problems, for title confirmed what was already recognised; the advantages were procedural, particularly where transfer was required. On the other hand, merely ascertaining rights in Kenya threatened to be a major obstacle, so that the co-operation
of the Africans represented something of a triumph. Leading Kikuyu farmers accepted the fact that their customary usages were the most formidable barrier to better farming, and would have to go. The result was that most Kikuyu, even during the Emergency, became interested in better farming practices, which would accompany the exchange and consolidation of land. This removed an obstacle long feared by the agricultural authorities (Pedraza 1956:83).

Concomitantly, some of the legal problems associated with the persistence of traditional law under the Native Lands Trust Ordinance were overcome by the agreement of Kikuyu authorities to waive (or, in effect, modify) what was decreed by custom. In particular, Kikuyu district councils, advised by their 'law panels', agreed that the right of redemption of land should be abolished, so that a man could not automatically expect the return of land for which he had been 'paid' if he returned the 'payments'. Leading Kikuyu also accepted the idea of limitations on the subdivision of consolidated holdings by inheritance.

**Techniques of consolidation**

A clear method of consolidation had already been evolved in the Kikuyu areas, but it was recognised that methods would vary from area to area. The selection of areas for consolidation depended primarily on the co-operative spirit which had been shown there, and on other factors such as sufficiently large contiguous areas to justify aerial survey after the process was completed.

Consolidation was carried out by teams of trained Africans, selected both for their specialised knowledge and their integrity. Each team consisted of a team leader, a number of recorders who measured the holdings of each individual and computed the total acreage, and a group of farm planners who laid out consolidated holdings on the basis of sound agricultural principles. No survey was made of fragments held by each individual, but the right-holder and elders pointed out the boundaries and notes were made of them; the team leader settled the more difficult disputes which arose. At the same time a group of planetablers made a topographical map of the area, including contours at twelve-foot vertical intervals and such local landmarks as would allow the introduction later of boundaries and soil conservation plans.

With the assistance of the local people assured, representatives of all the central departments concerned met together. The agricultural officers' plan included soil conservation details, provision for water supplies, the location of facilities such as demonstration plots, coffee and tea factories, and particularly the siting of villages. The concept of village living was an innovation in many areas, although the Kikuyu, for security reasons, had become accustomed to more congested living during the Emergency. One purpose of the village was to accommodate all those owning less than three acres of land, for in many of the good highland areas there was not enough land for everyone. Thus, instead
of having a disgruntled landless class drifting in to the major towns,\(^1\) or exerting pressure on landholders to break up their holdings, the village was seen as a nucleus in which these men could provide services (e.g. mechanical, accounting, farm supplies), or from which they could go out to work in processing or even on the larger farms.

The total acreage required for all public purposes - including roads - was computed, and to allow for the designation of consolidated holdings, a proportionate deduction was made from the total acreage held by each individual under the fragmented system.

The departmental representatives, in association with the African team and clan elders, marked out the new farms both on the ground and on the map. Close supervision was required to ensure that each man received land of comparable value to that he had vacated, and to strike a balance of arable, cash crop, and grazing land, so that each farm represented a sound economic unit. Where individuals had to vacate land which they had already improved, in order to take over equivalent but unimproved areas, compensation was paid between landholders at special meetings after the consolidation was completed, and a record of the amounts paid was kept. A scale of compensation for various improvements was drawn up; this was not binding but, with the concurrent advice of the elders, it provided guidance and reduced haggling and ill-feeling.

Once agreement was reached and farms allocated, the follow-up programme began. Each farm boundary was planted with hedge seedlings, so that the owner would immediately develop a sense of pride in ownership. This also facilitated aerial surveying. Accurate surveys of the boundaries were made on the ground.

Then the Department of Agriculture drew up an over-all plan for the area, regulating proposed land usage largely by the slope: for example, slopes of between \(0^\circ\) and \(20^\circ\) were marked down as arable land, those between \(20^\circ\) and \(35^\circ\) for cash crops (after bench terracing), and slopes over \(35^\circ\) were reserved for grass. This method was adopted as a rough guide in order to raise production without delay. The individual farms were then treated. Initially it had been thought that only the farms of the progressives - estimated at 10 per cent of the total number - would be laid out in detail, and that the others would be able to learn from them, and from further follow-up education, how best to use their holdings. But by 1956 this plan was superseded by a simple basic layout

---

\(^1\) One or two of the up-country towns had already, during the 1950s, outgrown the capacity of government and councils to cope with their problems. By 1962 Nairobi had a population of more than 300,000, many of them jobless, sharing rooms and depending for support on those of their relatives who were working. This occurred despite a remarkable growth of light industry and extensive African housing projects.
for each holding; African staff of the Agriculture Department helped each farmer in the suggested division and cultivation. Obviously able and particularly ambitious men were given additional instruction, so that a false egalitarianism did not prevent the better men from receiving any additional help they needed. Farmers' training centres were gradually established for each ecological zone, and many farmers obtained intensive instruction in irrigation, crop rotation, the best division and cycle of crops, and so on.  

At this stage farmers became eligible for a loan, either from central development funds or district council reserves, for five years at 4½ per cent interest, generally on condition that the holding would not be subdivided below a certain minimum size. Under the supervision and gentle prodding of district staff, all the work preparatory to planting was carried out immediately after the layout was defined. Bush and unwanted trees were cleared, and drains, slipways and terraces constructed, either by the people themselves or by paid gangs. The terraces were then prepared for planting by using manure from the village cattle sheds, and local compost. Where gangs had to be used, the cost was met partly by direct contributions from central development funds and partly from debits to the loans for which the farmers had applied. The latter was done partly to ensure that the central funds stretched as far as possible, and partly to see that the farmer had a definite stake and interest in what was done.

So successful was this procedure by 1956 that similar methods were being voluntarily adopted by other peoples well beyond the areas in which consolidation was officially promoted. Private schemes for the exchange of land progressed over the next five years more quickly and more extensively than the Administration anticipated.  

**Formalising land adjudication**

In 1957 the success of land consolidation by agreement, under the Native Lands Trust Ordinance, and the recommendations of the Royal Commission led to the establishment of a Working Party on African Land Tenure. This consisted of Kenya's principal land tenure officer, the African land titles officer, and S.R. Simpson of the Colonial Office, a man with an encyclopaedic knowledge of land tenure problems and policies in many parts of the world. The Party's task was to assess the extent of African demand for individualisation; the examine the working of the land tenure rules and amend them as necessary so that claims could be adjudicated and title awarded; to determine the nature of land title which should be awarded; and to draft the substantive law  

---

governing such titles and such other areas of African land as might not be suitable for individualisation. The Report of this Party was recognised as a classic as soon as it was released, although it appears not to have become available in Australia and Papua-New Guinea.

In laying down substantive law for African lands the Working Party carried through a very great advance. Whereas in England registration of title was introduced to remove uncertainty in the evidence for ownership, in Kenya it was introduced to remove the uncertainty of title based on traditional practices and customary law: 'It provides an officially recorded and authenticated title, easily accessible in an official register in which the mere entry is the conclusive evidence of it and guaranteed by government.'

The legislation, as proposed by the Working Party, came into force in 1959: the Native Land Registration Ordinance and the Land Control (Native Lands) Ordinance, nos 27 and 28 of that year. Procedurally, the laws simply carried over the 1956 land tenure rules, with a few modifications. One of the important changes was that lesser interests in the land - for example, customary tenancies - were recognised.

An important pitfall which had to be avoided was the awarding of title by government, for this would seem to imply that the land belonged to the Crown, and this in turn could raise the kind of uncertainty and uneasiness which had prevailed in the 1920s. Therefore, it was taken that the very fact of registration conferred title. By its procedures, the committee listed the people who had recognised interests in land, so that registration could convert that recognition into a freehold title. Thus registration simply gave legal force to a previously de facto right. This smoothed the transition from customary rights in land to individual rights according to Western law. Registration, by conferring the highest form of title known to the courts, gave the owner virtually indisputable possession, and it was expected that this would eliminate the interminable law suits of the transitional period, when custom was falling into desuetude and progressive individuals were seeking firm possession.

The Working Party correctly recognised that in some countries one of the surest ways to ensure that peasants lost their land was to give them freely negotiable title. It thus provided in the legislation for the establishment of divisional and provincial land control boards. The divisional boards would be broadly representative of local Africans and relevant government departments; all land transactions within the division required the approval of the board, which would consider both the minimum size of holdings recommended and the accretion of unduly large holdings. The provincial boards would be largely appellate, but they

---

1 Comment in Journal of African Administration (1959), vol.11, no.4, p.216.
could also give general directions concerning particular classes of land dealing which would be allowed or prohibited.

One of the most difficult questions the Working Party faced was sub-division. While communal tenure remained in many areas the government could hardly make or enforce provisions for inheritance, so that customary law still largely applied. Moreover, it was impracticable in law to specify minimum sizes for holdings. It was hoped that legislation giving Africans the right to make wills could be introduced; until then the legislation introduced in accordance with the recommendations of the Working Party provided that not more than five individuals could be registered as co-owners of a holding. Detailed provisions were also made for the administration of an estate on the owner's death; these involved the elders, the land registry, the African Court, and the divisional land board. By these means it was hoped to ensure that the prime aim of good farming and optimum use of the land was upheld.

Other categories of land were catered for, although here I am concerned primarily with agricultural lands. Registration provisions could be altered to recognise grazing rights, and other periodic claims, while such lands still remained the responsibility of the Lands Trust Board. Where rights in such areas appeared to have become permanent, the Board could recommend that fee simple titles be granted.

Thus the legislation established a uniform tenurial system throughout the country - including the European areas - and it carefully defined procedures which had already proved themselves over a number of years. What the Working Party recommended, therefore, was not a bold step in the dark; it drew together, regularised and systematised measures already working well even in areas where there had been acute dissatisfaction.

Problem areas

Individualisation and improved farming had 'taken on' in the congested areas, but there were many other areas where proselytising - indeed, the very nature of the problem - was rather different. For example, what was to be done with the pastoralists?

To try to answer this problem, during the decade of consolidation the government concomitantly promoted grazing management schemes, with particular attention to stock selection and a reduction in numbers. By 1959 almost three million acres of land, mainly in the Rift Valley region, were under such schemes. Some people proved particularly intractable: for example, the Masai, who had resisted innovations in all spheres of activity. But by 1961 - possibly because of the enhanced economic and political power of agriculturalists, notably the Luo and Kikuyu - the Masai were beginning to move, and the government persuaded

---

some of them to undertake individual ranching rather than communal grazing; some even settled down as farmers.\footnote{Kenya Ministry of Agriculture, \textit{Annual Report} 1961:55.} Nevertheless, the government recognised clearly that this process would be tedious and uneven.

Some of the areas in which consolidation appeared to be initially successful did not progress in all spheres of better farming. In areas near Lake Victoria where individualisation had proceeded before the Swynnerton Plan, the doldrums appeared to have been reached by 1961. Many farmers still cultivated their subsistence crops in a crude way (with swift and disastrous deterioration of the land), and unimproved cattle were still grazed.

**Summary and achievements**

At the end of 1961 the Secretary of the Kenya Lands Trust Board, in summing up past methods and achievements, pointed out the differences between the scheme in Kenya and those in other parts of Africa: these resulted from the fact that the Kenya scheme constituted a plan for \textit{comprehensive agrarian development}, not simply a method for satisfying the needs or ambitions of individuals or isolated tribal groups. For example, under a pilot scheme for the registration of title in Uganda, consolidation was often not achieved first (although this was the aim); registration in Uganda was sporadic, while in Kenya it was systematic; in Uganda a cadastral survey to a high standard was required before registration (impracticable on a large scale), while in Kenya visible markings on the ground were initially acceptable; in Uganda appeal lay to a district judge (involving lengthy delays and complicated procedures), while in Kenya peasants appealed to an adjudication officer appointed for the purpose (Homan 1962:1).

In a comparative way these points summarise some of the best features of the Kenya system, and they emphasise that initial difficulties can be eliminated by careful planning, by co-operation among all groups and departments involved, and by administrative flexibility.

Despite the wide variety of local conditions, by 1962 a uniform, systematic method of consolidation, enclosure, and the registration of title existed in Kenya. Briefly, it may be summed up as follows.

\begin{enumerate}
\item The Ordinance was applied to an area and an adjudication officer appointed.
\item This officer declared 'adjudication sections' in which work was to take place. There could be eighty of these to an administrative district. In the densely populated Kikuyu areas they usually comprised the holdings of 500 to 1,000 peasants.
\end{enumerate}
3. Within six months all persons claiming rights in land within a section had to present those claims in person or through customary representation. The necessity to do this was widely publicised.

4. A committee was appointed for each section, consisting of 25 resident Africans. (the District Commissioner used to be responsible but these appointments were later made by the adjudication officer, after consultation with the regional government agent). An arbitration panel for the whole area of between 6 and 25 elders was also appointed; from it an arbitration board was chosen to hear particular disputes. Formerly the Provincial Commissioner appointed the board, but under the later procedure the tribal lands were vested in county councils, which were responsible for empanelling arbitrators. The large size of the panel made bribery difficult, and those elders chosen to adjudicate were only selected shortly before a sitting.

5. The committees decided on the ownership of every piece of land within a section; difficulties and disputes went to the arbitration board.

6. A Record of Existing Rights was compiled from the decisions of the committee and the board. This was open for inspection and objection for sixty days. Individual appeals could be made to the committee which, if it could not reach a unanimous decision - usually required by customary law - referred the case to the board. It was possible for the adjudication officer to make a final decision (it should be noted that many Africans already held senior administrative posts).

7. After sixty days the Record of Existing Rights was declared final. During this time the Kenya Survey prepared a perimeter map. The perimeter area, obtained by aerial survey, was then compared with the total area of the measured fragments. These never coincided exactly, for the perimeter survey was a horizontal projection. However, the area of each fragment was adjusted by multiplying it by the 'reconciliation factor', that is, by the ratio of the total area according to aerial survey to the total of the measured fragments.

8. Then the amount required for public purposes was assessed, and this was expressed as a percentage of the total section area. Each landholder then lost this amount from his holding.

9. At this stage consolidation began. After adjustments according to the 'reconciliation factor' and the 'percentage out', committees allocated land to each landowner in a single piece equivalent to the sum of his scattered pieces. These holdings were demarcated on the ground in the presence of committee members and adjoining landowners.
The adjudication register, containing details of all holdings, was then prepared. This was open for objection for sixty days again. Any errors were corrected either by redemarcation or by the payment of compensation for loss.

Finally, titles were registered. By registration, rights amounting to full ownership under customary law were recognised as freehold.\(^1\)

This, essentially, was the process, although many other aspects also had to be considered. For example, consolidation would obviously have been nugatory if subdivision followed. No transaction after consolidation was legal until it had been considered by local land control boards appointed by county councils; the area overseen by each board usually covered the holdings of about 2,000 landowners. It was planned to resurvey all areas from the air; this was possible because hedges planted around all properties after registration show up clearly.

By the end of 1961 it was estimated that the total cost per acre, including registration and survey, was about £0.184 stg. By that date more than two million acres had been enclosed (in the three most populous provinces with complex conversion problems) and more than one million acres were registered in 179,658 individually owned farms. In the long term this cost will not be counted as exorbitant; it facilitated the changeover to better farming and cash crop production, and simplified the borrowing of money on title: by the end of 1961 almost £400,000 stg had been lent to registered title-holders, two-thirds of it by commercial banks.

By 1961 the consolidation and registration of holdings also produced some startling individual results, particularly in relation to conversion costs per acre and borrowings per farm. One farm of 15 acres, consolidated from nine separate pieces, gave an annual net yield of £364 stg, or £24 stg per acre (mainly from three acres of coffee). Another farm of 76 acres (but including many steep slopes) gained a net annual profit of £795 stg by 1961 from the sale of milk, pyrethrum and tea, and it was estimated that by full bearing in 1963 this figure could rise to £2,000 stg.

These figures compare with the average annual target envisaged by Swynnerton of £100 stg net profit. They showed that there was ample room for the exercise of individual initiative in improving this figure and that, although consolidation to some people has the guise of a 'socialistic' experiment, the dead hand of rigid egalitarianism had not been placed on African agriculture.

\(^1\) Although this outline is in the past tense, essentially the same process is still followed.
Research and education

It should be re-emphasised here that consolidation has been only one part of a comprehensive campaign to improve farming. Research, the control of erosion, the introduction of new crops and better strains, the extension of education and agricultural services, are all linked with the individualisation of tenure.

The quality and variety of agricultural and veterinary research in Kenya has for many years been remarkable for a small country. The Director of Agriculture reported in 1957 that Kenya was 'very well served in regard to agricultural research'. This was not to claim that the research was entirely adequate, for the readiness to admit deficiencies was long one of the more heartening features of administration in Kenya. In 1956 the Agriculture Department stated that many African farmers were adopting cash crops much more quickly than had been anticipated, and that preliminary research to enable this to proceed had not been able to maintain the same pace. The Department frankly admitted that it was still not clear on some matters, particularly on the best types and methods of irrigation in some areas, and on the most suitable varieties of wheat to sow in others; but at least the problems posed by the transition to better farming were clearly recognised.

Local facilities for training Africans were steadily expanded. For some years the university college in Uganda, Makerere, prepared students for diplomas in agriculture. In 1958 it was made a full degree course and this enabled the Department of Agriculture to prepare Africans for the research side of its work. To train field workers to diploma level, Africans were admitted to Egerton College, a Kenya institution previously restricted to Europeans seeking agricultural training. Apart from applied research within the Department, the country was for many years very well served - and continues to be served - by the semi-independent East African Agricultural, Veterinary and Forestry Research Organisation.

The follow-up programme made great demands on the Department's resources, for the proper combination of farm layouts, crops and stock had to be designed for the extension services to propagate and supervise. A basic plan was made for every holding, using African subordinate staff. In addition, farmers' training centres were set up for each ecological zone, so that farm improvement could be followed up and information, flowing from research, quickly disseminated.

Indeed, education for the new farming was extended to early schooling. In 1956 it became policy that every primary and intermediate school devote some time to agricultural instruction; many schools

---

already had their own plots of ground (in the Nyeri area averaging ten acres) for practical instruction in the new techniques.¹

Moreover, where it was most convenient central government itself provided follow-up services, such as the construction of terracing and dams. It was obviously impracticable to expect groups of local farmers, even under efficient local government, to provide such services as economically and efficiently as the Department of Agriculture.

Marketing and finance

Marketing was also given close attention by central government, for crop and stock diversification is one of the principal objects of better farming. Forty years ago many budding cash crop farmers were severely discouraged by the fall in prices of the one or two crops they were producing. Now their production is being so organised that, unless there is a calamitous general fall in the prices for primary produce, each farmer will have a form of insurance in the range and quality of his output. Central government is able to watch international conditions and local farming simultaneously, so that appropriate changes in the farming pattern can be made. In addition, in international marketing the Kenya government has been careful to safeguard the interests of producers during the changeover to cash cropping; this was especially necessary because many farmers adopted the new methods and ideas so thoroughly that they substituted cash for some of the planned subsistence crops. For example, Kenya did not participate in the international coffee agreement - although representatives issued a 'declaration of intent' to co-operate - to allow time for production to be rebalanced; the purpose was that sufficient low grades be grown to satisfy the local market while only high grades were offered for overseas sale. Of course, here (compared, say, with Papua-New Guinea) Kenya is fortunate in having a long-established and substantial local market which will tide producers over until better grades or substitute crops mature.

By the early 1960s, also, increasing numbers of African farmers were brought into executive and policy-making spheres, including representation on provincial agricultural committees. This made it easier for the government to proceed with onerous and unpopular aspects of follow-up work, such as soil conservation measures.²

Another post-consolidation problem to which much attention was given was the availability of credit. As Raup (1960:25) pointed out, without ready credit after land redistribution, tenure reform would itself be useless, leading only to an episodic and static cross-transfer of wealth. The registration of title made possible bank loans on the security of

land. (The American government also made £100,000 available from International Co-operative Alliance funds, for loans to African farmers.) Some internal credit had been available for many years from a land and agricultural bank, but its funds were limited, particularly with the decline in European investment. Therefore, the Kenya government set up a central agricultural board to administer international funds; in 1963 this transferred its credit functions to an agricultural finance corporation, which set out to finance development worth £1,790,000 stg in the period 1963-65. In addition, the corporation provided managerial and technical advice.1

**Government opinion of the project**

The general consensus of opinion about the individualisation scheme is that it has been a startling success, and its scope - except for the reverse, collectivisation in communist countries - is unprecedented. However, this has not blinded administrators to its faults, nor has it led them to overestimate accomplishments.

The Director of Agriculture gave a frank assessment of the position in 1961:

it would be over-optimistic to say that more than 10 per cent of the African high potential land is soundly farmed at the present time. This is of course a considerable advance on about ten years ago when the figure was more like 2 per cent.2

Despite these figures, the general picture was highly encouraging, for the use of high potential land had been improved fivefold, and 90 per cent remained available to be brought up to its optimum. This gave great hope for the future, for it demonstrated that Kenya was very far from reaching population and crop saturation in relation to land productivity.

The longer the individualisation scheme continued, the more convinced the authorities became that it was the only way to increase productivity and agrarian contentment. Swynnerton reiterated this point: 'An enclosed holding tenable as a single unit is essential if any sound system of farming is to develop.'3

Research would seem to bear out this contention. A farm economic survey unit, set up to investigate the relations between input and output on various types of African holdings, reported in 1961 that 'intensive farming is the best way to satisfactory results on all but the very largest mixed farms'.4 This, of course, is a difficult

---

1 Kenya News Digest, 12 October 1963.
question: it would be easy to assume that farming methods will remain as they are at certain arbitrary stages of development, and to assess maximum productivity according to certain sizes and balances of holdings in the light of those methods. But, in accordance with the planned transition to better farming, the Kenya government realised that any evaluation would have to take account of reasonable results and expectations in the improvement of basic farming methods. Taking this factor into account, Swynnerton came to the above conclusion. Thus what should be involved in calculations such as those in Kenya is a projection into the assessment of such improved farming as might reasonably be anticipated within a carefully controlled programme.

On this basis, statements that have been made about Papua-New Guinea could well prove to be unfounded. For example, Crocombe (1963) stated that optimum returns to capital invested rather than returns per acre should be the prime object in Papua-New Guinea agriculture. Yet if the Kenya experience has any relevance, with planning there is a close positive correlation between the two: that is, optimum returns per acre may well mean optimum returns to capital (including labour). The Kenya authorities concluded that improvements could be brought about only through intensive farming on individual holdings (mixing stock and crops, subsistence and cash crop production). As Clayton (1959:148) summed it up:

In the general pattern of development it [the compact smallholding under mixed farming] is now seen to have three distinct though related purposes. It has the economic purpose of raising rural incomes; it has the original technical purpose of maintaining soil fertility; and arising from these two it has the political purpose of securing social stability.

International opinion on agrarian reform

International opinion of the reform of traditional agriculture seems to agree on policies similar to those implemented in Kenya. It has been noted that, until about 1950, there were strong official pressures in Kenya for some adaptation of existing systems of communal tenure. Progress was not possible until individualisation was accepted. Aldev in 1956 began its lengthy report with this historical quotation from Robert Trow-Smith's English Husbandry: 'The foundation of all good husbandry was the enclosure of the land; this was the unanimous opinion of all leaders of farming thought.' (Aldev 1956:1)

Jacoby (1953:13), writing for the Food and Agriculture Organisation (FAO), insisted that communal systems had little power of adaptation and, in particular, offered little encouragement to the progressive cultivator. (Of course, there are exceptional cases, especially among an educated population where planned communal farming reaches high standards, as in Israel.) Jacoby felt that individual tenure was desirable from a social viewpoint, as it promoted human dignity by
raising a man above the status of a labourer, and that this had an absolute connotation and value.

A similar emphasis appeared in most United Nations and FAO booklets. Partly this argument followed practice, for the United Nations booklet *Land Reform* (1951:29) noted the trend to individual tenure as a regular feature of African affairs. The introduction of cash cropping always implies some adjustment of traditional tenure, and if there must be some adjustment, the argument was that there might as well be a complete reform of the agrarian structure (Bins 1950:5-6). Sir Bernard Bims examined the question of consolidation of scattered holdings for FAO in 1950, and subsequent methods in Kenya followed his recommendations very closely. In a sense, what has been accomplished in Kenya vindicates what Bims advocated (1950:28-30). Raup (1960) pinned down the advantages of individual tenure primarily to motivation; and this, surely, must be the key to the question. But, of course, the problem arises: what form of motivation? In the usual 'Western' sense, motivation is tied essentially to the concept of individual or family benefit, the raising of oneself in the economic and social scale; but in the marxist framework (and in a few religious and non-marxist systems, e.g. Israel again) motivation is supposedly tied to the improvement of general conditions within the state. However, most of the underdeveloped parts of the world have been primarily influenced by Western European values - despite currently 'socialistic' policies - and individual or family improvement may be taken as one of the prime desiderata governing conduct and concepts. Indeed, it is well recognised that as the economy develops and opportunities open up for the indigenous peoples, the kinship framework tends to shrink - especially in the sphere of obligations - and inheritance tends to take a distinctly Western form.

Therefore it is reasonable to expect that the land tenure system will take its place in this network of transition, and that motivation on Western lines will determine the style and pace of change. Governments can well recognise and assist this when projecting agrarian reform. Secure tenure is vital; and it is reasonable to assume that the individual or family-unit form of title will accord most closely with what will be desired, as Western notions of economic individualism permeate the society. Moreover, Raup (1960:16) pointed out that the advantage of individual holdings of a peasant type is that the build-up or waste of capital is patent in every decision made within the household: 'every act of consumption...must take place in immediate confrontation with the prospect of an alternative investment in the firm.' In other words, there is little scope for the consumption of capital through concealed expenditure, such as can easily occur in a large-scale joint enterprise. In this way, individual holdings overcome one of the most difficult of problems: the lack of educated managerial skills.

This is not to say that individual holdings should be universal: plantations and similar communal undertakings could continue. But
family-unit farms seem to be the answer to many problems. Processing and marketing could well be - or continue to be - organised through co-operatives, as long as the management and ultimate finances of each holding are kept separate.

In Kenya, farming co-operatives have been and are being formed in order to preserve the best of the former European farms as producing entities; this is in addition to the major individualisation programme, and if it can be carried through on a significant scale it will mollify those critics who have seen the break-up of the large farms as anti-economic.

Pressures towards individualisation (or separation on a family basis), with secure tenure, have usually been most obvious where land pressure has been great, as in Kenya. However, prospects could be even more promising in areas without overpopulation; there it would not be necessary to turn people off the land - as has happened in parts of Kenya - or to be concerned about subsequent subdivision of already small holdings. Most parts of Papua-New Guinea could well award substantial areas on secure tenure to individuals, without causing real hardship to neighbours or potential hardship to descendants. Moreover, the sooner such a process is carried out, the sooner will threats of arguments, litigation and bitterness be removed. Land consolidation is a much simpler matter in areas where competition for the 'best spots' has not already become acute.

The importance of motivation with changing values

Individual motivation is the key to land reform and attempts at better farming. As remarked, where there is not already severe overpopulation (in an absolute sense, independently of farming practices) it should be, and is, easier to promote change.

In East and Central Africa policies at the central level aimed at achieving not only massive agrarian change but equally massive social and legal reforms. Basically they depended on the realisation that individual incentive is the key to better farming, to higher living standards, and to nation-wide economic progress.

Under such broadly conceived plans every peasant farmer can look forward to definite and specific benefits. A man can be told that he will be able to hold and pass down to his children - or to some of them - an area of land which, with hard work and careful improvement, can be guaranteed to return a minimum subsistence and cash income. He can be both informed and shown that all the services of government are working so that he can achieve these aims. Thus, for example, he knows that if he works hard and follows advice, he can expect to own a better house, with better furniture and greater comfort. He knows that he will be able to keep his children at school longer - indeed, indirectly help to provide more schools - and that his sons, according to their
abilities, will be able to receive technical training and perhaps even enter the professions. In this way they will cease to be dependent on the splitting of the inheritance. Further, he knows that, if he works wisely and is reasonably frugal, he will possibly be able to acquire more land by purchase and so expand his income potential and his children's eventual expectations.

It is not only pointless, but obstructive, to gloss over the fact that a man with adequate motivation will work, and that he will be motivated to work by the knowledge that he can count on a better life which is permanent and will go on improving. In Asia, of course, despite central planning in some countries such as India, the peasant knows that he will be lucky merely to hold his own economically, and that his chances of bettering himself, or providing better prospects for his children, are negligible. Thus successive five-year plans in India appear to founder not only on the inexorable rocks of population growth and limited skills, resources and capital, but also on the basic apathy of the peasants, who rarely see real improvement in their condition and cannot honestly be promised any.

But in countries where the economic factors are not so intransient, and where there is no disastrous shortage of farming land - as in parts of Africa and Papua-New Guinea - the individual peasant can be given definite targets which are manifestly attainable. This, in itself, goes a long way towards solving existing and potential problems.

The outlook in government which regards peasant farmers as having little individual ability to learn, and even less social capacity for adaptation, will never lead to sufficiently dynamic policies to overcome the initial barriers in the way of agrarian reform. A vicious circle of ineffective policies and growing social and economic confusion will result. In Kenya, for years after World War II, the government avoided fundamental land questions - apart from spreading propaganda in certain areas - and the longer it hesitated the bigger the obstacles appeared to be.1 However, once a definite policy had been adopted and carefully explained to the Africans, the basic difficulties of traditional reservations and inadequate motivation largely evaporated.

Two ways of regarding the land problem

Broadly, there are two methods which can be followed in relating people to land: either one can say that, allowing for traditional practices with gradual improvement, and taking into account burgeoning population in relation to land resources, a certain area may be made to support a certain number of people at a certain level of living; or, one can regard the whole agrarian problem in its broader economic aspects, in relation to an evolving central economy, and thereby

---

1 This, basically, was the attitude in Liversage (1945).
estimate how many people a certain area of land, according to its ecological possibilities by any practicable method, can support at a pre-defined or required standard of living.

For a long time Kenya was bedevilled by the first approach, which was boosted by increasingly anachronistic notions of indirect rule and the preservation of custom. Eventually the authorities realised that a bold, comprehensive, long-term solution was needed, rather than a series of mitigations, and that such a solution would demand a revolution of the existing social and agrarian order, rather than a mere adaptation of custom to needs at a low and falling level. Thus, instead of attempting to balance the impossible equation of technologically primitive farming (no matter how well conceived in relation to land use) with increasing population and growing economic needs and concepts, the government eventually took people and land as absolutes, and grouped them according to ecological types, desirable soil conservation measures, and a minimum income level. Such adaptation of custom as was involved was made subordinate to this basic concept by the simple but very effective expedient of explaining the whole scheme in advance and permitting the indigenous peoples themselves to work out the necessary rearrangements. The old attitudes had depended on the unspoken and often unconscious premise that traditional agriculturists were incapable of radically reforming their pattern of cultivation and their social context; the new policy necessitated that they carry out such a reformation overnight, and it was implemented in the conviction that the Africans could do it if they knew what was involved. Treating the Africans as intelligent beings, instead of as vegetables destined to follow a pre-ordained pattern of life, generated a confidence which is rare in colonial territories, and which in itself very largely explains the astonishing pace and success of the revolution.

The background in Papua-New Guinea

Policy on land in Papua-New Guinea was exceptionally enlightened eighty years ago. In Erskine's proclamation of a protectorate to the inhabitants of Port Moresby in 1884, an absolute pledge to respect their lands was made: 'evil-disposed men will not be able to occupy your country, to seize your lands.... Your lands will be secured to you.' (Murray 1912:74) Sir Hubert Murray interpreted the phrase, 'your lands will be secure to you', to mean that indigenous land, even that never likely to be required by the owners, should not be compulsorily purchased. Thus respect for indigenous land ownership was basic in the conduct of government. All land was regarded as indigenous land unless it was acquired by the Crown; all transactions in land had to be made by the government.

---

1 For comments on the relevance of comparing segmentary societies in East Africa and Papua-New Guinea, see Barnes (1962).
Papua-New Guinea lacked the attractions which had induced wealthy settlers to go to Kenya; neither did it possess large areas of apparently unoccupied land. Hence the usual 'settler problem' did not arise and clashes over land were largely avoided.

This meant, however, that in later years there was little incentive to deal with developing problems in the indigenous lands. Because isolated indigenous-European clashes over land gave little stimulus to reform, the need for regulation or reform, beyond safeguarding general indigenous ownership, was not recognised. Thus the policy was not oriented towards progress. Until the 1950s it did not have to be, for bush-fallow cultivation continued and cash crops had barely been introduced. The only cash crop which had been promoted was coconuts, grown on small village plantations in Papua.

However, by the early 1950s there were isolated areas where population growth and European alienation had produced a land problem, most notably in the Gazelle Peninsula, where one-third of the arable land had been converted into European plantations. In response to such pressures, the Administration set up a Native Lands Commission in 1952 to stop or forestall disputes by applying European concepts to customary occupation. The commissioners were to ascertain the true owners according to custom and to legally establish and register ownership so that titles could eventually be issued. ¹

The Carter Land Commission of twenty years before could have told the Australian Administration that the mere registration of customary ownership would be exhausting, futile, and even obstructive. It had recognised that the application of European forms to customary modes of occupation would cause an undesirable freezing of the land situation, when the need was for rapid and fundamental change. Moreover, the Native Lands Commissioners in Papua-New Guinea were all Europeans, so that they had to spend years in an area familiarising themselves with custom before they could be useful, and even then the elaborate identification of a vast variety of indigenous rights meant that work proceeded at a snail's pace.

By 1956 the Administration began to realise that indigenous land usage could not be allowed to evolve by itself. In that year the Secretary of the Department of Territories addressed senior officers on the need to change over to individual title. Officials began to recognise this need but they emphasised the difficulties in the way of reform, as had been done in Kenya in the immediate pre- and post-war periods. Secretary Lambert emphasised that it was 'necessary to proceed with caution...to avoid too rapid a disturbance of existing village life'. He noted that indigenous participation in local planning would be essential, but there was no over-all plan for tenure conversion such as that then being implemented in Kenya.

Officials emphasised the difficulties and risks associated with getting indigenes to change their ways, without apparently realising that it was the piecemeal, unsystematised approach of previous years which was responsible for many of those difficulties and risks: it was assumed that whatever was done would be slow and tedious, and subsistence land would have to be treated separately from cash crop land. However, some officials saw that interdepartmental co-ordination was essential and that local groups of indigenes (in particular, the local government councils) would have to act as channelling agencies.

What was needed urgently at that stage was an integrated plan with definite social and financial objectives aimed at comprehensive land tenure and agricultural reform (on the lines of the Swynnerton Plan in Kenya). But no such plan, and therefore no such administrative integration, was produced. One of the more striking features of official views was the denial that quick and radical reform was possible, at the very time when a revolution in agriculture was being successfully promoted in Kenya.

Nevertheless, without any such plan or appropriate administrative reorganisation, the legal concept of the registration of individual land titles was carried forward. In 1960 Mr Hasluck gave notice of legislation which would establish fixed European title and stop customary registration by Native Lands Commissioners. However, the extent of co-ordinated planning necessary to make this an economically progressive measure was not appreciated: gradualism was still assumed. The Minister emphasised that title could be granted only with detailed understanding of tenurial custom in the lands affected; and it was presumed that the same or similar machinery for ascertaining land rights before registration would be continued.

In 1962 the Land (Tenure Conversion) Bill was introduced into the Papua-New Guinea Legislative Council. The Director of Lands noted that 'guaranteed individual titles to land are the best aid to agricultural development'; but, although aspects of the bill were patently borrowed from Kenya, the registration of title was not mooted as part of a campaign for agrarian reform. In Kenya the registration of title had been successful only because it was part of a massive programme of agricultural change; but in Papua-New Guinea it was envisaged that registration of title would follow petitions by individuals, presumably without regard to total-area conversion.

1 Ibid., pp.1020-1.
Moreover, the legislation seems to have been introduced on metropolitan Australian initiative without adequate prior consultation with Papuans and New Guineans. Some fundamental but quite elementary objections were raised by indigenous members of the Legislative Council: for example, it was found that notice of the period within which objections to registration could be lodged was not specified - an obvious point carefully considered in the Kenya legislation.\(^1\) Eventually the Bill was withdrawn for redrafting.

Can Papuans and New Guineans adapt quickly?

While lawyers moved gradually towards some means of regularising individual title, other branches of the Administration remained hesitant. The Administration saw itself as the sole progenitor of reform; its realisation of the indigenous capacity for change followed a similar pattern to that in Kenya immediately after World War II. For example, in 1956 Barrie (1956:46-51) saw resettlement as the only solution to population pressure and land degradation in a Chimu sub-district. Resettlement has been a favourite theme in the more densely populated parts of Papua-New Guinea, as it used to be in Kenya before officials realised that with basic reform in land tenure and agriculture, problems of so-called over-population could be largely overcome.

An article by Conroy (1962) of Papua-New Guinea's Department of Agriculture, showed the firm hold of paternalism. The emphasis was firmly on obstacles rather than on opportunities, as in Kenya after the war: a reflection of the long-standing administrative philosophy of 'hasten slowly'.\(^2\) In this light, the difficulties in the way of reform loomed much larger than necessary. Moreover, this attitude neglected modern anthropological advice, for it has been shown that the adaptability of primitive peoples has, in the past, been grossly underrated. We have a good illustration of this change in outlook in the works of Margaret Mead. In the 1920s, too rapid social change was believed to lead to a lowering of interest in life and thus to depopulation. Studies emphasised the well-balanced nature of traditional life which was upset by too much outside contact or interference. Mead's study of Manus, Growing up in New Guinea, assumed these concepts. However, by 1953, when she revisited Manus and wrote New Lives for Old, she had come to regard change as a barrier through which it was salutary to propel primitive communities as quickly as possible. This reversal of attitudes has been both produced and supported by experience elsewhere since World War II, when political pressures made an economic revolution essential in so many backward areas.

---

1 See objection by J. Guise in ibid., p.648.
2 For an excellent outline of similar attitudes in the Rhodesias, see Keatley (1963:302-36).
In Papua-New Guinea paternal policies have been made possible - indeed, reinforced - by two major factors: (i) the relative lack of economic pressures, because of the ready availability of land and the isolation of most areas; (ii) the slow development of independent political thought, and the related lack of an educated elite seeking change and 'progress'.

This second point is most important because local indigenous leaders with education can promote and facilitate change. Papua-New Guinea official attitudes generally tend to overlook the advantages of working through this kind of intermediary relationship: for example, Conroy (1962:25) stated that the extension worker must have a detailed knowledge of existing systems in order to 'reach understanding with the cultivators'; the implication was that a European had to spend much time familiarising himself with local cultures and values before he could proceed with development. Yet Kenya experience shows that radical alterations, affecting virtually every aspect of life, can be made in five years, as long as the intelligent understanding and support of community leaders have been enlisted.

The failure to recognise this is illustrated by the success of the Erap mechanical farming project where New Guineans, without official support - indeed, in the face of official disbelief - organised an elaborate scheme of joint programmed work and profit-sharing. Yet Conroy (1962:23) repeated that 'in the early stages of advancement, the farmer's managerial capacity is low'. It is typical of paternal attitudes that dependent peoples should be grouped together in this way; but in Papua-New Guinea, men of outstanding intelligence and organising capacity are ready to promote development if they are taken into the Administration's confidence and treated as equal partners. These men are rooted in local cultures, they are capable of appreciating the transformation which is required, and of making suggestions for local modifications to meet local needs. They should be the main intermediaries of change.

Even outside observers showed no great confidence in the capacity of the indigenous sector of the economy for adaptation and development. Shand (1963) pointed out that, as was to be expected, there was a net outflow of private capital from Papua-New Guinea. Australia's ill-defined political policy inhibited the private sector. This argument placed the burden of development on the European segment of the economy. Indeed, Shand (1963:6, 12) said that the indigenous people could not take up the slack because 'a large majority of them are still too closely interlocked with traditional life'.

This statement accepted the basic Administration concept that the promotion of change among Papuans and New Guineans will be slow and

---

1 Cf. Crocombe and Hogbin (1963a) on managerial success at Erap.
arduous and profitable only in the very long term. In view of experience in Kenya in recent years, this assumption may be questioned. The two factors would appear to be interlocked, for in Kenya private investment fell off while the economy was in a state of confusion brought about both by political uncertainty and by large-scale embryonic change in the African sector. But changes in the African sector proved themselves, prospects for productivity burgeoned, and confidence returned despite the take-over and subdivision of European estates. So great was the confidence engendered that vast new agricultural schemes were launched; these will require an investment of more than £125m over the years, but the Kenya government had no doubt that the bulk of this could be raised on the international money market. Simultaneously the government was raising several million pounds by private investment for industrial projects which, it was hoped, would eliminate unemployment within two years.

In Papua-New Guinea, however, the failure to tackle basic problems in the indigenous economy is responsible for the notion that it is too backward to make up the gap caused by depression in the European sector. Thus the loss of confidence is unnecessarily exaggerated, and may be prolonged: a bold plan to establish every Papuan and New Guinean in cash cropping and stock raising at a defined level could go a long way towards raising economic morale and improving conditions favourable to a return of private capital. As Kenya experience shows, this could be so even if a substantial proportion of formerly European farming areas are transferred during the interim of stagnation, although this might be necessary in Papua-New Guinea only in a few areas, such as the Gazelle Peninsula, the Northern District, and Milne Bay.

There is always a tendency to assume that while the economy depends on European agriculture and private capital, a failure of confidence here means a long period of general decline. But experience shows that nothing drastic need result as long as planning for the transfer of the burden largely to the indigenous sector has been pushed forward, and as long as development funds from overseas public sources continue.

On the latter point, the very factor that causes an outflow of private capital by a reflex action impels increases in public assistance from overseas. This results not only from an economic motive (to resist a total fall in capital inflow), but also from a political motive (to secure stable area conditions and attempt to guarantee future amicable

---

1 The Kenya agricultural show of 1963 - always considered a good barometer - was a record with unprecedented attendances and sales. *Kenya News Digest*, 12 October 1963.

2 Ibid., 31 January and 1 February 1964.

3 See, for example, Lipscomb (1955).
relations). Thus, Kenya obtained more capital in the period of economic and political uncertainty from Britain and from other international sources than at any previous time; and more in the form of grants than loans. These factors are equally pressing in Papua-New Guinea. Planning should ensure not only the availability of capital but also its maximum utilisation in encouraging a rapid spread of indigenous production for export. Such planning requires radical alterations to current official and non-official attitudes: while confidence is lacking in speedy change and in the indigenous capacity for adaptation, no significant restructuring of indigenous landholding and production methods can be achieved. (It will be interesting to see to what extent the indigenous sector of the 1968 Five-year Plan succeeds.)

The very boldness of the methods used by the Kenya government created a good impression for investment for it showed that a notable capacity for large-scale planning existed which the restraints of traditional methods could not inhibit.¹

The need for radical change

Some able and conscientious studies of landholding patterns in Papua-New Guinea² have shown, as might be expected, that there are merits in traditional methods of cultivation and that a certain balance is struck between crops, land types, labour expenditure and economic needs. However, they made some assumptions similar to those of the Administration, particularly that the most suitable forms of traditional landholding and cultivation could gradually be adapted to cope with new demands.

It was this very conception which caused so much delay in Kenya in developing adequate planning. Initially there was an attempt gradually to modify traditional methods through existing government institutions; only when thorough planning recognised the need for comprehensive agrarian reform was progress made with the necessary speed and co-ordination.

Papua-New Guinea examples

Attempts to deal with the land problem in Papua-New Guinea still founder on old conceptions and the persistence of outdated methods. For example, the Tolai cocoa project is generally thought to be the most successful economic scheme involving New Guineans; but this is essentially a comparative judgment. Many latent problems have not so far surfaced because of the remarkable fertility of the area. There is no doubt that quality control and marketing arrangements have been good,

¹ In 1970 President Kenyatta of Kenya, in a notable survey (1970:30), confirmed the adherence of the independent government to the pre-1963 policies of consolidation and planned development, with an orderly system of registering land titles and concomitant credit facilities.
² For example, Brookfield and Brown (1962), Crocombe and Hogbin (1963b).
but with a rationalisation of land tenure the scheme could be more secure and the average returns per grower could be much higher. In fact, the land problem has largely been ignored, with the result that a complex pattern of landholding is probably being steadily, even insidiously, aggravated.¹

Land usage control through local government councils was stated to be one of the objects of the Tolai project; but central government continued to reserve the control of indigenous land tenure to itself without adopting new plans or setting up appropriate institutions to cope with this responsibility. Because of this, no one realised how serious the situation had already become; this was also concealed by the lack of an indigenous courts system which would bring disputes into the open. Native Lands Commissioners have long been at work in the Gazelle Peninsula, but no one has been clear on their functions; certainly the painfully slow accumulation of data on existing methods of tenure can hardly promote reform. Rather, it may tend to fossilise completely unsuitable forms and types of landholding.² The returns to the grower during the boom years of cocoa marketing were high by Papua-New Guinea standards, but they did not approach the minimum envisaged for individual farmers in Kenya. As the population increases individual incomes are likely to decline; moreover a highly complex problem of inheritance has been gradually developing, particularly with the changeover from a matrilineal to a patrilineal form. In the long run, there is little doubt that Papuans and New Guineans will have to pay heavily for the Administration's failure to face up squarely to its duties in land tenure reform. This is a signal instance, too, where the Administration's failure to encourage fundamental criticism of policy by executive staff militated against development of a sound general approach. District co-ordination had not progressed to the stage where lands, agricultural and administrative field staff could submit a detailed development plan to central government with any hope that its provisions would accord with the statutory requirements of separate departmental policies.

¹ In June 1970 the project had eighteen fermentaries but a large number of these had ceased to function because of the divided political situation in the Gazelle Peninsula. To overcome such difficulties, the Administration accepted the recommendation of an Australian management consultant that the project be converted from a council-owned utility into a public company. Under the plan, the only people eligible to become shareholders in the company are indigenous cocoa growers; the latter are also responsible for electing a board of management. Papua-New Guinea Post Courier, 29 June 1970.

² For a superb analysis of individual cases among the Tolai, see Epstein (1969).
Several resettlement schemes revealed glaring inadequacies in the consideration given to land policy. The Vudal scheme is a notable example. Here a council leased land thirty-five square miles from its area with the intention that blocks of 4.9 acres each would be individually subleased. These blocks were covered with primary forest, and there was no financial provision for clearing, for housing the settlers, or for tiding them over the pre-productive phase of cash cropping. An even more obvious weakness, however, was that the blocks were too small to give sufficient promise of returns to induce men to leave their home areas. This must be a major factor if any resettlement scheme is to have significant hopes of success. Some of these lessons were learned at Vudal and better provisions were made in the later Warangoi scheme\(^1\) where 15-acre blocks were leased to individuals.

All the resettlement schemes to 1963 were on such a small scale that only those resettled could benefit. In other words, resettlement policy had not been positively correlated with general land tenure reform policies for better farming, or generally with attempts to raise living standards. In Kenya massive resettlement projects have largely made use of methods and administrative machinery for better farming which have been developed in the consolidated areas.\(^2\)

In Papua-New Guinea several councils were involved in such schemes, but because there was no co-ordinated programme by central government, they were left without guidance and even became involved in inter-departmental confusion. For example, participants in the Ambenob scheme near Madang sought to continue subsistence tenure of traditional lines, but could only sublease three-acre blocks for cash cropping. This scheme was patently ill-conceived and derived from the Administration's piecemeal and unsystematic approach. Inter-departmental clashes delayed action: after the local government council had begun work on it, the Department of Agriculture decided that it favoured consolidated subsistence and cash cropping. In this atmosphere of doubt indigenous enthusiasm waned, and the hopes and confidence of field staff also declined. However, even had the scheme been implemented swiftly and smoothly, it would have left many problems untouched, such as definite financial targets and plans for better land usage. It was essentially a stopgap scheme; and, while it may have served the participating New Guineans during an economic transition stage, it would have made no permanent provision for future change and growing aspirations. Because

---

\(^1\) See Singh (1967) for a benefit cost analysis of this and other resettlement schemes in the Gazelle Peninsula.

\(^2\) Kenyatta (1970:30) stated that, by mid 1968, the resettlement of more than 33,000 families on one million acres of formerly European land had virtually been completed: a total of 127 separate resettlement schemes had been involved.
of its nature and broad implications, cash cropping cannot be properly organised on an ad hoc basis.

Nevertheless, a thoroughly ad hoc approach was evident in all schemes to 1963. This stemmed from the fact that the Administration reserved to itself the right to regulate land tenure practices, without having developed policies appropriate to this right. Another example of this occurred in the Higaturu area of Northern Papua. In this instance, the local council (and its supervising officer) wished to roughly survey and allocate land on which coffee was, or was about to be, grown. It was thus recognised locally that the introduction of tree crops demanded a new approach to land tenure; but this was not recognised at all in the Lands Section of central government. Moreover, there was no legislative or executive machinery whereby registration on a non-customary basis could be effected. The council was unable to make rules on land tenure which had legal force, even within its area. Up to a point, the Administration was right in refusing to sanction a scheme for the registration of cash crop land without adequate prior investigation; but cash cropping had to proceed, and without a comprehensive policy on economic development (including land tenure), stopgap measures at the local level seemed the only ones possible. Although the registration of cash crop land in the Higaturu area was reluctantly allowed to proceed, such registration gave no legal title and threatened in the long term to lead to much confusion, bickering and recrimination. Clearly what was needed was a policy which, in the light of present and future cash crop and subsistence needs, would relate people to land resources in such a way that stability would be guaranteed and definite income targets achieved. As the Kenya example shows, this can be done as long as positive, broad, central policies are applied through, and with the understanding of, local committees and other representative institutions. Papua-New Guinea was trying to cope with new needs through old and irrelevant procedures and institutions (e.g. the Native Lands Commission, and Law Department surveillance of locally conceived registration schemes).

Because of inadequate planning by central government, it was very doubtful by 1963 whether any existing approaches were adequate. In the Higaturu these methods involved merely a partial adaptation and reapplication of custom. Some of these were promising; for example, the Yega project involved the voluntary division of certain clan lands among individual clan members for cash cropping (Crocombe and Hogbin 1963b: 93). But no specific targets seemed to be aimed at, no general improved farming under stable individual tenure seemed to be involved. Thus it appeared that the time was ripe for a complete restructuring of land tenure essentially on an individual basis. This demanded a bold

---

1 The 1962 Lands Ordinance specifically took any such power from local government councils.

2 Possibly members of the extended family would be co-owners.
central policy, the setting of specific aims, thorough local explanation and willing co-operation from Papuans and New Guineans at all levels of social and political organisation.

The Erap mechanical farming project in the Markham Valley showed that the indigenous managerial capacity for cash crop schemes was officially underestimated: indeed, this project was locally initiated by New Guineans and achieved communal cash crop production largely unaided (it might be noted that the Papuan Kiwaï tried to establish production co-operatives almost sixty years ago - Healy 1967:23). However, the Erap project works on too small a scale for the number of people involved, so that the cash returns per man are very small: it is questionable whether, on existing lines, the project can yield significant returns. Clearly, local initiative needs to be harnessed to central planning, so that farming to a specific design with specific financial aims can be evolved. It is possible that such planning would be on the basis of individual production, with co-operative assistance (e.g. machinery) and marketing. Patently, the present methods were adopted for lack of knowledge of anything better; but with good central planning and propaganda, the same leadership applied to other forms of production would yield greater returns, give greater security, and give better prospects of social uplift.

A need for cash incomes exists in Papua-New Guinea and is likely to expand rapidly; groups of Papuans and New Guineans at the local level have the knowledge and capacity (given reasonable guidance) to alter their land systems to facilitate cash cropping and better farming. It is the government's responsibility to take appropriate steps, and what has been done in Kenya seems to offer a good guide.

Conclusions: Papua-New Guinea's needs

By 1963 the needs in Papua-New Guinea seemed to be as follows.

1. A definite central plan providing, inter alia, for individual farms of a minimum size and potential productivity. This did not rule out communal farming where it was more suitable or preferred; and there needed to be co-operative effort in ancillary activities such as finance, purchase and allocation of machinery, and marketing.

2. Prior indigenous agreement, both on general principles and on details, was essential. The pending establishment of the House of Assembly provided an ideal opportunity - better than that which existed in Kenya in the early 1950s - to reach an agreement covering the whole country.

3. If individualisation of tenure was to proceed smoothly and rapidly, entirely new central and local organisations needed to be established (this ruled out the existing Native Lands Commission); and the programme needed to be carried forward
on an 'area basis', not merely at the wish of progressive individuals.

4. The Kenya example showed clearly that the reform of tenure had to be positively linked, from the beginning, with a comprehensive programme for better farming; this in turn had to be based on research and farmer education according to ecological zones.

5. The details of consolidation needed to be handled by local committees; this demanded appropriate sound organisation, and faith in the capacities of Papuans and New Guineans. Adjudication could not wait on laborious and exhaustive investigation by Europeans.

6. Finance on reasonable terms had to be available to every individual as an essential adjunct to the consolidation programme.

Moves towards a reform of land tenure do not imply that traditional methods are necessarily poor or destructive; indeed, Brookfield and Brown (1962:167) showed that Chimbu agriculture was technologically efficient and relatively successful, according to the criterion of its ability to produce food without causing land damage. However, such a criterion is grossly inadequate as people face new ideas, new modes of life, and a cash economy. Experience in Kenya has shown that the necessary revolution in landholding and production can be achieved among similar societies without disastrous social strains, and with every prospect of a smooth transition to a new economic basis of life.
Appendix

Summary of adjudication procedure in Kenya

Adjudication area
(Adjudication officer)

and

Arbitration board

Adjudication section
(committee)

Six months for claims

Committee decides (A) or Committee refers to
Arbitration board (B)

Record of Existing Rights
(Compiled from decisions of committee and arbitration board)

Objections
(within sixty days)

to

(A)

Committee if objection is

to a committee decision

Committee's second decision

must be referred to

Adjudication officer

or

Committee

(B)

Adjudication officer if

objection is to an arbitra-
tion board decision

Adjudication officer must

hear with the arbitration

board

Confirm committee's

second decision

or

Hear with arbi-

tration board

Final Record of Existing Rights
Bibliography


Raup, P.M., 1960. 'The contribution of land reforms to agricultural development; an analytical framework', University of Stanford, offset.


Part IV

Land reform in Kenya

J.K. Kinyanjui
Introduction

This paper deals with the land reform programme in Kenya with special reference to the transformation of communally owned tribal lands into individually owned properties, a process commonly known as land adjudication, consolidation and registration.

Kenya is an agricultural country with little mineral wealth. It contains some of the best farming land in Africa, although it is not very extensive. Of a total area of 225,000 square miles, only 38,000 square miles are suitable for arable farming and forestry, with a further 20,000 square miles of marginal agricultural potential suitable for ranching. The rest is either desert or semi-desert, mainly in the north, which is sparsely populated and has very little farming potential.

Prior to Kenya's independence in 1963, farming land was in three distinct categories:

(i) the large European-owned farms, commonly known as the 'White Highlands', alienated some sixty years ago for the exclusive use of foreigners (these comprised approximately 7.6 million acres and were surveyed and registered with titles guaranteed by the government);

(ii) the irrigated rice- or sugar-growing lands whose tenure was usually organised on a long-term lease basis (these were relatively few);

(iii) the remainder of arable and pastoral land (excluding the townships) was known as trust land or African reserves where indigenous African peasants lived (this is the category with which this paper is mainly concerned).

The ownership of this land was, and is, vested in county councils as trustees for the tribes resident in the area of their jurisdiction. In the early days, there was common ownership of land among clan members, but gradually individualisation took place. It proceeded more quickly among agricultural tribes than pastoral tribes. By the end of World War II virtually all Kikuyu land, in the Central Province of Kenya, was owned on an individual basis. The complicated system of inheritance coupled with outright sale, which was permissible, caused fragmentation. As the population increased, more and more fragmentation took place, so much so that by the 1950s it was not unusual to find plots less than the size of a small room. At the time of consolidation in 1959, an individual farmer in Muranga District had forty fragments which added up to a total of 2.5 acres. The average number of fragments per farmer in Kiambu, Fort Hall and Nyeri at this time was ten, while the average size of consolidated holdings was 4 acres.
Increasing population pressure on the limited area of land, together with the rising standard of living as a money economy crept in, forced landowners to till the land more intensively and efficiently, but they were hampered by fragmentation. This problem was so apparent to peasant farmers in Nyeri District that they had started to consolidate their fragments by mutual exchange as early as 1948; however, their efforts were hampered by the lack of co-operation from the less enthusiastic or unprogressive farmers.

The other problem was litigation over the ownership of fragments and the position of boundaries. As ownership of land evolved over a long period of time without documentation, it was very difficult to settle disputes for one had to rely on evidence given by neighbours and relatives. As a result, countless disputes went to the courts without a satisfactory conclusion being reached and landowners spent large amounts of money on court fees. In the report of the mission on land consolidation and registration in Kenya (Republic of Kenya 1965-66:20), for instance, it was estimated that in Kisii District approximately £25,000 was spent on land cases in 1964.1

The policy of the colonial government had been to maintain the status quo whereby the whole question of land rights in African areas was controlled by unwritten customary law with all that it entailed by way of insecurity and lack of definition. However, in 1954, with the acceptance of the Swynnerton Plan, it became government policy to issue African farmers with individual titles to their holdings such as their European counterparts had received. Swynnerton highlighted the urgent need, from the agricultural point of view, to take active steps to furnish each African farmer with an indefeasible title to his land:

[Every African farmer] must be provided with such security of tenure, through an indefeasible title, as will encourage him to invest his labour and profits in the development of his farm, and as will enable him to offer it as a security against such financial credits as he may wish to secure from such sources as may be open to him.

(Swynnerton 1955:4)

He strongly recommended that where farmers' holdings were severely fragmented, particularly in the densely populated Central Province, a process of consolidation should be introduced. In the less densely populated areas of communally held land, as in Western and Nyanza Provinces where a process of enclosure of individual farming units was being carried out voluntarily, urgent action should be taken to prevent subdivision below an economic level and thus forestall possible fragmentation. The process of land consolidation and registration was thus introduced in Kenya as part of an over-all plan to intensify agricultural development.

1 £K. was equivalent to £ stg before devaluation in 1967-68.
In 1955 work started simultaneously in the Kiambu, Muranga and Nyeri districts of Central Province, under officers of the provincial administration. Unfortunately, this coincided with the state of emergency, resulting from Mau Mau rebellion among the Kikuyus, which made the other areas look upon the process of consolidation and registration with suspicion. However, it was not long before other tribes realised the benefits which this process brought, and by 1963 there was a rapidly growing demand in other areas for land adjudication and registration. This forced the government to set up in the Ministry of Lands and Settlement a separate department called the Land Consolidation Department, now known as the Land Adjudication Department. This resulted in an increase in staff solely involved in adjudication work and the rapid extension of the programme.

Kenya's land tenure policy was, and is, based on the belief that the prime requisite for increased productivity and development generally is security of tenure. In other words, once a man's ownership of his land is secure and guaranteed by government, then all the horrors of constant litigation, so common in the past, will be removed and he will invest in and develop his land. This has proved to be correct. Land cases in the registered areas have practically ceased and the development which has ensued there is obvious. Some might argue that although there is evidence of substantial development, there is nothing specific to prove that it stems directly from security of tenure. However, development of this nature did not take place or even exist prior to registration and it is not taking place in the unregistered areas. Therefore, it is reasonable to assume, as the farmers themselves realise, that it has occurred because they are secure in their ownership of the land. There is ample evidence to indicate that government policy is justifying itself.

**The process of land adjudication and consolidation**

The following is a brief outline of the land adjudication and consolidation process. The process starts with the county council making a written request to the Minister for Lands and Settlement to apply the Land Adjudication Act to an area within its jurisdiction. This is done if the Minister, through the Land Adjudication Department, satisfies himself that the majority of the landowners are in favour of its application. Wide publicity of the declaration is given through the press and radio and in the local newspapers. Subsequently, the Minister appoints an adjudication officer for the adjudication area who may appoint the necessary demarcation officers, recording officers and survey officers. Within the adjudication area, the adjudication officer declares adjudication sections within which consolidation or amalgamation will take place. These are areas of approximately 6,000 acres on an average, usually coinciding with administrative sublocations or parishes. Public meetings are held to explain the details of the procedure to the
landowners. Elected representatives of different extended families or clans resident in the area sit on a committee known as an adjudication committee, to advise the government officers on ownership of land and settle any disputes between landowners. An officer of the government records committee proceedings, and he may speak at the meetings, but not vote.

This is followed by publication of a notice requiring persons claiming rights of ownership to land within the area to appear in person, or through a representative, before the committee and confirm such rights according to the customary law. The committee then proceeds to determine rights within the area. Each claimant indicates his land and it is measured by junior surveyors until the whole sublocation is covered. The committee hears all cases and determines the matter. If there is an objection to their decision, it goes to the Arbitration Board which is an appellate body for the whole adjudication area, consisting of between five and eight members appointed by the Minister. Experience has shown that leaving the decisions to local bodies composed of elders, or other people of repute or standing, not only ensures that justice is done, but discourages many frivolous claims which could delay the operation. After measuring all the fragments, a Record of Existing Rights is compiled showing the particulars of each landowner, number of fragments owned and their aggregate acreage. The record is then published and for two months landowners can lodge any objection concerning its inaccuracy or omission. After two months or the date when the last objection is dealt with, whichever is later, the record is deemed final.

The next stage is the demarcation of consolidated property boundaries. The intention is to demarcate these properties equitably, having regard to the size and fertility of the fragments previously owned, while causing as little disturbance as possible. Nevertheless, as a safety measure the law merely says that the demarcation officer, with the assistance of the committee, shall demarcate to each landowner one consolidated holding, considering both size and fertility. To ensure the co-operation of everyone concerned, landowners are asked to submit a list of succession which is scrutinised and approved by the committee before the demarcation officer starts work on it. Then, starting from one end of the sublocation the demarcation officer, using a planimeter, demarcates on the maps and his surveyors follow him, laying out the plots on the ground until the whole area is covered. If, for reasons beyond control, someone loses his permanent improvements, he is compensated by the incoming owners. There may be exceptional cases where it is clearly inequitable to consolidate two fragments belonging to an individual due to disparity in their fertility or the inability of the incoming owner to pay compensation. In such cases the person affected may be allowed to own two plots. After all plots have been demarcated on the ground, a further period of two months is given for objections, after which no further appeals are entertained. The records are then
delivered to the Assistant Land Registrar for registration and no appeal is allowed from the first registration.

This process was applied to fragmented areas of Central Province, and a similar, although less complicated process is taking place in the less densely populated areas of Nyanza and Western Provinces. Here, in the absence of fragmentation, landowners are asked to enclose their holdings by hedges or fences. Measurers are sent in to open access roads if necessary. Aerial photographs of the area are produced showing existing boundaries. Adjudication committees carry out adjudication and thereafter a Record of Existing Rights is compiled. Simultaneously the surveyors trace the identified property boundaries from the photographs and produce preliminary index diagrams on which registration is based.

By 1965 an area of just over one million acres had been registered and the amount of acreage registered each year by the Land Consolidation Department, as it was then, was roughly 300,000 acres. It became apparent that if the government intended to register all suitable land, a further 25 million acres would have to be dealt with, which, on the progress of the Department, would take eighty years to complete. Dictated by the need to speed up the work, a joint Kenya-British mission under the chairmanship of Mr J.C.D. Lawrance (formerly Permanent Secretary for Land Tenure in Uganda) was appointed in November 1965 to study land consolidation and registration work in Kenya and to advise on an accelerated programme of such work and its costs. The report of the mission (Republic of Kenya 1965-66) contained many recommendations for improving the methods used for varying categories of areas processed, i.e., consolidation areas on the one hand, and non-consolidation areas on the other, including lightly-populated arable areas, areas suited to irrigation or other agriculture block-cultivation type, pastoral areas, and areas where the process was simply one of enclosure or distribution. It also contained numerous recommendations relating to the staffing of the three departments concerned (Surveys, Land - which is responsible for registration and administering the registers - and Land Adjudication), the production of maps required by the field staff, and land registry plans. The major recommendations on the question of legislation were that a new Land Adjudication Act be enacted providing a simplified and speedier process for application to non-consolidation areas where no consolidation of fragments is needed; that the name 'Adjudication Act' should be applied to this new Act and the existing Act be restyled the Land Consolidation Act; that provision be made for registration of title to land held communally by groups, particularly in pastoral areas; and that the present Registered Land Act should be amended to provide for appeals to the High Court to rectify any first registration of title which is alleged to have been effected by fraud or error. In 1963, following the report of a commission on existing land legislation, the Registered Land Act was passed. This Act, which has proved to be most successful, unified not only the conveyancing and registration laws but also all title, whether stemming from grants
under statutory law or from the recognition of ownership under customary law. The Act is based on English land law but avoids its traditional obscenities. Following the Lawrance Mission's recommendations, a loan of £3½m was made available to Kenya by the British government to finance the programme for four years.

The last major recommendation of the Lawrance Mission was the introduction of the Land (Group Representatives) Act which provides for the appointment of the registrar of group representatives, and for the procedure by which such representatives shall be selected by the group and incorporated by the registrar; it also provides for the powers and duties of the group representatives, the submission of returns by them to the registrar, and the maintenance of records.

The Kenya government accepted practically all the Lawrance Mission's recommendations and has been implementing them over the last three years. Up to 1966, 1,400,000 acres had been adjudicated and registered at a cost of £3,650,000. By 1970 it is hoped to have ownership on 5,830,000 acres adjudicated which will include 2,700,000 acres of range land for a total cost of £3,415,000. At the moment, progress is behind the Lawrance Mission's target because of delays in starting and a reduction in available finance. In the years 1970-74, it is anticipated that 10,200,000 acres of range land and 4,800,000 acres of arable land will enter the registers at a cost of £5,182,000. The last year of the British government loan, 1970, is the first year of the new development plan period. It is hoped that the necessary money for the adjudication programme will be obtained from the World Bank.

To complete this enormous task within fifteen years of independence, a vastly increased staff in the three departments concerned has been necessary. Thus, with the target acreages increasing from 340,000 acres in 1966-67 to 2,400,000 acres for 1968-69, staff has increased from 864 to 1,468 in the Land Adjudication Department alone. This staff increase in the field has necessitated increases at departmental headquarters and, of course, a substantial training programme.

The urgency and speed with which this programme is proceeding necessitated clear administrative control. Thus, an inter-ministerial standing committee of officials has been established to agree on where work shall take place, and no variation of the programme is permissible without its approval.

The recruitment of staff and the general progress of this aspect of the land reform programme have been very satisfactory. There has, however, been some resistance to the registration of the rights of acceptees, i.e. people who for many years have occupied land in another tribal area whose rights the host tribe refuses to acknowledge. West Pokot is an example where the adjudication process has had to be suspended. The other difficulties are mainly administrative, such as the extension of the Land Adjudication Department's activities from the coast to Nyanza and the general problem of expansion. There have also
been difficulties because the production of maps does not always keep pace with adjudication.

Control over land transactions

The fact that Kenya bases its programme of increased productivity and general advancement on individual tenure to land brings to mind the old maxim, which has so often been quoted, that the surest way to deprive a peasant of his land is to give him title to it. However, we have not found this to be the case in Kenya. There is, of course, a great deal of buying and selling, but not to the extent that a grant of title is creating a landless class who sell their land through mere improvidence or who allow themselves to become enmeshed in the toils of a money lender.

To guard against this happening, the Land Control Act of 1968 controls dealings in agricultural land. Every application to effect a transaction in agricultural land must be brought before a land board for approval. Failure to obtain the consent of a land board to a transaction renders any dealings with that land null and void and can, if the parties persist in proceeding with the transaction, render them liable to prosecution.

In reviewing a transaction the land board has to particularly consider its effect on the agricultural productivity of the plot and the maintenance of standards of good husbandry. The real problem in Kenya is uncontrolled subdivision and fragmentation of land arising from increasing population pressure on the land and customary rules of inheritance. The Land Control Act has only recently been passed and it is too early to say how it will work. However, it is hoped that this Act and the recommendations of the recent Commission on the Laws of Succession (1968) will help to check uncontrolled subdivisions on inheritance. This problem is essentially a social and economic one which legislation alone will not solve.

Throughout the registered areas land control boards deal with applications for a particular locality, and meet once or twice a month.

Land settlement

Whenever land reform in Kenya is discussed, the question of settlement is one which excites interest. It is the positive fulfilment of the progressive Africanisation of the ownership of land, and it was for this purpose that Kenya received so much financial assistance from abroad. As mentioned, 7.6 million acres were alienated by the colonial government for the exclusive use of some 3,600 European settlers. They established large estates which were highly developed because the tenure was organised, the settlers had capital and agricultural knowledge, and because the then government focused on their development to the neglect of African areas. The result was that the White Highlands became the economic backbone of the country, contributing one-third of total
agricultural production and four-fifths of the marketed surplus between 1954 and 1963. In the meantime, Africans were becoming more and more crowded in the rural areas as population grew. Their frustration at seeing large tracts of land, which originally belonged to their forefathers, owned by foreigners culminated in the political movement which was the major force behind the Mau Mau rebellion.

In 1960, the government of Kenya decided that the White Highlands should be opened to indigenous Africans, but very few African farmers could raise funds to purchase these estates. In the following year the government committed itself to a positive programme of Africanising Kenya's agriculture. The Settlement Department was set up with administrative officers, agriculturalists, veterinarians, and co-operative officers to steer the operation. Loan money was raised from Britain, the Federal Republic of Germany, the Commonwealth Development Corporation and the World Bank to finance the programme. The money was then either made available to African farmers on a long-term basis to buy out European farmers who wished to leave after independence, or the government bought farms and subdivided them for the settlement of landless or unemployed Africans from the rural areas. To May 1968, 1,005 farms representing 1,328,711 acres have been purchased for £12,668,492, and 33,000 families, or 150,000 people, have been settled.

Large-scale farms were broken up, basically, into two categories, high and low density farms, depending upon the ecology of the area. The high density farms cover roughly twenty-acre holdings and the low density farms cover larger units. The farms have been a qualified success. Insofar as they have eased a potentially dangerous political situation they have been successful, but on the productivity side there must be some qualification. Production dropped between the time the farms were purchased by the government and when the settlers became established. However, in many instances there has been a gradual rise in productivity so that many settlement farms are producing more now than when managed by Europeans. On the other hand, there have been difficulties in loan repayments, although that problem is showing marked signs of improvement. Not all the settlers are good farmers, as one might expect. In some instances they have been deprived of their farms because of bad farming or failure to repay loans. But, by and large, the settlement schemes are successful. They attract more attention than the farms in the trust lands because the philosophy behind the scheme is more dramatic and its implementation infinitely more costly. In fact, they overshadow the immense work and steady progress which is going on in the trust lands. But, in considering land reform in Kenya, progress in the trust lands and in the settlement schemes must be seen in conjunction; the government is now concerned with their inter-relationship in the light of an increasing population and the small number of reserves of good agricultural land remaining.
Conclusion

As a whole the land reform programme works: individual tenure has resulted in increased productivity, a greater investment in the land, and increased social stability. There are, of course, defects on the administrative side, but they are administrative defects only and as such do not lay the basic policy open to serious criticism.
Bibliography


Index

| Aborigines, Australian | 8 |
| Acreages, Kenya, restrictions recommended for | 90-1 |
| Adjudication; Kenya: areas, 129, 130; committees, 130, 131; extent of, 132; officers, 129-30; outline of adjudication - consolidation - registration process, 129-33; recommended by East Africa Royal Commission | 90 |
| Adjudication, Papua-New Guinea: committees, 18; officers, 17; see also Adjudication areas, Eastern Highlands; Adjudication areas, Papua-New Guinea; Systematic adjudication, Papua-New Guinea | Adjudication areas, Eastern Highlands District, 39; assessment of, 39; bases of 39; size of, 39 |
| Adjudication areas, Papua-New Guinea: adjustment of, 9; boundaries of, 32; completed, 33; declaration of, 3, 8, 12, 17, 27, 31, 32; need for careful selection of, 18; number of, 32, 33; see also Adjudication areas, Eastern Highlands District | Administration, Papua-New Guinea: acquisition of land by, 20; inadequate land policies of, 116; land (New Guinea), 14, 27, 30 |
| Administrator, Papua-New Guinea: authority to adjust declared adjudication areas recommended, 9, 27; control over dealing, 21; role in leasing, 21, 29 | African Land Development Organisation: activities, 83; composition, 82-3; flexibility of, 82-3; functions, 83; redevelopment of Makueni, 84 |
| African lands, Kenya: Africanisation of, 133-4; classified by Carter Commission, 79; Devonshire White Paper, 74; growth of problems in, 74; ignored, 73, 74; reserves, 73, 79, 127; trust lands, 134 | Africans in Kenya: agricultural methods, 72; divisions among, 69-70; economic activities, 70; increasing participation, 102; social structure, 70; traditional land authorities, 70; variations in land-holding, 70 |
| Agrarian reform, Kenya: as model for Papua-New Guinea, 68; international opinion on, 104-5 | Agricultural land, leasing of, 25 |
| Agricultural production, importance of, 68 | Alienated land, Kenya, 133; area unused, 75; as cause of Mau Mau rebellion, 134; out of hand, 73; see also White Highlands |
| Alienated land, Papua-New Guinea, 109 | Altitude, Kenya and Papua-New Guinea compared, 70 |
| Ambenob resettlement scheme, 116 | Arabs in Kenya, 69 |
| Aronis - Baranis, 33 | Auction: of building plots recommended, 29; of leases, 20 |
| Availability of land, Papua-New Guinea, 112; see also Population pressure | Baganda people, land tenure of, 66, 67 |
| Bahamas, 17 | Banda, President, 17, 22 |
| Bantu, 69; as agriculturalists, 69; land tenure of, 85 | Binns, Sir Bernard, 105 |
| Blantyre, 25 | Boers, 68 |
| Boundaries, Kenya, 93, 94; disputes over, 128 | Boundaries, Papua-New Guinea, 17; clan and subclan, 20; disputes over, 53, 55, 56, 58; of adjudication areas, 32; of customary land, 20; role of demarcation committees in marking, 39, 47, 48, 49-50, 55, 56, 57-8; settlement of, 9; survey of, 31 |
| Boundary markers, Papua-New Guinea: recommendations concerning, 28; unsupported by survey, 10, 28; see also Targets | British Colonial Office, caution regarding changes in land tenure, 82, 88 |
| British East Africa Company, 71 | British Foreign Office, 71 |
| British Ministry of Overseas Development, 23 | British Solomon Islands Protectorate, Land and Titles Ordinance 1968, 28 |
| Burma, loss of title when registered, 4 | Byrne, Sir Joseph, 81 |
| Cambridge Colonial Conference 1949, 82 | Carter Commission report, 74, 75; advocacy of better land use, 76-7; and individual tenure, 76-8; caution of, 76, 77, 78; land classifications recommended by, 79; role of government envisaged by, 76, 77, 80; weaknesses of, 78 |
Cash cropping, Kenya: and land tenure, 105; basis laid by Europeans, 73; by individuals, 84, 85, 100; provision of small-holdings for, 89; security of, 102
Cash cropping, Papua-New Guinea, 109, 117; and demarcation, 34; communal, 118; indigenous managerial capacity for, 118; Nimai, 59; registration of land for, 117
Catholic mission, Koge, 44
Caution, Kenya, 128; of Carter Commission, 76, 77, 78; regarding land tenure changes, 77, 78, 81-2, 88, 92
Caution, Papua-New Guinea, official, 110, 111
Census divisions, Papua-New Guinea, basis of adjudication areas, 32
Central Chimu: councillor, 49; inter-clan marriage, 52; land disputes, 52; land tenure, 46-7; language, 44; population densities, 44; social structure, 46
Central District, Papua-New Guinea, 32
Central Province, Kenya, 79, 127, 128; acceptance of individual tenure, 80; consolidation, 90, 130
Chagga coffee-growing scheme, 21
Change: factors inhibiting in Papua-New Guinea, 111; factors promoting in Kenya, 66-7, 79, 80
Chatterton, P., 16
Chief Land Titles Commissioner, Papua-New Guinea, 32, 33, 39; view of demarcation procedure, 49; see also Kelliher, D.J., McCubbery, C.P.
Clan, Kenya, basis of committees ascertaining individual rights, 92
Clan, Nimai: land disputes among, 50, 53, 55; holdings, 46-7; use of land granted within, 53, 55
Cloves, Zanzibar, 4
Cocoa, West Africa, 4
Coffee: and land, Nimai, 48, 51-2, 54-5, 58; introduction in Kenya, 76; introduction to Nimai, 44; Tanzania, 4
Colonial Development Fund, 79
Commissioner of Titles, Papua-New Guinea, 32; see also Chief Land Titles Commissioner
Commonwealth Development Corporation, 134
Communal farming: attempts to promote in Kenya, 70, 86-7; possible role in Papua-New Guinea, 118
Communal tenure: adaptability, 104; and economic development, 67, 82; compared to individual tenure, 86-7; support for, 82; traditional, 65; see also Israel
Compensation, Kenya, 94, 130
Conroy, J.D., 111, 112
Conservation, Kenya: measures taken by Africans, 102; provision in Swynnerton Plan for, 89; soil, 82-3, 93
Consolidation, Kenya, 23, 95, 99, 100, 127, 128-9, 130; among Kikuyu, 84, 90; apparently unnecessary in Papua-New Guinea, 23; as means to agricultural development, 128; compensation during, 94; difficulties in, 86; techniques of, 93-5
Conversion of customary land to individual title, see Customary land
Conveyancing: in England and Australia, 4; titles registered to assist, 4, 6; unregulated private, 6, 10, 11
Co-operatives: possible role in Papua-New Guinea, 118; role in Kenya, 106
Courts of Native Affairs, Papua-New Guinea, 57
Credit: importance for tenure reform, 102-3; registration of agencies, 90; see also Finance, Loans
Crocombe, R.G., 22, 59
Crop rotation, Kenya, 95
Crown land: Kenya, 15, 73, 79; Papua, 14, 30, 108
Customary land: and economic development, 4-5, 21-2; conversion to individual title, Papua-New Guinea, 3, 7, 11-12, 22, 23, 39; determination of rights to, 30, 39; individual title to recommended by East Africa Royal Commission, 90; investigations into, 8; registration of, 6, 10, 11, 20, 27, 28; usages, Kikuyu attitude to, 93; see also Systematic conversion
Customary law: limitations of, 96, 128; persistence in Kenya, 88
Dealing, 3, 4, 19, 20, 27; control of, Kenya, 96, 100, 134; control of, Papua-New Guinea, 6, 21, 28; in converted land, 7; sorts of, 14n.; when land acquires economic value, 6; with registered titles, 4, 6
Delamere, Lord, 76
Demarcation, Kenya, 130; officers, 129, 130; see also Adjudication, Kenya
Demarcation, Papua-New Guinea: as means to recover land, 55; attitudes to, 33; cessation as result of hostilities, 40; conversion to individual title the aim of, 39; development in Chimu District, 39-43; history, 8, 30-4; information, 47; Nimai response to, 56-9; officers, 17, process, 39
Demarcation committees, Chimu, 40; changes in representation, 41; composition, 39, 41; failure, 40, 42; members' need for authority, 43, 59; member's uncertainty about functions, 43; nomination, 40; role of local government councils in demarcation work, 40; size, 40; see also Demarcation committee, Nimai
Demarcation committee, Nimai: boundary marking, 49-50, 56; concentration on inter-clan
disputes, 50-1, 53, 55; formal meetings, 48, 49; kinds of disputes approached for settlement by, 51-2; members' ambiguous role, 50, 55-6; members' characteristics, 47; members' views of demarcation, 48; need for authority, 59; role, 56; size of members' groups, 55; success, 51, work methods, 51

Demarcation committees, Papua-New Guinea, 39; appointment, 31, 32; based on Kenya system, 11; composition, 31; establishment, 11; numbers of, 33; role, 31; types, 33; see also Demarcation committees, Chimbu; Demarcation committee, Nimai

Department of Agriculture, Kenya, 89, 94-5, 101
Department of Agriculture, Papua-New Guinea, 13, 116
Department of Territories, Secretary of, 109

Deprivation of land, as result of good title, 6
Devonshire White Paper, 69 n., 74

Dingga people: demarcation committee members, 47; disputes with Nimai, 52, 55; territory, 46, 53; view of demarcation, 48

Director of Lands, Papua-New Guinea, 21

Disputes over land, Kenya, 128; during consolidation, 93, 99; settlement of, 93, 99, 130

Disputes over land, Nimai, 48, 51-5, 55, 56; boundaries, 49-50; inter-clan, 52; reasons for, 52; settlement of, 49-50

Disputes over land, Papua-New Guinea, 18, 109; demarcation as solution to, 40, 48; inter-tribal, 40; settlement by Administration officers, 57; settlement in Courts for Native Affairs, 57; settlement by Land Titles Commission, 4, 8-9, 55; settlement by village officials, 57; see also Disputes over land, Nimai

District registries, Papua-New Guinea, recommended, 16, 27
District Lands Office, as records centre, 10, 20

Districts, Papua-New Guinea, as basis for adjudication areas, 32

Diversity of conditions, Papua-New Guinea, need to allow for, 6-7, 8

Dorobo people, sale of land by, 66

Dual mandate, 72

East Africa Protectorate, 71

East Africa Royal Commission 1953-55, 11; appointment, 88; assessment of traditional tenure, 66-7; attitude to individual tenure, 4-5; criticism of report, 91; government reaction to, 92; need to facilitate dealing, 6; report, 90-1; view of land tenure and economic development, 91

East African Agricultural, Veterinary and Forestry Research Organisation, 101

East African Agricultural, Veterinary and Forestry Research Organisation, 101

Eastern Highlands, Papua-New Guinea, traditional balance between land rights and productivity, 66, 119

Economic development, effect of land tenure on, 4, 5, 21-3, 129; East Africa Royal Commission's view of, 91; Nimai view of, 48, 51, 55, 59

Economic development policy, lacking in Papua-New Guinea, 117

Economic individualism, growth in developing countries of, 105-6

Egerton College, 101

Elders, Kenya; role in demarcation and. consolidation, 92, 99, 130; traditional role in land allocation, 70

Elliot, Sir Charles, as Commissioner for East Africa, 72; attitude to Africans, 72

Enclosure movement, Kenya, 65, 86, 100, 128, 130

Encroachment on fallow land, Papua-New Guinea, 52; disputes over, 55

England: building lease, 24; land law, unsuitability for export, 3, 14, 15, 81; registered title, 4

Eraps farming project, 112, 117-18

Erosion, Kenya, 75; attempts to reduce, 79, 89, 101

Erskine's land pledge, 108

Ethiopia, 17

Europeans in Kenya: divisions among, 68; justifications for settlement, 71-2; occupations, 68; official concentration on, 72-4; residence, 68; types of, 72

Extended family, 117n.

Extension services: importance of 13; Kenya, 90, 95, 101

Fallow land, relation to land disputes, 52, 55

Fitch simple, 3, 16, 27

Feudal tenure, Europe, 65

Fiji, Native Lands Ordinance, 8, 10

Finance: Kenya, 102-3; Papua-New Guinea, 112; see also Credit, Loans

Five-year Plan, Papua-New Guinea, 22, 114

Fleming, J.T., 27

Flexibility, British, in Kenya, 80, 83, 87, 98

Fragmentation: absence in Papua-New Guinea, 22; Kenya, 22, 79, 94, 127

Freehold land, 13, 30

Galla people, 69

Gazelle Peninsula, 113; areas adjudicated in, 34; attitude to demarcation in, 33; claims during Native Lands Commission times in, 31; dealing under customary law in, 3, 6; individualisation under customary tenure, 12, 23; land alienation in,
109; role of Native Lands Commissioners in, 115; Special Commissioner, 23n.

Gezira scheme, 21

Githaka land, Kenya, 75

Government role recommended, Kenya: by Carter Commission, 77; by East Africa Royal Commission, 90-1; opposition to, 78; Swinnerton's recognition of, 89-90; vital in East Africa, 91

Gradualism, Papua-New Guinea, 110, 112; see also Caution, Papua-New Guinea

Grazing Land, Kenya, 97-8

Griffin, J., 16

Grogan, Colonel E.W., 75

Ground nuts, West Africa, 4

Group farms, Kenya, problems in, 86

Group representatives of customary landowners: Kenya, 132; Papua-New Guinea, 10, 20, 28

Guise, J., 15, 111n.

Hailey, Lord, 72-3, 78, 78n., 88

Himitic people in Kenya, 69

Hasluck, P.M.C., 39n., 110

Higaturu, 117

Highlands, Kenya, land shortage in, 93; see also White Highlands

Highlands, Papua-New Guinea: attitudes to demarcation in, 33; group landholding in, 23; highway, 44

House of Assembly, Papua-New Guinea, 118

Improvements in land, Kenya, 79-80; effect on tenure, 80

Incomes, Kenya and Papua-New Guinea compared, 115

India: economic development in, 107; loss of land with registered title in, 6

Indians in Kenya: divisions among, 68-9; exclusion from land purchases, 69; land claims, 74; occupations, 69; residence, 69; see also Devonshire White Paper

Indigenous capacity for change, Papua-New Guinea, underestimated, 111, 112, 113, 114

Indigenous participation, Papua-New Guinea, importance of, 108, 117-18

'Individual' certificates of title, 28

Individual tenure: and registration of title, 4; as policy matter, 3; compared with communal tenure, 67, 87; impact on tribal society, 5; indecisive evidence concerning, 23; need for control of, 6; relation to economic development, 5, 21

Individual tenure, Kenya, 68, 79, 128; advantages of, 104-5, 135; as basis for economic development, 133; Carter Commission's view of, 76, 77, 78; criticisms of, 82; development of, 80-1, 128; government assessment of, 88, 103-4; government hesitation to promote, 82, 83; informal individualisation, as basis for government action, 88; not necessarily universal, 105; promotion, 22; recommended by East Africa Royal Commission, 90; relation to population pressures, 106; relevance to Papua-New Guinea of, 104; social value of, 104-5; spontaneous, 83-4, 86, 87-8; traditional, 65, 66, 67, 73; under Native Lands Trust Ordinance, 92; see also Working Party on African Land Tenure

Individual tenure, Papua-New Guinea: advantages in, 106; cautious initial approach to, 109, 110; customary, Nimai, 46-7; customary, recognised under Land Registration (Communally Owned Land) Ordinance, 11; determination of, compared to Fiji, 10-11; lack of over-all plan for, 109; Lae, 12; Mt Hagen, 12; recommended, 118

Inheritance: Gazelle Peninsula, 115

Kenya, 70, 127-8, 133; Papua-New Guinea, inquiry recommended into, 28; problems with leasing, 24; see also Law of Succession

Intensive farming, Kenya, introduction of, 83

Intermediaries of change, Papua-New Guinea, 112

Inter-clan fighting, pre-contact Papua-New Guinea, as means of gaining land, 53; see also Warfare, traditional, Nimai

Inter-tribal disputes, Papua-New Guinea highlands, 40

Irrigation, Kenya, 82, 95, 101

Ismailis, Kenya, 69

Israel: communal farming, 104; communal tenure and exchange economy, 67; motivation 105

Kamba people, individual rights to land, 66, 84-5

Kavirond District, population pressures, 75, 76

Kellihier, D.J., 32

Kenya: adjudication in, 18; agrarian change in, as model for Papua-New Guinea, 68; agricultural basis of, 127; ascertainment of individual rights, 92; capital inflow, 113-14; categories of land, pre-independence, 127; caution, 78, 88, 107, 108; division of African and European lands, 73; early administration, 71; highlands, conversion to individual small-holdings, 89; Land Adjudication Act 1968, 19, 129; Land Control Act 1968, 133; Land Control (Native Lands) Ordinance 1959, 96; Land (Group Representatives) Act, 132; land scheme compared with Uganda, 98; land tenure rules, 92, 95; land treaties, 73; Lands Trust Ordinance 1930, 76; local committee to ascertain land
rights, 92; method of consolidation, enclosure and registration summarised, 99;
Native Land Registration Ordinance 1959, 96; Native Lands Trust Ordinance, 90, 95;
racial divisions in, 68; Registered Land Act 1963, 15-17, 27, 131-2; role of elders, 92;
role of local councils, 79, 80; system of registration recommended for Papua-New Guinea, 27; traditional landholding, 70
Kenya and Papua-New Guinea: attitudes, 70;
atitudes compared, 111; differences in treatment of land, 8; opening up, 71;
traditional economic activities compared, 70
Kenyatta, President, 114n.
Kere demarcation committee members, 47
Kiaibu: fragmentation, 127; individual tenure, 77; introduction of consolidation
and registration, 129; land registry, 16, land transfers, 80
Kikuyu, 69, 78, 89, 97; abandonment of customary land usages, 93; areas, 98;
cash cropping, 84; consolidation, 23, 84, 86, 93; experience of village living, 93;
fragmentation, 22; individual tenure, 80, 127; land shortages, 75; opposition to
alienation, 75; population pressures, 75, 76; purchase of land by, 66; traditional
landholding, 70; voluntary registration, 84; see also Mau Mau
Kinyanjui, J., 22
Kipsigis: group farms, 87; individualisation, 86; resistance to registration, 21
Kisii, 128
Kivu co-operatives, 118
Koge village, 44, 47, 49
Konkomba people, traditional land tenure, 70
Kundiawa, 44
Lae, individual holdings around, 12
Lagos, Registered Land Act 1965, 20, 28
Lake Victoria, 69, 71, 85, 98
Land: as ultimate source of wealth, 65;
importance traditionally 65
Land, Kenya: control boards, 133; landless
people, 74, 78, 80, 94; policy, 129;
traditional tenure, 65-7, 80
Land, Papua-New Guinea: adaptation of traditional tenure, 114; appeals to Supreme
Court, 27; policies, 6-7, 108; problems, 109; register, 10, 15, 19, 20, 27
Land-people relations, 107-8, 117, see also Population pressure
Land Adjudication Department, Kenya, 129, 132
Land Consolidation Department, Kenya, 131; see also Land Adjudication Department
Land tenure reform, 119; conditions justifying, 59; Kenya, assessment of, 135;
Papua-New Guinea, Administration's failure to promote, 115; vital role of
credit in, 102
Land Titles Commission, Papua-New Guinea:
advantages, 8; basis, 32; functions, 9,
18, 39; legal powers, 31; Madang Commissioner, 43; origins, 8-9; role in dispute
settlement, 56
Land use: and land tenure, 48, 51, 54-5,
58; changes in, 58; effect on disputes,
51, 54, 58; legislation, 13
Land use, Kenya, 79; planned, 94-5; traditional, 80
Landlord, responsibilities, 24
Lands Trust Board, Kenya, 79, 97, 98
Law Department, Papua-New Guinea, 117
Law of succession, 16
Laws of Succession, Commission on, Kenya, 133
Lawrence mission, 21n., 131; attitude to
systematic adjudication, 18-19; attitude
to revision of register, 19; control of
dealing examined by, 21; difficulties in
assessing land reform, 23; recommendations,
131-2
Layout, planned in Kenya, 94-5
Leakey, L.S.B., 66, 78
Leases: Administrator's role in granting,
29; of Administration land, 13; proposals
for registration of, 20; to Europeans,
24-5
Legislative Council, Papua-New Guinea, 110,
111
Litigation: Kenya, 128; registration as
means to eliminate, 23, 96, 106, 129; see
also Disputes over land
Loans, Kenya, 87, 95, 134; see also Credit,
Finance
Local government councils, Papua-New Guinea,
115, 116; model land use rule, 26, 29
Local-central government interaction, Kenya, 91
Lugard, Lord, 72n.
Luo people, 69, 97; group farms, 87; traditional
landholding, 70
Lutheran mission, Koge, 44
Machakos Local Native Council, 79
McCubbery, C.P., 32; retirement, 32
McGregor, Sir William, 72
Macmillan, W.M., criticism of individualisa-
tion of tenure, 82
Madang: demarcation committees, 43; Land
Titles Commission instruction course at,
33, 43, 47-8, 49, 52, 56, 58-9
Madang District, attitude to demarcation in
coastal, 33
Maine, H., 81
Mair, L., 71n.
Makerere university college, 101
Makueni: redevelopment, 84-5; size of hold-
ings, 87
Malawi, 17; certificates of title in, 25; Customary Land (Development) Act 1967, 19, 22-3, 28; individual tenure in, 22; Local Lands Board Act 1967, 21, 28; Registered Land Act 1968, 17, 27; Wills and Inheritance Act 1967, 16, 28

Malaysia, land registry, 16
Malinowski, B., 78
Maori Land Court, 8
Marketing, Kenya, 102
Markstones, 10; see also Tangents
Massai, 69; land treaties with, 73; opposition to innovation, 97-8
Matupit Island, 32
Mau Mau, 89, 129, 134
Mead, Margaret, 111
Middleton, J., 66
Milne Bay, 113
Ministry of Lands and Settlement, Kenya, 129
Mismanagement, basic problem in Kenya, 84
Mitchell, Sir Philip, 88, 89
Mombasa, 68, 68n, 71
Motivation: development of Western sense of, 105; importance to land reform, 107
Muranga District, 127; introduction of consolidation and registration in, 129
Murray, Sir Hubert, 108
Muslim, 69
Mt Hagen, individual holdings at, 12
Nairobi, 68, 71-2, 73n., 77, 94n.
Nakuru, 68
Nandi people, traditional land tenure of, 66
Native land, Papua-New Guinea, 30
Native Land Court, New Zealand, see Maori Land Court
Native Lands Commission, Papua-New Guinea, 32, 117, 118; Commissioners, 109, 110, 115; composition, 32; experience, 31; functions, 109; role of, 30-1, 58
New Ireland, areas adjudicated in, 34
Nile-Hamitic peoples, 69
Nilotes people, 69
Nimai people: border disputes, 46; crops, 44; customary tenure, 46-7, 52; demarcation by, 43-56; disputed land, 48, 51-5; location, 43-4; population density, 44; reasons for response to demarcation, 56-9; relations with neighbouring tribes, 45-6; settlement pattern, 44, 46; social structure, 45-6, 56, 57; territory, 44, 46; view of demarcation, 55
No-man's-land, 9-10
Northern District, 113
Nucleus plantations, 25
Nyanza Province, 79; acceptance of individual tenue, 81; enclosure, 128, 131
Nyeri, 102; consolidation, 127, 129; fragmentation, 127

Olon, 33
Ordinances, see Kenya, Papua-New Guinea

Palm oil, West Africa, 4
Papua-New Guinea: absence of public surveillance of land matters, 70-1; altitude, 70; area, 30; change inhibited by social structure, 67; classification of lands, 30; differences between highlands and coastal areas, 70; diversity of areas requiring attention, 7; indigenous participation, 119; individualisation, 106; influence of British colonies on land tenure of, 31; Land Ordinance 1962, 8, 21, 28; Land Registration Ordinance 1924-1955, 14-15, 30; Land Registration (Communally Owned Land) Ordinance 1962, 7, 10, 11, 23, 28, 31, 39; land tenure conversion, 7; Land (Tenure Conversion) Ordinance 1963-1967, 11-14, 23, 28, 31, 39, 110; Land Titles Commission Ordinance 1962-68, 8-10, 11, 27, 30, 31, 39, 58; Land Titles Restoration Ordinance, 1951-1962, 30, 32; Lands Ordinance, 117n.; Native Land Registration Ordinance 1952, 10-11, 30; opening up, 71; protection of indigenous land interests, 108-9; Real Property Ordinance 1913-1955, 14-15, 30; registration of title, 4; traditional economic activities, 70; traditional landholding, 114; ways to raise economic morale, 113
Papuans, indifference to demarcation, 33
Pari, 32
Partnerships, 25
Pastoralists, Kenya, individualisation among, 85
Paternalism: Kenya, 90; Papua-New Guinea, 112
Pidgin English, 16; demarcation instruction in, 58
Piecemeal measures for agricultural reform, Kenya, 75
Planning: importance of, 67, 104, 110; Kenya, 98, 103, 114; Papua-New Guinea, 110, 113, 114, 116-17, 118
Polynesia, 68
Popondetta, systematic tenure conversion, 12
Population pressure: effect on land tenure, 5; Kenya, 65, 74, 75, 106, 128, 133; Papua-New Guinea, 56, 109, 111; see also Land-people relations
Port Moresby, 108; need for complete register of landowners, 7; need for systematic adjudication, 17, 29
Pragmatism, British, in colonial affairs, 80, 87
Prescription and limitation, 26; ordinance recommended, 28
Private land, Papua-New Guinea, registration of, 27
Progressive individuals, Kenya, as leaders in land reform, 80, 81, 84, 88, 89, 94
Proof of title, 15
Public surveillance of land activities: absence in Papua-New Guinea, 71; Kenya, 71
Rabaul: area adjudicated, 33; instruction in demarcation procedures at, 33; need for complete register of landowners, 7; need for systematic adjudication, 17, 29; private conveyancing, 10; registration of title, 13
Radical reform: Kenya, 108, 112; means of achieving, 67; Papua-New Guinea, 111-12, 113, 114, 119
Rakunat, 32, 33; individual land dealing, 10; layout, 13
Recommendations: Healy, 118-19; Simpson, 15, 16, 27-9
Reconditioning of land, Kenya, 79
Record of Existing Rights, 13; Kenya, 99, 130, 131
Recording officers, Kenya, 17, 129
Register, land, 3-4; as final authority, 4; of all landowners, 7
Register of Native Land, 30
Registration of title: as 'freezing' device, 88; benefits of, 7, 22-3; correction of errors in, 19; difficulty in assessing effects of, 23; facilitation of loans as result of, 102-3; need to decentralise, 16; of customary land, 20; purpose, 3-5, 6, 14, 95, 96, 100, 110; relation to development, 4
Registration of titles, Papua-New Guinea, 31
Registration of title, Kenya: absence of appeal, 130; compared with Uganda, 98; extent of, 131, 132; purpose, 6; reason for success, 110; recommended by Kikuyu councils, 80; resistance to, 132; varied results, 22; see also Adjudication, Kenya
Registration of title, Papua-New Guinea, 39; attitude of Land Commissioners to, 4; customary land, 109; registration ordinances, 14-15, 28; sporadic nature of, 111; under Land Registration (Communally Owned Land) Ordinance, 10-11, 23
Report of the Conference on African Land
Tenure in East and Central Africa, 17, 28
Report of Working Party on African Land
Tenure 1957-58, 13-14, 19
Research, agricultural, in Kenya, 101
Reserves, Kenya, see African lands
Resettlement, Kenya, 116, 116n.; promotion by Aldev, 83, 84, 85; see also Settlement
Resettlement, Papua-New Guinea, 111; inadequacies, 116
Rift Valley, 97
Russia, organisation of agriculture, 68n.
Sack, P., 16
Security of tenure, 5, 6, 15, 21, 105; advantages, 128; as basis for credit, 88; dangers, 90; Kenya, 76, 78, 79, 89, 129
Settlement, Kenya, 133-4
Settlement Department, Kenya, 134
Simpson, S.R., 95
Sinasina: adjudication area, 43; demarcation committee, 42, 43; Local Government Council, 44, 47; see also Nimai
Small-holder farming, Kenya, 81; conversion of highland areas to, 89; criticism of, 82; possibility of, 87
Smith, Adam, 91
Social security, impact of individualisation on customary, 5
Social structure, similarities between Kenya and Papua-New Guinea, 67
Somali people, 69
South-east Asia, 68
Special Commissioner, Gazelle Peninsula, 23
Squatters, Kenya, 74, 79
Subclan, Kenya, basis for committees ascertaining individual rights, 92
Subclan, Papua-New Guinea: as basis for demarcation committees, 42, 43, 47, 55; disputes, 51, 52-3, 55; holdings, 46-7; use of land granted within, 53
Subdivision, Kenya: control of, 95, 97; on inheritance, 133; see also Dealing, control of
Sudan, 21; adjudication and registration in, 90; decentralisation, 21; land registry, 16; Land Settlement and Registration Ordinance 1925, 17, 28; Prescription and Limitation Ordinance 1928, 28; systematic adjudication, 21
Supreme Court, Papua-New Guinea: land appeals to, 27; special acting judge recommended, 29
Survey, Kenya, 93, 94, 99; compared with Uganda, 98; officers, 111, 130
Survey, Papua-New Guinea, 10, 12, 14, 28; officers, 17-18, 40; provision in Native Land Registration Ordinance for, 31
Swahili-speaking people, 69; individual tenure, 80
Swynnerton Plan, 89-90, 98, 100, 128; African response to, 89-90; as model for Papua-New Guinea, 109; deficiencies in, 89; view of individualisation, 4-5, 103
Systematic adjudication, Malawi, 22
Systematic adjudication, Papua-New Guinea, 9, 11, 17-19; appeals, 11, in towns, 17, 29; need for, 12, 13, 19, 28; procedures involved in, 17-19; purpose of, 17
Systematic conversion, recommended: for Gazelle Peninsula, 12; for Popondetta, 12
Systematic individualisation, recommended, 118

Tabari territory, Papua-New Guinea, 46, 53
Tanganyika, 11
Tangents, 49, 50
Tanzania, economic development and land registration, 4, 21
Terms of reference, S. Rowton Simpson's, 3n.
Titles, Papua-New Guinea, uncertainty of, 25
Tolai cocoa project, 115
Torrens system: Britain, 92; inapplicability for customary tenure, 14, 92-3; introduction in Papua-New Guinea, 30; purpose, 4; South Australia, 92
Torrens title, 10; certificates for individual customary titles with appearance of, 11; issue under Land Tenure Conversion Ordinance of, 11; unimpeachability of, 16
Trade stores, Koge, 47
Traditional land tenure, Kenya, 65, 80, 128; adaptation, 114; change in attitudes to, 81; inadequacy of, 65, 119; Kipsigis and Bantu compared, 85; no rights outside reserves, 79
Training centres, Kenya, 95, 101
Transfer of land, see Dealing
Tribal areas, Papua-New Guinea, systematic conversion to individual holdings, 12
Trust lands, Kenya, see African lands
Turks and Caicos Land Adjudication Law 1968, 28

Uganda, 11, 71; railway, 72; registration of title, 98
United Nations Visiting Mission 1968, 12
Unowned land, Papua-New Guinea, 20, 30
Unused land, Papua-New Guinea, 13

Upper Nyeri District, voluntary registration of land transactions in, 84
Urban land, leasing of, 24
Usufruct, traditional, 65, 66, 67; adaption to co-operative organisation, 82

Victoria Act 1954, 14
Village living, Kenya, 93
Vudal resettlement scheme, 116

Waie-Digibe Local Government Council, 40
Waie-Dom demarcation committee, 43
Warangoi resettlement scheme, 116
Warfare, traditional, Nimai: as means of adjusting man-land ratios, 48, 52-3, 57; effect on land tenure of elimination, 57; replaced by boundary litigation, 57
West Africa: economic development and land registration, 4; English and customary land law in, 14-15
West Pokot, adjudication process suspended in, 132
Western Europe, slow changes in tenure, 67
Western Province, Kenya, enclosure, 128, 131
Western Region Property and Conveyancing Law, 15-16
Whalan, D.J., 7
White Highlands, Kenya, 76, 127, 134; African dissatisfaction over, 83; African farms in, 134; apparent emptiness of, 71-2; development of, 72-3, 74; purchase by Africans, 134
Willis, see Inheritance
Working Party on African Land Tenure, 95-7
Working Party on the Lagos Registered Land Bill, 15
World Bank, 132, 134
World War II, 30, 68, 80, 82, 86, 88, 107
111, 127
Yega project, 117
Zanzibar, 71, 72; economic development and land registration, 4; Sultan of, 69
# New Guinea Research Bulletins

<table>
<thead>
<tr>
<th>Bulletin No.</th>
<th>Title</th>
<th>Author(s)</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Erap Mechanical Farming Project</td>
<td>R.G. Crocombe and G.R. Hogbin</td>
<td>$1.50</td>
</tr>
<tr>
<td>2</td>
<td>Land, Work and Productivity at Inonda</td>
<td>R.G. Crocombe and G.R. Hogbin</td>
<td>$1.50</td>
</tr>
<tr>
<td>3</td>
<td>Social Accounts of the Monetary Sector of the Territory of Papua and New Guinea, 1956/57 to 1960/61</td>
<td>R.C. White</td>
<td>$1.50</td>
</tr>
<tr>
<td>4</td>
<td>Communal Cash Cropping among the Orokaiva</td>
<td>R.G. Crocombe</td>
<td>$1.50</td>
</tr>
<tr>
<td>5</td>
<td>A Survey of Indigenous Rubber Producers in the Kerema Bay Area</td>
<td>G.R. Hogbin</td>
<td>$1.50</td>
</tr>
<tr>
<td>6</td>
<td>The European Land Settlement Scheme at Popondetta</td>
<td>D.R. Howlett</td>
<td>$1.50</td>
</tr>
<tr>
<td>7</td>
<td>The M'buke Co-operative Plantation</td>
<td>R.G. Crocombe</td>
<td>$1.50</td>
</tr>
<tr>
<td>8</td>
<td>Cattle, Coffee and Land among the Wain</td>
<td>Graham Jackson</td>
<td>$1.50</td>
</tr>
<tr>
<td>9</td>
<td>An Integrated Approach to Nutrition and Society: the Case of the Chimbu</td>
<td>E. Hipsley</td>
<td>$1.50</td>
</tr>
<tr>
<td>10</td>
<td>The Silanga Resettlement Project</td>
<td>Olga van Rijswick</td>
<td>$1.50</td>
</tr>
<tr>
<td>11</td>
<td>Land Tenure and Land Use among the Mount Lamington Orokaiva</td>
<td>Max Rimoldi</td>
<td>$1.50</td>
</tr>
<tr>
<td>12</td>
<td>Education through the Eyes of an Indigenous Urban Elite</td>
<td>Karol van der Veur and Penelope Richardson</td>
<td>$1.50</td>
</tr>
<tr>
<td>13</td>
<td>Orokaiva Papers: Miscellaneous Papers on the Orokaiva of North East Papua</td>
<td>Olga van Rijswick</td>
<td>$1.50</td>
</tr>
<tr>
<td>14</td>
<td>Rabia Camp: a Port Moresby Migrant Settlement</td>
<td>Nancy E. Hitchcock and N.D. Oram</td>
<td>$1.50</td>
</tr>
<tr>
<td>16</td>
<td>Papuan Entrepreneurs: Papers</td>
<td>R.G. Crocombe, W.J. Oostermeyer</td>
<td>$1.50</td>
</tr>
<tr>
<td>17</td>
<td>Land Tenure Conversion in the Northern District of Papua</td>
<td>David Morawetz</td>
<td>$1.50</td>
</tr>
<tr>
<td>18</td>
<td>Social and Economic Relationships in a Port Moresby Canoe Settlement</td>
<td>N.D. Oram</td>
<td>$1.50</td>
</tr>
<tr>
<td>19</td>
<td>A Benefit Cost Analysis of Resettlement in the Gazelle Peninsula</td>
<td>S. Singh</td>
<td>$1.50</td>
</tr>
<tr>
<td>20</td>
<td>New Guinea People in Business and Industry: Papers from the First Waigani Seminar</td>
<td>S. Singh</td>
<td>$1.50</td>
</tr>
<tr>
<td>21</td>
<td>Teachers in the Urban Community</td>
<td>Penelope Richardson and Karol van der Veur</td>
<td>$1.50</td>
</tr>
</tbody>
</table>
Bulletin No.22 Papers on the Papua-New Guinea House of Assembly by Norman Meller, January 1968 $1.50
Bulletin No.23 Mixed-race Society in Port Moresby by B.G. Burton-Bradley, March 1968 $1.50
Bulletin No.24 The Organisation of Production and Distribution among the Orokaiva by E.W. Waddell and P.A. Krinks, September 1968 $2.00
Bulletin No.25 A Survey of Village Industries in Papua-New Guinea by R. Kent Wilson, November 1968 $1.50
Bulletin No.27 New Guinean Entrepreneurs by B.R. Finney, February 1969 $1.50
Bulletin No.29 Hohola: the Significance of Social Networks in Urban Adaptation of Women by Lynn Oeser, June 1969 $1.50
Bulletin No.30 Inter-tribal Relations of the Maenge People of New Britain by Michel Panoff, July 1969 $1.50
Bulletin No.31 Inter-ethnic Marriage in New Guinea by Andrew W. Lind, August 1969 $1.50
Bulletin No.39 The Situm and Gobari Ex-servicemen's Settlements by A. Ploeg, January 1971 $1.50

The above bulletins are available at the prices listed from the A.N.U. Press, The Australian National University, P.O. Box 4, Canberra, A.C.T., 2600, Australia, and the New Guinea Research Unit, the Australian National University, Box 1238, Boroko, New Guinea.

For bulletins published from 1970 on, an annual payment of $7.00 entitles the subscriber to all bulletins issued in the year.