

# Land Tenure and Economic Development

(A study of the economic consequences of land registration in Kenya's smallholder areas\*)

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This paper presents some of the findings from a research project for the Queen's University of Belfast which aimed at examining the interrelationship between land tenure reform and economic change with reference to a developing country. It was decided to study in detail the effects of one type of land reform, namely land registration. Registration and grant of title has received considerable attention in Northern Ireland recently, especially since the publication of the Lowry report,<sup>1</sup> and the decision to introduce a compulsory system of registration for all land involved in dealings,<sup>2</sup> which will lead to the eventual registration of all land in the Province. An excellent summary of the historical background to land registration is contained in the Lowry report (Chapter II), and the distinction between registration of deeds and registration of title is clearly explained. It is the latter method of registration, sometimes known as the Torrens system,<sup>3</sup> which is being dealt with here. This system, first introduced in South Australia in the mid nineteenth century, has subsequently been applied in many parts of the world including Great Britain, the Republic of Ireland, and now Northern Ireland. Under the Torrens system records of all rights pertaining to specific units of land are compiled, rather than the mere recording of details of deeds to property, without referring to the land itself, as was the case with earlier systems involving registration of deeds.

Kenya was chosen for the study, as it was the only country in Africa where a comprehensive system of land registration has been implemented. The writer was attached to the Institute for Development Studies at the University of Nairobi for almost a year during the course of this investigation. The land registration programme in Kenya has been more systematic than that envisaged for Northern Ireland, as existing land rights have been adjudicated in specific areas across the country, and subsequently

\*Some results from the study have already been presented by the writer as seminar papers at the University of Nairobi.

(a) Land Control in Kenya's Smallholder Farming Areas. Staff Paper No. 89 (January 1971).

(b) The Economic Implications of Land Registration in Kenya's Smallholder Areas. Staff Paper No. 91 (February 1971).

Both obtainable from the Institute for Development Studies, Nairobi.

<sup>1</sup> Registration of Title of Land in Northern Ireland (1967) Cnd 512 H.M.S.O., Belfast.

<sup>2</sup> Land Registration Act (Northern Ireland) 1970 H.M.S.O., Belfast.

<sup>3</sup> E. Dawson and V. L. O. Sheppard describe the origins of the Torrens system in "Land Registration" p. 78 Colonial Research Publications No 13 H.M.S.O., London 1956 (2nd ed.).

registered, without waiting for the land to become involved in dealings before it is registered. Although this procedure has been more costly in the short term than that applied in Northern Ireland, it is much quicker, and the longer term expenses may well be lower. In Northern Ireland the reform is justified by the benefits expected through easier conveyancing, but in Kenya, more widespread benefits were anticipated, as will be seen.

Registration in Kenya affected the land tenure system more profoundly than is likely in Northern Ireland. In Kenya, under customary tenure, individual rights were restricted to varying degrees by tribal tradition, and did not constitute full ownership, as for example there were limitations on disposal of land. The financial constraint of legal expenses associated with land dealings were of greater significance in Northern Ireland, as there were no similar restrictions on land rights. However in both countries, with agriculture the chief industry, and major source of employment, any reform which affects tenure has important economic implications, in so far as there is a link between the land tenure system and farm production.

#### PERSPECTIVE OF KENYA'S LAND REFORM

The land reform in Kenya, instigated in the 1950s following the Swynnerton Plan,<sup>3\*</sup> involved land consolidation in many of the smallholder areas such as Central Province,<sup>4</sup> prior to registration, but in this paper attention is focused on the latter part of the reform only. Consolidation of fragmented holdings has in any case been completed, except in a few areas,<sup>5</sup> but registration is still continuing as Table 1 illustrates. By the time the Lawrance Mission<sup>6</sup> reviewed the reform programme in the mid 1960s it had already been extended outwards from Central Province to the Rift Valley and Eastern Provinces, and plans were being laid for its introduction in Western Kenya. The Lawrance Mission recommended the implementation of the programme throughout the remaining densely populated high potential agricultural areas, as well as its extension to the more arid and sparsely settled range areas. By the end of the current development plan's period in 1974,<sup>7</sup> the major portion of the former "Trust" land within the agricultural areas will be registered, the "Trust" land being that reserved during the colonial period for African farming, and safeguarded by legislation,<sup>8</sup> even if inadequately in practice, from alienation to European settlers. Consideration here is limited to these African agricultural areas, as at this stage it is too early to attempt to assess the effects of registration in the range areas.

<sup>3\*</sup> "A Plan to Intensify the Development of African Agriculture in Kenya", Government Printer, Nairobi 1954.

<sup>4</sup> All references are to Provinces as currently demarcated, and not the pre-independence situation.

<sup>5</sup> i.e. Parts of Meru District, Eastern Province and Taita District, Coast Province.

<sup>6</sup> Report of the Mission on Land Consolidation and Registration in Kenya 1965-66.

<sup>7</sup> Republic of Kenya, Development Plan 1970-74.

<sup>8</sup> Native Lands Trust Ordinances 1930 and 1938 and Trust Land Act, 1939, Cap 288. See K. M. Maini "Land Law in East Africa" pp. 35-36, O.U.P. Nairobi 067.

TABLE I  
PROGRESS OF LAND REGISTRATION

Province	Agricultural land registered ('000 ha.)			Range land registered ('000 ha.)	Former Trust Land ('000 ha.) <sup>1</sup> C	% of former former Trust Land registered by 30.6.74	Agricultural Land ('000 ha.) D	% of Agric. Land registd. by 30.6.74	Number of registered holdings 30.6.69
	30.6.63 A	31.12.69 A	30.6.74 B	30.6.74 B					
Central	394 <sup>2</sup>	378	436	—	449	97%	926	46%	156,523
Eastern	100	188	808	282	12,676	9%	2,692	30%	81,570 <sup>3</sup>
Rift Valley	52	166	931	4,480	13,268	41%	3,145	30%	25,015
Nyanza	—	74	828	142	1,180	82%	1,253	66%	90,193
Western	—	331	605	—	647	94%	741	80%	125,334
Coast	—	—	341	201	2,940	18%	1,170	29%	15,049
Kenya	546	1,143	3,949	5,105	31,160 <sup>4</sup>	29%	9,927 <sup>5</sup>	40%	493,684

SOURCES: A Economic Survey 1970 Table 4.14 p. 75.  
 B Development Plan 1970-74. Table 8.1 p. 282.  
 C Report of the Mission on Land Consolidation and Registration 1965-66. Table L p. 175.  
 D Ibid. Table K p. 174.  
 E Economic Survey. Ibid. Table 4.15 p. 76

NOTES: <sup>1</sup> Excludes alienated Trust Land.  
<sup>2</sup> Includes land in Muranga where registration was later cancelled—87,000 ha. involved.  
<sup>3</sup> Includes Kirinyaga District of Central Province, as land-owners there use the land registry at Embu, Eastern Province, which was formerly part of Central Province.  
<sup>4</sup> Excludes North Eastern Province—12,670 ha. Trust land.  
<sup>5</sup> Excludes Nairobi.

As far as Kenya is concerned, an examination of the consequences of the land registration programme is chiefly of interest now to the historian rather than to the policy maker, for the policy decision has been taken already to implement the reform throughout the entire Republic, and registration is far advanced. The experience gained from this reform should be of interest to policy makers in other countries, especially those which face similar problems of development, and which have factor endowments corresponding to these highly populated agriculturally productive regions of Kenya under consideration here. Within Africa, the Government of Malawi seems set to embark on a programme of registration similar to Kenya's, while the Ethiopian authorities have shown keen interest in the reform. Many Asian countries face land tenure problems today which registration could help solve, even if the historical contexts differ, and the magnitudes of their agrarian problems are greater. In the Australian dependencies of Papua and New Guinea, a registration programme has been mounted, and reformers there have been interested in Kenyan registration procedures and programme results. Observers within Africa and elsewhere will be interested in comparing the results of Kenya's and Tanzania's land policies, the former supporting the independent peasant proprietor, while the latter favours a policy of government controls over land use with little security of tenure for the producer. Care should however, be taken in making this, or other similar comparisons with the Kenyan experience presented here; the countries may be at differing stages of development, have varying population/land ratios, and unequal agricultural production potentialities.

The magnitude of the land reform programme can be judged by considering the considerable costs involved. The Lawrance Mission estimated that over 67 million shs. had been spent by the end of 1965,<sup>9</sup> although a considerable proportion of this was for consolidation rather than registration. Expenditure on the Lawrance Mission's programme represented a further 68 million shs. over the 1966/67 to 1969/70 period,<sup>10</sup> most of which was on registration alone. During the period of the current 1970-74 Development Plan it is estimated that a further 126 million shs. will be spent,<sup>11</sup> although some of this will be on registration in the range areas. Thus the total expenditure on the reform will exceed 261 million shs. by 1974, and probably over £10 million of this will have been for registration in the smallholder areas.

What benefits have resulted from these expenditures? No attempt is made to give a comprehensive cost benefit analysis in this paper. The aims are more modest, and consist of an examination of the benefits which have resulted from registration, and consideration of some further advantages which could be realised if certain complimentary reform packages were introduced.

<sup>9</sup> Lawrance Mission Report, op. cit., p. 16 par. 58. 1 Kenya shilling = £0.06 sterling = \$0.14 U.S.

<sup>10</sup> Development Plan 1970-74, op. cit., p. 211, par. 8.63.

<sup>11</sup> *Ibid.*, p. 212, par. 8.66.

Those who support land registration believe it can aid rural development. Allocation of the scarce land factor can be improved. Within the economy, the supply of capital can be increased by making farmers put more into capital formation through greater monetary and non-monetary allocations to investment rather than leisure or consumption. The capital supply to agriculture can also increase through making agriculture more competitive *vis-à-vis* available finance. The realization of these improvements should increase agricultural output and rural employment opportunities.

Registration and grant of title deeds should help:

(1) *Land allocation*

An examination will be made of whether the land market is operating in a way which will encourage or hinder the creation of a land tenure structure which will serve the needs of an expanding rural economy. It has been noted, for example, with respect to Uttar Pradesh in northern India that "the market for land did not react to the stimulus of productivity alone but to tradition and custom, and to the prestige attached to the land."<sup>12</sup> The question arises if this is applicable to Kenya also, and if so, what the implications are for control over land transactions for which legislation provides.<sup>13</sup>

Registration facilitates land transfer, and the immediate legal recognition of the rights of the purchaser may be an additional factor encouraging many to expand their holdings, or obtain new holdings. Thus the land market may be directly influenced by registration. Cheaper conveyancing may also be an incentive to purchasers, and the Nigerian case illustrates how expensive lawyers fees can be without registration.

(2) *Agricultural credit*

Land, after title has been granted, may be mortgaged to obtain credit for farm improvements. Attention here will need to be focused on how adequate land is as a security, credit utilisation, the loan repayments records, and the fate of persistent debtors.

(3) *Reduction in land litigation*

With certain boundaries, and well defined rights, disputes over land matters are much less likely. The money and time which was formerly spent on expensive court proceedings can be invested productively in land development. It should be interesting to see what land disputes were about in the past before registration. The causes of the elimination of land litigation will be considered. Adjudication resulted in all land rights being decided once and for all, but with the land reform many had their land rights extinguished. The social costs must be weighed against the economic

<sup>12</sup> W. C. Meale "Economic Change in Rural India", p. 279. (Yale U.P. 1962).

<sup>13</sup> The Land Control (Special Areas) Act (Law No. 28 of 1959) represented the first attempt to introduce land control. Currently the Land Control Act applies (Law No. 34 of 1967).

benefits. The question also arises if this halt to land litigation is going to be permanent, or whether disputes are likely again in the future.

(4) *Incentive to invest*

The farmer with a freehold title will want to improve his holding as—“the magic of property turns sand into gold” (Arthur Young). With increased security of tenure, uncertainty is reduced, causing those farmers at the margin to invest more, those for whom the decision to invest was marginally unattractive before. However, the intra-marginal farmers, faced with the economic necessity of providing for their families from small plots, will be forced to work hard on their lands anyway, regardless of how secure their tenure is, and even without registration, permanent improvements may be made, if this will aid indirectly the families' living standards. Here again the emphasis will be on ascertaining how strong an effect registration has on farmers' propensities to direct their energies and capital onto the farms.

(5) *Land control*

With registration, comprehensive land control legislation was introduced,<sup>14</sup> and Land Control Boards set up in each administrative division to control all dealings in land, including transactions involving sale and leasing, as well as mortgaging. The existing controls and operation of the Boards will be reviewed, and the need for further controls discussed.

(6) *Prevention of subdivision with inheritance*

Traditional inheritance ideals that all sons should inherit some land remain the Kenya practice, but with registration, controls over subdivisions are possible. However, with increasing population growth, the lack of employment opportunities away from the family farm, and the inability of one heir to buy out the shares of the others in the family holding, subdivision is likely to remain a difficult problem.

(7) *Taxation of agricultural land*

Hitherto in Kenya there has been no tax on land. It is often said that a tax based on the amount of land owned is a means of ensuring a more efficient allocation of land in countries where it is scarce, through penalising farmers with large holdings who fail to utilise their lands intensively.<sup>15</sup> A land tax would encourage this type of person to sell land to others who either have more capacity to develop the land, or are more willing to do so. The farmer who owns a small plot which is intensively developed is likely to be favoured by the incidence of such a tax whether it is related proportionally or progressively to farm size while the larger farmer, unless he is efficient will suffer. With holdings registered, the owner is clearly identified and the sizes of all holdings are recorded in the registers. This means there is an excellent opportunity for the introduction of this type of taxation.

<sup>14</sup> See 13 above.

<sup>15</sup> Land Registration (Special Areas) Act. (Law No. 27 of 1959).

## ORIENTATION

Two different smallholder areas, Kisii District of Nyanza Province and Nyeri District of Central Province, were chosen for the study, so that a more general view of the situation prevailing in respect of land registration could be obtained for Kenya peasant farms. Land registration started in Kisii in 1965 and is still continuing, although probably by the end of 1971 all holdings in the district will be registered. In Nyeri, consolidation preceded registration, and this was carried out in the 1950s during the "emergency". As land rights had been recorded by the time the first land registration legislation was effected in 1959, registration was a simple administrative measure, quickly completed.

As should be expected there have been considerably more land dealings in Nyeri than in Kisii as Table 2 shows. The figures largely reflect the longer period there has been since registration in Nyeri. Kisii today appears to be in a similar position with regard to the cumulative total of land dealings that Nyeri was in during 1962, 3 years after registration was completed. As registered landowners usually take out their land certificates in order to deal in land, this serves as a good indicator of the farming community's future plans. Considering that 1969 certificates of title issued as a percentage of the total number of registered holdings in each district during that year, there appears to be no significant difference between the two districts, which seems to indicate that in the seventies there should be a similar volume of land dealings in both areas.

The main sources of data for this study were the land registries themselves, and some time was spent in the registries at Kisii and Nyeri collecting information. Officials of the commercial banks and governmental credit agencies were interviewed in both districts to get details on mortgaging of land. The workings of the land control mechanisms were examined, and the writer attended several board meetings in both areas. To find out about land litigation prior to registration the files of the old African courts were consulted in Kisii, and court officials interviewed. A small sample survey was conducted by the writer in one sub-location of Kisii<sup>16</sup> of 77 registered landowners, with emphasis on those who had been dealing in land. The purpose of the survey was to discover how registration had affected the more progressive farmers.

<sup>16</sup> Bassi-Boitang'are sub-location. Coverage represented 40% of all registered transactions 45% of all charges (mortgages) notified, 20% of respondents with title deeds, and 10.8% of all holdings within the sub-location.

TABLE 2

## REGISTERED LAND DEALINGS IN KISII AND NYERI

	No. of registered land dealings (Cumulative) <sup>1</sup>		Percentage of all holdings registered involved in dealings (Cumulative)	
	Kisii	Nyeri	Kisii	Nyeri
Certificates of title issued	3,719	18,079	9.1	39.1
Transfers ... ..	246	4,738	0.6	10.3
Changes ... ..	697	5,171	1.7	11.3
Discharges ... ..	57	1,736	0.1	3.8
Successions ... ..	30	641	0.1	1.4
Holdings registered ...	40,873 <sup>2</sup>	46,000	68.1 <sup>3</sup>	100.0 <sup>3</sup>

<sup>1</sup> Total number of dealings registered in Kisii District up until September 1970, and in Nyeri District till October 1970.

<sup>2</sup> September 1970. When registration is completed should be over 60,000 holdings included.

<sup>3</sup> Holdings registered as a percentage of the total number of holdings in each district. No account is taken of divisions on the ground within registered holdings.

SOURCE: Monthly registration returns for both districts (corrected by the writer).

## THE LAND MARKET

Two main types of transactions must be distinguished, those which involve transfer of complete holdings, and those with prior subdivision and then transfer of a portion of the holding. The first type of transaction is common where sellers have land elsewhere, either in the traditional small-holder areas, or on the settlement schemes, and normally occur in areas where plots are small. The farmer with a larger holding, will often decide to sell only a minor and underdeveloped portion, and retain the major share. The Land Control Boards do not affect this pattern of transactions as much as might be expected, as they refuse consent to less than 10% of applications in most areas.<sup>17</sup>

Data from the land registries illustrate this pattern of transactions. Where prior subdivision occurs, the average plot sold since registration has been 1.0 ha. in Kisii District, while the average holding size is 2.4 ha. there (see Table 3). The typical transaction in Kisii is where a farmer with over 3.0 ha. decides to subdivide his plot and sell a minor share of 0.5-1.5 ha., and retain the remainder. In divisions where the seller has more land, it appears, as would be expected, that they are willing to sell a larger piece of land as the table shows, but this does not vary significantly as a proportion of the total holding before the sale.

<sup>17</sup> Found from my own investigations of Land Control in Kisii and Nyeri Districts, and confirmed by J. T. Fleming's studies in many areas of Kenya, see "An Analysis of the Kenya Land Reform Programme 1966-68", p. 52. Ministry of Lands and Settlements, Nairobi 1968 (Unpublished).



TABLE 3  
THE LAND MARKET IN KISII

	Transfers involving prior subdivisions					Transfers of complete plots	
	Average seller owns (ha.)	Average land sold (ha.)	Average land remaining (ha.)	Per cent of land sold (%)	BASE	Average land sold (ha.)	BASE
Irianyi ...	5.2	1.2	4.0	23	101	1.7	28
Bosongo ...	4.4	1.1	3.3	25	40	1.5	7
Moocha ...	3.3	0.7	2.6	21	6	2.1	4
Bogetutu ...	3.1	0.6	2.5	19	42	0.9	18
<b>Kisii District</b>	<b>4.5</b>	<b>1.0</b>	<b>3.5</b>	<b>22</b>	<b>189</b>	<b>1.4</b>	<b>57</b>

NOTE: Minimum holding recommendation for Control Boards—3.0 ha.

SOURCE: Minutes of the Land Control Board Meetings for the 4 Divisions with registered holdings in Kisii District (March 1968—October 1970).

In few cases will a landowner be willing to sell more than 30% of his holding, and only on rare occasions will the major portion be sold. In Kisii District most transactions appear to involve prior subdivision, and since registration 77% of all transactions have been of this type. The other dealings involving transfer of a complete plot therefore account for a minority of transactions in Kisii, with the average size of holding sold around 1.4 ha., and in few cases is more than 2.0 ha. transferred in this fashion. In Nyeri in contrast, where holdings are smaller, most transactions are transfers of complete plots, usually well below the average size. Taking the Land Control Board minutes for selected periods<sup>18</sup> in Tetu Division, it appears that the average land sale is around 1.0 ha, with the majority of sales in the 0.4-1.6 ha. range, while the average holding is 1.8 ha. There appears to be no tendency for the average land transferred to be varying over time.

From this evidence on the pattern of transactions and the size of holdings transferred, one clear conclusion emerges. Natural market forces appear to be working to cause subdivision on the larger holdings through transactions down to a certain critical size, which is likely to vary widely between areas due to differences in types of agricultural production, capital utilized, population pressure, ecology, etc. As these latter determining forces are modified over time so it seems likely that the market will operate towards different holding sizes than at present. There are several reasons militating against subdivision of the smaller holdings at present. The desire

<sup>18</sup> Aug., Sept. and Oct. of 1963, 66 and 70. 104 transfers of complete holdings were covered. (Before 1963 the minutes did not give details of size of holdings transferred). With over 4,300 registered transactions in Nyeri, some selection was necessary, unlike Kisii.

to retain land for heirs, and a reluctance to sacrifice the family's production possibilities, are of primary importance. An additional reason is that often farmers still wish to maintain a certain portion of land for production of their own food crops, as well as some cash crops such as tea and coffee which provide a welcome income. In Kisii, the desire by many farmers to keep some cattle, even if they are local varieties giving low returns, also necessitates a larger farm size.

Where prior subdivision is involved before a transaction, fragmentation is the usual consequence. The purchaser seldom has an adjoining holding, and often the plot acquired is a considerable distance away. In the Kisii survey conducted by the writer, the majority of the purchases involving subdivision investigated, were accompanied by fragmentation. Partly as a consequence of these transactions, this survey of 77 farms revealed the following pattern of plot ownership:

45 respondents owned	1 plot
20 respondents owned	2 plots
7 respondents owned	3 plots
5 respondents owned	4 plots
<hr/>	<hr/>
Total 77 respondents owned	126 plots

This tendency towards fragmentation seems likely to continue as purchasers often find great difficulty acquiring land contiguous to their own plots.

Transfer of whole plots may lead to consolidation in rare instances where a purchaser acquires a holding adjoining his own, which was formerly owned by a farmer with his homestead plot elsewhere. Usually when the owner of multiple plots decides to sell one, the purchaser will not have a contiguous holding, so the fragmentation is not eliminated. In fact the effects of the fragmentation may be worse than before if the plot purchased is further away from the purchaser than the seller.

At this point it is interesting to enquire who are the buyers and sellers of land, whether these people have alternative employment outside the agricultural sector, and what size of farm they own before the transaction. Of the 29 respondents surveyed who purchased land in Kisii, 13 were full-time farmers, but the other 16 had off farm employment with 12 of these people self-employed as traders of various kinds, the other 4 being government employees. In sharp contrast only one of the 19 sellers of land had any employment outside the farm, and in this respondents' case, it was as a trader. People in financial hardship are often forced to sell a portion of their land to raise cash, widows being a typical case.

From the survey it appeared that both buyers and sellers of land own holdings above the average size of 3 ha. in the sub-location covered in Kisii, the average buyer owning 4.8 ha. before the transaction, while the average seller owned 6.4 ha. These results, if representative of elsewhere in Kenya, indicate that there is no growing concentration of land ownership occurring at the moment, with very small farmers gradually being bought out by large land-owners. In the future an association may develop between holding size and wealth as land transactions become more common, with

sellers being frequently those in financial difficulties. However, the inheritance factor will further limit any tendency for rural income differentiation to develop, with accumulation of large holdings in a few hands. The respondents who purchased land were found to have a mean number of 5.6 sons, while those who did not has an average of 3.9 sons.

At this juncture it is pertinent to ask why people purchase land, and whether their motives are economic or non-economic, as this will help to determine whether the market is acting to ensure the most efficient use of the scarce land resource. This may give some clue about the type of land control needed in the future, now that registration has made this feasible. The 4 main motives for purchasing land appear to be:

1. Provision of land for children's inheritance, especially as many are beginning to realise that their heirs may be unable to find paid employment even if they go to secondary school. The higher number of sons which purchasers of land have, suggests that because with larger families the amount of land needed for inheritance is greater, this may be an important reason for acquiring extra holdings. Here however it is difficult to isolate cause from effect, as there is a correlation between holding size and family size which may indicate that the temptation is greater to have more children when holdings are large.
2. In order to give each wife a separate holding where a marriage is polygamous. Often husbands may prefer to own multiple fragmented holdings as it keeps the different wives separate, making life simpler.
3. Land is a source of revenue. Additional holdings acquired through purchase enable a family to raise its income level, although not necessarily immediately as there may be a shortage of capital to develop the land. In many cases there will be little will to cultivate holdings acquired until the needs of an expanding family dictate the necessity to increase production.
4. With rapidly rising land values caused by growing land scarcity with population pressure, increased production possibilities, and the growing demand from those with regular non-farm incomes, land purchase represents a sound investment. At present speculation is largely limited to land near main roads or market centres, but it may become more extensive in the future.

Thus the motive for acquiring land is often not economic, and even where it is, a better land utilization may not result. In the area surveyed in Kisii many respondents who acquired land over 10 years ago had not planted any crops, or even cleared their new holdings in a few cases. Many purchasers had only utilized a portion of the additional land for crops, and grazed local cattle, which gave poor returns, on the remainder. The need for effective land control over purchase is apparent.

Leasing seems to be fairly common throughout Kenya's smallholder areas, with the prevailing pattern rather similar to the Ulster "conacre" system, leases normally being for short periods of 1 or 2 years, and occasionally 3 years where the lessee decides to plant pyrethrum, as that time span is its production cycle. The production effects are very favourable,

as leased land is always cleared and cultivated quickly. These effects are even greater than might be expected from surveying holdings leased, as lessees often grow food crops such as maize on the land leased, and specialise on their homestead plots entirely in permanent crops such as tea, coffee, bananas etc. As leasing is inexpensive often very small farmers with little land of their own may decide to lease in order to expand their production possibilities, and frequently landless younger sons are lessees. Legally leases of over 2 years should be registered,<sup>19</sup> and therefore subject to land control, but in practice none are. This means compensation of lessees for improvements made on expiry of leases is impossible to enforce.

Registration appears to be a factor which was welcomed by people who would have purchased land in any case, rather than an influence on the respondents intention to purchase, although it may have had an effect on when they purchased land. Many apparently decided to purchase immediately before land registration, rather than later, so that the holdings acquired could be adjudicated in their names, without having to go to the trouble and expense of doing so after registration, while at the same time they realised that they would not have any problems with land disputes over holdings acquired as in the past. The volume of transactions does not appear to have been influenced by registration, although there is a continuous upward trend. A temporary movement around the trend line is all that can be ascribed to the land reform. However perhaps in the longer term if no registration had occurred, complicated and expensive conveyancing such as that in West Africa would have been a constraining factor on the development of the land market.

#### MORTGAGING OF LAND

After registration many farmers, who could not otherwise obtain agricultural credit were able to offer their land as security and get loans in return, from the governmental credit agency and the commercial banks. Prior to the granting of title deeds in Kisii District, a few loans were made by the state sponsored Agricultural Finance Corporation as it was the government's policy to lend to at least some people in all areas of Kenya, even where land had not yet been registered, to avoid any charges of regional discrimination. The grade cattle granted under the loan scheme served as security, but there was always the risk of the stock dying. No security could be offered in respect of credit utilized for capital improvements on the farm or crop developments. The repayments record was poor on these loans, but this need not be taken as an indication of the disadvantages of lending to farmers with unregistered holdings, as in the early days of the A.F.C. granting smallholder loans in Kisii, the repayments record, even from registered holdings, was not as good as it is now, due to the lower standards of credit supervision, and the less comprehensive application procedure. The commercial banks were more reluctant to extend credit to smallholders without title deeds, although a few unsecured loans were made, largely to win new customers.

<sup>19</sup> Under the Registered Land Act, Cap. 300 Section 47.

The views on the usefulness of title deeds as securities are partly coloured by political considerations. Thus the A.F.C. and the newly formed Kenya Commercial Bank Ltd.,<sup>20</sup> in which the government owns a majority share, stress that it is useful to have the title deeds so that if there is defaulting with repayments, then the money lent can be easily realized through the sale of the land. The A.F.C. has not hesitated to resort to this recourse in the past, although normally the debtor was given a period to repay in excess of the 3 months permitted before notice of sale can be given by law,<sup>21</sup> the time allowed depending on the validity of the reason given for failure to repay. K.C.B. officials stress that they will be fair in their treatment of farmers in debt, and that account will be taken of genuine difficulties experienced, but they will not hesitate to act in the case of persistent debtors in the future.

The two private, foreign owned, lending institutions, the Standard Bank Ltd., and Barclays Bank D.C.O.<sup>22</sup> have more trepidation about selling land owned by farmers in debt to them, and in fact in Kisii, neither bank has done so yet. In Nyeri however, Barclays have in a few cases sold the land of persistent debtors to reclaim the amount lent and the interest, and paid the remainder of the money realised from the sale back to the farmer who has lost his land, which he can use to make a fresh start. The Standard Bank has never done this as they have been able to keep a check more easily on debtors through employing loans officers who are specialised in dealing with smallholder credit.

There were some problems in a few cases of disposing of the land in the mid 1960s when often the dispossessed farmer would try to get his neighbours together at the time the holding was being auctioned, in order to try to prevent any purchaser coming forward. Since this time, less difficulty has been experienced in this respect, as debtors have come to realise that attempts to keep their land are futile, while in a situation of land scarcity, buyers have not been intimidated by any threats made. The main reason for eviction and land sale is to set an example to other bad debtors, so that they can see that unless they repay, they will also lose their lands. Threats, some bank managers stress, are useless unless carried out occasionally. Normally holdings to be put up for sale are selected on a geographical basis, and there is maximum publicity about the sale, so that other debtors in the area will get the message. Such selection in the past in certain locations has been very effective, with repayments improving remarkably after an eviction.

The Commercial banks are still a more important source of credit than the A.F.C., even despite the introduction of the International Development Association project, backed by the I.B.R.D., which the government's

<sup>20</sup> Formed when the Kenya Government reached an agreement with National and Grindlays Bank Limited in 1970, that the state should take a 60% share in the latter, with 40% remaining in private hands.

<sup>21</sup> Under the Registered Land Act, *op. cit.*, Section 74 (2).

<sup>22</sup> Negotiations are at present under way for state participation in both these banks.

agricultural credit agency handles.<sup>23</sup> In Nyeri almost three-quarters of the loans granted to date have been from commercial bank sources, while in Kisii the commercial banks dominance has only been challenged recently with the inauguration of the "Kreditanstalt für Wiederaufbau"<sup>24</sup> scheme, financed by the West German Government, and managed in close cooperation with, and on the same terms as the A.F.C. scheme. This high proportion of credit from commercial sources may seem surprising as smallholder lending has until now been at best marginally profitable for the banks, and in many instances, heavy losses have been experienced, largely due to the high administrative costs associated with this kind of operation, but also because of poor repayments in many areas.

There appear to be several factors explaining the major role which the commercial banks are playing in the provision of smallholder credit:

1. The banks have excess liquidity, and wish to find an outlet which at least provides some returns on their capital, rather than let it lie idle.
2. During the colonial period, the banks used to lend large amounts to the European farming community. However, in the 1960s with the numbers of European farmers decreasing rapidly as settlement schemes were introduced, and with those remaining living off, to a large extent, their existing capital, and not investing as much as before, it became necessary for the banks to find alternative sources of investment.
3. There is a desire by the banks to expand their business in the rural community, and get more clients. They hope that many people who have not previously been in the habit of using banking facilities will do so now.
4. The expanded production possibilities for the smallholder mean there are greater opportunities for investment in farming. The banks are prepared to lend to the progressive farmer who wants to substitute grade for local cattle, or to undertake crop development, as the high returns should facilitate repayments, even though there are risks involved.
5. With growing paid employment opportunities for African landowners outside farming, many have additional incomes from which loan repayments can be made. Thus even if the agricultural investments undertaken fail, repayment through deductions from salary means minimization of risks for the banks.
6. Many smallholders prefer the banks to the A.F.C., as the former do not require a 20% deposit, loans are made in cash rather than kind as with governmental credit allowing greater flexibility in loan utilization and the application procedure is simpler. Because of these

<sup>23</sup> This World Bank (International Bank for Reconstruction and Development) scheme was started in 1969—see "The Tootell Mission on Agricultural Credit"—Report and Recommendations on Credit for Kenya Farmers", pp. 15-16 for details. Unpublished report (1970). Sponsored by U.S. Agency for International Development.

<sup>24</sup> Loan Bank for rebuilding. The West German small-holder scheme is operative in Kisii and Kericho only, 2 districts not covered by the IBRD-IDA project.

advantages many borrowers are prepared to accept the higher commercial bank interest of 9% compared to the A.F.C. rate of 7½%, and the shorter repayments period of within 2 years rather than the one-year moratorium and 5 years to repay which the A.F.C. offer.

7. Grant of title deeds to farmers means that borrowers have some security to offer the banks. This can be a better form of security than might be imagined from the remarks made earlier about land sale. If the banks have possession of a farmer's title deeds, he will have difficulty obtaining an additional loan until the first loan is repaid. In Kisii repayments to the Standard Bank, formerly the main source of lending in the District, have been coming in rapidly since the K.F.W. scheme started, as many smallholders want their title deeds back to get loans under this new scheme.

The need of most smallholders is for loans of very limited amounts. On a small farm the scope for development is limited, and thus so are capital needs. The typical loan from the banks and A.F.C./K.F.W. schemes is in the 2,000-4,000 shs. range,<sup>25</sup> although Barclays Bank who concentrate on fewer smallholders than the other banks, offer larger amounts. With such small loans, it becomes difficult to realise enough revenue from the interest even to cover the heavy administrative expenses involved in processing applications, while visits to the farms of debtors automatically means losses are incurred. Provision of properly supervised credit is not possible for the commercial banks as such an operation would be too costly, and even the A.F.C. finds it impossible to provide an effective follow up. Some element of government subsidy is clearly needed.<sup>25</sup> Perhaps the best solution will come from closer co-operation with the extension officers of the Ministry of Agriculture. These officers should visit all loan recipients to ensure that credit is utilized effectively, advise on investments undertaken and stress on borrowers the responsibilities they face for repayments.<sup>26</sup> The extension officers will have to be given special training for these tasks. The Ministry of Agriculture employees assigned to K.F.W. loans officers have already received such valuable training on the job.

Most of the credit granted under the A.F.C. schemes is for grade cattle and items associated with dairying, as Table 4 illustrates, and this is also true for the commercial banks, although in Nyeri a substantial proportion of bank lending goes towards crop development. A recent report on agricultural credit<sup>27</sup> stresses that more diversification of credit utilization is desirable but officials stress that the current pattern reflects the demands of the farmers. A greater effort may be needed to illustrate to smallholders the scope for development, and how credit can help them fulfil new plans.

<sup>25</sup> See S. M. Makings "Agricultural Problems of Developing Countries in Africa", p. 84, O.U.P. Nairobi 1967.

<sup>26</sup> The integration of credit and extension services can also serve wider rural development aims. See H. Belshaw "Agricultural Credit in Economically Underdeveloped Countries", pp. 199-203. F.A.O. Agricultural Series No. 46 (Rome 1959).

<sup>27</sup> The Tootell Mission Report, *op. cit.*

TABLE 4  
UTILISATION OF GOVERNMENT CREDIT

	Kisii		Nyeri	Kenya
	A.F.C. <sup>1</sup> (%)	K.F.W. <sup>2</sup> (%)	I.D.A. <sup>3</sup> (%)	I.D.A. <sup>3</sup> (%)
Grade cattle ... ..	61	65	58	50
Dairy equipment ... ..	4	2	8	6
Fencing ... ..	11	4	19	11
Water development ... ..	18	15	15	11
Crop development ... ..	3 <sup>4</sup>	12 <sup>5</sup>	—	15 <sup>6</sup>
Other <sup>7</sup> ... ..	3	1	—	6 <sup>8</sup>
BASE ... ..	67	136	104	673

<sup>1</sup> March till September 1970.

<sup>2</sup> June 1969 till August 1970.

<sup>3</sup> 3rd quarter 1970.

<sup>4</sup> Tea.

<sup>5</sup> 8% tea, 4% potatoes.

<sup>6</sup> 6% potatoes, 3% bananas, 2% maize, 2% cotton, 2% tea.

<sup>7</sup> Mostly for clearing land and pasture development.

<sup>8</sup> 1% pig development, 3% poultry development.

SOURCES: Kisii figures calculated from A.F.C. and K.F.W. returns. I.D.A. data computed from the Smallholder Credit Project Progress Report, A.F.C. 3rd Quarter 1970, Statement 3.

A more limited class of people benefit from credit than was envisaged by many of the strongest supporters of land registration and grant of title deeds. Firstly borrowing is now limited to registered proprietors. A few of these are excluded where land is jointly registered and one of the owners is a minor, as the latter cannot sign loan application forms. The borrowers covered in Kisii in the survey conducted by the writer had mostly off farm employment, and a large proportion of commercial bank loanees were in full-time salaried positions. The survey illustrated how credit agencies favour the larger farmer, often with 3 or 4 ha., rather than the smaller ones. This is inevitable when the main criteria for selection of borrowers is capacity to repay rather than security offered. Those with regular incomes are in a favoured position, while the larger farmer with a reasonable cash income from existing farm developments has a clear advantage.

#### LAND LITIGATION

The figures on the reduction of land litigation in the courts with registration seem impressive, and there can be no doubt that considerable sums of money which were formerly spent on court actions are being saved. In Kisii, for example, in 1955, over 260,000 shs. was spent on land litigation, which represented one-quarter of the value of coffee production in the district that year. In addition it has been estimated that perhaps five times



the amount spent in the courts went to witnesses and elders who arbitrated in disputes before the court stage was even reached.<sup>28</sup> Now once an area is declared ready for adjudication of land rights, the stage immediately before registration, all legal suits are suspended. This is largely for administrative convenience, in order to speed up the reform programme.

Table 5 illustrates the reduction in Kisii since adjudication started there in 1963, with the drop in cases before the Divisional African Courts being gradually reflected in a corresponding decrease in appeals going to the District Magistrate and District Officers Appeals Court till its abolition in 1964.

TABLE 5  
LAND LITIGATION BEFORE ADJUDICATION IN KISII

Year	Divisional African Courts	Appeals Magistrate	D.O.'s Appeals Court	P.C.'s Court of Review
1961	1,224	240	N/A	44
1962	1,181	59	N/A	8
1963	798	172	129	23
1964	666	263	53	81
1965	536	88	—	31
1966	228	85	—	140
1967	246	—	—	—

SOURCE: Returns of the African Courts in Kisii District and Nyanza Province.

A large number of cases were still filtering through, however, to the Provincial Commissioners Court of Review at Kisumu until its abolition in 1966, although these were from throughout Nyanza Province, and not only Kisii. Calculations from these returns indicate that probably at least one-fifth of all landholders in Kisii were involved in court cases over land at some stage. Much time used to be wasted on court proceedings, especially as the contestants had normally a considerable amount of travelling, often on foot to reach the Divisional Court, and if an appeal went to the Court of Review at Kisumu around 115 Km. from Kisii, travel expenses soon mounted.

An analysis made of 61 land cases brought before the Divisional African Court for the Kisii area, one of four for the entire district, revealed in 1963 the following reasons for litigation:

- 46% Boundaries
- 28% Transactions
- 21% Land Stealing
- 5% Rights of Way.

<sup>28</sup> F. D. Homan and R. A. Sands "Land Tenure Reform and Agricultural Development in the African Lands of Kenya", p. 2. Unpublished paper, Development Centre on Land Policy for East and Central Africa—Fort Portal, Uganda (1960).

With holdings registered disputes between registered landowners over boundaries are now impossible, as any uncertainty over the demarcation of a holding can be cleared up by consulting the registry, where maps of all plots are kept. It is no longer necessary for purchasers of land to go through the courts to have their rights confirmed over land acquired, as once transactions are registered following approval by the Land Control Boards, a seller cannot claim his former land back, so the purchaser need have no fears. A registered proprietor who is absent from his holding has his rights safeguarded, and if anyone tries to occupy his holding, without the landholder's consent, there will be no problem about evicting that person. During adjudication, care was taken to ensure that all registered holdings had access to roads, and as far as possible, water supplies, and with the rights of access clearly demarcated, disputes are unlikely.

With the land reform certain categories of people lost their land rights:

1. During land consolidation in Central Province, many cultivators were away in detention as Mau Mau suspects. These farmers never had their former customary land rights registered.<sup>29</sup>
2. The "ahoi" of Central Province, who were tenants at will, never got their rights legally recognised, even though provision was made in the Registered Land Act for this.<sup>30</sup>
3. Landholders absent when adjudication was in progress frequently lost their rights, despite the recourse for appeal and local representation adjudication committees.<sup>31</sup> Where nobody informed the adjudication committee or demarcation officer about an absent landholder, on his return, perhaps from agricultural labouring or urban wage employment, he will find his land rights have not been registered.
4. Holdings were frequently adjudicated in the name of the family head, ignoring the fact that married sons were cultivating their own plots

Where these categories of people remain as cultivators on the registered holdings of others, often disputes result, but as their names are not on the register, they can have no legal protection. Although the social costs of the land reform can be exaggerated, especially outside Central Province, these losses should not be forgotten, and the continuing disputes within the confines of registered holdings must be offset against the economic benefits achieved by the reform as a consequence of the saving in time and money with the ending of court litigation.

<sup>29</sup> M. P. W. Sorrenson points out how consolidation during the Emergency "Became associated with the anti-Mau-Mau crusade", p. 240. "Land Reform in the Kikuyu Country, O.U.P., Nairobi 1967.

<sup>30</sup> Section 46 of the Act. Flidner explains the situation in "Some Legal Aspects of Land Reform in Kenya", pp. 4-6 (Mimeographed paper E.A.I.S.R. Conference Proceedings Kampala 1963).

<sup>31</sup> Section 17 of the Land Adjudication Act (Cap 283) allows for "objections to the record of existing rights". Section 9 covers the composition of the committee from local residents.

## SECURITY OF TENURE AND INVESTMENT INCENTIVE

The survey conducted in Kisii showed that nearly three-quarters of the 77 registered proprietors interviewed believed that registration meant increased security of tenure. Many suggested that as land registration confirmed their rights over their holdings, nobody could now deprive them of that land. One respondent remarked that registration had made him a "policeman of his land". Nearly 20% of the respondents specifically stated that they welcomed registration as it meant their boundaries were more secure than hitherto. However, none of the co-proprietors with jointly registered holdings interviewed felt more secure as a result of registration, largely because of the disputes they were having amongst themselves already referred to. It was these people who largely accounted for the 9% of respondents who saw no benefits from registration.

There does not appear to be any relationship between this increased security of tenure and added inducement to invest in the development of holdings in Kisii. The farmers interviewed appeared to be just as willing to plant permanent crops before registration as after. Any increase in investments on the farms since registration, appear to be a result of the increased capacity which the farmer has to invest, as those with title deeds usually find it easier to obtain credit, as already indicated. The smaller farmer wants to develop his holding regardless of whether it is registered, in order to provide for his family's subsistence, as well as some cash income. Larger farmers do not feel more inclined to bring more of their under-utilised or uncleared land into productive use as a result of registration. There were no indications that the farmers or their families seemed to be working harder than before.

Probably a major reason for this finding is that even despite the large volume of litigation over land, the landholders before registration did not feel very insecure, or worried about losing large portions of their land. In Kenya, the cultivators were not in the position of the sort of tenants which Arthur Young was considering in Ireland or France, subject to the whims of a capricious landlord. Land scarcity had only recently started to emerge as a problem, and only just over 30 years ago in Kisii, with abundant land freely available, there was not much need to worry about security of tenure. The larger farmers in Kisii still have much underdeveloped land, and hence even if some was lost in a dispute their current economic position would not be affected, but merely future production possibilities, which did not greatly concern many of the older landlords in any case. The degree of insecurity was not great for the family heads, as they could usually count on the support of the elders in any dispute. Therefore, it is not surprising that incentive is unaffected by the reform.

## LAND CONTROL

Before registration of land, it was impossible to control dealings in land, but now since the land reform programme has been implemented it is possible to use controls to achieve economic and social aims. The 1959 Land Control (Special Areas) Act, and the subsequent Land Control Act

of 1967 which currently applies, made provision for the establishment of land control boards which were given wide powers to approve or reject any application to deal in land as they saw fit.<sup>32</sup> These boards, set up for each administrative division throughout the Republic, normally comprise the District Officer who acts as Chairman, and one or two other Government officials, one being the Assistant Agricultural Officer for the division, while the remaining 8 or 9 members consist of 2 county council nominees and prominent local landowners, many of whom have off farm occupations as school-teachers, traders, etc.<sup>33</sup> The Land Registrar attends board meetings but has no vote. As presently constituted, these boards seem more effective bodies for implementing controls which take account of social rather than economic factors. The members lack the experience and background to assess the economic implications of the various dealings.

Until recently, with the legislation not very specific on the criteria the boards were to apply to reach their decisions, and with little detailed guidance from Nairobi, the boards were left to devise their own standards for approval. The legislation states that the boards should take account of the utilisation of land after any transfer, without specifying how this should be judged or enforced.<sup>34</sup> Account should also be taken of the amount of land an intending purchaser already has, but no size ceiling is recommended.<sup>35</sup> One specific prohibition is on transfers to non-citizens of Kenya, or private companies or co-operatives controlled from outside Kenya.<sup>36</sup> The only detailed "economic" recommendations the boards received concerned minimum holding requirements. The boards were informed by the Ministry of Agriculture that it was deemed undesirable for subdivision to be permitted as a result of transactions which would result in holdings of less than 3.0 ha. in Kisii, and 2.4-4.8 ha. in Nyeri, depending on the ecological zone.<sup>37</sup> Many boards ignored these recommendations which were unrealistic in any case as the average holding is 2.4 ha. in Kisii and 1.5 ha. in Nyeri, well below the minimum recommendation for a "viable economic holding".

Before consideration can be given to how useful a function the control boards are serving, and whether further controls are needed, it is necessary to find out more about the relationship between differing land tenure structures and economic development. The question of farm size is crucial, especially when assessing whether the boards should be taking account of ceilings and floors on holding size when reaching decisions on transfers.

In developed parts of the world larger farms are usually advocated in the

<sup>32</sup> Section 6 of the 1967 Act gives details of coverage. K. M. Maini in "A Guide to Registration of Title Practice" pp. 56-62, briefly describes the legislation.

<sup>33</sup> The first schedule outlines the composition of the boards.

<sup>34</sup> Section 9 (1) (a) and (b).

<sup>35</sup> Ibid.

<sup>36</sup> Section 9 (1) (c).

<sup>37</sup> 4.8 ha. High Bracken Zone

3.2 ha. Kikuyu Grass Zone

2.4 ha. Star Grass Zone

4.0 ha. Grass Woodland Zone.

interests of efficiency, and arguments about evolution of tenure structure usually centre on such questions as amalgamation of holdings. Economies of scale can be realised when capital intensive techniques such as mechanised ploughing are introduced onto farms thus saving on expensive labour, which would be better deployed in more productive sectors of the economy. However, in developing countries such as Kenya, land and capital, rather than labour are the factors in scarce supply. There is much under-employment of labour in the agricultural sector, and few alternative employment opportunities, which means that development must be seen in terms of a more intensive utilisation of the scarce land factor and labour absorption, rather than increasing labour's productivity. The innovations needed are those which benefit the smallholder through enabling him to use his land more intensively, such as the introduction of better seed, cheaper and improved fertilizers, etc., labour using rather than labour saving techniques, usually with constant returns in relation to increasing farm size.

In terms of output per hectare, the evidence suggests that smallholdings are more efficient than larger farms as Table 6 shows. With only limited data available for Kenya's smallholder areas, figures are also taken from India, where planners face similar problems in expanding agricultural production, and augmenting rural employment opportunities.

TABLE 6  
EFFECT OF FARM SIZE ON OUTPUT PER HECTARE

Kenya (Sample A)		India (Sample B)		India (Sample C)	
Farm Size (ha.)	Average Output per ha. (shs.)	Farm Size (ha.)	Average Output per ha. (rupees)	Farm Size (ha.)	Average Output per ha. (rupees)
1.6-2.7	1,255	0 -1.9	593	0 -1.9	746
2.8-3.9	1,354	2.0-3.9	530	2.0-3.9	689
4.0-6.3	1,138	4.0-7.9	422	4.0-5.9	672
6.4+	939	8.0+	254	6.0+	645

SOURCES: Kenya (Sample A) "Some Aspects of Agricultural Development in Nyeri District" Table IX p. 17. Report No. 25. Statistics Division, Ministry of Economic Planning and Development (1964). Base 49 : farms in Nyeri District.  
India (Sample B) Figures cited by E. J. Long "The Economic Base of Land Reform in Underdeveloped Countries" p. 204 in S. Spiegelglas and C. J. Walsh (eds.) "Economic Development: Challenge and Promise" Originally in Land Economics, Vol. XXXVII, No. 2 (May 1961) pp. 113-123. Base : 100-200 farms from each of 7 Indian States.  
India (Sample C) *ibid.* p. 206. Base : 225 farms in 3 villages, Bihar State.

Figure 1 illustrates the relationship suggested by the data with output per hectare declining (XY) with increasing farm size (AB) (Quadrant I). Output per man increases with farm size (Quadrant II), but the shift

from C to D as farm size shifts from A to B, is only possible if the supply of capital is increased by EF (Quadrant III). Such an increase in capital, especially if the main component is farm machinery, may make agricultural labourers redundant, and place serious strains on the balance of payments. Thus the present development problems are more likely to be solved through the continuance of labour intensive smallholder farming rather than larger collective or producer co-operative enterprises. Land Control Boards should be more concerned with placing a ceiling on accumulation of land rather than with subdivision of holdings.

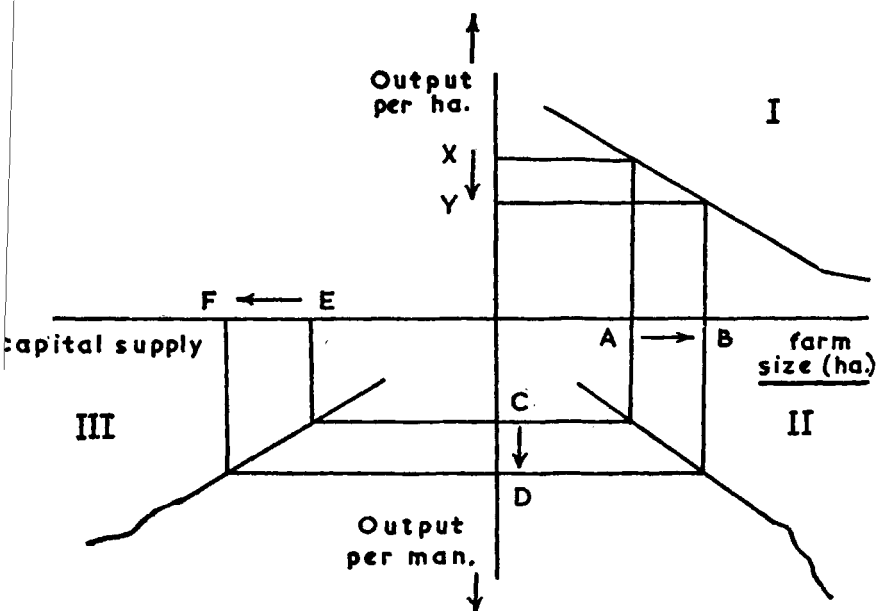


FIGURE 1

Figure 1: Relationship between farm size, capital supply and agricultural output.

In the recent handbook which was written for the guidance of the Boards, it is noted how "Hitherto Land Control Boards have been far more concerned with the social effects of transactions than with the economic aspects. For example, they have been more concerned with whether family rights under customary law are likely to be affected, whether a man who proposed to sell his land has somewhere else to go to, and whether a man from one tribe can purchase land in the tribe of another".<sup>38</sup>

<sup>38</sup> "A Handbook for the guidance of Land Control Boards", p. 10. Ministry of Lands and Settlement (Nairobi June 1969).

The present handbook is designed to give the board members an idea of the sort of economic criteria they need to consider. The boards are advised to question the intending purchaser about his plans for the holding, consider if he has the resources to carry out such plans, and whether the plans are realistic in the light of the agricultural potential of the land. The agricultural officer should be able to advise the other members in these respects. More attention needs to be paid to this sort of consideration, especially in the light of non-economic motivations of many purchasers, outlined earlier in the section on the operation of the land market. Where purchase will result in serious fragmentation, making management of distant holdings acquired difficult, refusal seems inevitable, although at present, this is seldom the case. Similarly, when purchasers have off farm employment, as is frequent, the Boards should satisfy themselves that intending buyers have made adequate plans for the management of their new holdings.

Although the Boards must approve all mortgaging of land to commercial banks, this approval is merely a formality at present. The borrower is required to attend the Board meetings, but no representative from the bank concerned is ever present. The Board members make no enquiries concerning the purposes for which the money is to be spent, or whether the borrower is a capable person to utilise the finance successfully on agricultural development. There is clearly scope for more effective control here. It is important that the agricultural officer should be present at Board meetings, so that he can arrange for visits by Ministry of Agriculture personnel to the farms of borrowers, to give advice, and ensure that the money is used effectively to promote development on the holdings.

#### INHERITANCE AND SUB-DIVISION

Under the customary inheritance system which still prevails in all of Kenya's smallholder areas, every son receives a portion of his father's land, either when he marries or on the death of the father. In the past, most of the sons were allocated a holding of their own when they married by their father, if they had not acquired land for themselves elsewhere, but in many cases the youngest son only received land on the death of the father, as normally they had the responsibility of keeping their father on the remaining land during his old age. With the lack of paid employment opportunities and little alternative land available for occupation to many, it seems socially desirable that each son should receive a portion of his father's land if possible, no matter how small, as this is the only means the son will have of providing for his and his families' subsistence, in the majority of cases.

A recurrent worry of many lawyers and political scientists, who have reviewed the inheritance system, has been that if the customary inheritance procedure is allowed to continue unchecked, all holdings will have become sub-divided into minute plots. Thus, for example, one observer describes the retention of the traditional method of inheritance as the Achilles heel

of the whole land reform programme.<sup>39</sup> It is true that attempts to impose controls on subdivisions with successions have been completely ineffective. Sorrenson cites how in Central Province few successions were being registered.<sup>40</sup> In Kisii, the file on successions is a very thin one, with only 30 successions registered to date, representing less than 1% of the probable deaths of registered landowners since registration was first started in the District in 1965. Successions appear only to be notified when the heir or heirs want a title deed in order to deal in land, either through mortgaging the holding, or selling a portion. Although this failure to register is largely due to ignorance of the need for notification it seems likely that if any attempt were made to control subdivisions effectively, there would be popular resistance.

At present Land Registrars have been instructed not to permit subdivisions below the minimum holding requirements recommended by the Ministry of Agriculture. However, provision is made for registration of up to 5 joint heirs under the Registered Land Act, even though in practice holdings jointly registered are usually subdivided on the ground. Where there are more than 5 heirs, and subdivision would violate the minimum holding requirements, the law lays down a complicated and rather unpractical procedure involving compensation from those who inherit the land to the dispossessed brothers.<sup>41</sup> Any succession formula which involved widespread dispossession of heirs would face opposition, as to become landless in a situation of few alternative employment opportunities means great hardship. Fliedner, recognising this fact, recommended allowing subdivision of the smaller holdings, which will occur in any case, while preventing the break-up of the larger holdings through financial compensation from development loans to dispossessed heirs.<sup>42</sup> This solution is, however, based on a misplaced faith in the "economic efficiency" of larger holdings in the context of underdevelopment.

With population growth at over 3% throughout Kenya, holdings are rapidly becoming smaller.<sup>43</sup> Nevertheless, this trend need not be feared on economic grounds, as it has already been noted that smaller holdings are

<sup>39</sup> J. P. W. B. McAuslan "Control of Land and Agricultural Development in Kenya and Tanzania", p. 208, in "East African Law and Social Change", ed. Sawyer. East African Publishing House, Nairobi 1967. The customary law on successions still applies under S120 of cap. 300 op. cit. The Commission on the Law of Succession (1968) under H. Slade recommended the discontinuance of this (par. 211). It was proposed that the widow should receive the whole of her deceased husband's estate, thus preventing immediate subdivision except in the case of polygamous marriages (par. 135). However as daughters were to be given equal inheritance rights, whether married or unmarried (par. 138), ultimately the Slade Reports implementation would result in even more subdivision.

<sup>40</sup> "Land Reform in the Kikuyu Country", op. cit., pp. 215-216. S120 of cap. 300 op. cit. outlines the procedure.

<sup>41</sup> Registered Land Act Section 120 7(a).

<sup>42</sup> Fliedner, op. cit., p. 10.

<sup>43</sup> Kenya's overall population growth is 3.1%, the highest in East Africa. In Nyanza Province it is 3.7%, while Kisii has one of the highest growth rates in the Republic, 4.8%.



more intensively cultivated. At present in Kenya's high potential areas, large farms may be justified for hybrid maize seed, where large blocks are needed, and careful supervision, but not for much else. Dairying, for example, can be carried out successfully on minute plots if stall feeding is adopted, and proper lays planted, as the Chagga living around Mount Kilimanjaro in Tanzania have proved. The strongest argument in favour of large farms concerns managerial economies. Where good management is a scarce factor it seems wasteful to deploy it, quite small holdings where progressive farmers will not have the scope to realise their potential. However, perhaps the energies of such people could be utilised more profitably by encouraging them to become extension workers, even on a part time basis, so that they can advise other farmers about the adoption of improved techniques. This seems a more efficient solution than greatly differentiated holding sizes, which would be the inevitable outcome of adopting Flidner's recommendations.

#### LAND TAXATION

Land registration opens the way for the introduction of a land tax in Kenya. Experience in other countries shows that such a tax can have an output-increasing effect, especially where the agricultural sector is far from maximizing its production. In Japan, for example, the high land taxes imposed during the late nineteenth century played an important part in promoting agricultural development through ensuring a more effective land utilisation,<sup>44</sup> and also served as a transfer mechanism which aided industrialisation.

There are three ways in which land tax can help agricultural output-increase:

1. The larger landowners with some under-utilised or uncleared land will find that they still have to pay tax on that land. This makes it unprofitable for any owner to keep land lying idle. The only solution is either for the land to be developed so that any losses are avoided, or for the land to be sold, thus relieving the owner of his tax burden. The purchaser will be anxious to develop the land acquired, otherwise he, in turn, will incur losses through having to pay the tax.
2. In order to pay his tax bill, especially if the tax is imposed at a high rate, the small holder will be forced to work much harder to ensure an even higher production level from land which is already utilised. The peasant farmer may be encouraged to innovate on his holding to secure such production increases, through introducing more valuable crops, using fertilizers and manure to a greater extent, purchasing hybrid seeds, and replacing local with grade livestock.
3. Where the revenue from the tax is used for building up the infrastructure in the rural areas, through provision of improved roads, marketing will become easier. This should encourage the small-

<sup>44</sup> J. W. Mellor "The Economics of Agricultural Development", p. 85 (Cornell University Press 1966).

holder to produce more, as he has better opportunities to sell his produce. More money could be channelled into extension services which would perhaps aid the introduction of improved farming methods.<sup>45</sup> Revenue would also be available to help the expansion of agricultural credit facilities which should enable the landowner to undertake more developments on his holdings.

In Kenya, now that land registration is nearing completion throughout all the smallholder areas, a record exists of all landholders who have been granted rights of freehold ownership. Details are contained in the registers of the landholder's name and address and the size of his plot. This information should help Kenya if such a tax is imposed, avoid the difficulty which confronted the Japanese government in the last century, when the visit of land survey staff to each particular area was a signal for peasant revolts to break out, as the people knew that the land was being surveyed for taxation purposes.<sup>46</sup>

The question arises as to which form of land tax would be most suitable for Kenya. In many countries, the assessment has been based on the developments already on the land, rather than its potential for production. Such a tax would be related to ability to pay, with the amount of tax depending, for example on "the number of coffee trees, tea bushes, pyrethrum splits, or dairy cows, etc."<sup>47</sup> This would not have the favourable production effects which a tax imposed on unused land would have. In Kenya, with much land within the smallholder areas still uncleared, or merely used for grazing local cattle, and with most of the land which is at present being utilised capable of being developed more intensively a tax based on the amount of land owned seems the most logical. The tax could be imposed at a flat rate on each hectare of land owned, or at an increasing rate for larger holdings.

Probably a flat rate tax be easier to impose. Many of the larger landowners have several holdings, and if a tax was introduced at a progressive rate, then the total number of hectares which the owner was liable to pay tax on would have to be aggregated so that the tax assessment would be fair, and the owner of multiple holdings was not paying less on his marginal hectare than the owner of a similar sized farm which consisted of just one holding. Although in the registers records are kept of all of each farmer's holdings, each entry is separate, and it is difficult to trace how many holdings a particular landowner has. To check this would be a time-consuming and virtually impossible task, unless all the information on the registers was computerised, which would be a costly operation. As often people use different names, even this method would not be foolproof. With a flat rate tax, the marginal rate of taxation on each hectare remains constant, and this problem does not arise. Easier administration of the

<sup>45</sup> H. Rutherberg "African Agricultural Production Development Policy in Kenya 1952-65", pp. 125-126. Ifo-Institut Afrika-Studien 10. (Springer-Verlag, Berlin 1966).

<sup>46</sup> R. P. Dore "Land Reform in Japan", p. 65 (O.U.P. London 1959).

<sup>47</sup> E. S. Calyton "Agrarian Development in Peasant Economics" p. 141 (Pergamon 1964, London).

tax means the costs of assessment are reduced, and more net revenue raised.

For administrative convenience, it would probably be desirable to exempt all holdings under a certain size from the tax, with the maximum size for exemption varying with the potentiality of the land for development, the ecological zone in which the holding is situated being the main guide for assessment.<sup>48</sup> Any farmer who had part of his land infertile, could be given an opportunity to appeal against this assessment based on the ecological zone, and in such cases the tax assessors after visiting the farm, could perhaps raise the exemption limit or lower the tax rate. One problem which arises with such tax concessions is that some landholders might try to acquire multiple holdings, the size of each plot being just below the exemption limit. It would be up to the Land Control Boards to prevent this from happening.

The new land tax could be levied by the Central government to replace the present head tax and graduated personal tax. With a tax based on the size of holding owned, there is much less scope for fraud than with an income tax such as the graduated personal tax, as it is often difficult to estimate a farmer's income. The tax should be designed to yield at least as much revenue as those which it is replacing, and preferably more, as then the type of development expenditure which was outlined earlier, could be undertaken by government to an increasing extent.

There is likely to be a marked increase in the number of transactions after a land tax is imposed, as the larger landholders with under-utilised land start to subdivide and sell portions of their holdings. This may have a temporary depressing effect on land values, but cheaper land should encourage an increasing number of smaller farmers to become purchasers. There would be few people who would want to purchase land to provide for their children's inheritance, without developing it immediately, as at present. Fewer large holdings would continue to stay intact, unless they were highly efficient units, and the average farm size would probably be reduced as a result of this. Such a trend is not undesirable, however, as usually the smaller holdings are more intensively developed, and there seems little justification for large under-utilised holdings in a country where high potential land is scarce, and labour abundant.

### CONCLUSIONS

Land registration does not appear to have any marked permanent effect on the market in land. The operation of the market is causing subdivision of holdings, and any tendency towards concentration of ownership is limited by the reluctance of sellers to part with more than a minor portion of their holdings. Aggregation of holdings by a few purchasers is occurring, but the inheritance factor places restraints on this in the longer term.

Many landholders have been able to mortgage their lands since registra-

<sup>48</sup> In the Star Grass Zone the maximum size for exemption could be 1.5ha., and in the lower potential High Bracken Zone, 3.0 ha. would be realistic.

tion, and obtain credit for agricultural development, but often inadequate supervision, especially of commercial bank credit, which is the major proportion, has meant ineffective utilisation. This has been reflected in the poor repayments. It appears that many of the loan recipients have been people with off farm employment, a result of the banks basing their lending on capacity to repay rather than the security offered. The credit agencies take title deeds as security, as this is an additional incentive for borrowers to repay promptly, but loans are not normally made to owners of very small holdings with no outside employment merely because the applicant has a title deed to offer. Thus the significance of title deeds is not as great as many of the supporters of registration suggested, and it has not helped all classes of landholders to get loans.

Land litigation has been halted by adjudication and registration, but many people lost their land rights with the land reform and have no recourse for appeal. Considerable savings have been made, as the cost of land litigation was quite high, especially if appeals were made beyond the Divisional African Court. Less time is wasted over litigation, but disputes, usually amongst family members, within the confines of registered holdings still take up some time.

Although registration has increased security of tenure, there does not appear to be any correlation between this, and the incentive to invest, or work harder to develop a holding in the Kenya context. The reason for this may be that the smaller holdings were always relatively developed to serve immediate family needs, and also because even before registration, family heads did not feel very insecure, in spite of the land litigation.

With an inverse relationship between increasing holding size and agricultural output per hectare, there seems little justification for control over subdivisions with transactions. The Land Control Boards should be thinking more in terms of imposing ceilings on aggregation of holdings, halting harmful fragmentation, and scrutinising the development plans of all intending purchasers and mortgages, although social concerns should not be neglected.

Similarly, there is no need for concern over the subdivisions which are occurring as the customary inheritance system continues to be operative, with all sons receiving a portion of their father's land. Controls may only cause harmful effects, as the dispossessed are unlikely to find alternative employment.

Land registration presents a valuable opportunity for the introduction of a land tax, which will not only provide revenue for government expenditures on development, but may also ensure a more effective land utilisation, and encourage landowners to work harder.

Although the benefits of land registration have not so far gone to all classes of the rural community, in the future, if certain additional reforms are introduced, the benefits may be spread more widely. Despite the high costs of registration, the programme widens the possible means for helping future development, and creating a more prosperous rural society. Outside observers must realise that full advantage has not yet been taken within Kenya of the land reform programme.