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**REFORMING LAND RIGHTS
IN SUB-SAHARAN AFRICA**
ISSUES OF EFFICIENCY AND EQUITY

by Jean-Philippe Platteau

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◆ Preface

Structural adjustment programmes typically promote the privatization of publicly-held assets and encourage support for the market economy in the interests of economic efficiency. This paper, prepared as part of the UNRISD research project on Economic Restructuring and New Social Policies co-ordinated by Jessica Vivian, examines the implications for efficiency and equity of the privatization of common property and the formalization of individualized land rights in sub-Saharan Africa.

The author presents persuasive theoretical and empirical evidence indicating that efforts to formalize and enforce private land rights in Africa will not necessarily result in increased agricultural production or reduced environmental degradation. At the same time, the adverse social impacts of such proposed land rights reforms are potentially severe. He first examines the case of common property resources, which, as the paper indicates, are usually regulated in both formal and nonformal ways. Transfer of village-level common property to state ownership has rarely been successful because effective government supervision is much more difficult than community-level regulation. However, privatization of lands currently held by the state does not guarantee an improved outcome: private property rights may be very difficult to establish and enforce and, in the absence of perfect and competitive markets, individuals losing access to land because of privatization arrangements are unlikely to be adequately compensated. In addition, experience shows that private land owners often use their land less efficiently than do community managers: if they buy land for speculative purposes they may either leave it idle or overexploit it in order to move their capital quickly into other lucrative investment opportunities.

The paper next examines the question of whether the trend toward individualized land rights, which is evolving in much of Africa, should be further stimulated and supported by state intervention. It has been argued that, in theory, such individualization provides incentives for agricultural investment, gives farmers access to credit, reduces fragmentation of land holdings, and reduces conflicts over land. However, evidence from Africa indicates that such potential benefits are rarely realized: land registration commonly increases uncertainty and conflict over land rights, especially for groups which customarily had nonformal access to natural resources; the educational, economic and political élites are generally able to benefit disproportionately from land titling; and the little credit generated by formal land ownership is seldom used for productive investment.

The author argues for a pragmatic approach to land tenure in Africa that emphasizes the role of the local community and recognizes the value and flexibility of indigenous arrangements. The role of the state should thus be

primarily to facilitate and co-ordinate the informal management systems operating at the local level, taking a more active approach where necessary because of inter-community conflicts or because local practices involve high efficiency or equity costs.

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PART I: INTRODUCTION

The basic idea underlying structural adjustment programmes is that adjustment should involve not only the introduction of better macro-economic management policies (implying a more effective regulation of aggregate demand) but also the carrying out of structural reforms aimed at creating more incentives for economic growth. What these structural reforms precisely amount to is not always clear, yet there is no doubt that privatization of public assets is the outstanding component of the structural reform package. In the agricultural sector, emphasis is generally put on privatization of marketing boards and other distributional parastatal agencies on the grounds that they are inefficiently run and impose unfavourable terms of trade on the peasantry. What the ownership status of rural land assets ought to be is a complex question that is less decisively answered, even though the dominant view stresses the efficiency advantages of duly formalized private property in land. In this paper, we consider this issue in the specific context of sub-Saharan Africa (SSA), which is characterized by major macro-economic problems, low overall economic growth and poor agricultural performance.

Until the beginning of the 1970s, the attention of land reformers was almost exclusively focused on Latin America and Asia. Africa was commonly considered to be a “special case” that had fewer worries because of its abundant land endowments. It is true that SSA did not have private property rights in land, yet this did not really matter since, as long as communally-owned resources are abundant, the absence of such rights cannot have serious consequences. Indeed, the main argument put forward by proponents of the so-called Property Rights School is that “a primary function of property rights is that of guiding incentives to achieve a greater internalization of externalities” (Demsetz, 1967:348). Richard Posner expressed the advantage of private property rights in a less abstract way: “The proper incentives [for economic efficiency] are created by the parcelling out among the members of society of mutually exclusive rights to the exclusive use of particular resources. If every piece of land is owned by someone, in the sense that there is always an individual who can exclude all others from access to any given area, then individuals will endeavour by cultivation or other improvements to maximize the value of land...” (Posner, 1977:10).

What needs to be emphasized is that, when land is plentiful, to maintain communal rights (in the sense of general rights to use a resource that fail to include the right to exclude others from using it except by prior and continuing use) makes good economic sense since the gains from internalization necessarily remain small compared to the costs: externalities are of such small significance that it does not pay anyone to take them into account. In other words, “there is no positive value to society of creating clearly defined property rights in land” (Johnson, 1972:271), especially because the costs of enforcing these rights are high when rural dwellers are scattered and population densities are low (a description that perfectly fits the case of SSA).

However, so the argument continues, when there is growing competition for the use of land as a result of population growth and/or increased commercialization of agriculture in the wake of market integration, communal ownership becomes unstable and produces harmful effects in the form of mismanagement and/or over-exploitation of the now valuable resource. Efforts at husbanding and conserving it are discouraged and potential social benefits are lost. To remedy this situation, property-rights theorists argue, one needs to create freely tradable private property rights in land since the gains of internalization have become greater than the cost. During the 1980s, some authors applied that line of argument to SSA and expressed the view that there is a fundamental discrepancy between existing land tenure arrangements that reflect a long tradition of extensive usage of land and the requirements of output growth in the context of an emerging intensive agriculture. Thus, we would hear that SSA is in need of “a genuine land reform” (Giri, 1983:271) and that many African countries require “a total redrafting” of their land laws which have become “inconsistent and ill-adapted to the actual situation in the field”, as well as a whole machinery of a formalized land legal framework to establish private rights in land and facilitate their exchange (Falloux, 1987:199). In short, nothing short of a drastic alteration of customary land rights under the aegis of determined public authorities is likely to offer a viable solution to output losses (see also Lewis, 1955:121; Ault and Rutman, 1979; Gourou, 1991:156).

At this preliminary stage, the concept of communal or corporate ownership which is often used to characterize land tenure arrangements in SSA needs to be stated precisely. Essentially, communal ownership or tenure means that there exists a corporate entity (the tribe, the village, the lineage, the extended family) acting as a joint ownership unit. This implies that the collective territory of a rural community is actually regulated by an authority that decides the allocation of the available lands, distributes land use rights to the member families, determines the uses to which the land is put, supervises land exchanges (by the way of explicit approvals), and litigates land-related problems. In most of the cases, the territory is divided into several portions according to the nature of the land rights defined over them. At one extreme we find the village commons, which are open to all members of the community, and, at the other extreme, are lands that are privately held by individual rightsholders.

There are thus two central questions that need to be raised in the light of the aforementioned doctrine about the need for a radical privatization of land rights in Africa. The first question relates to the former category of lands and asks whether village level common property resources (CPRs) ought to be privatized. It is addressed in part II of this paper. The second question refers to the latter category of lands; it asks whether the increasingly individualized rights that farmers hold on their agricultural lands need to be formalized by a state authority and whether their free tradability should be actively encouraged. In other words, should these rights be made the object of a full-fledged privatization programme? This question is tackled in part III. Part IV evokes the main policy implications of the analysis proposed in parts II and III.

PART II: COMMON PROPERTY ARRANGEMENTS: AN INSTITUTION OF THE PAST?

◆ Some Theoretical Considerations

What needs to be stressed with respect to the two aforementioned land categories (and all the intermediate categories that are ignored for the sake of simplicity) is that, in SSA as in other tribal or lineage-based societies, possession of land is personal and statutory in the sense that access to a portion of the communal resources is mediated through membership in a social group. In fact, the relation is reciprocal: on the one hand, group membership is the basis of social rights that include access to land as a means of ensuring one's subsistence (such guaranteed access is therefore an insurance mechanism) but, on the other hand, maintaining access to a share of the corporate productive assets serves to validate membership in the group (see, for example, Berry, 1984:91).

Regarding the commons, the above feature is obviously important since it helps distinguish between situations of open access (*res nullius*) in which a right of **inclusion** is granted to anyone who wants to use the resource on the one hand, and situations of common property (*res communis*) in which the right of **exclusion** is assigned to a well-defined group. Conceptually, this makes a significant difference (see Baland and Platteau, 1995: chapter 2 for a recent, more detailed presentation). Under an open access régime, the users of a resource do not take into account the fall in others' incomes which is caused by their entry when they privately evaluate their net expected profits: as a result, they impose an externality upon the other users and an economically inefficient situation ensues. Moreover, the dynamic consequences of present decisions are completely disregarded because each user follows a myopic rule that simply consists of comparing the average instantaneous subtractable flow he can draw from the resource with the cost he has to incur to effect that subtraction (which can be thought as the only price of entry under open access conditions). Under common property, by contrast, the users no longer think that the final outcome is independent of their own individual decisions. They instead expect that their action will

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