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Tribal Africa: The System of Land Use and Ownership

INTRODUCTION

Since the emergence of sovereign states in Africa, less is being heard of the need to solve African land problems, despite the urgency. Nevertheless, some African governments, Tanzania, in particular, and maybe Uganda, Nigeria, to name only a few, have taken significant steps toward the solution of land problems. There are many states, however, which have done virtually nothing. In those countries, land is still a means of subsistence farming, and will probably remain so for a long time to come unless the land problems are given urgent attention and priority by the political leadership within the various African nations.

This article is intended to emphasize the need of a new land tenure system in Africa, which will make the land more productive and thereby make it a significant factor in the economic development of Africa.

THE OLD SYSTEM

In tribal Africa, land is chiefly used for subsistence agriculture. Farm production is deficient in quantity and quality and therefore does not attract outside markets; it provides only for the bare subsistence of the family.¹ African ideas about ownership of land are like those of the Europeans regarding the use of sea or air, which one neither buys nor sells. The plural use and ownership of land in Africa are confined to members of the same tribe. But as between tribes, under customary law,² occupation constitutes an original title in the tribe first entering the land. Members of friendly and strange tribes may settle on the land already occupied by another tribe, so long as they come in peace, and willing to abide by the laws and authority of the host tribe.³

Agricultural holdings on tribal land are based upon family holdings. Each family cultivates a certain number of acres every farming season. Often the acres are subdivided for individual cultivation. The area cultivated in any one year by the various families of a tribe does not mark the limits of the land over which the tribe exercised rights of exclusive use. Furthermore, a tribe is not necessarily a compact geographical unit. The unfenced scattered strips of cultivation in the open forest, in the

¹ PAUL BAHANNAN, *AFRICA AND AFRICANS* (1964).

² MANCHEST, A.M., *THE NATURE OF AFRICAN CUSTOMARY LAW* (1956).

³ JAMES L. SIBLEY, *LIBERIA-OLD AND NEW*, Doubleday Inc., 1928.

villages, or in the open hillsides are usually the farms of the inhabitants of a tribe miles away.⁴

Boundaries are vaguely defined, but families, villages, and tribes have what Joseph E. Casely Hayford, in an address to the National Congress of British West Africa in 1920, referred to as "spheres of influence" in any land regularly and permanently cultivated, grazed, or hunted over. Even though tribes do not always exhaust the use of all land within their territories, they are quick to assert their claims against intruders, and often go to war in protection of their boundaries.⁵

While rights in land within a tribe depend to some extent on use, crops belong "without doubt" to the individual who plants them. There is general recognition of property in trees; fruit trees once planted near a hut can continue to be picked by the planter or his heirs after they have moved and the neighborhood has gone back to bush, or even if a new family should come to cultivate the land. In West Africa, for example, families will claim palm trees even where the land has been given to strangers. According to Professor Macmillan,⁶ a new land tenure for tribal Africa must specifically render such claims void because they amount to land waste since they tend to perpetuate indefinite abandonment of arable land and absentee ownership.

The idea that the land belongs to the chief is new and alien. To suggest that the land belonged, for instance, to the Alake of Abeokute, the Ashantihene of Ashanti, or the King of the Chieftdom of Kiteabo, would be a sure way of starting a revolution. But to speak of the land as belonging to the Kiteabo, the Ashanti or the Abeokute people is true only in the sense that the land of America or France "belongs" to the people of America or France.

WHY DOES TRIBAL AFRICA NEED A NEW LAND TENURE?

To Africans, everywhere, it is commonplace that life and work normally depend upon and center around subsistence farming, which, of course, is one of the key causes for the prevalence of malnutrition, and low standard of living. In a paper presented during the Seminar on Agricultural

⁴ W. M. MACMILLAN, *AFRICA EMERGENT* (1949).

⁵ JAMES L. SIBLEY, *LIBERIA-OLD AND NEW* (1928).

⁶ W. M. MACMILLAN, *AFRICA EMERGENT* (1949). Chapter IV of *EMERGENT AFRICA*, discusses limitation of the personal rights of chiefs and private individuals to claim unoccupied or unused land. Macmillan advocates that actual possession and use should be the prerequisite or the criteria upon which claim to arable land should be based.

Development in Tanzania,⁷ T. J. Baker analyzed the factors of subsistence agriculture which limit economic development in Africa when he said: "Agriculture on which all life mainly depends in Africa is still undeveloped because of a reluctance to change time-honored methods, a lack of awareness of nutritional deficiencies, a high valuation of leisure as compared with a larger or more varied diet," and so on. . . ." "These factors," says Baker, "do place a limit to the developments that take place in the subsistence sector."

It is not enough that the tribes on their land use it as they please; better and directed farming methods must be introduced to the tribes to increase and improve their agricultural production to overcome, for example, the existing defects and deficiencies of diet. Speaking on the problem of nutrition and disease before an agricultural development body in East Africa, D. V. Chamber,⁸ Director of Development Division, Ministry of Agriculture, Tanzania, said: "The prevalence of chronic diseases, inadequate or unbalanced diets and the effects of an enervating climate tend to diminish the sustained physical output of the farmer. The judicious application of labour saving aids may help to overcome this problem which is, in my opinion, highly relevant to the whole scope of the farming enterprise." For the good of Africa, land must now take on a new value and purpose in order to give the progressive individual adequate sources from which to raise cash for better farm equipment or to pay for better education. Tribal Africa needs new laws of tenure which will permit the alienation of tribal or family land by individuals who have acquired their share of such land in fee. The right to alienate land will help make the land the base or "backbone" of the "new economy" in Africa.

Despite the obstacles imposed by the traditional land system, in recent years, land has taken on increased economic importance due to the spread of cash crops and the growth of population. On this point, the East Africa Royal Commission Report of 1955⁹ stated:

Increased African production requires a new concept of land rights and tenure. For, as land becomes one of the factors of production for the markets, with the consequent division of labour and specialization of production which its use as a factor of production in the market economy entails, two fundamental changes occur, (a) the land be-

⁷ HADLEY E. SMITH, *AGRICULTURAL DEVELOPMENT IN TANZANIA* (1965).

⁸ *Id.* at 38-40.

⁹ East Africa Royal Commission, *Report of 1955*, at 48-49.

comes valuable as a specialized factor of production, and (b) an increasing proportion of the population becomes less directly dependent upon the land and is able to find new income-earning opportunities in other directions, opportunities greater than those which occupation of the land itself can offer them.

“But,” says the Commission, “a tribal community which is economically isolated from the market cannot introduce these changes.” For the sake of economic growth, and better standard of living, the tribal communities must be brought out of economic isolation and put into the market economy. The most effective way to accomplish this is by creating a new concept of land rights and tenure in tribal Africa.

Speaking of the causes of economic backwardness in Africa, Frankel,¹⁰ a member of the East Africa Royal Commission, wrote:

It is clear that the root causes of economic backwardness of various African territories, as well as of the native areas in the Union of South Africa, lie in the failure to modify customary control of land occupation and tenure, which has prevented the emergence of land use and ownership compatible with modern forms of commercialized production in a money economy. The failure to make of the land a viable economic factor of production has condemned the peoples on it to eke out a precarious subsistence.

In some parts of West Africa, Southern Nigeria and Ghana, for instance, there is “extra-legal” buying and selling of land, and sharp division between old and young as to how far it is possible or desirable to adhere to tribal custom, which requires the consent of the whole family to such transactions. Short of outright sale, it is common for family land to be pawned, or in effect mortgaged to provide education for youths, or to raise credit for agricultural purposes, frequently for house-building.¹¹ This extra-legal right of land alienation constitutes a progressive departure from the customary system of land control in tribal Africa, and should be increasingly adopted by other African tribal communities as a prelude to the establishment of new tenure rules.

In Africa as well as in any other continent or country, individual ownership of land is often an economic step forward; yet, in Africa it must be recognized that so fundamental a change as a shift to individual land tenure can and should be made only when the conditions are ripe for

¹⁰ KAMARCK, ANDREW M., *THE ECONOMICS OF AFRICAN DEVELOPMENT* (1967).

¹¹ *Id.*, p. 109. H. W. Price, *Report on Yoruba Land Tenure* (1933).

it. The World Bank Economic Survey Mission,* after conducting a study in Uganda, East Africa, outlined the following major prerequisites for a shift to individual land tenure: (a) use of land to grow cash crops, thus the imputation of money value to land; (b) a relatively high density of population; (c) a growing rate of litigation over land rights, showing that these are acquiring growing value. In addition to the prerequisites above listed, the Mission strongly recommended that laws of individual tenure should not be imposed unless the preconditions are met and until the tribal population affected is taught to avail itself of the new tenure system.

The Buganda Province of Uganda is one instance in which the British Government once intervened with reasonable success to help the tribal system adapt itself to methods which are consonant with the pattern of modern economic development. The Uganda¹² land policy helped the people to seize the opportunity which the fertility of their soil afforded by increasing cotton production for exportation. The land policy also led Uganda through a period of unusually active economic development, prior to independence.

The recommendation calling for the enactment of new laws of tenure is not intended for all Africa, but for those tribal communities whose peoples still use and enjoy the poor fruit of their land without any need to think about rules of tenure.¹³ There is a need, and there should be time, to take account of what is happening in the more advanced communities and to plan ahead for those areas which are less affected by development. Since independence, African nations have been too slow in solving tribal land problems on lines consonant or in harmony with the law and custom of a time when the land alone has to provide a meager subsistence for all. The need for a stable African society demands a sympathetic understanding of African culture as a basis for a clear appreciation of the nature and extent of the new demands that are being made upon it. A real regard for African welfare demands that, so long as the responsibility exists, African governments should take active control and direct the solution of African land problems.

The failure of African governments to enact laws which will solve the tribal land problems might put tribal Africa in the predicament of Eighteenth Century England where the old common field tillage system

* KAMARCK, ANDREW M., *THE ECONOMICS OF AFRICAN DEVELOPMENT* (1967).

¹² WIEDNER, DONALD L., *A HISTORY OF AFRICA SOUTH OF THE SAHARA* (1964).

¹³ BAHANNAN, PAUL, *AFRICA AND AFRICANS* (1964).

was reformed by selfish landlords, at needless cost to the poorer classes. African authorities can avoid the experience of the Europeans if they act in time. For all that is needed is to reconcile the reasonable land rights of individuals with the continuance of a public control that will be more broadly based than the old family or tribal system of land control which has failed to accommodate the "new market economy" in tribal Africa. On the other hand, if the governments in Africa fail to act promptly, the younger generation, already ardent for freehold, will saddle Africa with the worst abuses of European land system; the older, jealous of their privileges, will allow the old forms to "harden and fossilize" at the expense of economic development in Africa.

In present day Africa, there are two land systems; (a) Tribal Land System, and (b) European Land Tenure. The latter is a system of land tenure imported from Europe, and is used in communities settled by Europeanized Africans. The worst abuses of the European Land System are already felt in those communities. For this reason, it will be advisable not to introduce the European land tenure system in tribal Africa since there is a great possibility of its doing more harm than good. The European land system must be thoroughly studied in order to avoid the adoption of its less desirable features.

CONCLUSION

There is a need to replace the old tribal system of land control which perpetuates subsistence agriculture. A new system of land tenure which will permit private individuals to alienate land must be introduced. Such a new system will facilitate increased farm production, and stimulate the growth of the market economy in tribal Africa. The general economic development effort of Africa will be greatly aided by the new land system, in that, it will contribute to the raising of investment capital for economic development which in turn will contribute to better standard of living. All this is possible because the new tenure will make tribal land a new commodity in the market scene.

There is no need to emphasize that the only way a new land tenure can effectively solve the land problems of tribal Africa, is by addressing itself, first of all, to the culture of the African population which it is to affect. An easy adoption of the European Land System will never work, for Africans are not Europeans and resent being Europeanized. The point here is that the experiences of the British, French, Portuguese, and other foreign dominators of Africa show, that tribal Africa is sensitized

to the process of change when it comes to the modification and improvement of its own culture. But the importation of a foreign system at the expense of that which is African is always despised and rejected. Thus, after nearly 200 years of alien domination, tribal Africa remains virtually the same, waiting to change its own way.

There is a need for a new system of land tenure, but the urgency with which a new land system can be made available depends upon the diligence and sincerity with which African governments approach the problem.

CHEA CHEAPOO

“Is It in Fact a Private Club?”

The main question, whether a club is or is not “in fact” a private club, is one from which has arisen great controversy and sharp dissent among the American judiciary today. It has in itself initiated a judiciary revolution because in the long fight for civil rights, judges have explored the Constitution and its varying intended interpretations. Since the question has aroused the judiciary in such a challenging manner, the courts have had to unify their efforts and apply several standards as set by the Civil Rights Act of 1964 and try to come as close as possible to the interpretive intention of Congress in passing the Act.

The Civil Rights Act of 1964, Title II, Sections 201 A, B-1, 2, 3, 4b; 201 D, E, 203, 204 is directly applicable to public accommodations as it relates to the effect these accommodations have on interstate commerce, and state action as related to discriminatory support. These sections also define public accommodations and their applicability to the enforcement of the Title under the Act.

Section 201 (A) provides that “all persons shall be entitled to the full and equal enjoyment of goods, service, facilities, privileges, advantages, and accommodations of any place of public accommodation as defined in this section, without discrimination or segregation on grounds of race, color, religion or national origin.”

Section 201 (B) provides for establishments affecting interstate commerce or supported in their activities by state action. Such places of public accommodations are lodgings, facilities principally engaged in selling food for consumption on the premises, gas stations, places of exhibition or entertainment and other covered establishments. Each of the follow-