LAND RIGHTS SYSTEMS
AND AGRICULTURAL
DEVELOPMENT
IN SUB-SAHARAN AFRICA

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In poor, but uncrowded rural societies, land rights are typically defined for groups rather than individuals. Within the groups, individual or family rights rest on elaborate traditions and customs. Such customs enforce group control over the use and disposition of land. Furthermore, to minimize social friction and ensure the group’s survival, the entitlement of individuals to specific tracts of land is transitory. As a result, some efficiency is lost, since people lack incentives to improve the land. But these losses are small as long as land is abundant and farming methods primitive.

The evolution of permanent and enforceable land rights is closely related to increases in population density, advances in farming technology, and the emergence of agricultural markets. As land becomes scarce, societies can no longer rely on long fallow periods to maintain land fertility. They must adopt fertility-restoring technologies, which require investment of capital and effort—and thus also require incentives for farmers to change their practices. One such incentive is the right to cultivate land continuously and to bequeath or sell it. One nearly universal development is a unified system of land documentation and registration, giving a land owner proof of ownership. If the registration system is effective and if the state can protect the owner from encroachment or unsubstantiated challenges to his land, then the system will indeed enhance security of ownership.

Land rights link up with another feature of agricultural development, the emergence of rural credit markets. Credit transactions often
require some form of collateral. Land is an attractive collateral, provided that the owner-borrower can assure the lender that the land can be transferred. Again, such an assurance is greatly enhanced by an effective system of land registration.

The importance of land rights to agricultural development is the starting point of this article. It then describes the evolution of land right systems in Sub-Saharan Africa, reviews the evidence from Africa on the implications of existing systems, and discusses the policy options.

**Ownership Security: Theory and Evidence**

The main (and obvious) effect of a lack of secure ownership is the uncertainty in a farmer's mind about the value of improvements made to the land. This uncertainty tends to increase as farming becomes more commercialized. There is ample evidence that the incidence of land disputes and land grabbing by larger or more powerful farmers increases as the potential return to land rises (Baron 1978, p. 27; Clark 1969; Feeny 1982, p. 95; Kemp 1981, p. 15; Tanabe 1978; Tomosugi 1980). Uncertainty regarding ownership will also tend to affect the sale and rent of land, which would otherwise allow land to be owned or used by those who are likely to put it to best use.

Many studies have also highlighted the role of secure legal ownership in providing farmers with access to cheaper, longer-term, and more extensive credit. A land title is often a prerequisite for commercial or official bank loans (Dorner and Saliba 1981, p. 23; Sacay 1973; U Tun Wai 1957). As noted by Binswanger and Rosenzweig (1986), land has several attributes that are desirable as collateral. Farmers without secure title have to rely more on informal lenders, who usually charge much higher interest rates than those in the formal market. In some areas of India, for example, lenders charged 8–16 percent on secured loans, compared with 18–37.5 percent on unsecured loans (Panandikar 1956, p. 75). (However, as explained by Stiglitz and Weiss [1981], interest rates cannot be allowed to rise to equate supply and demand, and credit rationing is optimal.)

Titles may also increase the supply of all types of credit. In a study of land transactions in Thailand, Stifel (1976) observes that the title certificate is often deposited as security for loans from noninstitutional lenders, a practice that is not registered or recognized by law, yet is common for small, short-term loans. The creditors have no legal rights to the land, but by holding the documents they prevent the owner from selling the land. They also restrict the owner's ability to borrow elsewhere and thereby incur excessive debt. In one village studied by Stifel, the number of these unregistered mortgages was three times that of registered mortgages.

A study in Costa Rica by Seligson (1982) showed that, before the
initiation of a titling program, 18 percent of the farms sampled obtained credit; after the program, 31.7 percent did so. Credit seems to have improved mainly for larger farms since the average farm size was 19 hectares for those title holders who received credit and 7.3 hectares for those who did not. (These results obviously reflected not only supply changes, but also shifts in demand.) Similarly, recent data from Jamaica (Inter-American Development Bank 1986) indicate that almost half of the recipients of titles under a new program went on to increase their borrowing. And a World Bank–sponsored study in Thailand (Feder and others 1986) found that more than 90 percent of the medium- and long-term loans were received by titled farmers—who formed only half of the sample. Legal owners, who were able to provide land collateral, obtained between 52 and 520 percent more credit than farmers without collateral. The interest rate on institutional credit was a third of the average rate charged on noninstitutional credit.

The effects of constrained and dearer credit are significant. Factor ratios and input levels tend to be suboptimal and investment to be lower than it would otherwise have been (David and Meyer 1980; Rosegrant and Herdt 1981). Suboptimal inputs lead to lower output per unit of land, and suboptimal factor ratios lead to lower output per unit of production cost.

These effects—less investments and land improvements, lower use of various inputs, and lower productivity per unit of land for farmers without secure titles—are summarized in figure 1, which is adapted from Feder (1987). It shows that, even when the availability of credit is not a binding constraint, insecure ownership can reduce productivity because farmers have less incentive to invest. Even when eviction and land disputes are rare, the lack of secure formal ownership could reduce productivity significantly if credit is an effective constraint on farmers’ activities. As land value is related
to its productivity, it follows that titled land is more valuable than untitled land.

Apart from these implications for productivity, the ownership systems also raise questions of equity. In some countries the procedures required to prove legal ownership are extremely complex and involve significant fees for lawyers, surveyors, and government departments. Since these costs vary little according to the size of the farm, larger landowners are better placed to afford them. By the same token, wealthier farmers usually have better access to information about land law, administrative procedures, and farm prices. They may therefore buy out poorer and less knowledgeable smallholders. One study of a land-titling system in Costa Rica found a high positive correlation (0.68) between farm size and the degree of ownership security in one of two provinces (Salas and others 1970). To safeguard the rights of the poorer farmers, governments could simplify procedures, disseminate information on land registration, and take the initiative themselves with a titling program.

The systems of land tenure in Sub-Saharan Africa today can be understood only in their historical perspective.

The Precolonial Era


- The person who cleared land first was, in the absence of any more powerful claim, entitled to use it. The literature often refers to this person as the maitre du feu (the master of fire, a reference to a common method of land clearing). Anybody who later tried to establish rights of use within the area already cleared and controlled had to seek permission from the maitre (or his descendants, since rights were usually inherited by his progeny). Where there were no distinct lineages, permission had to be obtained from the chief (usually the village head). In such cases, the right to use land continued only so long as the farmer continued to live in the village head’s jurisdiction and recognize his authority.
- When land was abundant, access to it was not difficult. It was obtained either by residence or by acquiring “membership” in a group—which could be done by tracing real or fictional genealogies. The admission of outsiders, even slaves, was common (Barnes 1954, Gluckman 1941, Van Velsen 1964). Thus ethnic identities, so
important during the colonial age, were less clearly defined and far more flexible. Once the right to use land was admitted, it could be passed on as a legacy.

• The crucial element for the continued control and use of land was to have enough people, be they relatives or slaves, to work the land.
• Given the primitive technology (mainly the hoe), the abundance of land, and the practice of shifting cultivation, land had little or no economic value. It thus made no sense to develop a system of rights to a particular parcel of land that could not be protected and had no utility until its fertility was restored. Accordingly, land was under group control, and individuals used particular bits of it. These areas of control expanded and contracted with the rise and fall of leaders.
• Under such systems of land use, one person could cultivate crops, while, on the same land, another could have rights to trees; or land could be used by cultivators during the cropping season and by herders in the off-season or during fallow periods.

The system was somewhat different under Islamic law (which, through conquest and influence, spread over Mali, Mauritania, Niger, and northern Nigeria in West Africa and to Somalia, Sudan, and Zanzibar in the East). As with other indigenous systems, land belonged to the “person who vivified it” (Anderson, 1954, Middleton 1961): the act of cultivation, or boring and enclosing underlying streams, gave the person doing so a right of ownership. But Islamic law differed from other indigenous rules in two respects: First, once land had been appropriated, nonuse did not mean a loss of ownership; that could happen only through conquest or sale. Second, Islamic law provided for defined rules of inheritance for both men and women, either as sharers or as residuaries (that is, after the sharers had received their specific shares of the property). In other indigenous systems, only patrilineal or matrilineal heirs could inherit rights. (In practice, though, under the Islamic system female entitlements to shares in land were usually bought by other heirs or residuaries.)

The Colonial Era

During the twenty-five years between 1885 and 1910, the African claims of nearly every major European nation—Britain, France, Germany, Portugal, and Belgium—were finally settled. The European powers were not troubled by considerations of ethnic homogeneity among the colonized; and as Hailey remarked, “the extent of the appropriation of indigenous lands has depended more on factors of climate or soil than on juridical arguments” (1957, p. 686).

The colonial attitude toward Africans was influenced by theories of
evolution. "Just as races were supposed to have evolved from a primitive 'state of nature,' so too was land tenure expected to evolve from the simple form of tribal ownership to individual ownership" (Sorrenson 1967, p. 27). In British colonies, the colonialists regarded Africans as being on a lower evolutionary rung—and thus at a stage where land ownership would vest in chiefs, not individuals, and all rights to land would flow from membership of the chief's ethnic group. The French initially took the opposite view. They believed that only individual rights to land existed.

The respective philosophies of the colonizers initially influenced their systems of government. The British chose indirect rule through traditional leaders, who were free to make rules within their "spheres of competence," including land rights. The French policy was to assimilate: it drew no distinction between a dependency and metropolitan France. "Native chiefs" derived their powers from, and were subject to, the metropolitan government. Belgium merely stated that the Congo Free State was under the sovereignty of Belgium, but with a separate legal personality and laws. For Portugal, the practice of Christianity became the test of its policy of assimilation. These original distinctions gradually blurred as the practicalities of government affected the approach of all the colonial powers.

In defining the concept of land ownership, the colonial powers drew a distinction between occupied lands (which were therefore owned) and unoccupied lands (vacant and "without a master"). The unoccupied lands were deemed open to settlement, as happened in Kenya, Zambia, and Zimbabwe; or to lease by foreign concessionaries, as, for instance, in the Côte d'Ivoire and Congo; or for use for other public purposes. These distinctions were much influenced by European conceptions of title and property.

The colonialists were completely ignorant of the systems of shifting cultivation and of transhumance that were prevalent in Sub-Saharan Africa. As a result, the land available to Africans shrunk, despite a few protests (particularly by French scholars). The consequences were disastrous for the African population, particularly in the British settler colonies where logic was strained to provide land and benefits for the settlers.

Even more influential was the colonial belief that all occupied land was held in "communal tenure." This meant that individuals had only user rights to land, without the power to sell or mortgage it. "Ownership" was vested in chiefs as trustees for existing and future generations. Yet the British were not entirely consistent. In Uganda, for instance, Sir Harry Johnston (who was later to settle claims in Malawi, then Nyasaland) decided that the Ganda chiefs had absolute title to land. He thereby created a new system of tenure: mailo. The French, far more consistent, recognized individual title only if the
applicant went through the complex procedures of titling and registration; few did so. The Belgians tried for decades to discover what lands were used by, and needed for, subsistence cultivation by the Africans.

The logical consequence of insisting on communal tenure and the trusteeship of chiefs was to raise the status of chiefs. Where there were none, chiefs were appointed. In some cases, as among the Ashanti, failing rulers were propped up, and the development of individual rights to property was stifled. And chiefs were quick to exploit their position to establish or strengthen their control over land.

Indigenous farming was further affected by the creation of districts (British) or cercles (French and Belgian). Initially, the districts and cercles were based on ethnic identity, real or assumed. This method had two consequences. First, it necessitated and strengthened ethnic differences. Second, it restricted movement outside the district by the introduction of the “pass” system (a badge of both identification and confinement) and kept trade to within each district. In precolonial days, it had been relatively easy to become a member of a group, and the absence of well-defined boundaries permitted both shifting cultivation and migration. All that was changed: land for cultivation now had to be found within the district or cercle.

What the colonial powers did was to pacify a continent. No longer was war a means of acquiring land and labor. Colonialism also brought with it some improvements to sanitation and public health, which helped to increase the longevity of the African population. When, in the last decades of colonial rule, the conquest of malaria and control of the tsetse fly opened new areas for settlement and cultivation, faster population growth reduced the amount of cultivable land per capita. It became correspondingly more important to acquire land rather than labor.

The development of a land market was also restricted by prohibiting Africans from selling land to non-Africans. This prohibition prevailed even in Uganda, where individual title to land was recognized. And land transactions had to be undertaken by chiefs, not commoners. Only in the twilight of colonialism was a feverish attempt made to introduce individual land titling, and then only in some colonies. By then, it was too late.

Interestingly, the introduction of individual titles in Kenya was justified by the need to promote economic development. The colonials’ earlier fears—for example, that in India individual titles had allegedly led owners to mortgage and sell their lands to moneylenders, resulting in widespread indebtedness and landlessness—no longer seemed to matter. The Swynnerton Plan for Kenya expressly recognized that some landlessness could be a consequence of introducing individual titles, but that this increase in landlessness was a necessary...
price to pay for development and that the more progressive farmers would survive (Glazier 1985). This theme has been reaffirmed in subsequent five-year plans in Kenya.

Independence and After

After African nations attained independence, their approaches to land tenure varied. In Malawi, for example, the thrust toward individual tenure has been tempered by registering only family tenures in the Lilongwe Agricultural Development Division. In Swaziland, the desire to return to customary tenure has not been applied to land that was privately owned before independence. In Sierra Leone, the idea that individual tenure was conducive to economic development has been accepted, but not widely implemented. In Tanzania, the government then began experimenting with long-term leases to individual farmers (for thirty years, which could be extended to ninety-nine years). Only two countries have consistently maintained a single view: Côte d'Ivoire and Kenya. In both, the prevailing philosophy has been that individual tenure is essential to foster economic growth. Nonetheless, Kenya restricts the rights of an owner to sell, lease, or mortgage land by making the consent of a land board a precondition to such transactions.

African approaches to land tenure can be divided into three main types:

a. Countries that allow the acquisition of individual title: Côte d'Ivoire (without any restrictions on the power of the title-holder); Kenya and Malawi (with restrictions on the title-holder).

b. Countries that recognize different types of tenure: Senegal and Sudan (both individual title and nationalization of nontitled lands); Botswana, Ghana, Lesotho, Liberia, Mali, Sierra Leone, Swaziland, Uganda, and Zimbabwe (individual title, indigenous systems and public lands); and Cameroon (individual, group, indigenous systems and public lands).

c. Countries that vest title to land in the state, so that individuals have rights only of use and occupancy: Ethiopia, Mauritania, Nigeria, Tanzania, Zaire, and Zambia.

This classification needs to be qualified. First, there is an overlap between the countries in (b) and (c): where indigenous systems are recognized in group (b), this usually means that the individuals or groups covered by those systems have rights only of occupancy and use. In that sense, they share the approach of countries in (c): examples are Botswana and Zimbabwe. (A similar practice applies in Senegal and Sudan where, with the nationalization of untitled land, the government recognizes only user rights of occupants.) Second, in Malawi, indigenous systems are recognized for untitled land. Third, in
Ghana, rights of sale of land under indigenous systems of tenure are vested in chiefs—the approach first introduced by the British. Fourth, in all the examples it is assumed that the state holds paramount title to land. The classification above is not, of course, immutable. For example, both Mauritania and Sudan have passed legislation recognizing Islamic law as the governing framework of the nation. This is a contradiction in terms, since Islamic law recognizes individual title to land, the power to bequeath and sell land, and the power to make gifts of property, while Sudan still maintains the ideology of state ownership of land. In Mauritania, where the state grew out of conquest, land title is arguably vested in the state.

Land as a Commodity

The most important factors contributing to the development of a land market are the growth of population, the use of new technology and inputs, the development of markets for products, the growth of communications, and the rise of alternative uses for land. These influences are not easily separable. However, as Cohen (1980) points out, there has been a tendency to concentrate on the analytically clearest factor, population growth.

In the African context, three studies are worth noting. Lunning (1965) studied land transactions in Nigeria: three villages in Katsina province and seven villages in Sokoto between 1960 and 1962. He classified the seven methods by which land could be acquired: inheritance, gift, purchase, pledge, loan, lease, and share cropping. He defined purchase as "an outright transfer of land for cash"; pledge as "the right to use the land [that] is passed to another party in exchange for a money loan"; and loans as land entrusted to a friend for a year when the owner had more than he needed (to be distinguished from a lease, where there was a defined money payment). Lunning found that there was "to a certain extent, a relationship between density of population and the occurrence of sales but it does not explain all differences... In some ways, acreage of farm land available per head of population should be a more reliable 'yard-stick'" (1965, p. 79). But, although this high ratio of population to cultivable land could explain land sales and leases (amounting to 31 percent of all transactions) in one village, it was not compatible with the prevalence of sales and leases in other villages where twice as much land was available per person. In these villages a more plausible explanation was the development of the road system and the greater accessibility to markets, which appeared "to be related to a greater occurrence in sale transactions of land. Villages off the beaten track have a far greater incidence of such customary transactions as inheritance and loan... Nearness to markets and subsequently easier accessibility to
capital may be reasons for a greater incidence of pledging” (1965). Lunning concluded that increasing demand for land had a decisive impact on land tenure patterns. The four factors he identified as being the most important were population growth, the introduction of cash crops, infrastructural development, and distance to major markets. But, he added, “none of these factors can be singled out as having had a singular influence on the demand; a number of them are usually involved” (1965, p. 178).

Roden (1971) studied farming among the Nuba of Sudan. Before 1940, they had cultivated both highlands and lowlands. In the highlands, the farming had been intensive, with terracing, manuring, rotation of crops, and planting of legumes. In the lowlands, where few people lived for fear of raids, shifting cultivation was the norm. On the plateau, the Nuba drew a distinction between homestead plots, which were near the terraced plots, and the main arable lands, which were some distance away from the homes. Where population density was greatest, there was a market in homestead plots and strict rules of inheritance: only the eldest son could inherit the homestead plot. Although in theory the state owned the land, sales of homestead plots were common, particularly to avoid rules that would otherwise result in inheritance by the mother’s brother’s son.

By 1940, however, the lowlands were no longer affected by raids. People started forming towns and growing cotton (which could not be grown on the plateau). In some highland villages, population pressure began to ease. Accordingly, the rules of inheritance were relaxed for the Nuba who had started farming on the plains, so that all sons could share equally in the property. The market in hill and homestead plots almost disappeared.

A similar picture emerged from Netting’s study (1965) of the Kofyar hill farmers on the Jos Plateau in Nigeria. The Kofyar farmed intensively on the plateau, with strict rules of inheritance and individual ownership of plots. On the hillsides, agriculture was shifting, and nobody had rights of access to a specific plot. When the Kofyar were studied again in the 1980s, they were farming the plains intensively and had developed a market in land: both changes had been assisted by the development of infrastructure and access to markets for their produce (Netting 1985).

Other factors that encourage the development of a land market include proximity to means of communication, such as a new road (Cobb and others 1980, Haswell 1975, Lunning 1963) or the main railway line (Bruce and Dorner 1982). Proximity to urban centers is also important: the possibility of alternative uses increases the value of land and turns it into a tradable commodity. An estimated 80,000 to 100,000 hectares of land are annually converted from agricultural to urban use in Sub-Saharan Africa (Hamer 1986). Hill’s (1963) study
of cocoa farmers in Ghana seemed to indicate that the cultivation of a cash crop is related to the development of a land market.

Finally, restrictions on mobility, particularly during the colonial regimes in some cases, resulted in the development of a land market much earlier than if people had been allowed to migrate to other, less populated, areas. An outstanding example was the development of a land market among the Kikuyu in Kenya (who lost most of their lands to settlers) long before such a market had developed, say, among their neighbors, the Mbeere.

**Household Appropriation of Land**

With the development of a land market, is there also a corresponding increase in individual tenure? The evidence on this is mixed. Studies by Berry (1975) and Okali (1983) suggest that the kin group continued to play an important role in the determination of ownership. However, others (Adegboye 1974, Food and Agriculture Organization 1984, Haswell 1975, and Levin 1976) suggest that, as the demand for cash crops grows, so more and more households appropriate land in defiance of indigenous rules. Land rights may be viewed as a bundle of distinct privileges (right to use, right to plant trees, right to rent, right to sell, and so forth). Over time, more of these rights are transferred from large social groups to smaller groups and eventually to households.

The pattern of this transfer appears to rest on a principle that is well known in Hindu law: where a farmer has acquired land with the help or common resources of his kin group, he has less individual control than if he has acquired the land from his own earnings and employs labor (paid in cash or kind). In all these examples, however, sales of land increase and so does the power of households (Haswell 1975, Hecht 1985).

The first rule of indigenous tenure is that a person is entitled to undisturbed possession of some allotted land as long as it is being used. The period of use varies according to the type of crops grown, so farmers often lengthen the period of use by planting trees. Thus, in Cameroon, for instance, the main purpose of planting cocoa and coffee is to retain undisturbed possession of the land so long as the trees survive (Levin 1976). Tree planting in Côte d'Ivoire and Zanzibar serves a similar purpose (Koby 1979, Middleton 1961). This gradual process of appropriation begins with the best land—the valley bottoms (as in Tanzania and Zambia), the oualo, fadama, and swamplands (in the Gambia, Nigeria, and Senegal). Because they retain some moisture, these lands allow cash crops to be grown in the off-season.

Over time, the rights of “outsiders”—the navettane in the Gambia and Senegal—are increasingly restricted. At first, they are allowed
access to marginal land. But as land values rise, other rights of outsiders are curtailed. They can no longer become members of the group, so cannot gain access to land (Haswell 1963, Hecht 1982). Restrictions are placed on the types of crops that tenants (or “stranger farmers”) can cultivate. For instance, in Ghana and Cameroon, tenants are not allowed to plant cash crops (Adegboye 1974, Dravi 1984); in Zanzibar, they are not allowed to plant trees, particularly the valuable kola tree (Middleton 1961). The basis for the restrictions is to deny tenants the opportunity of claiming title to land by virtue of their length of possession.

**Implications**

As colonial views of land law have been carried through into today’s independent countries, the land market in Africa remains distorted. In some areas only rights of use and occupancy of land are recognized by the state. In others, some of the rights of ownership—to transfer, mortgage, or lease land—have been fettered. This section discusses the implications of such distortions.

**The Divorce of Law from Reality**

When the legal system decrees that land cannot be sold or can be transferred only with bureaucratic (and frequently arbitrary) approval, law gets divorced from reality. Land continues to be sold or pledged, but in an informal market. The only result is that these sales or pledges are unenforceable in a court, so prices contain risk premiums that cause a deviation between the social value of land and its market value. Land sales may be disguised as the sale of trees or houses, as in Malawi (Ibik 1971); or as a pledge, with the pledgee paying an amount equivalent to the purchase price of the land so as to avoid getting the permission of the village headman, as in Nigeria (Lunning 1965).

During the colonial period the clearest examples of these market distortions came from West Africa, where the production of commercial crops (initially, oil palm) had led to the development of a land market even before colonialism began. In fact, in the Gold Coast (the coastal area of modern Ghana), land sales had started at the turn of the century and had been given judicial recognition (Grier 1981). In Nigeria, land sales had begun in the southern provinces even before the colony of Lagos was ceded in 1861 and were common in northern Nigeria in the first decade of the twentieth century (Rowling 1946, Watts 1983). However, the evidence of these transactions was discounted by the West African Land Committee in 1912 as being insufficient and inconclusive. As a result, land sales took place only “informally” (illegally) except where chiefs claimed that sales were for the benefit of the clan.
This inability to accept evidence of land sales, blurred by preconceptions of what “native” groups could actually do, afflicted other land commissions as well. In Kenya, the Carter Commission ignored evidence that land had been traded by Kikuyu and that, in the Kiambu region in particular, sales were common (Sorrenson 1967). In Tanzania, the cultivation of marketable crops and land sales were common among the Arusha, Sambaa, Hayya, and Chagga; the Sambaa did not even require the consent of kin to the sale (Hailey 1957, p. 782). Sales among the Sukuma in Tanzania began before the German occupation in 1891, but were stopped by the Germans (Malcolm 1953, p. 12). In Malawi, the Land Commission in 1921 did not accept evidence that in the Marimba and West Nyasa districts there were both land sales and individual titles to land.

Independence has not put a stop to land transactions. In Tanzania, Pitblado (1981) reports that in one village in the North Mkata Plain, some 16 percent of land was acquired by purchase; in another, the figure was 36 percent. In Lesotho, where land cannot be legally sold (and where urban and rural lands have equal value in the eyes of the law), Mosaase notes that as a result of land scarcity “a clandestine land market had developed and the indiscriminate selling of arable land for residential and commercial sites has become uncontrollable” (1984, p. 90). In Mali, land is inalienable in theory. In practice, though, sales of less fertile lands to stranger farmers take place, even though it is difficult to obtain data on such sales. In Niger, sales of land are increasing, although indigenous rules say that land cannot be sold (University of Arizona 1979). Ega’s (1979) survey of three villages in Zaria, Nigeria, showed that 18 percent of those surveyed had obtained their lands by purchase. He notes that “there is a significant prevalence of illegal commercial transactions in land and considerable mobility of land. In particular, purchase has become an important means of acquiring land” (1979, p. 291). Of the Volta region of Ghana, Nkunya says that “outright purchase... is becoming more and more common these days” (1974, p. 4). Even in areas where sales are recognized by law, cumbersome legal procedures mean that many transfers are not registered and the official record does not reflect reality.

Access to Credit with Land as Collateral

The widespread prohibition against mortgaging land does not stop land being used as collateral in informal transactions. The prohibition serves only to make the occupant more dependent on state largess or on the informal market where interest rates are much higher (Watts 1983). As Woodman (1967) demonstrates, lending practices increasingly take on the color of formal legal requirements (with witnesses to
transactions and documents); land mortgages are recognized in both Ghana and Nigeria. Nonetheless, the status of these transactions is blurred, which often results in litigation, especially when land prices rise. As Goody notes of southern Ghana “the different value that cocoa farming, large-scale mining and timber exporting had given to the land and its products created innumerable disputes that found their way right up to the Privy Council” (1980, p. 144). Land pledging was also found by Pitblado (1981) in four of the villages he studied (in one of these the land pledged amounted to 40 percent of the farming acreage). The pledging of oil palms in Nigeria continues despite its illegality, increasingly maturing into the right of sale by the mortgagee (Abasiekong 1981). As in the case of land sales, data on pledges are difficult to obtain, particularly in areas where Islamic law (with its prohibition against usury) prevails (Scott 1984, Watts 1983).

The Potential for Increased Inequality

Increased inequality, the fear of which is often cited as a reason for prohibiting land sales and mortgaging, could in fact be an important consequence of the prohibition. Inequality also arises where governments recognize sales only by people from a particular group (chiefs, for instance) or where transactions in land involve complex procedures with uncertain results. During the colonial period, the insistence that chiefs were trustees of the land encouraged them to use their office to their own advantage (Fallers 1955, Glazier 1985, Goody 1980). With growing shortages of land, chiefs were not reluctant to revoke allocations of land, particularly when outsiders were involved (Hamnet 1975).

Inequality is a consequence of prohibition for two other reasons. First, those who know the law (usually the wealthier and better-off) can use the system to their own advantage. Second, they are protected in land transactions because their status ensures that no action would be taken to dispossess them (see Bates 1981, pp. 53–61). And in Ghana, “many chiefs have benefited as a result of their control over land... to acquire bank notes, tractors... Where benefits did accrue to chiefs, they were not redistributed within the chiefs' communities, with the result that the chiefs have become economically quite distinct from their subjects. At the same time, the institution of chiefs has been reinforced at a regional level by this new wealth of its office-holders” (Shepherd 1981, p. 177; see also Goody 1980). Similar consequences have occurred in Botswana (Lawry 1983, Peters 1983).

In their studies of land adjudication in Kenya, in the Embu District and among the Mbeere, Haugerud (1983), Brokensha and Riley (1980), Glazier (1985) and Njeru (1978) found that it was the influential people (including the chief) and the civil servants who used their
knowledge of the law to acquire land, at the expense of the poorer and less knowledgeable. Glazier (1985) shows that the chiefs take advantage of laws requiring proofs of genealogy and residence to expand the numbers of their kin, so that more land would be granted to them. Burial sites are also scattered as evidence of prior occupation (Glazier 1984, West 1972). In Nigeria, occupancy certificates under the Land Use Decree of 1978 were granted according to occupation and income. Koehn concludes that “most applicants for statutory rights of occupancy are prominent businessmen and senior civil servants” (1983, p. 467).

The advantages of knowledge (and literacy) tend to favor the urban dweller. In Senegal, for example, under the Law on National Domain of 1964 residents were allowed to establish title and request registration within six months from the date of passage of the law. However, “rural people, including those of the river basin, were generally unaware of this, and were not notified to present claims. Then all non-deeded lands became part of the National Domain” (USAID-RBDO 1982, p. 115). Women, too, have often been excluded from owning land: examples include the Tonga of Zambia (Colson 1963, Spring 1985), Nigeria (Spiro 1985), Kenya (Pala 1978), and Senegal (Gladwin and others 1987). And nomadic farmers have been affected—not only during the colonial era, when administrations regarded “unoccupied” lands as being lands without title (Baker 1975). After independence, the nationalization of unregistered lands has resulted in nomads’ losing their traditional routes. In Mauritania, Niger, Senegal, and Sudan, they have only a licence (which can be withdrawn) to pass over transhumant routes, but no easement (which is both recognized in law and enforceable).

Insecurity and Uncertainty

Uncertainty is an obvious consequence of any transfer that is formally illegal, both because it is not clear that the seller has the right to transfer land, and because the buyer fears government action to cancel the transaction. In some areas, the insecurity arises “not so much in fear of interference (with possession) by members of (the cultivator’s) own community but from the apprehension that the government may, for its own purposes—such as the need of land for public use or for alienation to colonists—disturb him in the possession of his holding” (Hailey 1957, p. 807). Thus, in Côte d’Ivoire, it is fear of expropriation by government that makes a farmer plant more coffee and cocoa, so widely spaced that the returns are “inefficient” and ten hectares produce what could have been obtained from three hectares of closely spaced trees.

Another barrier to greater productivity is the application of indi-
genous rules on tenure. They provide for an individual household to be granted as much land as it needs for subsistence; this rule prevails, for instance, in Lesotho (Hamnet 1975). Families are naturally inhibited in producing a surplus. If they do, they face additional pressure to redistribute the surplus—pressure that is "usually sufficiently great to inhibit both general economic development and rigid patterns of stratification" (Cheater 1984, p. xiv; see also Richards and others 1973).

The rule that a person in possession of property has only a right of occupation, not genuine ownership, is not conducive to productivity. This is largely a matter of inference, for there are no detailed studies of the link. However, the final report of the Tanzania National Agricultural Policy Task Force notes that

> the present system of land ownership by village (with individual residents having a mere right of use) has the following constraints:
> a. reluctance to invest in the cultivated area for a long-term improvement of the land;
> b. unwillingness to expand crop acreage for fear of being identified as a person opposed to collective farming;
> c. the issuing of short-term leases discourages long-term investments leading to mining of the land;
> d. scaring off potential investors in agriculture due to uncertainty over ownership of land (1982, pp. 27-8).

Another important consequence of the indigenous system of tenure is its impact on labor mobility and, implicitly, on productivity. Although there are studies of the impact of taxes imposed by colonial regimes on labor and migration (Hailey 1957, Palmer and Parsons 1977, Snyder 1981, Ward 1976) and on the introduction of cash crops (Pelissier 1966), no study has examined the impact of indigenous systems of tenure on labor mobility (except, very indirectly, Collier 1983). When statutes affirm only rights of use and occupation, the indigenous rules would apply. Non-Islamic rules construe any absence from allocated land as abandonment. This implies, of course, that some time must elapse (for instance, five years in Lesotho) before rights to the land can be assumed to have been surrendered. The threat of such rules being applied is growing as land becomes scarcer. The result is that some members of each household must always stay on the land and cultivate it, however inefficiently. The others, if they can move at all, do so only to urban areas.

**Titles to Land and Security**

The term "security" is often misunderstood in the literature. When it refers to the ability to use land for a certain period and for a defined purpose without disturbance, security of possession is usually
ensured under indigenous systems. It is clear that in most Sub-Saharan African societies, land under cultivation by an allottee cannot be taken away. Eckert (1980) notes that in Lesotho the average period of landholding is eighteen years which, adds Doggert, is “more than that prevailing in the United States” (1980, p. 20).

The situation, however, is entirely different when security is defined as the ability of an occupant to undertake land transactions that would best suit his interests—for example, to offer land as collateral for a loan. Transactions in the informal market become problematic when there is a question of selling the property (Haugerud 1983) or borrowing from commercial lenders (Abasiekong 1981, Haswell 1975). As Goody says:

In order to make loans for agricultural development, some “security” is required by both commercial and government banks. “Security” means a regular income (i.e., being an employee), a saleable (i.e., not a mud) house, or land (one’s own). Everybody of course has land, although subject to the rights of others. But if one is going to purchase a tractor or even a plough, one needs access to an increased acreage and the problem is showing that one has rights to that land. These rights have to be of a certain kind if they are to act as security under the contemporary rules and identifiable by a court, bank or government department as being linked, in effect exclusively, to the particular individual. And they have, in principle, to be disposable by him. Such identification is achieved by the registration of land in the name of an individual, which proves definite proof of “ownership” and hence security for loan (1980, pp. 144–5).

At times, even an officially granted occupation certificate can be valuable property. Seidman notes that possession of such a certificate in Nigeria confers private economic advantages: “major financial institutions treat these certificates as a necessary collateral against various types of loans, including bank mortgages, and commercial agricultural credit. Therefore, holders of statutory titles can gain access to domestic money markets and secure loans at favorable terms which can be utilized for private capital accumulation and investment” (1975, p. 642). Koehn adds that these statutory rights “provide a measure of legal, state-enforced security of tenure that is not afforded by customary rights, squatting or land purchases on the secondary market” (1983, p. 461). At times, however, title to agricultural land is regarded as inferior collateral compared with “urban properties, attachment of salaries and other forms of valuable property” (Okoth-Ogendo 1976, p. 175). This attitude could arise from the fact that in some areas it is difficult to enforce sales of mortgaged agricultural land when a mortgagor defaults.

Gershon Feder and Raymond Noronha
Secure Ownership: Productivity and Efficiency

While the evidence seems generally to favor the conclusion that titled land opens up the commercial money market, it is scanty on the question of whether titling in Africa leads to higher productivity. Studies from other parts of the world, however, suggest that that is indeed what happens. In Costa Rice Salas and others (1970) found positive correlations between the degree of ownership security and farm investment per unit of land. Data from three states in Brazil in 1978 show that capital per hectare is substantially higher on titled farms than on undocumented or encroached land (Villamizar 1984). The analysis was done for different farm sizes, and within most groups the link applied. Analysis of data from three provinces in Thailand (Feder and Onchan 1987) indicates that the probability of investing in land improvements is significantly affected by possession of secure ownership, holding constant other factors such as location, soil quality, and farmers' characteristics. Capital-land ratios were found to be markedly higher among titled farmers (again, controlling for various other attributes). Differences were more than 100 percent in some of the areas studied. Data from this study also indicated significantly greater inputs (labor, power, cash) per unit of land by legal landowners, compared with squatters and untitled farmers.

Several studies have focused on the impact of ownership security on output or income. The earliest study (Salas and others 1970) indicates a positive correlation of 0.53 between income per unit of land and ownership security on one province in Costa Rica. In another province, however, the correlation was negative, although quite weak (−0.07). A study of the state of Maranhao in Brazil (cited in Inter-American Development Bank 1986, pp. 186–89) concludes that the granting of full legal ownership to squatters and undocumented occupiers would increase their income by 200 percent. The same report quotes recent data from Ecuador indicating that the incomes of titled farmers were double those of untitled farmers, holding the amount of land constant (p. 187). Data from Thailand show much lower, but nonetheless statistically significant, differences in output per unit of land, in the range of 12–26 percent (Feder 1987). The analysis for Thailand controls several factors that may vary between titled and untitled farmers (for example, location, soil quality, and initial wealth), which could explain the fact that the productivity differences are smaller than those in the studies from South America. Although it would have been more appropriate to consider the impact of secure ownership on output per unit of total factor use, the data deal with the more readily observable output per unit of land.

Efficiency may also be damaged when farmers cannot use land as collateral for credit. For instance, in Costa Rica it has been reported
that cattle are a surer collateral than land when the farmer does not possess a full formal title. Farmers without title therefore tended to shift from crops to cattle raising, even though their land may have been better suited to growing rice and beans (Dorner and Saliba 1981, p. 23). In general, credit constraints may cause farmers to shift to crops and activities that need less working capital and farm machinery.

Uncertainty over continued access to land encourages squatters to prefer short-cycle crops. Recent survey results from Jamaica indicate that titled farmers had almost double the incidence of permanent and semipermanent crops than did untitled farmers. Indeed, a third of the recipients of titles under a government program reported that, following the change in their status, they planted more permanent and semipermanent crops (Inter-American Development Bank 1986, p. 189).

The proposition that the prices of titled land are higher was confirmed by Chalamwong and Feder (1986) in rural Thailand. Their results show that, in several areas, titled land of given quality and location was twice as expensive as squatters’ land. However, the difference in land prices was smaller in an area where farmers had access to substantial amounts of credit from traders (who do not usually require a formal land collateral).

There are few quantitative studies of the economic effect of secure ownership in Sub-Saharan Africa. Most are based on preconceived notions of the necessity for land titling. For example, Ike (1977) took data from western Nigeria and tested the hypothesis that a freehold system was inherently superior to communal land tenure. He concluded that his hypothesis was proved by the higher average incomes of freeholders. But he provided no information on how he selected the sample, nor any data indicating that the study controlled for differential access to inputs and extension, quality of land, and access to labor. Perhaps only two studies examine the consequences of granting individual title in a thorough and revealing way: Richards and others (1973) in Uganda and Cheater (1984) in Zimbabwe.

Richards and others (1973) tried to establish which factors tended to induce a switch from subsistence cultivation to commercial agriculture. The area for study was Buganda in Uganda, where in 1900 the British had granted absolute title to land to the king, his kinsfold, and other senior officials (mailo tenure, as it came to be known). Richards and others point out that Buganda had several advantages not enjoyed by many other areas: a developed transport system, immigrant labor (especially in the first four decades of this century), and towns in the midst of the farmland providing a ready demand for food. Fifty-eight percent of the farmers in the sample had bought their land. The authors’ conclude:
The mailo system itself did not result in the commercial use of land by its owners for a period of some 40 to 50 years, though there were a few exceptions. Traditional attitudes to land ownership as a source of political power and prestige continued and during the first half of the century mailo land was important to its owners as providing rents from peasant tenants and also capital, through the sale and mortgage of portions of estates. The money so obtained was used to raise the standard of living of the owners and to provide for a European type of education for their children. Nevertheless the mailo system, by introducing the right of land purchase so early in the century as compared with the rest of East Africa, gave to the ambitious peasant the opportunities and it certainly facilitated the purchase and development of the big coffee farms of the fifties which attracted Ganda traders, businessmen and others into commercial farming. A property market therefore grew up and a man with capital was able to buy land and start farming on his own account. This opened the way for the emergence of a class of commercial farmers (pp. 295, 313).

The authors emphasize the importance of capital. Those who did not hold mailo could raise capital through selling cotton, which was introduced in Buganda in the 1920s. It is interesting to note that the creation of a land market, permitting land mobility, allowed the commercially minded farmers (whom the authors characterize as "the men of profit") to buy land from the mailo holders who regarded land primarily as a source of status (they were "men of affairs").

Cheater (1984) studied African Purchase farmers in Msengezi, west of the Zimbabwean capital of Harare. African Purchase farmers were those who, after the Carter Commission's recommendations in 1925, were allowed to buy land in areas designated as African Purchase areas. Although it was suggested that these farmers should ultimately obtain freehold title, there were initially many restrictions (for example, a prohibition against subletting and a restriction of rights of residence to family members and hired labor). Furthermore, all transfers "were to be subject to government approval, whether or not title had been granted" (p. 6). Some 69 percent of the sample farmers were monogamous. Although the farmers were not entirely free of social obligations to their kin—they let some kinsfolk live with them—it was clearly understood that this residence was only temporary (except in the case of a mother or eldest son). In fact, the relatives were often evicted, unlike in the communal lands where such residents are permanent fixtures.

Cheater says that "less than 10,000 Purchase Land farmers account for one-third of the total value of marketed produce from African growers, the remaining two-thirds coming from approximately 600,000... Communal Land households" (p. 11). These farmers, accord-
ing to Cheater, now express themselves in a modern idiom of status and prestige: “durable goods such as farm machinery and bank accounts... In earlier African societies, there were few opportunities to retain wealth in such material forms and crop surpluses were, therefore, converted into control over people, particularly over wives and children” (p. xiv). In 1974, 91.4 percent of the sample population possessed cattle; 86.3 percent, oxplows; 70.3 percent, cultivators; 61.7 percent, harrows; 41.4 percent, carts; and 12.1 percent, planters.

It is difficult to accept Cheater’s inference of higher productivity among Purchase farmers in the absence of comparative data for these farmers and those on Communal Lands of similar soil quality. But the study confirms the more consistent commercial approach of the Purchase farmers, which also characterized the farmers in the sample from Buganda.

The evolution of land rights in Sub-Saharan Africa should not necessarily be viewed as a natural process, because some of the changes were the results of government intervention (either colonial or postcolonial). Such intervention is not always conducive to efficiency or equity—whereas market forces have tended to circumvent any restrictions that cause inefficiency. The issue is whether those market forces achieve the same efficiency that could have been obtained under a different institutional set up.

The evidence cited in this article dispels some of the popular misconceptions about land rights in Sub-Saharan Africa. In many areas there has always been individual possession; in others, it is growing. Even where communal ownership was imposed, cultivation and possession remained with individual households, and an increasing range of rights to land were appropriated by individual households. Land sales and mortgaging by individuals are common in many areas where such transactions are not legally recognized.

The lesson from other parts of the world is that efficiency requires individual land rights to be recognized in a way that provides sufficient security (either in the form of long-term leases or land titles). That stage may not have been reached yet in parts of Sub-Saharan Africa. But in other parts (sometimes only a region within a country), the justification for a change in land arrangements already exists. In such cases, what is needed is a careful analysis of the benefits and costs of different systems (for example, title deeds, title registration, and long-term leases), including equity considerations. The gain in efficiency may or may not outweigh the costs of introducing a new system.

Unfortunately, there is a shortage of rigorous quantitative research that would help to assess the costs and benefits of a policy change.

Conclusions
Such research is essential in Sub-Saharan Africa, where many policymakers and donors have preconceived notions of the ideal system, based on ideological considerations or inadequate data. Obviously, quantitative research has its own limitations: it tends to highlight measurable variables, while disregarding administrative constraints. There is no point in introducing a system of title registration, for example, where the capacity continuously to update the registers does not exist. A proper analysis should include the costs of providing such capacity, rather than simply assuming its existence.

**Abstract**

Links between land rights and agricultural development provide a conceptual framework to analyze land rights systems in Sub-Saharan Africa. The discussion demonstrates that land rights in Sub-Saharan Africa evolved in response to changing political, social, and economic conditions, often the results of governmental interventions that may not have been conducive to efficiency or equity.

The evidence dispels some popular misconceptions about land rights systems in Sub-Saharan Africa. There is increasing individualization of ownership, and in many areas possession has always been individual. Even in areas where communal ownership has been imposed, cultivation and possession remain with individual households and an increasing range of rights to land are appropriated by the individual household. Existing and indigenous systems are not inherently equitable. Land sales and mortgaging by individuals are observed frequently in many areas where such transactions are not recognized under the formal legal system.

The lesson from other parts of the world is that efficiency ultimately requires formal recognition of individual land rights. That stage has not been reached yet in many parts of Sub-Saharan Africa, but in many other parts the justification for a change in land rights arrangements already exists. The practical problem in such cases is the careful analysis of benefits and costs, including equity considerations.

**References**


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*Gershon Feder and Raymond Noronha*


