

# Land Tenure

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Farming in sub-Saharan Africa outside South Africa typically takes place on small plots cultivated by individuals. The land tenure system is often described as ‘communal’, meaning that land is owned by a kin-based or political group and that individuals obtain the right to cultivate through their membership in that group. If a generalization is possible about the process through which people obtain land for farming in such a broad and diverse region, the consensus would be that land tenure in Africa is characterized by flexibility, complexity, and negotiability (Shipton and Goheen 1992; Amanor 2008). Claims to land and land resources commonly depend on membership in broader social groupings: extended families or lineages, villages, or other social networks. Land tenure in this broad region are often multi-layered, with differentiated rights over standing crops, crop stubble, fallowed fields, ‘wild’ foods, minerals, water access, or trees and forests. These multiple layers of rights over land and its produce can be associated with rich and flexible land use by multiple parties, as when grazing on crop stubble complements cultivation in many areas of the Sahel. They can also be associated with multidimensional conflict, as between timber extraction, cultivation, and wild food gathering in many forest areas. Layered on top of this customary tenure system is a growing share of land obtained by commercial transactions via sharecropping, rental, or outright purchase.

The flexibility and complexity of land tenure systems in sub-Saharan Africa are often associated with conflict: the fact that many individuals may have claims to the same piece of land, and to different dimensions of use of that land may imply that each one of those individual’s claims are not fully secure. This apparent insecurity, and the hypothesized associated losses in productivity and incentives to invest, attracted for decades much of the attention of policymakers with respect to land rights.

There are a number of economic mechanisms through which one would expect insecure property rights to reduce investment and productivity on farms (Besley 1995). The most direct is the fact that there is some probability that the farmer will be unable to reap the full reward of any investment. A farmer considering an investment balances its cost against the expected future benefits generated by the investment; otherwise worthwhile investments will therefore not be made if those expected benefits fall. This mechanism has received a great deal of attention from scholars and policy-makers concerned with land in Africa, and there is mixed evidence regarding its importance in various regions.

Less direct connections between secure property rights and increased investment and farm productivity run through credit markets (secure land could be used as collateral); gains from trade (farmers able to freely sell or rent out their land are more likely to make investments); or complementary factors of production (tenure security permits farmers to economize on guard labor). There is no evidence, however, that any of these indirect mechanisms has any quantitatively important impact on productivity or investment.

From the colonial period until the present day, there have been recurring worries that the insecurity of land tenure in Africa has inhibited productivity-increasing investments in agriculture. These worries have been founded primarily on the simple economic reasoning that insecure land tenure would reduce investment and lower agricultural productivity. Quantitative evidence that such a link exists, however, was always weak and partial. Partly, this weakness reflects the fundamental difficulty of measuring such an effect: it is difficult to quantify 'insecurity' of land. Formal laws regarding land tenure may have only a tenuous relationship to farmer behaviour or to the expectations people have regarding their ability to use or maintain control over their land (Pande and Udry 2006). Even when it is possible to measure tenure security and thus construct a correlation between this and agricultural productivity, it remains a challenge to understand the causal chain that might link land tenure regimes to investment and productivity. Causality could run in both directions: certain investments might themselves change the rights of a cultivator over her land, thus inducing a correlation between tenure security and investment or productivity. More importantly, there are surely many 'third factors' that might drive any observed correlation between land tenure regimes and agricultural productivity. An obvious example is the existence of an effective local government authority, which might reduce conflicts over land and at the same time provide infrastructural support that would increase agricultural productivity.

As late as the mid-1970s, the strength of the a priori theoretical arguments that there would be a strong effect of land tenure security and agricultural productivity was sufficiently persuasive that the dominant theme of land policy in international organizations and in many countries was focused on the desirability of providing secure, individual title to smallholder farmers (World Bank 1975). However, the weak empirical foundation of this point of view was apparent, and scholars from a wide variety of disciplines provided many examples of land tenure arrangements in Africa that were flexible, negotiable, complex, and that seemed compatible with a great deal of investment and agricultural intensification (Peters 2004 has a useful summary of some of the best of this research). Empirical research by economists found little evidence for a strong causal link from tenure security (via either formal titling programmes or variations in informal tenure security) to investment or agricultural productivity (a very useful brief review of this literature can be found in Brasselle, Gaspart, and Platteau 2002). By 1991, World Bank researchers were arguing that African 'indigenous land tenure systems appear to be adapting efficiently to changes in relative factor scarcities', that their quantitative

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evidence found no relationship between variations and land rights and variations in productivity, and that this evidence ‘undermines the conventional view that land rights are a constraint on productivity’ (Migot-Adholla et al. 1991: 171, 172). The conventional wisdom had been transformed from ‘seeing customary land tenure in Africa as inhibiting agricultural modernization to lauding its adaptive and flexible character that, over time, allows “evolution” towards more efficient forms of landholding’ (Peters 2004: 270). As a consequence, the primary focus of policy advice on land tenure has shifted from direct provision of individual title to support for better integration of customary tenure with the formal legal system.

However, it is clear that at least under some conditions the complexity, flexibility, and negotiability of land tenure arrangements in Africa can be associated with a high degree of insecurity and can inhibit investment and reduce agricultural productivity. Goldstein and Udry (2008) show that in the Akwapim area of southern Ghana, there is a high degree of tenure insecurity, particularly during periods when land is left fallow for weed control and fertility regeneration. Individuals in this region primarily obtain land for cultivation by virtue of their membership in a matrilineage. While ‘in principle, any individual is entitled to use some portion of his or her family’s land, . . . people’s abilities to exercise such claims vary a good deal in practice’ and depend in particular on their social and political status (Berry 2001: 145). Goldstein and Udry find that individuals who are not central to the networks of local political power through which land is allocated are very likely to have their land expropriated if it is fallowed. Women who do not hold a political office have more than a 40% chance of losing that plot in any year that it is fallow. The uncertainty associated with maintaining control over plots while they are fallow is pervasive in the area: even politically powerful men face a 20% chance of losing a plot in any year in which it is fallow. As a consequence, individuals fallow their land for much shorter durations than is technically optimal. As a consequence, farm profitability is correspondingly reduced: a quarter to a half of farm profits are lost as a consequence of the short fallows chosen because of the likelihood that land will be lost while it is fallowed.

These large effects of land tenure insecurity on investment and productivity stand in contrast to the substantial literature which tends to find no or only subtle impacts of insecure property rights on investment behaviour. It is also puzzling that these large effects of tenure insecurity on investment are found in Akwapim, the epicentre of the 20th-century cocoa boom which serves as perhaps the most important single example of massive investment and agricultural transformation under customary land tenure in Africa (Hill 1963; Austin 2004). How could the same land tenure system accommodate the large-scale transition from food crops into cocoa at the opening of the 20th century and so dramatically inhibit investment in land productivity in the same area at the opening of the 21st?

The resolution of this puzzle offers important lessons about the need for caution in generalizing about the economics of land tenure in Africa. In the case of southern Ghana, while rights over land itself are quite uncertain, cultivators almost never lose control over their growing crops.<sup>1</sup> This particular form of tenure insecurity has substantial negative consequences for investments in fallow in a food-crop farming system, but was irrelevant for long-term investments in a tree crop like cocoa. The congruence between a farming system centred on a long-lived tree crop and a customary land tenure system that provided secure rights over growing crops facilitated the meteoric growth of cocoa cultivation at the turn of the 20th century. The interactions between the rules of a particular land tenure system and incentives to invest in agriculture can be subtle; thus it is no surprise that the empirical evidence relating investment, productivity, and land tenure systems varies across Africa and over time. At the same time, these tenure systems play a crucial and flexible role in redistributing resources in the face of unpredictable variations in need. As a consequence, most of Africa is distinguished by the almost complete absence of a rural landless class. This system may provide important insurance in times of need, and a remarkable degree of social stability due to the redistribution of land within rural communities.

The dominant land policy recommendation has historically been to formalize property rights through land titling and registration. But, in many contexts, customary land systems are compatible with investment in agricultural intensification. Moreover, there are important transaction costs associated with any titling programme, and the cost of titling land seems to be much larger than the benefit for most small-scale producers. So only a few (typically elite) farmers and urban landowners go through the process of obtaining title when it is provided at cost. In addition, programmes of land registration and titling are often associated with exacerbated conflict over land (Shipton and Goheen 1992). The ambiguous social benefits of formalizing property rights, in turn, provide little reason for substantial subsidies from the state to support a large-scale titling or registration process.

A process of harmonizing formal legal land tenure with customary rights offers a potential opportunity to move away from state-run land surveys and formal titling of individuals to some form of community management and registration of customary rights. This prescription might relieve some of the burden from the state by offering an opportunity for civil society to play a major role in land administration. However, customary tenure systems are socially differentiated. Formal recognition of the authority of local authorities and 'civil society' to administer land rights may permit these local authorities to redefine their power in such a way as to appropriate additional value from

<sup>1</sup> Wilks (1993: 99) summarizes the principle as: 'The cultivated farm is my property, the land is the stool's [chieftancy's].'

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these land resources.<sup>2</sup> In many contexts, better integration of formal legal land tenure with customary land systems will be an important step towards improving tenure security and promoting rural development. But it is important that the political and social ramifications of such policies be investigated in particular settings.

Land banks have been proposed to provide a decentralized, flexible, and context-specific mechanism for privately providing secure property rights in land (Aryeetey and Udry 2010). Land banks would be formal institutions which would take ‘deposits’ of land from landowners. In turn, land banks would lease out land to commercial farmers and developers. The shareholders of the land banks would be individuals from the community (including chiefs) and elsewhere, and local government. Land banks would serve as aggregators of land to resolve conflicts over ownership, separate property use from ownership rights, and reduce the transaction costs of transferring use right. The relatively large size and long-term perspective of land banks would permit them to capture a portion of gains from providing relatively low-transaction-cost, secure property rights to those seeking land, and they would have an incentive to operate precisely in those regions and farming systems in which the provision of secure land tenure is particularly valuable.

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<sup>2</sup> There is a rich literature describing these processes; see Onoma (2009) for a vivid recent account.

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