

Controversy over the Customary Land Ownership: A Political Analysis

Khandakar Q. Elahi¹

Article history: Received: 14 June 2026, Accepted: 14 July 2026
Published: 15 July 2026

Abstract: This article examines the persistent controversy surrounding customary land ownership through a political and philosophical lens. While existing scholarship has predominantly approached customary land tenure from economic and administrative perspectives, this study argues that the core issue is fundamentally political because property rights derive from state authority and legal recognition. By tracing the historical evolution of customary land tenure and analyzing the concepts of property and sovereignty through John Locke's theory of property and the Locke-Rousseau conception of the nation-state, the article investigates the implications of decolonization and state formation for customary land governance. The findings suggest that the transition from clan-based political organizations to modern nation-states fundamentally transformed the basis of land ownership. Consequently, claims of communal ownership by clans over extensive customary territories are conceptually inconsistent with the principles of the nation-state. The study proposes a twofold reform framework: first, a constitutional recognition of the state as the ultimate owner of national land resources; and second, a cadastral and landform-based approach to classify land into public and private ownership categories. This political reinterpretation provides a coherent framework for resolving customary land disputes, improving land governance, strengthening tenure security, and promoting socioeconomic development in countries where customary land tenure remains dominant.

¹ Department of Agricultural Finance and Banking, Bangladesh Agricultural University, Mymensingh-2202, Bangladesh | kelahi53@gmail.com

Purpose: To analyze the controversy over customary land ownership from a political-philosophical perspective and develop a coherent framework for land tenure reform based on property rights theory and nation-state principles.

Design/Methodology/Approach: This study employs qualitative political analysis grounded in historical institutionalism and political philosophy. It utilizes an extensive literature review, historical records, policy documents, and theoretical analysis based on Locke's property theory and the Locke-Rousseau conception of the nation-state.

Findings: The study finds that customary land ownership conflicts stem from an inconsistency between traditional clan-based governance structures and modern nation-state institutions. The formation of nation-states transferred territorial sovereignty to national governments, rendering communal clan ownership claims over extensive customary lands conceptually incompatible with contemporary statehood. A constitutional and cadastral reform framework is therefore necessary.

Originality/value: This article offers a novel political-philosophical interpretation of customary land tenure by linking property rights, sovereignty, and nation-state formation. It moves beyond conventional economic analyses and provides an original framework for resolving customary land ownership disputes in postcolonial societies.

Keywords: customary land; ownership conflict; locke's property theory; locke and rousseau's nation-state philosophy

Paper Type: article-research

Introduction

In common vocabulary, customary land is understood as the earth's surface owned and administered by the indigenous communities according to their customs. The key feature of this proprietorship arrangement, called the customary land tenure (CLT) system, is communal land ownership. This tenurial arrangement is the polar opposite of the most common land

tenure system practised worldwide. In that system, land ownership is divided into two kinds – private and public. Individuals and/or groups hold titles to private land, while government and semi-government agencies hold titles to public land.

After World War II, when most countries in the South gained political independence, the CLT system came under serious criticism, particularly from donor agencies, for two main reasons. First, private property ownership is critical to a country's socioeconomic development, whereas communal ownership impedes economic growth and poverty alleviation. Second, due to its size, customary tenure poses a significant challenge to land governance in many developing countries. This challenge has both national and international dimensions. In some countries, the extent of customary land is so vast that national governments have little control over their land resources. For example, customary ownership virtually dictates land use patterns in the South Pacific island countries: Papua New Guinea - 97%; Vanuatu - 90%; Fiji - 88%; the Solomon Islands - 87%; and Samoa - 81% (Australian Agency for International Development, 2008). Globally, customary land is the most dominant tenure system. Although accurate global statistics are unavailable, one conservative estimate puts the figure at 1.4 billion hectares of accessible land in Sub-Saharan Africa under the CLT system. This estimate excludes wildlife and forest reserves, urban lands, and privately titled lands (Wiley, 2012).

Given the nature and importance of the issue, humongous policy as well as academic research has been conducted for designing appropriate policies to reform this economically inefficient and politically chaotic land tenure system (Anderson, 2015, 2011; Australian Agency for International Development, 2008; Besteman, 1994; Byamugisha, 2013; Elahi & Stilwell, 2013; Gosarevski, Hughes and Windybank, 2004; Knight, 2010; Lund,

2000; TNI, 2013; Wiley, 2012). A closer look at this extensive literature suggests that these studies have examined the issue mainly from a neoclassical perspective. In neoclassical economics, individuals, guided by their self-interest, utilise the resources under their control as efficiently as possible. This does not happen under the CLT system because land ownership does not belong to the individuals who operate it. Accordingly, the policy suggestion that follows from this neoclassical analysis is clear: communal ownership of customary land should be replaced by private ownership. This policy prescription is popularly known as the individualisation of customary land ownership.

The economic rationality of the individualisation measure is hardly in question. However, there are at least two reasons why this policy measure ought to be considered only a part of the holistic approach needed to address the whole controversy over customary land. First, the individualisation policy mainly involves arable land, which is just the tip of the customary land iceberg. In other words, an overwhelming proportion of customary land may not be suitable for individualisation. For example, 71% of the land in Botswana is under customary ownership (World Bank, 2016). Yet, only 0.5% of the country's land is arable, meaning most of the remaining 99.5% is not suitable for individualisation. Second, the pivotal point in the debate is the conflict over ownership of customary land. Property ownership, however, is a political and legal issue, not an economic one, as the analysis treats it. It is political in the sense that the political authority, no matter how poorly defined, must recognise the rights of the people to continually enjoy the services of the pieces of land they are operating or using. This recognition, in turn, makes land possession a legal matter that imposes a responsibility on the political authority to use its office and forces to protect the individuals' rights on their lands. In other words, the ownership

issue of customary land needs to be analysed from a political economy perspective.

Naturally, a satisfactory solution to the customary land conflict would require a holistic approach guided by political and legal analysis. Once these political and legal issues concerning the ownership of customary land are resolved, economic and geographical criteria may be used to execute the actual reform measures.

Accordingly, the paper has been organised into six sections, including the introductory one. Section 2 sketches out a kind of heuristic or popular history of the evolution of the CLT system. This discussion is important for understanding the political nature of the ownership controversy within the customary land tenure (CLT) system. Nowadays, the term "private property" is used to signify the legal ownership of any object, including land, by an individual or a non-public group/agency. This perception of private property has, in fact, evolved from the "customary land" conception. To see this link between the two terms, the meanings of "property" and "property rights" are discussed in Section 3. Section 4 discusses "landforms" or geographic features of a country. This discussion is vital for clarifying the complexities of customary land ownership because not all types of land are suitable for private ownership. Discussion in Section 4 directs the investigation to the paper's final topics – issues of colonisation and political independence, and their implications for the CLT System Reforms. Section 5 presents this analysis, and the paper concludes in Section 6.

Methods

This article adopts a qualitative political analysis grounded in historical institutionalism and political philosophy. Using an extensive review of literature on customary land tenure, property rights, and state formation, the study examines customary land ownership through the theoretical perspectives of John Locke's

property theory and Locke-Rousseau's nation-state philosophy. Data consist of historical records, academic literature, policy reports, and institutional documents. The analysis employs qualitative content analysis and interpretive reasoning to investigate how the transition from clan-based political organization to the modern nation-state has generated competing claims over customary land ownership and land governance.

Discussion and Findings

Evolution of the Customary Land Tenure System

The history of human evolution is now well known. Anthropologists believe that *Homo sapiens*, who were our ancestors, evolved in Africa about 350,000 years ago (Fagan, 2001; Hart, 2007). This new human species - whose *Homo erectus* ancestors evolved in East Africa about 1.8 million years ago - spread widely, including China, Europe, Central Asia and the Middle East, possibly as early as 300,000 years ago. This history of human evolution and enlightenment is well known and is not perhaps very useful here. What is really important to underline in the current context is that the development of human civilisation in different regions, including the CLT-dominated countries, has a common origin: All peoples, at some points of their socioeconomic and political developments, had experienced the kind of land tenure issues that the CLT-dominated nations are grappling with nowadays.

The CLT system originated with the advent of agriculture about 10,000 years ago; before that time, our ancestors had originally survived on foraging and hunting (Fagan, 2001; Hart, 2007). The introduction of agriculture, which initially involved domesticating plants and animals, was inspired by population growth and a dwindling supply of wild fruits and animals. Anthropological studies conducted in the Near East, the Far East, and Mesoamerica provide evidence that individuals living there knew wild plants and how to cultivate them. Accordingly, they

began incorporating farming alongside foraging as part of an overall food-collection strategy.

The introduction of agriculture was the turning point in the history of humankind. Farming helped the human race settle in their preferred places, which in turn facilitated the development of all kinds of technological inventions, social institutions and infrastructures. Of all the social institutions developed by *Homo sapiens*, the most significant one is the institution of private property. The family was the first natural institution to form the foundation of human society (Bengtson, 2006; Letourneau, 2016). And the natural division of labour dictated that women take charge of household affairs, including caring for children and managing farms for domesticating plants and animals. This is perhaps the reason why women are credited as the originators of agriculture. The important point to note here is that farming involved the exertion of family labour. And it is the exertion of family labour on a piece of land year after year that first created the notion or perception of "owning" or "belonging" among these Aboriginal people, which did not exist before. Although there was no formal social contract or recognition, families could inherit the lands they had prepared for food production. The institution of private property was thus created in times immemorial and was formalised in later periods with the socioeconomic progress of human civilisation. Rousseau (1754, p.23) dramatized the significance of this institution as follows: "The first man who, having enclosed a piece of ground, bethought himself of saying This is mine, and found people simple enough to believe him, was the real founder of civil society."

This development has some features that are immensely important for understanding the issues we are dealing with. First, each human cluster or race was small and family-based. Power (1999) describes the development of these clusters in the context of Papua New Guinea (PNG), where the presence of *Homo*

sapiens has been traced back to some 50,000 years ago. It is believed that these people, who were mainly nomadic or semi-nomadic, constituted hunter-gatherer bands consisting of about 30 people. Agriculture in the region developed about 10,000 years ago, when these hunter-gatherer bands began to settle in their preferred locations. This settlement led to two important demographic developments: an increase in band size and a breakup of bands. Firstly, as the band settled in one location, its size began to increase. Secondly, increased band size, in turn, made available resources scarcer, which persuaded some members to leave the band and settle elsewhere. Power (1999) says that the usual upper limit of the band in PNG was about 400 people, after which some impatient and adventure-loving members would break up and settle in new lands.

Second, these agricultural settlements were essentially clan-based, consisting mainly of families related by blood or marriage. This means that the social bonds and sense of security among these Aboriginal people were very close and strong. Each clan, living in the wilderness or on a plateau beneath a mountain, or on a flat field near a river or ocean, created its own domain or territory, where only clan members were allowed to engage in socioeconomic activities. In the modern sense, this means that each clan created its own sovereign state, where the chief was its leader and commander-in-chief. The clan council, which was ordinarily composed of or dominated by the adult male members, created its rules and customs, and the chief was made responsible for executing them. Additionally, within the clan territory, all families had private property recognised by clan members and protected by the clan administration.

The above description may be considered as the replica of the Western political society that has led to the development of human civilisation to its current state. The important point to recognise about this replica is that the development of this

political society has been extremely uneven across different regions of the globe. This model has reached its zenith in developed countries, including Australia, New Zealand and North America (the US and Canada). All the land in these countries was customary before the Europeans invaded and eventually settled. After they instituted a national government, individuals who could demonstrate control over land obtained government-issued certificates of private ownership. Or, the government demarcated lands into parcels and awarded ownership to interested individuals.

This land registration and distribution policy could not be adopted in CLT-dominated countries at the time because there was no national government. These countries consisted of hundreds of clans, who claimed sovereignty over the territories they knew and protected their presumed empires against all kinds of aggression. These clans, being large extended families living separately, did not need any property ownership arrangement. Land was abundantly available, which each family could use to create its own estate by employing family labour. The tenure security was ascertained as this estate could be used hereditarily. The clan owned the entire landscape, which it considered its sovereign domain, and individual members of the clan owned the lands they operated. Land ownership was inheritable, meaning it could be enjoyed for generations. It was also transferable, to some extent, as a gift to individuals of the same clan or, in the case of marriage, to those of different clans. But this ownership was not transferable in the modern market sense, because land is not supposed to be bought or sold under the CLT system, meaning individuals had use rights to the lands they operate but no ownership rights.

Property and Property Rights: John Locke's Theory of Private Property

The critical issue in the customary land debate is the controversy over ownership of the resource. Naturally, a satisfactory resolution to this debate requires developing a method or rule for assigning "ownership rights" to these vast areas of the earth's surface. To do that, we first need to understand what these two words mean, individually and collectively.

"Ownership" signifies the possession or control of anything, tangible or intangible, by an agent or agency. "Rights," on the other hand, signifies a moral and/or legal entitlement to have or do something, which commands social as well as legal approbation: Right is a social concept in that other members of society recognise and honour its legitimacy; it is also a legal concept, because the country's legal system endorses and protects. Finally, when a person is granted "ownership rights," all others are supposed to understand that they are "excluded" from access to that thing without the owner's express or implied consent.

Land is a "natural thing," which can be used, among others, for two primary purposes: livelihood (subsistence as well as commercial) and residence. Whatever the use, the critical question here is how someone could claim ownership and then demand that others recognise and honour that claim. This is a debate that has been fought over decades under the jargon "property" and "property right" (Macpherson, 1978; Parel & Flanagan, 1979; Pejovich, 1990; Reeve, 1986; Waldron, 1988). Thus, the issue of "ownership right" involves defining unambiguously two terms – "property" and "property rights": What is property? And why should someone be granted the right over its possession?

The current state of the property literature suggests that these questions lack satisfactory answers. John Sprankling (1999), a leading American legal expert, has gone so far as to argue that the question "what is property" is unanswerable. The reason, he

contends, is that the legal meaning of "property" is quite different from what ordinary individuals attach to the term: while jurists interpret properties as "legal rights," common people define them as "things."

For obvious reasons, we would set aside all this academic quibbling and concentrate on finding a workable definition of property that may seem sensible to most analysts but, more importantly, is relevant to our context. The definition being inferred here is the one that John Locke (1690) authored about three and a quarter centuries ago. This definition is considered most relevant here because it was developed in the context of conceptualising the modern nation-state, which eventually emerged in the Western world and now dominates the governance structures of the global village. All countries grappling with customary land issues attained political independence after World War II and instituted national government structures modeled on the Western model.

1. Locke's Theory of "Property" and "Property Rights"

Locke (1690) defines property in his *Second Treatise of Government*. In doing so, he followed a very religious approach so that his ideas could not be contradicted by the established political and religious authorities of his time. God, Locke says, created the earth and gave it to Adam and Eve for their preservation. Subsequent generations received the right to use this gift in common as their descendants. All this, Locke says, is well accepted. But this does not explain how anyone could have a property in anything. By property, Locke means one's right to exclude others from one's possession.

Although earth is a gift from God and all fruits it produces and beasts it feeds belong to mankind in common, men must use some means to make these products of nature useful or at least beneficial to them: "The fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common,

must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life" (Locke, 1690, p 17).

Every man, according to Locke, has a property in his own person, to which nobody has any right but himself. The labour of his body and the work of his hands are properly his. Therefore, whenever he removes something from the state of nature, which involves mixing up his labour to make it useable for human benefit, that thing becomes his property. This means that anything removed from the common state of nature by someone automatically excludes it from the common right of other individuals. For labour is the unquestionable property of the labourer; no one but the labourer can have a right to this human quality once joined.

It is thus human labour that puts a distinction between what can be claimed as "property" by a person and what is to be enjoyed "in common." According to this law of reason or the law of nature, the deer killed by an Indian becomes his property. Similarly, fish caught in the ocean become the property of those who caught them.

In the civilized world, people and governments have made and multiplied positive laws to define and protect property rights. The chief object of the property ownership issue in our context no longer concerns gathering the fruits of the earth, but the earth itself. Yet this issue is no different from the one that gave rise to the concept of property in the first place. Land that individuals cultivate for growing food is certainly their property, meaning they have both positive and moral rights to appropriate these resources. Accordingly, these individuals have the right to enclose their lands with fences to separate them from common use and prevent others from usurping their rights. This law of nature, therefore, shall take precedence when the conflict over ownership becomes too complicated.

This conception may be considered the primary and pivotal definition of property. To claim ownership of something, we must first convince ourselves why others cannot have the right to use this thing and why others will recognise and honour our claim. It is also obvious that this definition applies only to private property. However, the idea of customary land refers to vast expanses of the earth's surface, not all of which are arable, so private agents cannot claim ownership through personal effort. In other words, the ownership question of customary land is much more complicated than the issue Locke dealt with. Therefore, we need to understand the nature of a country's landscape to untangle the controversy over its land ownership. In technical jargon, this means knowing the country's "landform."

Landform and Customary Land Ownership

Landforms are specific geomorphic features on Earth's surface that range from large-scale features such as plains, plateaus, and mountains to minor features such as hills, valleys, and alluvial fans (National Geographic Society, 2011). From this information, it is clear that not all types of earth structures are suitable for agricultural activities, which are typically carried out for livelihood purposes. For example, landforms such as mountains, hills, buttes, and canyons are not very useful for agriculture and therefore do not qualify for private ownership.

Table 1, which presents two key statistics on the nature of landforms in some Sub-Saharan countries, underscores the importance of this point. All these countries are grappling with the Herculean customary land administration issues. The table shows statistics only on total and arable land areas. FAO defines arable lands as areas under temporary crops (double-cropped areas are counted once), temporary meadows for mowing or for pasture, land under market or kitchen gardens, and land temporarily fallow (World Bank, 2016). A broader concept in this regard is agricultural land, which encompasses permanent crops,

permanent pastures, and arable land. Permanent crops, such as cocoa, coffee, and rubber, occupy lands for long periods and need not be replanted after each harvest. This category includes land under flowering shrubs, fruit and nut trees, oil palm and vines, but excludes land under trees grown for wood or timber. Secondly, permanent pasture is land used for five or more years for forage, including natural and cultivated crops.

Arable lands are supposedly the appropriate candidates for registration and the awarding of individual ownership rights among the vast tracts of land under customary ownership. For these lands are already in use, which satisfies the property-right definition established above. This also suggests that agricultural lands are not the key factor in the prevailing controversy over customary land. In fact, this is the main reason for selecting arable land as a criterion for illuminating the confusions in the customary land debate.

Table 1: Land Use Statistics of Some Countries of Sub-Saharan Africa

Country	Total Land Area (2015) 000 sq. km	Arable Land (% of Total Land Area)	Total Arable Land 000 sq. km
Botswana	566.7	0.5	2.8
Chad	1259.2	3.9	49.1
Congo Dem. Rep.	2267.1	3.1	70.2
Ecuador	248.4	4.8	11.9
Ethiopia	1000	15.1	151.0
Kenya	569.1	10.2	58.0
Niger	1266.7	12.6	159.6

Somalia	627.3	1.8	11.2
Sudan	2376	7.2	171.0
Zambia	743.4	5.0	37.1
Sub-Saharan Africa	21242.4	8.8	1869.3

Source: The World Bank (2016)

The table shows that arable lands constitute only 8.8% of Sub-Saharan Africa's total land area. It also shows significant variation in the distribution of arable land across the ten African countries included in the analysis. The range varies from 0.5% in Botswana to 15.1% in Ethiopia. In numbers, this means that only 3 out of 567 thousand square kilometres of Botswana's landmass is arable, while in Ethiopia, only 151 out of 1000 thousand square kilometres is arable.

This information raises critical questions about what is meant by the term "customary land". For example, Botswana has three land tenure systems: tribal land (71%), state land (23%), and freehold land (6%) (Tembo, Manisa, and Maphale, 2001). The tribal land, which is the same as customary land, constitutes the largest tenurial category in the country. Theoretically, 402 thousand square kilometres of Botswana's landmass (71% of total land area) are treated as tribal or customary. Out of this huge landmass, only about two thousand square kilometres (0.5% of customary land) are arable. More specifically, only 0.5% of customary land is suitable for registration as private property. Accordingly, the remaining portion of customary land is not suitable for agricultural use because it consists of desert, mountains, rivers, swamps, etc. This is the fact recognised in the *Framework and Guidelines on Land Policy in Africa*, a report prepared by the African Union Commission in cooperation with the United Nations Economic Commission for Africa and the African

Development Bank. In articulating the land question, the report says:

One of the key aspects of Africa's land question is that, despite extensive dependence on farming, not much of the continent's land is arable or potentially arable. Large parts of the continent are deserts or semi-arid, and/or facing ecological damage. In many instances, unequal distribution of land has relegated a growing population of small farmers onto marginal areas leading to increasing physiological pressure and land and resource degradation including deforestation. In many parts of the continent, erosive downpours accompanied by flooding and intermittent droughts have also tended to accelerate soil exhaustion and land cover losses. This remains true despite the continent's enormous and untapped subterranean resources (African Union Commission 2010, p. 18).

The ownership controversy over customary land then boils down to one simple question: Who should own this vast land: the newly formed national government or the local clans? This is a political question that only theories of political philosophy can answer appropriately, a discussion that the next section takes up.

Colonisation, Political Independence and CLT System Reforms

The reason for failing to address the customary land ownership issue properly, it may be argued, is more a conceptual omission than an analytical imperfection. A closer look at the CLT reform measures, some of which have already been discussed above, reveals that the ownership issue has been examined mainly from economic perspectives, including poverty alleviation, tenure security, private investment, and rural finance. These are indeed the issues for which the CLT system needs reform. However, the principles guiding the formulation of reform measures ought to be grounded in political considerations, because "property rights," as noted above, are a political issue. From a political perspective,

there are few problems with registering arable customary lands and issuing titles to private owners. Rural people have already established their de facto ownership rights over the lands they operate on, and these rights are well recognised and respected within the relevant communities. Therefore, what the modern approach calls the statutory recognition of customary ownership is actually a simple matter of recording, registering, and titling arable lands, and making their ownership tradable.

Thus, the major issue in land governance in CLT-dominated countries concerns the vast areas of land that are not suitable for private ownership. Yet, the present legal systems of the concerned countries have placed them under customary ownership. To address this political issue appropriately, two fundamental political changes need careful consideration. These two political changes, which occurred in the relevant regions after World War II, are decolonisation and the formation of nation-states. As mentioned before, the countries grappling with CLT systems were European colonies that became nation-states after World War II, when they gained political independence. Section 2 details how clans and tribes were formed and how they determined their own domains. However, constitutional provisions in some of these countries indicate that certain politically powerful figures seek to retain their former domains within the framework of the nation-state. For example, some Papua New Guinean supporters of the CLT system treat the establishment of the independent state of Papua New Guinea as a sort of "social contract" between thirty thousand land groups and the national government (Power, 1999). In other words, the land groups, formerly called clans or tribes, want to retain their territorial domains within the national government's structure.

One way to assess the problems associated with this kind of political conception is to examine the issue from the perspective of the theory of the nation-state, as articulated by John Locke and

Jean-Jacques Rousseau in the 18th and 19th centuries. The theory of "the nation-state" is about the transition of state authority from absolute monarchy to the general populace. A brief statement about the nature of this theory might highlight the insights required to resolve the issue under investigation.

John Locke is usually credited with articulating the theory of the nation-state, which forms the foundation of democratic governance in the modern world. According to Locke, the nation-state is the outcome of a social contract among free people living in a specified territory concerning its governance. This social contract, which leads to the formation of the nation-state and civil government, is founded on two basic conditions: one provides reasons for accepting the contract, and the other convinces them to surrender their assets and authorities to the proposed state. The first fundamental condition of this covenant is equality, i.e., all members agreeing to the social contract are equal with respect to the civil and political rights to be enjoyed in the state. The other one is outlined below, following Locke and Rousseau.

Men, Locke says, originally lived in the state of nature. It was a state of perfect equality and liberty governed by the laws of nature, which were all just and fair. One problem of this state was that there was no human authority to enforce these natural laws. Consequently, the natural rights of the weaker could not be protected from the aggression of the stronger. To escape from this anarchic social situation, and to establish human authority to formulate positive laws and enforce them, men made a social contract so as to surrender all their natural rights or possessions – life, liberty and property – in some non-divine political institution, which Locke called the civil society. Rousseau (1762, p.7) articulated this social contract with the following words: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate

capacity, we receive each member as an indivisible part of the whole."

Several features of this contract are directly relevant to understanding the issue under investigation. First, this is a contract among individuals by which they surrender their natural rights to "civil society" (the state) that they are going to establish. This is not a contract between the ruler of any kind of empire and its subjects. Second, the surrender is absolute in that the individuals do not withhold any material possessions. Since everyone makes such a surrender, nobody benefits from others' surrendered possessions. On the other hand, no one loses anything by making the surrender, because they all get back what they surrendered. Finally, by entering into the contract, individuals lost their "natural liberty" and their unlimited right to seek anything they wanted. In return, they gain "civil liberty" and "proprietorship" to their possessions.

We can now apply this nation-state theory to examine the issue of customary land ownership. First, before decolonisation, these people lacked a nation-state. As Power says, Papua New Guinea was an island inhabited by thirty thousand clans who considered themselves sovereign within their own dominion. And in these dominions, land belonged to the respective clan, not its individual members. The formation of the nation-state, say, Papua New Guinea, was therefore a contract among the thirty thousand land groups, representing all individual clan members. With this contract, the informal and imaginary boundary separating one clan dominion from another vanished, and the government of Papua New Guinea, as the legitimate supreme political institution, became the owner of the country's entire terrain. The clans, which had once been political organisations, were reduced to simple social groups. They are therefore not supposed to regain any ownership rights in lands surrendered to the national government, meaning the clan administration must be considered

dissolved and disbanded. However, the individual members of the clan are entitled to retain ownership of the land they operate. In other words, all citizens of the free nation of Papua New Guinea shall get back their lands as property, which the government of PNG has the solemn responsibility to protect with the help of its law-enforcing forces.

This change in the ownership of customary land, formalised by the formation of a nation-state, has legal, political, and economic implications that are overwhelmingly overlooked in the existing literature and policy dialogue. First, to legalise this ownership change at the individual level, land needs to be demarcated, recorded, and registered in the rightful owners' names. Second, the economic implication of this legal act is that it makes land a tradable asset like any other. The economic importance and implication of this legal act hardly need any elaboration, because the marketability of property and commodity is the prerequisite for developing a prosperous national economy in a country guided by the institution of private property. Finally, all nationals would become true citizens of their free country through this legal change. Since individuals do not own land under the customary system, the exchange of land-use rights among non-clan members is not, in theory, permitted. This means that members of one clan cannot buy or sell land to members of another clan. In other words, people in CLT-dominated countries are not conventionally or conceptually free to engage in economic and residential activities within their own nations. In terms of buying/selling land and settling in preferred areas, there is not much difference between nationals and foreigners. Reality, however, may be different, because individuals are buying/selling customary lands in some places.

This discussion on the nation-state theory and its implications for reforming the CLT system would be merely theoretical if it does not make commonsense to the national and

international policymakers. A closer look at the discussion should suggest that the analysis presented above is both rational and pragmatic. It is rational in the sense that the analysis is conceptually clear and has little logical ambiguity. Then the idea of applying the nation-state theory to resolve the Herculean customary ownership issue is sound from the policy perspective. This is not only because the institution of customary land ownership has become invalid with the formation of the nation-state, but also because land reforms in line with the principles suggested above are critical for achieving the very objective for which peoples of all clans have united under one national flag – improved individual welfare and proud national identity. The formation of the nation-state has indeed dramatically changed the political agendas and national objectives of these countries' governments. Naturally, new rules need to be developed in line with the principles of property rights prescribed by the nation-state theory to achieve these national objectives.

There is, however, no single or simple mechanism that can be developed to address this hydra-headed ownership issue. However, two basic principles – one political and the other technical – might help disentangle this complicated land reform problem. The political principle holds that all land in the country belongs to the national government. This premise will do two things. First, it will directly disregard the land group or clan's claim over customary land. Second, the national government, established as the *de jure* owner of all lands in the country, will now have the authority to enact laws to distribute *de facto* ownership of these lands for effective and efficient land governance. The general principle in this regard is to divide all lands into two categories of ownership – public and private. Both public and private ownership could take various forms. For example, public land could belong to national, provincial or even to the lowest administrative units in the government. The

ownership of private lands could be individualistic or corporate of any kind. The political principle is supposed to guide the technical principles used to create an effective land governance system.

The main concern of the technical principle is cadastral, meaning it involves surveying the country's land resources for demarcation and documentation. The demarcated and documented lands would then be suitable for registration under a different ownership category. In this regard, the landforms approach may be appropriate for distributing titles of different land types. For example, arable land is certainly most suitable for private ownership. But mountains, rivers, forests, etc., ought to be placed under public ownership.

Conclusion

This paper begins with the premise that all conflicts over the use of customary land are, in some ways, related to ownership rights in the resource. Since property ownership is essentially a political issue, resolving this debate requires a political approach. Accordingly, a political analysis of the continuing controversy was carried out with a view to highlighting certain points that seem to have remained un-emphasised in the existing literature.

The political analysis in this paper outlines a holistic approach that begins by describing the evolution of the CLT system. The point underlined here is that, in theory, there is little difference between the CLT system and the conventional private property system. In the CLT system, the community owns the land, but individual members are entitled to use rights that they can enjoy in perpetuity. In the nation-state, all land resources are theoretically owned by the state, but in practice, these resources are distributed between private and public agencies based on their geographical and economic characteristics.

Given this conceptual truth, no controversy over customary land ownership should arise when people willingly change the

governing structure of the territory they have lived in for centuries. More specifically, when independent tribal communities living in a given territory join together to form a nation-state, the theoretical ownership of the country's land resources automatically passes to the national government. The formation of the nation-state entails the abolition of the tribal governance system, which in turn ends its claim to ownership of the natural resources the system once controlled.

Yet, an irreconcilable controversy has developed over ownership of customary land. The reason is that the legal system of land ownership in the territory has remained basically unchanged, although the political structure of its governance has totally changed. After decolonisation, independent nation-states were established in territories that had been governed by several independent tribal communities. This political change, however, has not been applied to land ownership. As shown above, a very big proportion of the country's land resources has been placed under customary ownership, in some cases through constitutional laws. This inconsistency between a country's political structure and the ownership of its land resources is the major clue to the continuing controversy over customary land ownership. The solution to this problem obviously lies in removing the inconsistency by bringing all land resources of the country under the nation-state's ownership.

Based on this logic, the paper suggests two principles/measures for reforming the CLT system. The first is political and concerns the enactment of a constitutional law stating that all the country's land belongs to the state. This declaration is supposed to make all ownership claims on customary lands illegal, which will, in turn, pave the way for pursuing the technical principle. The technical principle is essentially cadastral; it involves surveying all land resources of the country to demarcate and record them. These demarcated and recorded lands may then

be registered under a different ownership category. In this regard, a landform approach may be appropriate for distributing titles of different land types. For example, arable land is certainly best suited to private ownership. But mountains, rivers, forests, etc., ought to be placed under public ownership.

Bibliography

- African Union Commission (2010). Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods. <https://archive.uneca.org/publications/land-policy-africa-framework-strengthen-land-rights-enhance-productivity-and-secure-0> (accessed 04 June 2026).
- Anderson, T. (2015). Land and Livelihoods in Papua New Guinea. North Melbourne: Australian Scholarly Publishing Pty Ltd.
- Anderson, T. (2011). Melanesian land: the impact of markets and modernisation. *Journal of Australian Political Economy* 68: 86–107.
- Australian Agency for International Development (2008). Making Land Work. Volume One: Reconciling Customary Land and Development in the Pacific. Canberra: Australian Agency for International Development.
- Besteman, C. (1994). The local factor in economic and political analysis: individualisation and the assault on customary tenure in Africa- title registration programmes and the case of Somalia. *Africa*, 4.
- Bengtson, V., C. Alan, M. David, R. Katherine, & Dilworth-Anderson Peggye. (2006). Sourcebook of family theory & research. London: Sage.
- Byamugisha, F. 2013. Securing Africa's Land for Shared Prosperity: A Program to Scale Up Reforms and Investments. Washington, D.C., Africa development forum. <https://documents1.worldbank.org/curated/en/732661468191967924/pdf/780850PUB0EPI00LIC00pubdate05024013.pdf> (accessed 04 June 2026).
- Elahi, K. & F. Stilwell. (2013). "Customary land tenure, neoclassical economics and conceptual bias." Niugini

- Agrisaïens 5:28-39.
- Gosarevski, S., H. Hughes, & S. Windybank. (2004). Is Papua New Guinea viable? *Pacific Economic Bulletin*. 1:134-48.
- Knight, R. (2010). Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation. Rome: FAO. <https://www.fao.org/4/i1945e/i1945e00.htm> (accessed 04 June 2026).
- Locke, J. (1689). *Second Treatise on Government*. <https://english.hku.hk/staff/kjohnson/PDF/LockeJohnSECONDTREATISE1690.pdf> (accessed 04 June 2026).
- Letourneau, C. (2016). The evolution of marriage and of the family. Amazon Digital Services LLC. <https://www.gutenberg.org/ebooks/67739> (accessed 04 June 2026).
- Lund, C. 2000. African land tenure: questioning basic assumptions. <https://www.iied.org/sites/default/files/pdfs/migrate/9023IIED.pdf> (accessed 04 June 2026).
- Macpherson, C. B. (Ed.) (1978). *Property: Mainstream and Critical Positions*. Toronto: University of Toronto Press.
- National Geographic Society. (2016). Landform. <https://education.nationalgeographic.org/resource/landform/> (accessed 04 June 2026).
- Parel, A. & T. Flanagan. (1979). *Theories of Property: Aristotle to the Present*. Waterloo: Wilfrid Laurier University Press.
- Pejovich, S. (1990). *The Economics of Property Rights: Toward a Theory of Comparative Systems*. London: Kluwer Academic Publishers.
- Power, A. (1999). Land groups: the foundation for nation-building in Papua New Guinea. <https://www.pngbua.com/development/2000/landgroup1-2.html> (accessed 04 June 2026).
- Tembo, E., M. Manisa & L. Maphale (2001). Land Information Management in Customary Land in Botswana. A paper presented at the International Conference on Spatial Information for Sustainable Development, Nairobi, Kenya, 2-5 October.

- <https://www.fig.net/resources/proceedings/2001/nairobi/tembo-manisa-maphale-TS13-3.pdf> (accessed 04 June 2026).
- Reeve, A. (1986). *Property*. Atlantic Highlands, NJ: Humanities Press International Inc.
- Rousseau, J. J. (1754). *Discourse on Inequality* (translated by G. D. H. Cole). https://www.files.ethz.ch/isn/125494/5019_Rousseau_Discourse_on_the-Origin_of_Inequality.pdf (accessed 04 June 2026).
- Rousseau, J. J. (1968). *The Social Contract* (reprinted from Maurice Cranston). England: Penguin Books Ltd, Middlesex.
- Sprankling, J. (1999). *Understanding Property Law*. Newark, NJ: Matthew Bender & Company, Inc.
- TNI Agrarian Justice Programme. (2013). *The Global Land Grab: A Primer*. <https://www.tni.org/files/download/landgrabbingprimer-feb2013.pdf> (accessed 04 June 2026).
- Waldron, J. (1988). *The right to private property*. Oxford: Clarendon Press.
- Wiley, L. (2012). Customary land tenure in the modern world: rights to resources in crisis - reviewing the fate of customary tenure in Africa. <https://www.iccaconsortium.org/wp-content/uploads/2011/11/customary-land-tenure-in-the-modern-world.pdf> (accessed 04 June 2026).
- World Bank (2016). *World Development indicators: rural environment and land use*. <https://wdi.worldbank.org/table/3.1> (accessed 04 June 2026).