

# African-American Land Tenure and Sustainable Development: Eradicating Poverty and Building Intergenerational Wealth in the Black Belt Region

**Edward “Jerry” Pennick and Monica Rainge**

*The absence of clear, enforceable rules and the lack of a simple piece of paper, like a deed, are often roadblocks on the pathway from poverty to prosperity for the world’s poor.*  
— (Danilovich and Reckford 2008)

## INTRODUCTION

Throughout the world, especially in areas of persistent poverty, many advocates believe that land ownership coupled with sustainable economic development are key to eliminating poverty, especially in rural areas but also indirectly in urban centers. An economically viable rural America helps reduce outmigration. In many cases, well-paying jobs and affordable housing in large cities are still relatively scarce for those without sufficient education or marketable skills. While land ownership is important for sustainable economic development, the impact and value of African-American land ownership is often ignored by policymakers in the United States. However, there is a long tradition within the African-American community itself that views land as key to economic and political independence.

This is supported by a preliminary study conducted by the Federation of Southern Cooperatives/Land Assistance Fund (FSC/LAF) on intergenerational attitudes toward land. The study found that African Americans in all age groups valued land ownership as essential to building wealth and political advancement (Jordan et al. 2009). Yet, there has never been a concerted, financial commitment and long-term effort to parlay those values into land-based economic development programs that are rooted in the

community. There have, however, been several attempts to reach that goal—such as the U.S. Endowment for Forestry and Communities-led Sustainable Forestry and African American Land Retention Program which focuses almost exclusively on forest landowners’ access to specific U.S. Department of Agriculture (USDA) services [e.g., National Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP)]—yet there has never been a well-resourced holistic and long-term land-based economic development program that addresses the complexities of African-American land tenure especially as it relates to heirs’ property.

African-American land ownership has helped guide and support the march toward freedom and sustainability for generations, even in the face of physical harm, death, and an unjust justice system that has often conspired to dispossess the African-American community of this critical asset and power base.

This article provides a framework for developing solutions to the problem of systemic poverty in the rural South, with land access and sustainable development forming the key component of those solutions.

## BRIEF HISTORY<sup>1</sup> OF AFRICAN-AMERICAN LAND LOSS

Former slaves viewed land as key to advancing freedom beyond the removal of chains and welcomed General W.T. Sherman’s Field Order 15 (better known as “Forty Acres and a Mule”). Field Order 15 provided freed slaves (men) with 40 acres of abandoned land along the

<sup>1</sup>A more in-depth history can be found in the book, *Land & Power: Sustainable Agriculture and African Americans* (Jordan et al. 2009).

*Author information:* Edward “Jerry” Pennick, Rural Policy Coordinator, Tuskegee University, Tuskegee, AL 36088; and Monica Rainge, Director of Land Retention & Advocacy, Federation of Southern Cooperatives/Land Assistance Fund, East Point, GA 30344.

*Citation for proceedings:* Gaither, Cassandra J.; Carpenter, Ann; Lloyd McCurdy, Tracy; Toering, Sara, eds. 2019. Heirs’ property and land fractionation: fostering stable ownership to prevent land loss and abandonment. June 15, 2017, Atlanta, GA. e-Gen. Tech. Rep. SRS-244. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 105 p.

Sea Islands; however, that dream of land ownership and economic independence was short lived as President Andrew Johnson restored most of the abandoned land to the original (White) owners. Yet, with little assistance and few resources, it is estimated that African Americans were able to amass 15 million acres of land by 1910 (Browne 1975). Racism, discrimination, and lack of access to resources soon led many African-American landowners to seek better opportunities in northern urban centers, thus beginning the Great Migration and the further decline of African-American land ownership. The decline continued almost unabated, and today there are <3 million acres of African-American farmland. However, according to the 1997 Census of Agriculture (USDA NASS 1999), the African-American rural land base was 7.8 million acres of all rural land. This land was valued at 14 billion dollars. It would therefore be safe to assume that total African-American land ownership today is at least two times the amount of African-American-owned farmland. This is a hidden asset that needs to be tapped in order to move the Black Belt region toward sustainable economic development, but lack of estate planning resulting in “clouded” titles and insufficient outreach and legal assistance are primary factors that contribute to the loss of African-American-owned land.

The FSC/LAF<sup>2</sup> estimates that as many as 60 percent of African-American landowners do not have an estate plan (Emergency Land Fund 1980). When a landowner does not have a will, or other type of plan for transferring land ownership to another, State law determines how that land is passed down to survivors. When land or other possessions are passed down to heirs according to State law, it is called *intestate succession*, which creates a tenancy-in-common, or heirs’ property. Those who are entitled to inherit heirs’ property under State law share ownership or co-own the property. Each co-owner owns a fractional, undivided interest in the land.

One primary disadvantage of owning heirs’ property is that, with each passing generation, the number of co-owners can increase exponentially, thus further clouding title. The following are typical problems associated with heirs’ property:

- Heirs’ property is often co-owned by individuals who have no connection or even knowledge that they co-own land.
- Heirs’ property may not be managed properly (e.g., payment of annual property taxes, development and implementation of land utilization plans, etc.).
- Lack of or no management of heirs’ property sometimes results in land loss due to such factors as partition sales, tax sales, adverse possession, etc.
- The title complexities of heirs’ property render it virtually ineligible for participation in government and private programs that benefit farmers and landowners.

The ability to make basic but correct decisions when confronted with the above problems requires landowners to have a sound knowledge of their rights and responsibilities as landowners; however, the lack of qualified and/or trustworthy attorneys in the rural South is an ongoing and serious problem for African-American landowners. Where there are competent attorneys, oftentimes heirs’ property cases are so complex and resources are so limited that they are unable to provide the necessary legal assistance. Without basic knowledge and adequate legal representation, African-American-owned land often falls prey to tax sales, adverse possession, eminent domain, foreclosures, and mineral rights exploitation. There is growing acceptance that African-American land loss is having an adverse impact on sustainable economic development in general and in the Black Belt region in particular.

## OPPORTUNITIES FOR CHANGE

In 2008, the USDA Office of Rural Development awarded competitive grants to the FSC/LAF and the South Carolina Center for Heirs’ Property Preservation. The two organizations were tasked with developing recommendations on how to solve title issues associated with heirs’ property so that the land could become eligible for USDA programs and services, especially housing. This was the second such effort, the first being a 1980 USDA-funded study entitled, “The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States,” conducted by the Emergency Land Fund. Neither gained much traction; however, they served as the impetus for heirs’ property legislation contained in the 2018 Farm Bill which will be discussed later.

There have been some incremental steps in the public and private sectors toward addressing the problem of heirs’ property. Below are summaries of those efforts.

- The USDA Risk Management Agency (RMA) is the lone USDA agency that has a history of dedicating resources to solving problems related to heirs’ property. The RMA recognizes heirs’ property and the lack of estate planning as threats to wealth accumulation and financial security for farmers, and provides grants to community-based organizations to provide outreach

<sup>2</sup>The Emergency Land Fund merged with the Federation of Southern Cooperatives in 1985 and became the Federation of Southern Cooperatives/Land Assistance Fund which allowed a more holistic approach to African-American land retention and economic development.

and education to farmers throughout the South on the importance of a clear title and intergenerational transference of assets. This is a successful model that could be easily duplicated and expanded if adequately resourced.

- Several 1890 Land Grant Institutions have incorporated African-American land tenure issues into their outreach programs. This has led to more and better collaboration between the 1890 institutions and community-based organizations. These collaborative efforts have created opportunity for the 1890 system to make this issue an integral part of its extension program. For example, Tuskegee University has established a course on heirs' property. Through this course, the university's outreach will be strengthened while developing a cadre of new leaders and experts on the subject.
- Although some philanthropic institutions and individual donors have supported initiatives to help solve the problem of African-American land loss, none have dedicated sufficient resources to ensure success. With government and educational institutions collaborating with community-based organizations, philanthropic institutions now have the rare opportunity to stretch their resources without compromising the effectiveness of programs and projects aimed at solving the problem. Moreover, these funds could also encourage long-term collaboration by providing multi-year funding to collaborative efforts.
- For over 50 years, the FSC/LAF's mission has been to reverse the trend of Black land loss and to encourage land-based economic development throughout the Black Belt region. These partnerships are providing rich opportunities for solution-centered research and coordinated advocacy on heirs' property issues. In 2018, FSC/LAF received a grant from Alcorn University's Socially Disadvantaged Farmers and Ranchers Policy Research Center to conduct a study that would better describe the impact of heirs' property on Black farm and land loss and recommend policies that could decelerate that loss and improve access to USDA programs for heirs' property owners. This unpublished study, "Land Loss Trends Among Socially Disadvantaged Farmers and Ranchers in the Black Belt Region from 1969 to 2017," is essentially a follow up to the 1980 Emergency Land Fund study mentioned above.<sup>3</sup> A key policy recommendation from the study is that the USDA's eligibility standards be determined by either control or possession of the land. Control means possession of the land by ownership, written lease, or legal agreement. Currently, to be eligible as an applicant for NRCS assistance, a producer must

self-certify written control, which can include such documentation as a lease of the land at the time of application. While heirs' property owners may become eligible for NRCS programs, other agencies within USDA require clear title for participation in their programs; thus, heirs' property owners are shut out from accessing these critical resources, e.g., Farm Service Agency (FSA) loan program.

The most encouraging outcome in decades is heirs' property legislation that was passed in the 2018 Farm Bill. This groundbreaking legislation is the brainchild of the FSC/LAF and establishes policy to increase equity for heirs' property owners by expanding the USDA's eligibility requirements for participation in USDA programs. Introduced by U.S. Senators Doug Jones (D) of Alabama and Tim Scott (R) of South Carolina, along with U.S. Representative Marcia L. Fudge (D) of Ohio, "The Fair Access for Farmers and Ranchers Act of 2018" would provide statutory authority in the Farm Bill to allow producers farming on land that is held by undivided interests without administrative authority to secure access to USDA programs. The proposed legislation would also assist heirs' property owners by:

1. Providing authority in the Credit Title for FSA to make loans available through qualified intermediaries, establishing a revolving loan fund to resolve heirs' property ownership on farmland that has multiple owners
2. Providing authority to the Secretary of Agriculture to collect data and perform analysis on trends in farmland ownership and operation and transitions of farms and ranches to new generations of owners and operators, and to help clarify the impact of unresolved land tenure issues on the ability of producers to operate farms and pass them on to new generations of owners

## RECOMMENDATIONS

African-American land loss is a serious problem that requires a long-term commitment, financial and human, from all stakeholders. A collaborative, holistic approach for addressing this issue must bring together different but critical skills and other resources and should include the following:

- Well-resourced Community Based Organizations (CBOs)—Participating CBOs must have a proven track record of successfully addressing the problem. They also need to have a verifiable clientele or membership base. These CBOs are the first line of defense because they are on the ground with a direct connection to the

<sup>3</sup>Federation of Southern Cooperatives/Land Assistance Fund. 2018. Land loss trends among socially disadvantaged farmers and ranchers in the Black Belt region from 1969 to 2017. Unpublished report. On file with: Eloris Speight, Socially Disadvantaged Farmers and Ranchers Policy Center, Alcorn State University, 1000 ASU Drive #449, Lorman, MS 39096-7500.

community. Trust is a major factor in any successful program, and CBOs can provide that trust. CBOs are also experienced in organizing communities around particular issues and directing resources where they will have maximum impact.

- Universities—The 1890 Land Grant Institutions have a long and rich history of working to build sustainable rural communities through land-based economic development that includes agriculture, housing, and business. The 1890s can work with landowners and CBOs to develop and help implement land use plans that will make the land an asset rather than a liability.
- Federal and State Government—Government plays a vital role. It has an array of financial and technical resources it could bring to bear on the problem, but it must work with and listen to the communities on the ground. More resources need to be targeted to farmers, landowners, and communities of color.
- Charitable and Nonprofit Foundations—Foundations have financial resources that could help bring solutions to the problem. Unlike government, foundation resources could be less restrictive, multi-year, and encourage the development of innovative ideas to deal with a problem that is constantly evolving.
- Revolving Loan Fund—When legal assistance, mediation, and other strategies fail, the financial option is often the only one left for family land retention. Whether it is to buy other family members out, bid on family land at a tax or partition sale, or prevent foreclosure, African-American landowners need access to a pool of capital specifically for those purposes. Unfortunately, traditional lending institutions, for the most part, have not been receptive to providing financial assistance to save and develop farms and land owned by African Americans. A nonprofit revolving loan fund should be established to meet these critical needs. It could be housed within an existing organization or an independent entity, supported by a network of community organizations.
- Stakeholder Summits—An annual African-American land tenure summit of stakeholders should be held at an 1890 institution (preferably Tuskegee University given its history of addressing the problem) to develop a comprehensive, long-term, and outcome-based strategic plan that supports a shared agenda. This would also be a time to annually evaluate progress and make adjustments as needed.
- Uniform Partition of Heirs Property Act—Heirs' property laws vary from State to State; however, none adequately address the problems associated with heirs' property, especially partition sales. The FSC/LAF advocated for a uniform heirs' property statute for over 25 years, which was finally developed by the Heirs' Property Retention Coalition. Variations of the statute, the Uniform Partition of Heirs Property Act, have been enacted in 11 jurisdictions (Nevada, Georgia, Montana, Alabama, Arkansas, Connecticut, South Carolina, Hawaii, Iowa, Texas, and New Mexico). Essentially, this Act provides heirs with the opportunity to keep the land in the family. It also provides uniformity across States. A well-resourced advocacy and education effort is needed to ensure passage in all 50 States, especially the Black Belt region.
- Mandatory Mediation—Mandatory mediation gives the heirs' property interest holders some control over the process when a dispute arises. Family members would at least have to communicate with each other and try to compromise before the court becomes involved and they lose all control when, more often than not, a judge orders a partition sale. Once an interest has been sold to an outsider, mediation might not be effective; however, the problem could possibly be addressed through the Uniform Partition of Heirs Property Act.
- Modifications to Legal Services Regulations—Most African-American landowners are land rich but cash poor. Unfortunately, land ownership might disqualify them for legal services assistance. Regulations should be modified to place more emphasis on actual income, making land ownership less of a factor when calculating eligibility for assistance.
- Student Loan Forgiveness—This program would only apply to students who are interested in becoming attorneys. Students would be selected from law schools around the country with a focus on students of color. In order to secure student loan forgiveness, these students must commit to practicing law in a rural community for a minimum of 5 years. The student loan forgiveness program would apply to only those students who have interned with or are willing to work with reputable law firms that are experienced in the area of heirs' property and estate planning.

## CONCLUSION

Since 1910, the decline of African-American-owned land has been constant. Despite this decline, African Americans across generations have understood that land is central to their economic, political, and social advancement. Unfortunately, their aspirations have not been generally accepted by well-meaning public and private entities that profess a desire to assist them with achieving that goal. Instead these entities often employ a one-size-fits-all approach to alleviating poverty without sufficiently taking into account the unique circumstances of African Americans in the rural South. Too often there has been an almost laser focus on research and writing about the problem; while both are important, they should not overshadow the need for solutions. Much of the

research that has been conducted over the past 5 decades on African-American land tenure issues has offered comprehensive and possibly achievable solutions, yet most of those solutions have not been implemented.

There must be greater attention and respect paid to those advocates and organizations on the ground that are combating African-American land loss on a daily basis, often with few resources and support from those who profess concern for African-American economic development in the Black Belt region.

One would be hard pressed to explain how there could be any serious discussion or plan to solve the problem of persistent poverty in the rural South (especially the Black Belt region) without taking into account a 7.8-million-acre asset collectively owned by those who are impoverished.

After over a century of research and failed programs, a well-resourced Black Belt Economic Development Initiative (BBEDI) is required to solve this critical problem. Shirley Sherrod, the first African-American Georgia State Director of USDA Rural Development originated and implemented what is known as the “StrikeForce” program. The goal of the program was to bring together all USDA agencies to target economically underdeveloped and under-resourced counties with

a coordinated and holistic approach to economic development. Unfortunately, no additional funds or resources were set aside, and the program has had minimal success—yet small successes showed real promise if the program could be properly funded and expanded. The BBEDI could be a more comprehensive version of StrikeForce and achieve maximum and lasting success. This would require a public and private partnership that adheres to the principle of local solutions and local implementation, one that utilizes the assets of the region—its land and people.

## LITERATURE CITED

- Browne, R.S. 1975. Only six million acres: the decline of Black-owned land in the South. New York: Black Economic Research Center. 227p.
- Danilovich, J.J.; Reckford, J.T.M. 2008. An end to global poverty starts with property rights. *The Atlanta Journal Constitution*. November 25.
- Emergency Land Fund. 1980. The impact of heir property on Black rural land tenure in the Southeastern region of the United States. [Project Director: Rose Sanders. Submitted to the U.S. Department of Agriculture, Farmers Home Administration]. 569 p.
- Jordan, J.; Pennick, E.; Hill, W.A.; Zabawa, R. 2009. Land & power: sustainable agriculture and African Americans. [Place of publication unknown]: Sustainable Agriculture Research & Education. 216 p.
- U.S. Department of Agriculture (USDA) National Agricultural Statistics Service (NASS). 1997. 1997 Census of Agriculture. <http://usda.mannlib.cornell.edu/usda/AgCensusImages/1997/02/02/History.pdf>. [Date accessed: March 2018].