



Scaling up Responsible Land Governance

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THE ROLE OF LAND POLICY IN AGRICULTURAL TRANSFORMATION AND INCLUSIVE ECONOMIC GROWTH: IMPLICATIONS FOR AFRICA

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Abstract

This paper addresses two fundamental relationships affecting economic transformation in developing countries: the relationship between labor productivity growth and land distribution, and the extent to which land distribution patterns can be proactively influenced by land policies. The first question draws upon ongoing multi-country research that examines how farmland ownership patterns influence the income and employment multiplier effects from agricultural growth. The second question is addressed through case studies of alternative tenure approaches, ranging from countries that have devolved land rights to communities to strengthen their control over land allocation and security, to those that have used more centralized land governance approaches. The juxtaposition of the bodies of literature on these two relationships will produce a synthesis of current knowledge about ways in which land distribution and land policies might contribute effectively to economic transformation, taking account of the wide variations in land governance and farm structures in the region.

Customary Tenure and Land Concentration

Arable land across the African Continent is dominated by small, family farms. The majority of these farmers access land via customary or traditional tenure systems that allow them to cultivate individual plots and/or use communal land for grazing, firewood harvesting, and other rural livelihood strategies. In many cases, the land they use is legally held by the state (a common land ownership structure throughout the continent); thus, family farmers often do not have legal ownership of the land. Nonetheless, in many places, customary tenure systems have historically provided farmers with sufficient tenure security (Lawry et al. 2014; Stickler and Huntington 2015).

However, in recent years, factors such as population pressure and world food prices have increased demand for land in many regions, including across Africa (Otsuka & Place 2014; Landesa 2012). These trends have created new stresses on the ability of customary tenure systems to protect family farmers' land from encroachment or appropriation. Greater interest in acquiring land for agricultural investments by both international and national companies (Jayne et al 2014; Deininger & Byerlee 2011), as well as urban elites (Jayne et al 2015; Sitko et al 2014), coupled with government interest in attracting external investment, poor local governance (e.g., local chiefs who perceive themselves to be “essentially private owners of the land” instead of trustees on behalf of their communities – Diao et al 2013), and inefficient land administration have led to the sale or lease of customary land without the participation or even knowledge, in many cases, of local communities who have traditionally used the land. Increased interest in African farmland may also be explained by the perception that there are large areas of unclaimed “available” arable land in Africa for investment; however, recent approximations estimate a much smaller amount of available land (Sitko & Chamberlin 2015; Chamberlin, Jayne, and Headey 2014).

There has been a notable increase in the number of and area controlled by medium-scale farms (5 to 100 ha) in recent years (Jayne et al 2014; Sitko & Jayne 2014). For instance, Jayne et al (2015) show that these larger farms are increasing at a much greater rate than small-scale farms in Kenya, Ghana and Zambia. To the extent that these new medium- and large-scale farms are less productive than small-scale farms and can lead to greater concentration of wealth, this can lead to decreased agricultural productivity overall and less inclusive economic growth.

Africa's agricultural experience to date is thus notably different than Asia's Green Revolution. In Asia, agricultural transform was led by smallholder farmers, whose tenure was in many cases secured through large-scale land rights formalization interventions that encouraged their investment into the land. For

instance, in the 80s and 90s, Vietnam de-collectivized land, allocated plots to households in a relatively equitable way, and then introduced official land titles and newly permitted land transactions (Ravallion & van de Walle 2006). Increased farmer investment into the land led to higher productivity and better rural livelihoods just as urban growth drove demand for agricultural commodities and provided off-farm employment, thus leading to a large multiplier effect and robust economic growth (Jayne et al 2015).

Asia's experience supports the economic theory that secure land tenure can contribute to economic growth via three main channels: First, by incentivizing landholders to invest and improve agricultural productivity, since there is assurance that returns from their investments will not be appropriated. Second, by allowing factor mobility and efficiency gains, as land can be transferred to the most productive, efficient farmers via land markets. And third, by easing access to formal credit so farmers can more readily invest in their land or acquire new land (Deininger 2003; Brasselle et al 2002; Besley 1995).

Yet, in general, African land titling programs that were designed to enhance tenure security in the hopes of stimulating agricultural productivity and broad economic growth à la the Asian experience have had mixed results. A missing piece of the research to date is an analysis of the role, if any, that land policy in Africa has played in the disparate productivity gains and farmland distribution patterns in Africa, as compared to Asia. And, looking forward, what land policy interventions could potentially spur agricultural transformation in Africa? Can land policies be adopted that recognize the central importance of customary tenure in Africa, incentivize improvements in agricultural productivity, and are structured to widely distribute the benefits of economic development to the poor and wealthier populations alike?

Land Policy in Africa: Interventions to Support Inclusive Agricultural Transformation

Land policy across Africa has adapted over the years to prevailing policy trends. Historically, decentralized land management via tribes or other groups predominated, both in the pre-colonial period and afterward (Bruce & Knox 2009). Despite their prevalence (and relative ease of implementation, given that many rural areas are far from urban centers and lack infrastructure), these customary land tenure systems were initially seen as inefficient by newly independent African states and international actors. They were regarded as particularly inefficient compared to freehold tenure systems that would purportedly increase investment, agricultural productivity, and overall economic development, while decreasing poverty (Acemoglu et al 2001; de Soto 2000; Sokoloff & Engerman 2000; World Bank 1975). Underpinning this view was an assumption that with rising land scarcity and land value, land rights would evolve to be increasingly linked to individuals as an economic asset rather than as a social asset of

collective communities. Land policy was designed to induce this ‘evolutionary’ process through individual titling (Colin & Woodhouse 2010).

Yet, efforts at extinguishing customary tenure in favor of individualized ownership largely failed because initial titling, at high cost, did not prevent parcels from being used and transferred according to customary practice (Lawry et al 2014; Chimhowu & Woodhouse 2005). This was partly due to the persistence of customary norms but also to the relatively high cost of registering land transactions (Lawry et al 2014). Indeed, conversion to individual freehold title may actually decrease tenure security for customary communities where the formal land administration system is unable to maintain their tenure security to the same extent as lower cost, but more informal, customary land administration systems (Id.).

Thus, titling programs that were initiated in many African countries proved ultimately unsuccessful. Although Feder (1993) has demonstrated that titled land in Thailand is more productive than untitled land, Place & Migot-Adholla (1998) find that under Kenya’s post-independence land redistribution and resettlement schemes, the rights that farmers claimed to their land were not linked to their possession of registration or title certificate, and the authors also show no evidence that possession of such documentation is related to increased crop yields. More broadly, Lawry et al (2014) found that conversion of customary tenure to freehold tenure showed weak gains in agricultural investment and productivity in Africa compared to Asia and Latin America (Id.).

Formalization of Customary Tenure

These experiences with formal titling programs have led to a more recent focus in several African countries on the recognition and codification of customary or communal land rights. This approach recognizes that customary tenure systems – which often include both individual and communal rights to different resources – need not be inherently insecure and that the greater source of vulnerability related to customary rights lies in the fact that customary tenure regimes often do not enjoy statutory recognition. African nations and the international community have recognized the value in strengthening customary tenure systems through decentralizing land governance authority in ways that still offer protections and incentives for investment at less cost than formal titling programs (Hagos 2012; Deininger & Binswanger 1999). As customary tenure systems can be quite dynamic, strengthening these systems also allows for the adaptable evolution of property rights while preserving or restoring the social functions of common property within such systems (Deininger & Binswanger 1999) – e.g., use of grazing lands and other common resources that diversify rural income strategies and act as a social safety net in times of distress,

such as during droughts. Indeed, the African Union recently adopted the Framework and Guidelines on Land Policy in Africa (2010), which calls on AU Member States to adopt land policies that recognize the legitimacy of customary tenure systems, including their role in local, community-based land administration and management.

On this point, Botswana was ahead of its time. While other African countries sought to convert customary tenure into individualized statutory ownership, in 1968 Botswana became the first African country to formally recognize customary tenure as equal to individual statutory tenure. The law also established Land Boards to manage customary lands that have gradually increased the representativeness and accountability of traditional decision-making authority (Knight 2010). Not until the mid-1990s did other African countries follow Botswana's example, albeit with considerable variation. In 1999, Tanzania adopted the Village Land Act that vests elected Village Councils with land management authority and provides a means for households within communities to obtain titles while keeping their landholdings under customary tenure (Wily 2003). Other countries that have adopted land policies along these lines include Mozambique (1995), Kenya (2010), South Sudan (2013), and Liberia (2013). In addition, Zambia is currently considering a draft land policy that would formally recognize customary tenure as equivalent to statutory tenure.

Adapting Formalization and Land Administration Systems to the African Context

The impact of this land policy shift towards customary tenure recognition on agricultural productivity and land distribution is somewhat mixed and not well known. This is in large part due to the relative newness of these land policies, which have not in general been fully implemented. A recent systematic review found no sufficiently robust quantitative evidence on the impact of these newer customary rights recognition interventions on agricultural investment and productivity (Lawry et al 2014). The authors posit that the security offered by customary tenure systems may attenuate the security-enhancing effects of titling. While this may have been true in the recent past, this finding appears inconsistent with the phenomena described above in many African countries, which have seen growing evidence that customary tenure systems may be unable to sufficiently cope with rising pressure on land from national urban elites, who capitalize on weak community land governance and government policy that favors private acquisitions of customary land (Sitko & Jayne 2014; Hartman et al. 2015).

In fact, initial evidence on more recent policy reforms is emerging and showing promising positive results. For instance, implementation of the first step in Benin's land formalization policy – mapping of

customary land ownership at the communal and individual level – has shown a 39-40 percent increase in the likelihood that households will grow perennial cash crops and invest in trees on their parcels; also, female-headed households increased their following investments in land (Goldstein et al 2015). The Ethiopian land registration and certification program increased productivity by 35 percent for plots included in the program in the Ahmara region (Melesse & Bulte 2015). Madagascar has decentralized land administration to local governments and their new Municipal Land offices, which reduced the average cost of obtaining a land certificate from \$500 to about \$14 and the time it takes to acquire it from 10 years to 7 months (Teyssier and Selod undated).

Even for formalization programs that consider existing customary tenure arrangements, the complexity of these tenure systems is often a challenge for promoting agricultural productivity and investment. Benin's program to identify and demarcate collective community land ownership (including individual plots and communal land) as a precursor to issuance of official documentation of individual parcels saw an increase in long-term investment but fewer land rentals, possibly in order to assert landownership in anticipation of issuance of formal documentation (Goldstein et al 2015). Thus, there remains the risk that even these newer attempts to formalize customary tenure arrangements could – at least temporarily – increase landlessness and land concentration as more powerful landholders position themselves to benefit from the formalization process (Dethier & Effenberger 2012). On the other hand, evidence from countries like Vietnam shows that it is the non-poor who have taken advantage of the new opportunity to buy or sell land, and the landless are enjoying similar (or even higher) rates of poverty reduction as those with land (Ravallion and van de Walle 2006).

Recently, the success of *ejidos*, or community lands, in Mexico has been touted as a potential land administration model for African countries embarking on formal recognition of customary tenure (Barnes et al 2015). *Ejidos* date from shortly after the Mexican Revolution in the early twentieth century and were little more than community use rights on public land until 1992. That year, the government formally recognized the land ownership of *ejidos* and vested land management authority in *ejiditarios*, or village elders. Each household possesses certificates of their use rights to farmland and communal land within the community, and sales of these certificates are recorded in the *ejido* registry, with the data transmitted to a special *ejidal* land registry maintained by the government (Id.). Interestingly, this formalization process increased land rentals but not, as expected, long term contracts or sales, suggesting that most local landholders prefer to stay in the communal *ejido* system (Deininger and Bresciani 2001).

The *ejido* case illustrates the importance of pairing formal recognition of customary tenure with both representative, accountable local land governance institutions and also formal land administration systems that are flexible, affordable, and willing to learn from the many innovations developed by customary tenure systems. It is now generally acknowledged that pro-poor approaches to land tenure reform need to be based on a continuum of land rights that builds on existing practices, such as by beginning with the paper-based systems used by communities and allowing for more sophisticated land administration as local capacity – and demand for new land administration services, such as registration of leases – increases (Zevenbergen et al 2013).

Inclusive Community Land Governance

Cautionary tales of weak community land governance in many African countries are well documented. In Ghana, where customary chiefs own most of the country's land, chiefs often allocate land to investors without proper consultation of the community at large. The dominance of chiefs in nearly every significant land management decision can marginalize women and other groups vulnerable to landlessness. This is particularly problematic for agricultural productivity, given the importance of women to food production within Ghanaian customary tenure systems (Burgi 2008). A new Land Use and Spatial Planning bill was proposed in response, which would improve transparency and accountability in land transactions (Hagos 2012). In addition, Customary Land Secretariats have been established in many chiefdoms, which in some cases document household occupancy rights but which are hampered by a continuing lack of accountability (Bitir & Nara 2016).

In Zambia, elites from outside the community can legally access community farmland through land transfers. This makes both customary leaders and communities vulnerable to pressures from “urban big men” to sell their land (Sitko & Jayne 2014). The alienations have dramatically reduced the availability of agricultural land to smallholders and have contributed to land scarcity as well as low productivity of smallholders (Id.). Sitko et al (2014) suggest that institutional arrangements for titling in Zambia effectively exclude existing farmers on customary land from accessing land title and at the same time favor outside “elites” whose livelihoods orientation is not primarily agriculture. The Zambia land policy currently under development aims to correct this imbalance.

Despite, as mentioned, Tanzania's progressive Village Land Act, which vested land ownership and management authority in villages across the country, rising investor interest in village land has exposed shortcomings that may undermine agricultural productivity. In Tanzania, villages are not permitted to deal

directly with potential investors, even in order to rent their land in a manner that directly benefits the community and ensures their continued ownership. Rather, their village land must first be converted to public land (essentially through expropriation) to allow the government to allocate it to investors (German et al 2011). The community is then promised benefits from the investment, which may never materialize. After the investment has expired, and even when investments do not materialize, which has often been the case, the community is officially barred from accessing or using their former village land due to its new classification as public land.

The government often exerts influence on the decision-making process, and women and other groups more vulnerable to landlessness tend to be excluded. Conversions for less than 250 ha can only take place with the approval of the village leadership, called a Village Council, but often they feel compelled to approve the transfer. For conversions of 250 ha or more, village leaders can only recommend a course of action, with the Minister of Land empowered to convert the land even over the community's objections (La Viña 2015). Moreover, women are often excluded from conversion decisions. Although by law women should make-up at least 25% of Village Councils, in practice women are often left out of decision-making (Id.).

Land policy in Africa now recognizes the importance of supporting representative, inclusive, and accountable community institutions that are, as much as possible, consistent with traditional authorities and customary practices (Knight 2010). These reforms aim to establish legitimate community institutions that also sufficiently check the ability of local elites to undermine the tenure security of communities, households, and individuals, including women, minority ethnic groups, and recent migrants. One of the most recent examples is Liberia's national land policy and draft law, which calls for the creation of community land associations made up of the entire community but with a representative body to handle some decision-making (Stevens & Toe 2014). In the case of Liberia, this reform was seen as paramount to prevent, among other things, collusion between urban elites and chiefs (which are sometimes one in the same) to sell land and resources out from under communities (De Wit & Stevens 2014).

Recommendations

Based on the studies cited above and the relative dearth of literature mapping a course for how land policy in Africa can contribute to inclusive economic growth, we humbly suggest the following areas of future research and key points to consider when designing land policies.

Further research

Studies are needed that focus not only on the impacts of more recent attempts to formally register customary tenure on agricultural productivity, investment into the land, sustainability of practices, and access to finance but also on the distributional wealth effects of these newer land formalization programs (e.g., who benefits from such programs and are these benefits widely distributed, especially amongst the poor or marginalized, such as women, pastoralists, et al, and to what extent are these programs leading to further displacement or land losses, in particular by the most vulnerable?). Also, research into how the administration of customary tenure systems can be structured so as to prevent the capture of land by elites or outside investors to the detriment of the poor or marginalized and so the benefits of formalization are most widely shared. The United States Agency for International Development has commissioned a number of impact evaluations of customary rights recognition interventions in Africa to help address these and other closely related questions. More information can be found at usaidlandtenure.net/data.

Key considerations for land policy designed to promote inclusive economic growth

First, it is critical to understand how the security of tenure is perceived by land users before undertaking any kind of land policy or program. Each country, state, municipality, etc. has unique conditions that can greatly impact the success of the policy change. Melesse and Bulte (2015) suggest that the land certification program was so successful in Ethiopia because the land tenure situation beforehand was more tenuous than in other countries. Deininger and Ali (2008) conclude that there is a strong case for strengthening tenure security in Africa, but attempts to do so will need to be adopted with a very clear understanding of existing tenure conditions, which vary widely across the continent. Furthermore, it is vital to understand how land is distributed within a country (e.g., does it have a low or high GINI coefficient) so the tenure strengthening program is not simply furthering unequal land distributions but providing at least safeguards or potentially even additional benefits for marginalized groups.

Second, it must be recognized that customary tenure systems, and thus interventions that seek to formalize them, *may* not sufficiently protect the rights of the poor, women, or other marginalized groups that could most benefit from secure property rights and inclusive economic growth. They *can* do so by ensuring all community members have access to land via individual plots and/or communal land and protecting the rights of even the most vulnerable groups to such land. However, since formalizing customary tenure systems does not *a priori* protect vulnerable populations, policies or programs must be designed that include vital safeguards for these groups such that they also benefit from land formalization.

Third, it seems that land titling programs have the best chance of providing tangible benefits to people if titles are first demanded by the people. Place and Migot-Adholla (1998) show that the presence of land titles in the study area in Kenya is not linked to the rights that farmers claim over the land (e.g., having a title is not correlated with the farmer saying s/he can sell the land), and the authors suggest that titling programs can only be sustainable if they are demanded by land users. Since marginalized groups may have less access to the political system and are not as able to advocate for their rights, policy makers or those designing programs should actively engage these important stakeholders in the design process to make sure the economic and other benefits will positively impact the most vulnerable.

Finally, land policies focused on strengthening tenure or titling are best implemented in close coordination with and, in some cases, as a follow-on to, other critical government support for economic development. Place and Migot-Adholla (1998) postulate that government expenditures on rural infrastructure, health and education, and agricultural technology will not only help improve the rural population's welfare [and contribute to inclusive economic growth if all have access to such services], it may also serve to increase the demand for land titles. Phiri, Chilonda, and Manyamba (2012) suggest that increased research and development, better extension services that can advise on the latest technologies, and support for farmer producer and marketing associations would help Malawians achieve higher productivity across crops. To the extent that such government activities are implemented fairly and reach smallholders, family farmers, women-headed households, pastoralists, etc., there is a higher likelihood that, together, these interventions and land policies will successfully promote inclusive economic growth.

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