

# GHANA

## Strategy Support Program



### Land Policy and Governance Reforms and Agricultural Transformation

Hosaena G. Hagos

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#### INTRODUCTION

The impact of land tenure systems in sub-Saharan Africa on agricultural investment and productivity continues to be the subject of intense scrutiny. Recent food security crises in Africa have revived the debate over whether current land tenure systems constrain farmer innovation and investment in agriculture. In 2009, recognizing the importance of good land governance, the African Union (AU) heads of state agreed to a framework and guidelines for land policy initiatives in Africa. As a result, an increasing number of countries have implemented far-reaching programs to improve land tenure security. These changes in tenure systems have potential major implications for agricultural transformation. This chapter summarizes the arguments about how best to provide secure land rights in Sub-Saharan Africa and reviews recent experience and evidence arising from innovative interventions in Ghana.

#### REVOLUTIONARY LAND REFORMS AND THE LAND TITLING DEBATE

Land tenure has long been a thorny issue. In the 1960s and 1970s the main concerns were equity and security because the debate mostly concerned with justice in land allocation in countries emerging from colonialism. Since the collapse of the Soviet Union, a different kind of debate has emerged concerning land tenure. It centers around efficiency and sustainability of resource use in the context of transition from a socialist mode of production toward a market-oriented one (Cotula et al. 2004).

Our purpose here is not to examine this debate in any detail. Instead, we attempt to briefly summarize the theoretical issues surrounding land tenure security and the evolution of property rights. Although there is wide recognition about the desirability of tenure security for agrarian development, there is no clear and universally applicable blueprint concerning the most appropriate property rights regime, because this depends on underlying sociocultural and geographic factors.

Land tenure reform that leads to an individual free holding system has long been seen as a prerequisite for development in Sub-Saharan Africa (Feder and Noronha 1987; Migot-Adholla et

al. 1994). The arguments in favor of reforming the customary African land tenure system were mainly based on the neoclassical economic theory of property rights that predicts greater productivity as land tenure becomes more secure and individualized (Demsetz 1967; Barzel 1997). Reflecting neoliberal thinking about private property rights, Besley (1995) identified three channels through which secure property rights can affect positive economic outcomes:

- Tenure security and higher land investment incentives
- Smooth functioning of the land markets (tradability) that lubricate factor-ratio adjustment
- Facilitating access to institutional credit by allowing land to be used as collateral

These hypothesized effects of tenure security rely heavily on the neoclassical framework that presupposes markets for all goods and services exist (including for credit and insurance markets), and therefore market clearing prices determine demand and supply choices of households (Bardhan 1989; Hoff et al. 1993).

However, in areas where risk, information asymmetry and moral hazard are pervasive and transaction costs (mainly information and enforcement costs) are prohibitively high, such hypothesized effects of individualized property rights may not hold. As Stiglitz (1986) argues, this is so because the efficiency of the market economy and its allocation of resources (property rights) rely on the conditions of perfect information and the existence of complete markets. When high transaction costs characterize the market, causing absence or imperfections in the input or output markets, household decisions about production and consumption become inseparable (Singh et al. 1986; Janvry et al. 1991; Sadoulet and Janvry 1995).

Regardless of the security of tenure, imperfections in the market undermine farm households' ability to undertake profitable investments and participate in any form of exchange process (Holden et al. 2001; Kranton 1996). Farm households internalize such imperfections by producing a limited range of goods and services for their own consumption, especially when social protection for food security is absent, making the household

decision-making process more responsive to their initial resource endowment rather than market signals (Sadoulet and Janvry 1995; Holden et al. 2001).

For instance, the size and strength of the investment demand effects of tenure security depend on the attractiveness of the investment which ultimately depends on the development of rural input-output and other inter-temporal markets (Deininger et al. 2003). In areas with no or few off-farm employment opportunities, or other safety nets, improved tenure or secure property rights may not be enough to incentivize farmers to adopt improved farming technologies (which are associated with higher risks).

Hence, with such imperfections in the markets and limited institutions to support the functioning of markets in developing countries, liberalization, in the form of individualization of property rights, have sometimes failed to achieve the promised benefits of reducing the investment disincentives associated with a communal property rights system (Shiferaw et al. 2008). This scenario is even more compelling in rural areas of Sub-Saharan Africa where land is not only a productive asset but also performs important functions as social safety net and insurance functions (Deininger and Feder 1998; Holden 2007). For instance, one of the great advantages of many common property regimes in Africa is that community members can claim access to land for farming when necessary and rent it out as a coping response to ease short-term consumption pressures. Hence, in high risk environments, individualization of communal land rights that neglect the safety net function of access to land may reduce poor people's options for risk management (Deininger and Feder 1998). This implies that policy interventions in the form of granting only-use rights that limit any land alienation may come to the rescue in an effort to avoid myopic sale of land by individuals.

Empirical evidence on the effects of the land titling programs of the past on access to credit, smallholder investment, and overall production is mixed. Studies in Kenya and Burkina Faso found no effects of land titling on access to credit (Carter et al. 1990 and Brasselle et al. 2002). Earlier cross-sectional research in Ghana, Kenya, and Rwanda on land tenure did not show increased investment in land or improved agricultural yields when comparing restrictive land laws to more flexible policy allowing land transfers (Migot-Adhola et al. 1991). A study in a rice-growing area in Madagascar suggests that formal title had no effect on plot-specific investment and little impact on productivity (Jacoby and Minten 2007). In Uganda, by contrast, the likelihood of new investment on titled land was found to be double that of investments on plots occupied by owner-cum-occupants (Deininger and Ali 2008).

However, land registration and titling can create rather than reduce conflicts and litigations over land rights as property owners attempt to verify their rights to their acquired lands (Atwood 1990; Benjaminsen et al. 2009; Green 1987; Bruce 1986; Mackenzie 1993). Place and Hazell (1993), in their assessment of indigenous tenure systems in Sub-Saharan Africa, found that lack of credit access, insufficient human capital, and labor shortages had adverse effects on investment decisions more often than tenure insecurity. In general, inappropriate timing of land reforms and marginalization of the poor and minority groups result from inefficient and corrupt bureaucracies and high costs of conventional land titling (Bruce 1986; Barrows and Roth 1989; Roth 1993; Platteau 1996; Benjaminsen et al. 2009; Cotula et al. 2004). Moreover, contradictions between customary land rights and emergent statutory land rights have been largely outlined as major causes of past failures of land titling programs to create such investment and tenure security (Mackenzie 1993).

In Ghana, the introduction of SAP in 1983 resulted in increasing foreign investment in natural resources and the rehabilitation of export-oriented industry. This development led to a call for reform of the customary land tenure system, a new land titling procedure, and institutional reform programs. Ultimately, this call resulted in the enactment of the 1986 land law.

As structural adjustment programs moved from concerns with market liberalization to appropriate institutional reforms, land tenure reform began to feature on the agenda. The major objective of the land reform during the early years of the SAP (late 1980s and early 1990s) was to promote secure rights to property by creating a regulatory framework through land registration and titling. However, by the early 1990s concerns about the cost of land titling programs, and the ability of the state to supervise them transparently and honestly, resulted in growing caution about state-administered (supply-driven) land titling reform (Bruce 1993). It is this period that marks a turning point and laid the foundation for the change in the national land policy in Ghana.

Recent literature on land property rights (Larson and Bromley 1990; Bromley 1991; Schlager and Ostrom 1992; Janvry et al. 2001) acknowledges that privatization and individualization is not *a priori* the most efficient means of achieving tenure security. This was the basis for the revision of the 1975 World Bank land policy, which called for the introduction of private land rights in Africa, acknowledging the fact that communal tenure systems can increase tenure security and provide a basis for land transactions that are more cost-effective than freehold titles (Deininger and Binswanger 1999). Although few African countries have gone through revolutionary land reform or government-induced tenure changes, there is evidence to indicate that ten-

ure regimes are evolving towards individualized land rights in response to increased demand for secured land rights over scarce land resources (Peters 2004; Udry 2011).<sup>1</sup>

## THE NEW WAVE OF LAND POLICY REFORMS AND THE “CONTINUUM TENURE”

Against this backdrop, there is now a growing consensus that, even in the rural African context where individual titling of land may not be desirable or feasible, simple recognition of the nature of the rights held by individuals and communities under the existing customary tenure system (by providing poor landowners or users with options to have their rights documented) can yield significant benefits (Deininger et al. 2008).

With this recognition, a new and innovative approach is found in the continuum of land rights, rather than a narrow focus on individual land titling. In this approach, a range of possible forms of tenure are considered as a continuum from informal tenures (such as customary land rights and occupancy rights or the rights of possession) toward a more formal land right system (i.e. freehold rights or land titling), where each step in the process of securing the tenure can be formalized (UN Habitat 2008). This approach gained momentum over the past decade due to the recognition of the limitations of titling programs. Also, given population density is low and land is relatively abundant, the usufructuary rights (use rights) given under the customary tenure rights system do not impose large losses as long as markets are poorly developed, which ultimately is the case in SSA. Rather than a narrow focus on individual land titling, this approach involves a form of localized recording and documentation of rights (including secondary or derived rights to land either via gift or inheritance), adapting and expanding existing tenure and land administration systems, where possible, and introducing new ones selectively (Augustinus and Deininger 2005).

Since the turn of the new millennium, experience with implementation of the continuum of land rights approach has moved ahead in Ghana, Uganda, Tanzania, Mozambique, Ethiopia, Benin, Côte d’Ivoire, and Burkina Faso. In a number of countries, land policies and laws have been passed which aim to integrate customary and formal land rights and tenure systems. Ghana is not an exception in this aspect. Following the slow progress in the implementation of state-driven land registration and

titling and the recurring land disputes, the nation is now adopting a more pragmatic and incremental approach to land rights and land administration which was marked by new land policy in 1999 and its amendment in 2002. Contrary to the earlier focus (obsession) towards individualization of land rights, Ghana, with financing from the World Bank, has since 2003 embarked on a Land Administration Program (LAP) as part of an attempt to improve a decentralized form of land administration and demand-driven land tenure service delivery system. The LAP, which is now in its second phase of implementation, has two major components:

- Harmonizing the national land laws
- Strengthening a decentralized land administration system through piloting of initiatives such as the Customary Land Tenure System (CLS)

Proponents of the approach (including the World Bank) argue that, with the prevalence of high transaction costs and market imperfections, costs associated with the customary land right system are low. However, population pressure, urbanization, commercial pressures and the monetization of customary land transactions are eroding the social cohesion that gives customary tenure its legitimacy (Augustinus and Deininger 2005). No single form of tenure can meet the different needs of all social groups. Hence, a progressive approach, whereby tenure rights are gradually formalized or upgraded over time, is widely accepted as an alternative to costly or difficult titling programs. Table 1 shows a few examples of countries that adopted this new approach.

Although the many different customary land tenure arrangements across SSA have served their peoples well in the past, they need to be adjusted to the new demands being put on land by population increase, urban migration, and the globally increasing rush for commercial farming land. The challenge facing governments in the region, and the aid agencies assisting them, is to find a development model that will facilitate economic growth without causing widespread dispossession, poverty, and social dislocation.

In adjusting customary land tenure there are many options available for governments to choose from, and many difficult issues to address. Political leadership, however, is the most important requirement. The continuum approach avoids blanket solutions to land problems where each country must work out the solution that suits its needs best. Under this approach the most sensible approach is to proceed step by step without trying to do too much too fast—focusing on priority areas, adapting existing tenures rather than abolishing them, and piloting reforms before introducing them more generally (UN Habitat 2008).

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<sup>1</sup> Land reform and land titling are often used interchangeably. But as Burns (2007) explains, land titling is a process of adjudication employed to recognize an existing right to land; whereas land reform usually seeks to reassign rights to land—a process with far greater potential for dispute that usually attracts a significant degree of political attention and community sensitivity. Land registration and titling can take various forms ranging from a system of converting registered rights to freehold to a mere record (register) of existing rights to land (Cotula et al. 2004).

In economic terms, such reforms are demand-driven, not supply-driven. Customary groups can be protected, while individuals are given the security they need for investment in land development. Along the range of incremental tenure options, the first and basic reform option is the recognition of customary tenure rights. These rights protect the land ownership of groups or communities. This approach is very important, particularly in countries with a dualistic system of tenure regime such as Ghana—one based on statutory law and another based on customary law. Under such circumstances, failure to grant statutory recognition of customary land right could be a cause for tenure insecurity.

**TABLE 1— EXAMPLES OF INNOVATIVE LAND TENURE REFORMS**

Nature of intervention	Countries
1. Recognition of customary land rights	Ghana, Mozambique, Uganda
2. Legal protection of individual use/occupancy rights (issuance of certificates of occupancy)	Ghana, Tanzania, Ethiopia, Malawi, Botswana, Lesotho, Nigeria (being planned)
3. Community land demarcation and group/family titles	Ghana, Uganda, Mozambique, South Africa
4. Decentralized land administration system	Ghana, Botswana, Mozambique, Namibia, Uganda, Lesotho
Establish land boards	Ghana (CLS), Tanzania, Ethiopia
Village level land administration council/committee	
5. Sporadic (demand-driven) land titling	Ghana, Tanzania, Uganda, Rwanda
	Uganda (tribunals, local government mediators)
6. Forms decentralized dispute resolution mechanisms	Tanzania (village land administration council)
	Botswana (district land boards)
	Ethiopia (local conflict mediators)
	Malawi (land tribunals—proposed)

Source: Author's compilation based on reviews of national land policies and regulations.

Hence, depending on the local demands, if the objective is to formalize rights as they exist on the ground, this will generally require the formal codification of customary rules and institutions. Possible ways to do this are diverse and have met with varied results (Kanji et al. 2005). In general, three methods have been widely recognized as ways of protecting interests in land of communities and its members (Fitzpatrick 2005). The first is the minimalist approach which is captured by the statement that for certain areas, customary rights to land are recognized. According to Fitzpatrick, this approach allows customary rights to evolve over time in response to population changes and economic needs without undue restriction or imposition by a formal legal regime. Such a basic intervention could act as a targeted answer

to the problem of encroachment by outsiders or government expropriation without proper compensation.

Ghana and Botswana were the first nations to undertake this effort soon after independence (Toulmin and Quan 2000), and since then a number of countries, including Namibia, Niger, Uganda, Burkina Faso, Mali, Lesotho, Malawi, Swaziland, Mozambique, Tanzania, and South Africa have adopted a wide range of mechanisms and strategies to recognize customary land rights (Hvalkof and Plant 2000).

Conversely, recognition of customary rights would not be sufficient where tenure insecurity arises from matters internal to the community. This is usually the case in the ever-growing population pressure and urbanization in many SSA countries, where enhancement of occupancy (possession) rights are required in the form of proclamations against forced evictions and relocations by members.

Addressing such issues, the second method that can be considered as an innovative best practice is the issuance of an occupancy right certificate, which is part of the process of documenting land rights of individuals by states or chieftaincies. In general, such a process is critical for customary tenure rights which include secondary rights of vulnerable groups (such as women and migrants) that protect them against eviction or expropriation (in the latter case, without subject of fair compensation).

Hence, only in the event of considerable tenure insecurity within a group, particularly as a result of tension caused

by population pressure and urbanization, would the benefits of recording individual interests potentially outweigh the considerable costs and risks of the recording process. For instance, in Ghana, documentation of all existing rights to land (including secondary or derived rights of women and migrants) by traditional leaders through the innovative initiatives of Customary Land Secretariat is nationally pursued as a form of induced institutional response to land disputes. Groups and traditional leaders in a number of African countries are beginning to document the rights of individuals in response to increasing tensions between individuals, including Botswana, Lesotho, Tanzania, Malawi, Namibia, Swaziland and Uganda (Alden Wily 2003; Toulmin and Quan 2000; Toulmin et al. 2002).

## EMERGING CHALLENGES TO LAND GOVERNANCE IN AFRICA (LARGE-SCALE LAND ACQUISITION)

Growing interest in land potential for commercial investment in agriculture, mineral extraction, and urban expansion has caused an unprecedented pressure on the customary tenure system. This scenario is even more compelling in the case of Ghana where the recent phenomena of growing foreign interest in land has caused a noticeable shift in the attitude of chiefs in some customary areas away from perceiving themselves as trustees of their communities to being private owners of the land, with the result that secondary and undocumented customary rights are becoming increasingly vulnerable (Goldstein and Udry 2008).

Often, such land deals are also made by the chief in partnership with local entrepreneurs and district government officials who have varying interests beyond that of the community (Borras et al. 2011 for Mozambique; Nonfodji 2011 for Benin). Hence, in the face of lucrative deals with outsiders, the customary tenure system may not always act in the interests of the community. As a result, many SSA countries with customary land tenure systems are moving toward land boards or village committees as a means of granting group tenure rights (Alden Wily 2003).<sup>2</sup>

The best-known and pioneer example is Botswana, where the 1968 Tribal land act transferred the authority over traditional land from tribal chiefs to district and sub-district land boards (Quan 2000). Similar approaches were adopted in Lesotho (1979), Mozambique (1997), Uganda (1998), Tanzania (1999), Namibia (2002), and South Africa (2004). In a similar fashion, Ethiopia (since 2007) has established a decentralized land administration system in the form of village land administration committees that allocate land within their jurisdiction, adjudicate disputes, and implement policies for land use and administration (Holden and Ghebru 2012).<sup>3</sup>

Though property rights regimes have evolved in Africa to cope with the ever-changing profile of the land (an increase in the value of land due to population pressure and urbanization), the recent rush in acquiring agricultural land has caused unprecedented pressure on the customary tenure system because most of the land deals target areas with poor land governance.

Analysis by Deininger et al. (2011) suggests that lack of clarity in land rights increases a country's attractiveness for land ac-

quisition. Such lack of clarity in the property rights system and the existence of overlapping interests in land may erode the confidence of domestic as well as foreign investors to inject capital into rural economies. For example, investors' multiple compensation to various hierarchies in Ghana (i.e. compensating individuals after getting into an agreement with the chief) remain one of the most challenging issues concerning transnational agricultural investment (Poul 2012). Against this backdrop, the best-known institutional intervention was the establishment of Ghana's national land bank committee in 2006 (MLFM 2008). The other challenge related to the recent land rush is associated with local communities and land users lacking comprehensive information about the benefits and costs of foreign investments and acquisitions. For example, German et al. (2011) found that poor bargaining power by local communities resulted in potential benefits to local communities oversold, while the social and economic costs associated with such investments were downplayed when negotiating land acquisitions in Ghana, Tanzania, and Zambia.

The lack of capacity of local communities in making the land deals and the non-transparency of the process have sparked a growing concern over the potential role the private sector can play in overcoming long-standing bottlenecks in providing infrastructure and technology, and providing the much-needed vertical integration to link the rural sector to regional and global markets. This concern is intimately linked to the ongoing debate on the suitability of large-scale versus small-scale farming as development models for transforming the agricultural sector and facilitating economic growth (Deininger et al. 2011; Deininger and Byerlee 2012; Hanlon 2012).

Deininger and Byerlee (2012) outline a series of economic and policy factors that may contribute to better developmental outcomes from the recent rush for land acquisition. Their analysis of recent demand for land from large investors suggests that if such investment is to live up to the expectations in providing economic and social benefits, in addition to greater clarity in the definition of property rights and their recognition, the public sector needs to set suitable policies, provide complementary public goods, and assist local communities in screening investments and investors. The three priority areas outlined for attention are:

- Clarity on property rights to and proper valuation of land available for investors
- Clarity on labor market impacts and technical as well as economic viability of the projects
- Ability to flexibly reallocate land in case an investment fails

<sup>2</sup>As land rights of communities evolve (especially in view of growing interest in land by foreign investors), establishing formal group rights (land boards) is identified as a key tool in protecting tenure rights (Fitzpatrick 2005).

<sup>3</sup>In Ethiopia, the process was not a typical transition from chieftaincy to land boards; rather it was a transition from a state-controlled system to a more decentralized and participatory land administration system.

The establishment of donor-supported Community Land Funds in Mozambique makes it one of the few countries in SSA to be officially proactive in responding to the recent rush for agricultural land. Through the program's participatory land delimitation and demarcation process, it aims to protect community-based land rights, facilitate community consultation with prospective investors, and obtain tenure security for investors. Tanzania, Ethiopia, and Ghana have also recently instituted reforms to cope with the growing global demand for land by identifying land that can be allocated to investors. In Ghana, the negative outcomes associated with land investment deals (for instance, when chiefs gave out land without proper consultation of the local population or when little accountability on the use of revenues occurred) have led to increasing criticism of the customary system. A new Land Use and Spatial Planning Bill (Republic of Ghana, Draft as of 2011) is currently in the consultation process. If adopted, the new law will improve the transparency and accountability in such land deals.

Further research assessing land tenure policy as it relates to land certification and tenure security will be important as agricultural land constraints become more prevalent and countries continue to seek out agricultural investment opportunities. In addition, public access to land certification data and information, as well as clear guidelines that identify the varying responsibilities of institutions is important for large-scale land acquisitions and foreign investment opportunities. However, recent research does suggest the need for improved transparency and greater local participation in domestic and international acquisitions. As highlighted by Deininger and Byerlee (2012), some of the initia-

tives that can facilitate mutual understanding include well-defined compensation definitions for transferring land, agreement on timing of land redistribution, clearly specified contractual obligations with regard to employment of local people, and clear expectations as to the nature and quality of infrastructure provision.

## SUMMARY

Though land titling programs in Africa have often been unsuccessful, there is renewed political commitment to improve tenure security of individuals and communities. The success of these reforms in enhancing tenure security hinges on the appreciation of the diversity and dynamic nature of existing agrarian structures and the rejection of "one-size-fits-all" policy prescriptions. In rural areas of Africa, land is not only a productive asset but also acts as a social safety net against consumption and production risks. Unless alternative mechanisms are available to insure households against such risks through the development of markets, ongoing efforts to improve land rights will not be sufficient to enhance smallholder investment and agricultural productivity in Africa.

Increased demand for land by foreign investors has brought a sense of urgency to the question of how best to increase land tenure security in Sub-Saharan Africa. Public policy must assist local people in screening commercial investments in land by providing clarity on property rights and proper valuation of land as well as the economic viability of the projects. By the same token, clear and transparent policies as regards land rights should encourage productive foreign investment.

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#### **INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE**

2033 K Street, NW • Washington, DC 20006-1002 USA  
T: +1.202.862.5600 • F: +1.202.467.4439  
Skype: ifprihomeoffice • Email: [ifpri@cgiar.org](mailto:ifpri@cgiar.org)

#### **GSSP – IFPRI**

Contact: Shashi Kolavalli - Senior Research Fellow and Program Coordinator  
c/o IWMI, PMB CT 112 • Cantonments, Accra, Ghana  
Martin Odei Block • CSIR Campus • Airport Residential Area  
T: +233-(0)-21-780716 • F: +233-(0)-21-784752  
[gssp.ifpri.info](mailto:gssp.ifpri.info)

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