



# Selecting the State or Choosing the Chief? The Political Determinants of Smallholder Land Titling



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## SUMMARY

This article examines the effect of customary institutions on smallholder land titling in Sub-Saharan Africa. It argues that the individual's status within the customary institution conditions his or her demand for land titles. Individuals with greater customary privilege gain advantages from maintaining customary property rights, including stronger tenure security. For households with lower privilege within the customary institution, the benefits of adopting state land titles are higher. Analysis of an original survey of smallholder farmers in Senegal and an existing survey in Zambia demonstrates that households with greater customary privilege are less likely to adopt state land titles, independent of ethnicity, wealth, and land values. I find additional support for the argument in measures of increased tenure security for those with greater customary privilege. Qualitative interviews with customary authorities and smallholder farmers help establish the mechanism. These findings update the dominant wisdom that land values and material transaction costs drive smallholder land titling, demonstrating the important effect of status within the customary institution on demand for land titles. By examining the political underpinnings of customary property rights, this article contributes to our understandings of which farmers benefit most from land titling. This has implications for the improved design of land governance programs.

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## 1. Introduction

As multinational investors, national elites, and urban middle classes rush to claim plots of African land, the debate over land titling becomes increasingly salient. The titling of land—converting it from customary to state property rights—can increase land tenure security, investment incentives, and credit access for smallholder farmers (de Soto, 2000; Deininger & Chamorro, 2004; Feder & Noronha, 1987). Yet researchers have repeatedly concluded that titling had no impacts on productivity or tenure security (Atwood, 1990; Jacoby & Minten, 2007; Sitko, Chamberlin, & Hichaambwa, 2014). Appreciating why land titling affects farmers differently requires further analysis of the demand for titles and the alternative systems of property rights, customary institutions. Whether a shift to land title is a priority for smallholder farmers depends on how their local customary institutions serve them. This article examines the political underpinnings of customary property rights to contribute to our understandings of which farmers benefit most from land titling.

Existing models of the demand for land titles have overlooked the effect of privilege within customary institutions and have instead largely focused on land values and wealth. Boserup's

(1965) argument that increasing population density provokes institutional change is a baseline for much of the scholarship on who adopts land titles. In this framework, competition for land renders customary property rights insecure, pushing individuals to seek formal, statutory property rights. Following the same logic, a range of factors that increase land values should prompt individuals on customary land to seek titles, “inducing” institutional change in property rights over land (Ahmad, 1966; North & Thomas, 1973; Platteau, 1996). Extensions of this framework emphasize material costs as the primary constraint on titling, such that wealthier individuals should be first to adopt titles (Alston, Libecap, & Mueller, 1999).

However, smallholder land titling also reflects the local politics of customary authority. Across Sub-Saharan Africa, customary authorities (CAs), or “chiefs,” are a pervasive feature of the everyday lives of citizens (Baldwin, 2015). The resilience of customary authority (Englebert, 2002; Ubink, 2008) and the widespread popular support they garner (Logan, 2013) is in part due to their ability to organize social relations within the modern state. These CAs are the leaders of customary institutions; they execute customary property rights within their communities. As a result, the status or privilege households derive from the customary institution

can have important impacts on whether they seek titles. Smallholders with high customary privilege gain a variety of benefits from their status, including stronger tenure security. For these individuals, the benefits of titling are low and may have costs to their social status. Thus they are slower to adopt titles and resist the institutional change. By contrast, for households with low customary privilege, the benefits of titling are high. These smallholders propel the land titling process, exiting the customary property rights regime in favor of the protections of the state. In this way, the smallholder's status within the customary institution shapes if titles are desirable and whether titling increases their tenure security.

I examine the relationship between customary privilege and titling among smallholder farmers in Zambia and Senegal, countries with distinct systems of customary authority over land. I rely on one original and one existing geo-coded smallholder farmer survey to identify how an immutable measure of customary privilege—kinship with the CA—affects land titling and tenure outcomes. In both country contexts, I find that high privilege in relation to the customary institution decreases the smallholder's likelihood of titling. I offer support for the theory that this difference is the result of the desire to continue benefiting from high status within the customary institution by showing that high customary privilege leads to greater land tenure security. Those with low customary privilege are less likely to follow their land, a behavior that requires confidence in the security of one's customary property rights. These are the same smallholders that welcome land titling. Qualitative insights and descriptions gleaned from interviews with customary authorities and focus groups with smallholders inform this theory.

To understand when land titling will benefit smallholder farmers and why some individuals resist titling programs requires attention to how customary property rights function within local communities. For scholarship on why smallholders adopt titles and how institutional change in property rights occurs, this article establishes a critical new variable: privilege within the customary institution. In the following section, I discuss the prevailing approach to who seeks land titles and the literature that suggests a role for customary institutions. I then present the context of titling and authority in Zambia and Senegal, before proposing a new theory of how customary institutions structure privilege within the community, shaping the demand for titles. Section 5 addresses the data and methods; Section 6 presents the results of analyses of customary privilege on titling and tenure security in Zambia and Senegal. The article concludes with a discussion of the implications of these findings for designing policy interventions that can better serve smallholder populations.

## 2. Explanations for land titling

Existing explanations for land titling focus on land markets and the insecurity that results from competition over higher value land. A variety of factors increase the value of land, which should “induce” institutional change in property rights (Ahmad, 1966; North & Thomas, 1973; Ruttan & Hayami, 1984). As land becomes more valuable and scarce, actors have incentives to shift to formal property rights institutions that protect individual ownership of land. Competition over the resource, which increases the costs of dispute resolution, generates the demand for new property rights institutions. For Boserup, population density is the central variable that makes land scarce (1965). Other formulations of the induced institutional innovation approach highlight a larger set of factors that can increase the value of land, such as the commercialization of crops and transportation networks (Deininger & Feder, 2001).

Platteau names this approach the Evolutionary Theory of Land Rights (ETLR), suggesting that property rights institutions are in the process of a slow evolution from customary systems to individually titled land (2000, 1996). His framework hinges on the transaction costs of institutional change. The costs of institutional change relative to its benefits should decrease as land becomes more valuable. Similarly, the relative costs of titling should be lower for wealthier individuals. Miceli, Sirmans, and Kieyah (2001) also model land titling decisions as a trade-off between the material costs and benefits of titling. Thus as the value of land increases through commercialization and population growth, farmers should be more likely to seek the protections of state titles. In this framework, lags or discontinuities in titling behavior are the result of imperfections in the market that change the transaction costs of converting land from customary property rights to titles (Platteau, 1996).

However, a wide range of political and social factors shape the individual's demand for new forms of property rights. The proponents of induced institutional change themselves have suggested that ideology and interest groups (Ruttan & Hayami, 1984), social norms (Platteau, 1996), and economic heterogeneity (Baland & Platteau, 1999) may slow institutional change. Greif (1994) and Firmin-Sellers (2000) argue for the influence of culture on this process. For Greif (1994), shared cultural beliefs coordinate expectations of gain from institutional change. For Firmin-Sellers (2000), cultural beliefs shape actors' understanding of what property rights outcomes are legitimate, or their “choice set.” Similarly, in recent work on urban titling, Kim (2007) argues that cultural attitudes toward private property condition demand for titles in Vietnam. Monkkonen (2012) suggests that clientelistic political ties increase tenure security and reduce demand for title in informal urban settlements in Mexico.

A rich interdisciplinary literature has established that property rights in land are socially embedded, such that institutional change transforms power relations within the community and the society (Berry, 1993; Polanyi, 1944; Sikor & Lund, 2009). Rural elites should be most resistant to land reforms, as they have the most to lose (Lipton, 2009, p. 151). Specific cases support this. For example, lineage heads in China discourage titling in order to maintain their ability to control local populations (Mattingly, 2016). In Ghana, Onoma finds that chiefs reap the benefits of weak property rights regimes of their own creation (2009). While not often viewed as an explicit means of resistance to land titling, the Commons Pool Resources school provides plentiful examples of local institutional solutions designed to stop the evolution toward individualized, statutory natural resource rights (Ostrom, 1990). Customary authorities resist titling because it cedes their power and autonomy to the state, rendering the land and its occupants “legible” (Scott, 1998; Sikor & Lund, 2009). That power relations and privilege within the community should condition who seeks institutional change is consistent with much of the scholarship on titling and land reform.

Yet, these literatures have stopped short of theorizing or identifying a systematic effect of customary institutions on who seeks titles for their land. I update existing models of institutional change by showing that the decision to adopt titles is not only a reflection of the factors that push actors to seek new property rights, but also of factors that pull them to stay within the customary system. In the language of the induced institutional change framework, my approach incorporates the political and social transaction costs of titling. This explains why some smallholders resist titling while others embrace it and why the benefits of titling are unevenly distributed within a community. This article introduces a novel approach to understanding how privilege created by the customary institution shapes individuals' decisions to adopt titles and pairs it with empirical support from two distinct African country contexts.

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