



The complexity of local tenure systems: A smallholders' perspective on tenure in Ghana



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ABSTRACT

For many decades, land tenure reforms have been high on the policy agenda of governments in SSA. One of the key drivers for this is the idea that simple land policy interventions could improve tenure security, which then could lead to more agricultural investment and higher agricultural productivity. Yet, land tenure interventions do not occur in a vacuum, but occur in the presence of customary tenure institutions. Based on qualitative field work in Ghana, we show that customary tenure is extremely diverse, complex and dynamic. There is a need for more recognition of this diversity and complexity by policy makers, development practitioners and researchers in order to design more effective and realistic land policy interventions.

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1. Introduction

For several decades, land tenure reforms have been high on the agenda of policy makers, development practitioners and scholars (Peters, 2009). The interest in land tenure reforms is fueled by classical economic theory that predicts that stronger land rights and higher tenure security can have a positive impact on farmers' investment, productivity and income (Feder and Feeny, 1991; Besley, 1995; Place, 2009). Given the critical importance of agriculture in the economies of sub-Saharan African countries and the livelihoods of its' rural people, improving land tenure could be a promising avenue to improve the lives of millions of Africa's poor.

The idea that more secure land ownership leads to more agricultural investment is intuitively appealing, but not always straightforward when one tries to apply it in practice. Land tenure interventions do not occur in a vacuum. Customary land tenure systems have already been in place for centuries and have evolved over time (Joireman, 2008). From the late 1960s till the early 1980s land policies were designed based on the premise that customary systems are not able to provide sufficient tenure security, focusing mainly on formalization of land tenure through land titling or registration (Atwood 1990; Peters, 2009). Yet, critics argue that customary land right systems may provide better or equal

tenure security compared to statutory systems (Atwood, 1990; Brasselle et al., 2002; Bromley, 2008; Bruce and Migot-Adholla, 1994). Empirical work on the (potential) impact of land tenure reforms has mostly delivered inconclusive and/or contradicting results (Bromley, 2008).

In order to judge whether and how statutory systems can be set up or improved to benefit smallholder farmers, one must be well aware of the different tenure systems that are already present and how they are perceived by smallholder farmers. Yet, the description and/or understanding of local tenure systems is often limited to a broad set of key characteristics such as the prevalence of communal tenure, overlapping land rights, or the primary role of chieftaincy and clan heads. Case studies sometimes provide a more elaborate and detailed description of local tenure systems. Yet, the diversity and complexity of land tenure systems, at the national level, is still poorly documented and understood, and insufficiently appreciated in the design of policy interventions and the interpretation of empirical research findings.

In this study, we illustrate the varied nature of customary tenure by explaining smallholder farmers' experience of land tenure institutions in Ghana. Ghana spans four agro-ecological zones, hosts roughly 100 ethnic groups, and has population densities as low as 35 persons/sqm in the Northern Region to a high 224 persons/sqm in the Western Region (Ghana Statistical Service, 2010). About 80% of land in Ghana is under customary tenure (Pande and Udry, 2005). It should come as no surprise that tenure systems differ throughout the country. Based on qualitative research findings from different regions and supported by existing literature, we shed light on land

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tenure from a smallholder farmers' perspective in different regions in Ghana. Our results show that land tenure institutions in Ghana are diverse, complex and dynamic. The diversity and complexity challenges policy makers to design effective land tenure reforms, and researchers to support policy makers with coherent findings from empirical data analysis.

2. Background

2.1. Land tenure institutions in Ghana

Ghana's legal framework for land is affected by 166 pieces of legislation, from which several are contradictory and/or overlapping. Land is essentially governed by a pluralistic legal system in which both customary and statutory systems are recognized and overlap. The duality between statutory and customary rights is especially problematic due to the lack of effective practical administrative links between both traditional and government authorities (Quan et al., 2008). The combination of customary and statutory approaches to land has created additional avenues for rent-seeking, misappropriation and misallocation, especially in communities that are facing rapid levels of rural transformation (Fred-Mensah, 1999).

Land reforms have since long been on the policy agenda of the Government of Ghana and the donor community. The Intestate Succession Law (ISL) (PNDCL 111), enacted in 1985, provided a major milestone in Ghana's legal history to formalize property rights of the nuclear family, rather than the extended family. The Law states that any self-acquired property, except for the house and household items, should be distributed according to the following rule: 9/16th to the children, 3/16th to the surviving spouse, 1/8th to the surviving parents, and 1/8th according to the customary tradition. The more common interpretation of the law is one-third for the spouse, one-third for the children, and one-third for the customary family line (Quisumbing et al., 2001a,b). Prior to the passage of the Law, inheritance of any intestate property (i.e. property for which no oral or written will is prepared) would automatically follow the customary rules. While this does not differ drastically from the customary practices in patrilineal societies, it does provide a drastic change to the (default) customary practices by the matrilineal Akan.

Ghana approved its first comprehensive land policy, the National Land Policy, in 1999 (Ministry of Lands and Forestry, 1999). Its first poverty reduction strategy paper (PRSP) (2003–2006) mentions "land administration reform to improve security of land tenure by addressing issues of land title and land security" as a priority, and similarly Ghana's PRSP for 2006–2009 and 2010–2013 mention reforms to land acquisition and property rights as priority interventions. Ghana was one of many African countries solicited in the African Union's Land Policy Initiative (LPI) in 2006, and jointly with other African Heads of States it endorsed the Framework and Guidelines on Land Policy in Africa in 2009. It was also one of the ten African countries that were assessed using the Land Governance Assessment Framework (LGAF) by the World Bank and its partners in 2011 (Deininger et al., 2014; Bugri, 2012).

In 2003, the World Bank and other partners embarked on a long-term Land Administration Reform Program in Ghana. The development objectives include enhanced land tenure security, a more sustainable system of land administration, more efficient and cost-effective services, and the improved fairness, transparency and sustainability. The project simultaneously aims to strengthen government land administration services through decentralization as well as customary authorities with a pilot of customary land secretariats (CLS) in a small number of communities (Independent Evaluation Group, 2013; Quan et al., 2008). Yet, the CLS approach is under substantial scrutiny of those arguing that traditional author-

ities may sometimes act out of self-interest, rather than striving towards an equitable and fair distribution of land (Ubink and Quan, 2008).

2.2. Empirical evidence on the impact of land tenure institutions in Ghana

Several studies look at the impact of land tenure institutions on agricultural investment and productivity in Ghana (Table 1). Yet, rather than clarifying whether there is a need for land tenure reforms, results and policy recommendations from these studies are contradictory and seemingly inconsistent. On the one hand, Goldstein and Udry (2008) and Abdulai et al. (2011) show that insecure land tenure under customary institutions is associated with greatly reduced investment in land fertility and consequent reductions in productivity. Abdulai et al. (2011) therefore conclude that "ensuring tenure arrangements that confer permanent or sufficiently long temporary rights to cultivators would enhance investment in both soil-improving and natural resource management practices". On the other hand, Place and Hazell (1993), Migot-Adholla et al. (1994) and Besley (1995) warn against viewing land rights as a panacea for improving agricultural investment and productivity. Finally, Otsuka et al. (2003) conclude that traditional land tenure institutions are not inefficient for investments in tree planting or management of tree crops, but they find some inefficiency regarding fallowing in shifting cultivation.

[Table 1: characteristics of empirical studies on land tenure and agricultural investments and productivity in Ghana]

Three main elements vary over the different case studies that possibly drive the differences in research findings: (i) the case study setting, (ii) language and use of different indicators for land tenure systems, and (iii) empirical methods used. Fig. 1 shows the approximate location of these different case studies. Migot-Adholla et al. (1994), Place and Hazell (1993), and Besley (1995), use the same data from three (resp. two for Besley) different case study settings in the Western, Ashanti and Volta Region. Quisumbing et al. (2001a) and Otsuka et al. (2003) focus again on Wassa in the Western Region. Quisumbing et al. (2001a) also include neighboring districts in the Brong-Ahafo and Ashanti Region. Abdulai et al. (2011) look at two other districts in Brong-Ahafo Region, and Goldstein and Udry (2008) focus on Akwapim in Eastern Region.

Case studies are not only limited in their geographical coverage, they generally also focus on a limited sub-set of possible investments, cropping systems, or tenure types (Table 1). All of these may differ substantially in characteristics that matter for the tenure security-investment link. Many studies focus on active investments such as tree planting, fertilizer use or drainage. Goldstein and Udry (2008) and Otsuka et al. (2003), however, focus (partly) on fallowing. Fallowing is described as a soil fertility enhancing investment, yet such "inconspicuous" or passive investment differs substantially from many other investments which are typically visible, labour-intensive or cash-intensive (Place and Hazell, 1993). Draining and excavation improvement are land-conserving and destumping land-improving investments. Fertilizer, manuring and mulching are profitability-increasing investments. Some of the investments analyzed, such as planting trees or making shallow beds, are essential to the crops that are cultivated, and therefore investment and cropping choice are intertwined.

In the analysis of Abdulai et al. (2011) renting and sharecropping arrangements are key independent variables of interest, which contrasts highly with Besley (1995) who limits his sample to owner-operated farms. Proxy indicators used for tenure security and land tenure institutions also differ across the different case studies. The studies in Ghana use indices of land rights (Place and Hazell, 1993), mode of acquisition (Migot-Adholla et al., 1994; Quisumbing et al., 2001a; Otsuka et al., 2003), or both (Abdulai et al.,

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