

Linking Land Tenure and Agricultural Modernisation: Making PMA relevant for all.



Land and PMA : rethinking the link

Plan for Modernisation of Agriculture (PMA) is usually associated with agricultural extension (NAADS) and research, mechanization and possibly investment for processing. However, PMA is built on many interlinked 'pillars'. According to the original estimates, the single largest allocation of funds was, understandably, not for agriculture directly but for feeder road construction. Following this, three areas had equal financial priority, with around 10% of total PMA funds each for advisory services, rural electrification – and land policy and land reform¹.

The link between land policy and modernising agriculture is, quite rightly, deeply rooted in Government thinking, but it has not often been discussed. As a result, few stakeholders have felt able to contribute to this critical discussion. Now is a crucial time for stakeholders to get involved because a) the Government is in the process of formulating the first National Land Policy, and b) last year's evaluation of PMA made important recommendations about attention to land issues.

Land policy in Uganda is intended to support the modernisation of agriculture, most of which takes place on land under customary tenure. However, land has not featured widely in discussions on PMA because the assumptions about land which underlie the thinking behind PMA have largely remained unspoken. **These assumptions are:**

1. Customary tenure is bad for agricultural growth: ownership is communal and users are not secure on their land, so they do not invest in the land. A 'freehold' system (with titles) gives better security and is therefore a vehicle for agricultural growth.
2. Access to large areas of land by progressive farmers ('investors') will be

through the market. A freehold system will make an efficient land market possible.

3. Less productive farmers will choose to move into alternative livelihoods, selling the land to those who can use it more productively.
4. The rights of vulnerable people will be protected from the market, because the Land Act says a spouse must sign her consent when family land is sold.
5. Title holders will apply for bank loans for investing in agriculture

Conventional thinking on land tenure has rested on these assumptions for many years. They appear reasonable, but evidence in many countries has shown that they are not true. This is now being recognised, even by the organisations most closely identified with these ideas, such as the World Bank. LEMU has conducted on-the-ground research across ten Districts in the North and East of Uganda over three years. This evidence has shown that in Uganda, none of the assumptions are true.

1 "Customary tenure is bad for economic growth. Titles will give more security."

It is believed that under customary tenure, land is owned communally, rights are insecure and so neither investment nor land sales can take place. Titles would give people more security, without changing people's existing land rights.

What is happening on the ground?

Agricultural land under customary tenure is private property, held either by families or households. No-one has the right under customary law to evict someone from their farmland by 'reallocating' it to someone else, even from the same family or clan.

Farmers have always invested in their land – e.g. by planting long term crops such as coffee and tea. Farmers are unwilling to take loans to invest in agriculture because the returns are risky – prices are low and volatile, and rainfall is unreliable. Land tenure changes will not improve this economic reality!

Many land sales are taking place under customary tenure. Often, the sales are administered by the LC1, who may or may not write sales agreements.

Introducing titles does not necessarily bring greater security. To improve security, we need to think first about where threats to land rights actually come from! Titling will not protect people from most of the threats they currently face, as wives, widows and family members.

Acquiring a title is moving from a legal system (customary) which is verbal, informal, and based on community values, to one which depends on knowledge of the law and the legal system, ability to read and write English – and on wealth. People without these are vulnerable to those who have them.

Many people fear titles, not from ignorance but because of genuine dangers. Under customary law, land was vested in the head of the family as a steward of land, with the responsibility to protect the land rights of all family members. Some family heads are treating land as their personal property, denying other family members their legal rights. Once land is titled in the name of the family head, as proposed by the Land Act, nothing can be done. Even people who are not family heads have also titled land in their own name, where they had ‘connections’. The desire to sell family land for individual profit is a powerful motive to steal land. Although this is illegal, nothing is being done to stop it happening. (See Lemu Discussion Paper 4).

2 “Titles are needed for a land market, which will make land available for investors.”

What is happening on the ground?

Most land sales are of small plots of land, sold to meet particular and urgent needs.

These needs almost always relate to medical emergencies, the need for bride price or school fees – or, very commonly, for drinking. Investors can have no interest in these small plots of land. The buyers of land use it for agriculture in the same way as the sellers. Sales have not promoted modernisation.

In some areas, buyers are people who inherited little land, but in other areas buyers are often rich or ‘powerful’ people from cities, not farmers, who invest in land for speculation, not production.

These transactions, and many rental agreements, are taking place on customary land without titles. The customary system provides enough security for people to be willing to invest in land purchases.

3 “Less productive farmers will move into alternative livelihoods.”

What is happening on the ground?

It is rare to find land sellers moving into alternative livelihoods, largely because the opportunities for non-agricultural livelihoods are so rare. Often, those in rural areas do not have the skills or connections to take advantage of opportunities which do exist.

Most land sales are not made as a positive choice but from necessity, because of an urgent need for money, or for drinking.

People who are selling land remain in farming but they remain with less land than before – making future land sales still more likely. They become reliant on daily agricultural labour, which is poorly paid and not always available. They are therefore the people most vulnerable to extreme poverty, often living on less than \$0.15 per person per day.

4 “Vulnerable people will be protected in the land market”

The Land Act recognised customary tenure, and with it, gave legal force to customary rules of protection. It also added protection by making a spouse’s written consent mandatory for all sales of family land, reinforcing inheritance rights, and making discrimination (on sex or disability) unconstitutional.

What is happening on the ground?

The Constitution recognized customary tenure, but the Land Act did away with its governance system, by establishing state institutions that are not accountable to the customary institutions. This has almost killed off protection under customary law.

The elders who were mandated by customary law to protect the rights of women and children are by-passed: land is grabbed and sold without the consent of the family members.

Nothing is being done by the State administration either to hold the customary elders to account for failing to enforce customary law, or to support them, e.g. by enforcing protection.

No institution or person has ever been mandated to ensure implementation of the clause which mandates a spouse's written consent before land sales. As a result of this failure, the clause is meaningless and almost never applied. Land is regularly sold to raise money for drinking, without the consent of the wives.

There is no protection against landlessness caused by sales of land to meet emergency expenditure. No measures are being taken to help people find alternative solutions to meet these emergencies. (See *LEMU policy discussion paper 3A*). Solutions have been used successfully in other countries, e.g. India.

5 "People will acquire titles and apply for bank loans"

What is happening on the ground?

Few people are interested in getting into debt for investing in agriculture for sensible economic reasons: interest payments are too high (over 40% p.a.), repayments must be made within one month, even though returns on agriculture take many months, prices for farmers for agricultural produce are low, and success is not guaranteed. Even fewer people are prepared to risk losing land to take a loan for agriculture.

People cannot afford titles, and are suspicious of the process. However, land mortgaging does take place on customary land without titles, where individuals lend money for emergency needs, with the land serving as collateral, and the use of the land by the lender functioning as the interest. Little is known about such mortgages, or how the system could be supported.

Recommendations

PMA rightly sees the implementation of the Land Act and formulation of land policy as an integral part of modernising agriculture. Even more welcome is the fact that PMA does not only see land policy as a way to help get land for big investors. PMA recognises that without land, people cannot modernise agriculture ! It recognises the fact that women in particular are vulnerable to losing land rights, and that poverty cannot be tackled while this continues.

The PMA evaluation pointed out that more progress is needed on ensuring land rights for all. LEMU believes that this can be achieved if we rethink many of our assumptions regarding land, poverty and agricultural modernisation.

Land rights

Current policy focuses on protecting rights through bringing more land under titling and improving the administrative system for registered land. This abandons the majority of land users, whose land administration on unregistered land is given no support. Titles are not 'wrong' in themselves, but pushing through 'systematic demarcation' for titles is bringing conflict and risks, where it is done before the communities have thought through how they want their land rights system to work. (See *LEMU policy discussion paper 2*).

Most people need an administration for customary land, which can support documentation, recording and registration of land rights and land transactions. Even large areas of land can be made available to investors if clans can rent (or 'lease') out communal land in a system where both parties feel secure in their agreement.

People also need a cheap and accessible justice system which can protect rights. This can come if the State justice system works together with the local or 'customary' system. This will be more effective and much cheaper than supporting the titling land, and will help millions of people rather than the few who have titles. This would make PMA relevant to everyone.

Gender

Women's lack of land rights is identified both in PMA and in the evaluation. Solutions have not been so easily identified. This is because we have all accepted the distortion of customary law which men are now claiming when they say that "women do not own land". Even women activists start their fight for women's land rights by accepting that this is true! Customary law, in most of Uganda, gave women secure rights to land: men were stewards of the land, with the duty to give land rights to male and female members of their families. We need to move the battlefield for women's land rights: instead of accepting the distortion of customary law and trying to pass legislation to overrule it, we should challenge the erosion of women's rights from within the customary system itself. (see LEMU's policy discussion paper 1, and Information Leaflets 3 and 4.) The Ministries of Lands, Justice and the Interior can then work together on a campaign to get land grabbing treated as theft (a criminal offence), and not as a family squabble.

This needs to go hand-in-hand with a serious attempt to implement the "consent clause". Any sale of family land needs a wife's written consent by law – but this is being completely ignored, because no-one has been given the duty to verify her consent.

Investment:

Investment is needed badly in the agricultural sector. Two models are possible: large external investors can establish large plantations, employing previous owners as workers; or smallholders can be encouraged to invest and modernise their farms. Experience in both Uganda and elsewhere shows that poverty can only be reduced by the second model. This alternative is included in PMA and needs a higher political profile. Investors are also needed on this model, providing services for the farmers, in both processing and production. Success in modernisation needs the harmonisation of the sectoral vision, overall economic policy and land policy.

Promoting agricultural growth under customary tenure.

Investment can be encouraged on farms under customary tenure. Farmers actual constraints need to be identified and addressed, rather than assuming that giving farmers titles will stimulate investment. Farming needs to be made more profitable, and less risky. MFI loans which demand interest of over 60% and which need to be serviced from the first month will rarely be used for agriculture. New models for making capital available for investment are needed. (See LEMU policy discussion paper 4).

Land policy is part of PMA. Everyone interested in PMA should be involved.

Support is needed for all Ugandans, not just for a small minority with titles.

¹ See PMA, table 9.9

This paper is written by Land and Equity Movement in Uganda (LEMU) under the Danida Human Rights and Good Governance Legal Aid Basket Fund.

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**Land and
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Making land work for us all