

STUDY ON THE IMPACT OF LAND TENURE SYSTEMS ON AGRICULTURAL TRANSFORMATION IN MALAWI, MOZAMBIQUE, TANZANIA AND ZAMBIA

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PURPOSE OF STUDY

- Determining impact (actual and potential) of the dominant tenure systems on agricultural transformation in Southern Africa
- 4 case study countries:
 - Malawi
 - Mozambique
 - Tanzania and
 - Zambia

DOMINANT TENURE SYSTEMS

1. Customary tenure administered by traditional authorities (under state regimes)
2. State administered lease-hold system and/or variations thereof, especially the long-term lease
3. Freehold

THE STATE IS INCREASINGLY THE MAIN LANDLORD

- The *de jure* and *de facto* situation in all countries views all land as state land
- Weakened and increasing compromised traditional authority system is still contesting the state in various instances
- Countries still engaged in same war that pitched colonial governments against African traditional systems of law and governance
- Land law is just but a sub-set

STRUCTURAL TRANSFORMATION IN SOUTHERN AFRICA



- All countries in Southern Africa are Low Income Countries (LICs) or Middle Income Countries (MICs)
- All fail to attain High Income Country (HIC) status
- Best cases all locked in MIC Trap:
 - **Low growth, high employment, worsening inequality**
- **Main reason: No broad based agricultural revolution**

INCOMPLETE STRUCTURAL TRANSFORMATION

- *There is urbanisation with no urban jobs, the attraction being services, not manufacturing*
- *Whether economic growth is low or high, it is invariably accompanied by rising equilibrium rates of unemployment and inequality*
- This is why the way in which land issues are addressed will be critical for Africa's development over the next few decades.
- The main conclusion is that this situation is structural not temporary; and this is not mostly self-correcting

INTERNATIONAL BEST PRACTICE IN ESCAPING MIC TRAP



- Understanding the process of structural transformation, and what it means for public policy: How did it happen in Europe, USA, Canada, Australia and Japan
- What lessons do we have from those countries that are now breaking the MIC Trap:
 - ASIA: China, South Korea, India, Vietnam, Malaysia
 - South America: Brazil? Mexico- etc.
 - Africa: NONE- S. Africa? Nigeria? Kenya? Egypt?

INTERNATIONAL BEST PRACTICE IN ESCAPING MIC TRAP

- Expand domestic market by raising massive numbers of rural smallholders into rural middle class (Africa \$4/day)
- Dilute the dual economy, engage the whole economy in pulling and linking the rural sector
- This requires serious government with serious developmental ideology, and a multi-level public administration to deliver

7 MAJOR PRIME MOVERS OF AGRICULTURAL TRANSFORMATION

1. Land reforms that secure tenure, improve access to land by family farmers, improve land development
2. Structured demand for smallholder farmers so as to harness the backward and forward linkages between agriculture and manufacturing sectors.
3. Human capital across the board- farm labour productivity, technical, managerial, professional
4. An Agricultural Innovation System that continually develops green revolution technologies for smallholders

7 MAJOR PRIME MOVERS OF AGRICULTURAL TRANSFORMATION

5. A dynamic rural financial services sector with multiple products
6. An effective public administration system at all levels
7. A conducive macro –economic policy environment for agriculture as a business

MAIN FINDINGS

- Because the study was a rapid country appraisal, the country findings are useful for cross-country insights and not for country specific recommendations.
- It appears that both customary tenure and leasehold tenure have the potential to be harmonised into the vibrant agricultural transformation process under a 'multi-tenure system'.
- The study confirmed that both land tenure systems have an actual and potential impact on agricultural transformation that is currently understated due to significant limitations in the reach of the developmental states in terms of public investment in the rural sectors generally and specifically because of an underdeveloped public administration capability.
- There is evidence that organised smallholder farming is a strategy that has enormous potential for raising smallholder productivity and capital formation.

MAIN FINDINGS

- Security of tenure is fairly robust under customary tenure and leasehold tenure. Smallholder farmer organisations generally have their members operating limited fear of loss for their land especially those born in the community.
- Land rights and land access for youth and women is a major challenge in all countries and under all land tenure systems
- Capital formation is happening to varying degrees under customary tenure and leasehold tenure in the 4 countries. In the lease hold sector, the attraction has been with individuals/corporations with already capital. This has tended to benefit medium and large farmers.

MAIN FINDINGS

- But for smallholder farmers, leasehold has not brought about capital formation. It is too early to tell if leaseholds have led to capital formation. This is entirely depended on the enterprise and viability of the business.
- Literature shows that farms under huge concessions have failed produce or exhibit forms of capital formation due to factors beyond lease but rather due to other constraints such as an underdeveloped economy.
- Where smallholder farmers and cooperatives are organised and linked to agribusiness markets, there is evidence of sustained capital formation.

MALAWI: MAIN FINDINGS

- Over the times, the state has taken greater legal and administrative control of customary land
- The Land Act of 2016 will see the voluntary registration of customary land and convert it to private land
- There is evidence that that tenure security boosts investment under all the tenure systems

MALAWI: MAIN FINDINGS

- Titling alone cannot completely lead to investment;
- overall, the strengthening and decentralising of land governance systems in Malawi could improve the implementation of the Land Act (2016) with positive impact on customary land, as well as revamping and regularising the estates under state leases
- There is need to disseminate clear guidelines on how to manage relocations and resettlement of poor rural communities in the case of large scale land based investments.
- Organised smallholder commodity associations seem to increasingly developing capabilities that will accelerate capital formation and agricultural transformation.

MOZAMBIQUE: MAIN FINDINGS

- There is a growing need to formalize and register customary land rights as part of a broader push to integrate secure
- Most rural populations, however, still have low levels of trust in the authorities and may not be willing to take risks or incur the costs
- Government land administration and state authorities remain largely managed and staffed by administrative and technical cadre, trained in top-down management processes, and still feel more comfortable with the old rules and in the old system of command and control

MOZAMBIQUE: MAIN FINDINGS

- Large scale land investments a mixed bag of results. There is also accelerating urban encroachment and commodification of customary land by the powerful
- Formalization, therefore, must consider more than just the mapping and registration of land rights and requires a careful process of civic education, community capacity building
- Smallholder cotton growers association are positioned to pull a significant number of smallholders into rural middle class income levels but public policy and support is limited.

MAIN FINDINGS: TANZANIA

- Land policies in Tanzania require sensitisation and education for the masses
- Policies should also opt for eased titling procedure
- Land ceilings may be needed for avoiding monopoly and excessive ownership by individuals, and to facilitate land expropriation for the public good, land banking, and women entitlement to land ownership
- Experience with SAGCOT would suggest that while land laws originally aimed at tenure security for customary land, the desire by government to promote large scale land investments has led to pressure to release as much land as possible from village to public lands that can be leased out large scale.

MAIN FINDINGS: ZAMBIA

- In spite of decades of conflict, both customary tenure and leasehold tenure have been permanent features of Zambian society
- Zambia seems to have taken an approach in settling for a multi-form tenure system where customary tenure is tolerated as part of state land system
- Both land tenure systems have an actual and potential impact on agricultural transformation that is currently understated due to significant limitations in the reach of the developmental state;
- there is evidence that organised smallholder farming is a strategy that has enormous potential for raising smallholder productivity and capital formation;
- Lease-hold investors tend to be entities and individuals who have already accumulated capital and the potential there for capital formation is to be found in more inclusive business models that link smallholders with large scale investments

MAIN FINDINGS: ZAMBIA

- Security of tenure is fairly robust under customary tenure and leasehold tenure
- Smallholder farmer organisations generally have their members operating with limited fear of loss for their land especially those born in the community
- Outsiders who acquire land in these areas, however, tend to have less customary rights and security and therefore gravitate towards needing a certificate to enhance tenure security
- Capital formation is happening to varying degrees under customary tenure and leasehold tenure; there is gravitation towards local value-addition through micro-ginneries as a means of greater capital formation as opposed to smallholders concentrating only on producing raw materials for large companies
- There is need to invest in a more effective land administration system and procedures, reduce time and costs of land registration and ensure more transparent systems of transferring public land for private use; the 'myth' of Zambia being land abundant may still be true, but increased conflicts and commercialisation of customary land are an indication of massive change in the myth.

MAJOR FINDING 1: STRUCTURAL TRANSFORMATION STAGNATED

- In the 4 countries and beyond, both the state and private sector are weak
- Economic convergence between rural and urban is weak, urbanisation with no jobs
- Public, local and community level administration are weak and poorly integrated
- Land policies appear ignorant of the fact that land markets are a result of structural transformation, not the other way round
- Statutory reforms may prove some points at micro-controlled level, but that is unlikely to translate into up-scaled and efficient land markets at current stage of economic transformation
- Including with reference to the case countries of Malawi, Mozambique, Tanzania and Zambia, and indeed most of Southern Africa.

RECOMMENDATION 1: FIRST SEEK TO UNDERSTAND STRUCTURAL TRANSFORMATION

- SACAU and its national apex members have to fully analyse status of structural transformation of their countries
- Then locate the land governance agenda within the context of agricultural and rural transformation
- Each national apex body assist the state to redefine the agricultural and rural development policies and investments
- Aim to connect significant number of smallholders with manufacturing and industry -rural middle class status

MAIN FINDING 2: SMALL FARM STRATEGY MOST DIRECT PATH TO TRANSFORMATION

- Lessons from global experience with those countries that have overcome the MIC trap (such as China and India) to Africa
- “small-scale but efficient, rather than large-scale, mechanized and efficient” is a more relevant strategy for agrarian conditions such as in Africa.
- Break out of the dualism rather than pushing parallel development agendas that entrench dualism.
 - Expand domestic markets by raising labour and land productivity and incomes of as many rural people as possible;
 - public investment architecture has to reform so that it raises rural total factor productivity
 - Integrates factor markets; and therefore renders rural businesses more profitable;
 - Foster convergence between rural and urban areas, and create backward and forward linkages;
 - Support family farming through agricultural policy instruments extended and adapted to the needs of smallholder farmers.
 - Capital formation in rural areas has to be driven by the entire economy and a priority of macro-economic policy.
 - Transformative rural capital formation is a multi-sector agenda and should go well beyond the agriculture sector policy.

RECOMMENDATION 2: PLACE PRIORITY ON STRENGTHENING LAND GOVERNANCE

- Secure land rights more a function of strong land governance system than burden of statutory law
- Land tenure reforms, therefore, should focus on land governance across all tenure systems
- Reforms and modernisation targeting the predominant customary tenure system should be designed to align with the evolutionary path of the structural transformation.
- Governments should reconsider the belief and temptation to prematurely substitute customary tenure with statutory tenure.

BASKET OF SECURE TENURE RIGHTS

- Use
- Transfer
- Exclude/include
- Enforce

MAIN FINDING 3: 'TENURE SECURITY' MORE IMPORTANT THAN 'TENURE TYPE'

- *'Tenure security'* as opposed to *'type of tenure'*.
- No tenure system is good or bad, right or wrong, rather a tenure system has to be appropriate for a given circumstance
- All tenure systems can strengthen or weaken with similar impacts
- Economies of scale are often confused with economies of size.
- Although small family farms are more efficient at early stages of structural, and consolidation of farms into larger units becomes more efficient (economies of size) at later stages

RECOMMENDATION 3: SACAU SHOULD STUDY AFRICAN AND GLOBAL EXPERIENCE

- SACAU and its members and partners should study that discern African and global experience and nexus between agricultural, rural and structural transformation.
- Agriculture is becoming less autonomous and increasingly a multi-sector approach is more effective
- SACAU and its members are more likely to succeed in influencing national and macro-economic policies that impact on capital formation by position agriculture within broader rural transformation.

MAIN FINDING 4: INCOMPATIBLE LEGAL SYSTEMS

- All 4 case countries have their Constitutions driven by ‘imposed law’ or ‘given law’ from of the coloniser
- International experience is loaded with the challenges in reforming customary tenure on the basis of given (imposed) law
- Limited experience of:
 - Reforming customary law in its own right and own evolutionary path.
 - None of the 4-country has taken the path of legal plurality
 - The ‘war’ between imposed statutory laws and customary laws – which dates back to colonial occupation --will continue
 - No serious efforts to integrate and/harmonise both systems of law and systems of public administration
 - As long as there is no legal pluralism, it would appear that the state machinery in these countries will continue to grind away slowly until African customary laws and the cultures that drive them have been completely dissolved.

RECOMMENDATION 4: SACAU SHOULD ADOPT A 'MULTI-FORM TENURE POLICY'

- Identify strengths and weaknesses of each tenures systems
- Strategize on how to strengthen and secure land rights in each tenure system
- In reforming land policy:
 - identify the relevance and role or different tenure systems at various stages of structural transformation.
 - Recognize all existing land tenure systems
 - Reforms should be pragmatic rather than ideological
 - Aimed at strengthening 'tenure security' for all systems as opposed to substitution.

MAIN FINDINGS 5: ENFORCED WESTERNISATION OF TENURE MIX BAG OF RESULTS

- The general argument for registering customary tenure hinges on three potential economic advantages of title deeds relative to informal usufruct land rights:
 - a) legal title to land can be used as collateral to improve access to credit;
 - b) title can increase the security of tenure for farmers, which may make them more willing to make medium- to long-term investments in land and c) titles may enable the formalization of the land markets.
- Despite these strong theoretical arguments in favour of formal titling of land in Africa, in practice titling programs have often yielded sub-optimal results, particularly for poor or marginal households and communities.
- The literature on such reforms in Africa has generally been inconclusive about attributing major economic recovery of Communal Areas mainly to a land tenure reform. It is also rather unrealistic to expect that abolishing and/or reforming customary tenure will resolve legacy issues of economic exclusion, poor infrastructure and remoteness from main markets, and the general inadequacy of public sector investment into these poor communities.
- Moreover, customary land rights—however well formalised—don't appear to ever fulfil the requirements of commercial banks. Banks in general fund smallholders on the basis on viability of their businesses rather than on collateral security.
- The literature is also clear that reforms are still badly needed in light of major transitions and pressures on all land especially customarily held land.

RECOMMENDATION 5: HARMONISE CUSTOMARY AND STATUTORY LAND LAWS

- SACAU should promote efforts in its member countries to harmonise customary and statutory land laws and their administrative systems and modalities.
- SACAU members should seek full protection of their smallholder farmers by advocating for legal plurality, and offering **CUSTOMARY TITLE DEEDS** under the dictates of customary law and administration systems that are harmonised and integrated into the state machinery, public land information system and registry.
- This paves way for a culturally sensitive approach that has scope to evolve itself along with structural transformation as a unified land market
- SACAU must oppose forcing an 'enclosure' policy.
- Formalise land markets that already exist in communal areas, but governments and donors do not recognise the potential to modernise those markets under customary systems.

RECOMMENDATION 5: HARMONISE CUSTOMARY AND STATUTORY LAND LAWS

- SACAU and its members must discourage abolishment mentality and/or colonial type approaches and strategies that just seek for crude ways of prematurely forcing the emergence of land markets. Land markets are a result of progressing structural transformation, not the reverse.
- Moreover needed cultural transitions and reforms go beyond land. In spite of their drawbacks, customary laws and tenures have strong points too. A wholesale attack on African cultures is inappropriate, and just prolongs the residual colonial trauma that Africans are still trying to heal themselves from, while preserving their African identity and cultural heritages.
- No culture in the world is perfect, yet all want to keep their identity and heritages as they evolve. SACAU should promote modernisation –not Westernisation or Easternisation of customary laws and heritages.

RECOMMENDATION 6: AVOID FORCED REGISTRATION OF CUSTOMARY LAND

- Although land governance reforms are needed (including formal regulation and registration in some instances), governments should avoid turning communities into squatters on their own lands;
- legitimate solutions lie in protecting and strengthening customary land tenure and community governance;
- Governments should therefore ensure that customary land rights are recognised as property rights in statutory law, not just as user or occupation rights, and have an equivalent force of law to private deeded property rights.
- Customary land must include not only the land of the family, house and farm but also forest, rangeland and other lands held collectively, including those that are currently considered as state-owned.

RECOMMENDATION 7: GOOD PRACTICE WITH TITLING AND REGISTRATION

- Statutory law should recognise and protect customary tenure rights BEFORE registration process
- Pilot programs are advisable as a first step to implementation
- Countries should establish a decentralized system of land administration and adjudication down to community level before registration commences
- Demarcate and register the land administration zones and formalize land governance structures for each zone before registration commences
- Commence voluntary registration based on need; and
- Finally go for systematic registration of remaining parcels after long periods of learning and experience;
- Registry systems have to be drastically adapted to be able to register customary type tenures; laws and regulations must provide for registration of group rights; spouses must be co-owners and protected.

RECOMMENDATION 8: SACAU SHOULD COMMISSION STUDY ON SMALLHOLDER COMMODITY ASSOCIATIONS

- SACAU should commission a special study on smallholder commodity associations that seeks to enhance these entities as a major force for capital formation and agricultural transformation.
- The study should analyse existing commodity associations in terms of institutional modalities and business models that can promote smallholder farmers, producers, and related entrepreneurs along the entire value chains.
- Smallholder farmers need to be involved in entire value chains. There is need for better organisation of farmer groups large and small supported by government.
- From the research, it shows that capital formation is probable and already happening in various countries. Where farmers are disconnected, it shows very little capital formation occurring.
- As a lesson from Asia, a lot of emphasis should be put on prospect for village and township manufacturing especially to supply rural towns and rural middle class.

MAIN FINDING 6: MOST LAND IS STATE LAND

- Because there is increasing ownership by the state (*de jure* and *de facto*) that means that for all practical purposes, all land in the 4 case countries can be considered public land.
- This then means that for SACAU and its members there is need for greater understanding of the technical issues around the **GOVERNANCE AND MANAGEMENT OF PUBLIC LANDS**.
- The study confirmed that state mechanisms, modalities and procedures for managing public lands is largely not transparent, not well documented, and information not generally available to the public.
- This space is filled with maladministration, rent seeking behaviour because of the commoditization of all land occasioned by pressure of demographic changes.
- There are not enough policies, laws, structures to administer public land.
- On land rights, the general problem is that land rights under customary tenure tend to be ambiguous and unclear, and are interpreted differently depending on circumstance. Land rights are not clear, and the participation of youths needs to be addressed.

RECOMMENDATION 9: SACAU SHOULD EMPHASISE LAND GOVERNANCE

- SACAU should put initial efforts into supporting countries to develop a capable, effective and decentralised land administration system
- This is a pre-requisite for effective titling and registration, and as a basis for linking land markets with financial services
- This is best way to promote land tenure security, transparency and minimisation of conflicts and disputes, better spatial planning, and generally securing all tenure types and integrating them into one linked national land market.
- Such decentralised system of land administration will be able to fulfil functions of adjudication, conflict management system, mutations- such as change of use, and change of ownership.
- These efforts in some cases may require a full diagnosis of the land administration systems.

RECOMMENDATION 10: NEED FOR PUBLIC LAND INFORMATION SYSTEMS THAT ADD VALUE

- Ultimately **CAPITAL** is pure information and data
- CAPITAL is **FUNGIBLE**, does not exist in the physical world
- SACAU and its members should develop a clear idea of the kind of public information system on land that will serve farmers in their businesses and relationships with the financial services sector and with governmental entities for various requirements.
- SACAU and its member should promote the establishment, development and maintenance of a state of the art land management information system as the very foundation capital formation, especially given that the value of land ultimately resides in those attributes that are publicly available and integrated with the financial services sector including banks, pension funds, and insurance and so on.
- A functional land information system can always start with a manual system that can progress into an electronic system.

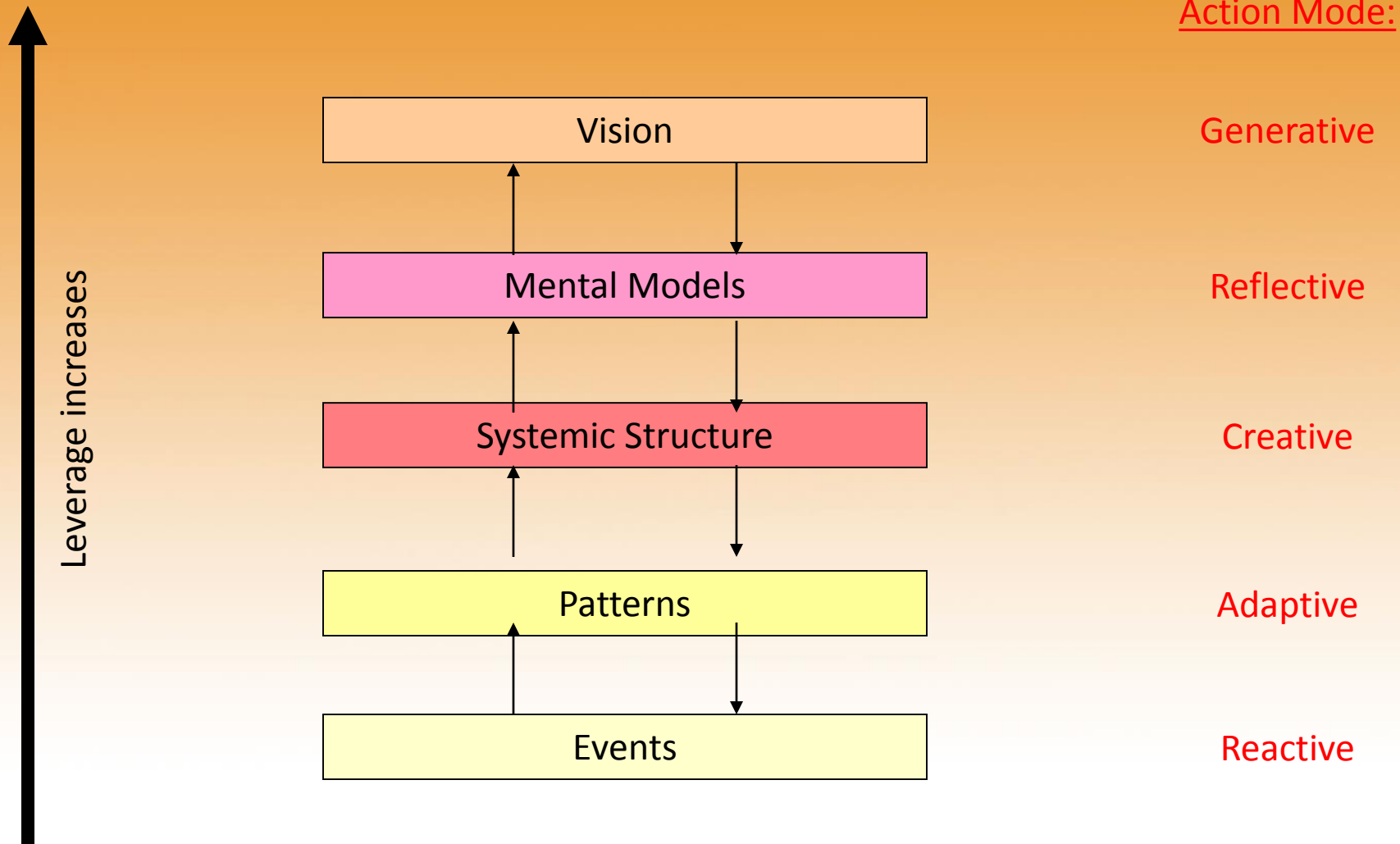
MAIN FINDINGS ON LSLBs

- On the issue of Large Scale land Based Investments (LSLBIs) the study found that although there has been interest in acquiring large tracks of land, effective utilisation is difficult.
- In the 4 countries case countries information on LSLBI is not publicly available and also there is limited information on how these investments are performing.
- Once again the poor management of LSLBIs has been attributed to weak in-country land governance that fails to protect land rights. While governments are increasingly centralizing control over land, they do not legally recognize or respect the land rights of local land users, or find ways of bypassing, thereby paving the way for the large-scale allocation of land to prospective investors.
- The faddish belief in LSLBI without empirical evidence of performance is also contributing to the low prioritisation by government on public investment into smallholder family farms.
- Some interviews from the case study countries had the feeling the some of these LSLBIs end up assuming the role of the state- attempting to install infrastructure thereby establishing their own extension systems etc.

RECOMMENDATION 11: SACAU SHOULD STUDY THE 2013 LPI STUDY ON LSLBIS


- Update with recent data and information for its member countries.
- SACAU needs a clear policy on LSLBI that:
 - Promotes inclusive investments that contribute to broad-based capital formation
 - Assist governments to sharpen policy, guidelines, results frameworks and monitoring systems for LSLBIs.
- The main purpose of attracting LSLBIs should be:
 - Accelerate structural transformation by broadening of the domestic market
 - Increasing the numbers of rural middle class through inclusive business models
 - Connect as many smallholder farmers as possible into the mainstream markets and mainstream economy,
 - Yielding an attractive return on investment.

LEVELS OF PERSPECTIVE



TOO MUCH FOCUS ON SYMPTOMS NOT THE CAUSES

- Development is about people, not things
- Large farm versus small farm strategy- red herring, colonial baggage
- Type of tenure, versus security of tenure
- It is not so important to agree with me, it is more important to OPEN the mind, THINK and DEBATE more deeply
- All suffering is an absence of a higher thought



**SIYABONGA
ZIKOMO KWAMBILI
KEA LEBOA
TATENDA
MUITO ABRIGADO
ASANTE SANA
THANK YOU**