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## Nigeria Agricultural Policy Project

### **INSTITUTIONAL LIMITS TO LAND GOVERNANCE REFORM: FEDERAL-STATE DYNAMICS IN NIGERIA**

By

Danielle Resnick and Austen Okumo



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## 1. INTRODUCTION

Over the last decade, land governance has become a major priority for the development community<sup>1</sup>. A particular focus has been on sub-Saharan Africa due to the recognized paradox of high levels of land availability and low productivity in the region (see Deininger et al. 2012). While poor land governance systems have long been identified as a key reason for this disjuncture, the relatively recent large-scale impetus to improve land governance emerged from the inclusion of land management in 2009 as one of the four pillars under the African Union's Comprehensive Africa Agriculture Development Program (CAADP). Subsequently, in the wake of the G-8's launch of the New Alliance for Food Security and Nutrition in 2012, many international initiatives have emerged to promote better land governance. These include the African Union's Land Policy Initiative (AULPI) and the World Bank's Land Governance Assessment Framework (LGAF). At the national level in Africa, land registration and land titling are the most common approaches to reform (Sikor and Müller 2009), with governments selecting among a broad spectrum of modalities to pilot. These include rural land use plans in some francophone countries (e.g., Benin, Burkina Faso, and Côte d'Ivoire), systematic land tenure regularization (Ethiopia, Madagascar, Rwanda), and communal land demarcation and registration (e.g., Ghana, Mozambique, Tanzania) (see Byamugisha 2013).

Despite the broad recognition of the importance of such reforms, there continues to be wide variations in the degree of progress towards improved land governance across the region. The political economy of this contested process, and the institutional factors that underlie such dynamics, is one of the key reasons why efforts at land governance can stall and why reform modalities borrowed from other countries may not be successfully implemented. In order to understand these factors, this paper focuses specifically on the case of land governance in Nigeria.

Nigeria is a critical case for regional efforts in Africa to improve land governance for a number of reasons. First, only three percent of Nigeria's vast land resources are formally registered (see Adenji 2013; Birner and Okumo 2012). Absence of clear title to land can inhibit farmers from using land as collateral or to motivate investments to improve land quality, leading many to depend on depleted lands and to be unwilling to combat land degradation (see Phillip et al. 2009). This can have large implications for improving agricultural productivity, especially since Nigeria is now heavily dependent on food imports. Furthermore, Deininger and Xia (2014) note that fear of expropriation by the state is one of the key sources of rural tenure insecurity in Nigeria. Secondly, a lack of information and clear title has implications for land valuation and therefore inhibits raising tax revenue that could support government expenditures on broader public goods and services, a diversification away from oil as the primary source for raising domestic revenue, and less dependence for states on intergovernmental transfers (see Adenji 2013; Byamugisha 2013; Suberu 2015a).

Thirdly, Nigeria continues to be one of Africa's most rapidly urbanizing countries based on population size and urbanization levels. Between 2014 and 2050, the urban population in Nigeria is expected to grow by 212 million people, with the urban population increasing from 47 to 67 percent of the total population during the same time period (UN 2014). Under Nigeria's Land Use Act, titles are only given to recognize the right of occupancy, rather than title to buy or rent land. Consequently, there is widespread squatting and the spread of informal settlements in urban areas (USAID 2010). For instance, in the Federal Capital Territory of Abuja, LeVan and Olubowale (2014) observe that this pushes many into the informal market as property use agreements depend on negotiation between migrants to the city and "indigenous landlords." Since 2003,

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<sup>1</sup> As Peters (2009) notes, the 1970s and 1980s similarly witnessed a flurry of activity around land policy reform in Africa, albeit with very mixed results.

almost 800,000 homes have been destroyed in the capital city by government bulldozers destroying informal settlements (USAID 2010). Poor land governance also contributes to other forms of violence and geographically-concentrated conflicts in the country. These include longstanding disputes in the Niger Delta linked to environmental degradation caused by the oil industry and conflicts over grazing rights in the Middle Belt of Nigeria between farmers and pastoralists.

Yet, despite a notable and widely recognized need among a broad range of stakeholders regarding the need to improve land governance in Nigeria, progress remains slow. To address this puzzle, this paper applies the Kaleidoscope Model (KM) of policy reform. As detailed elsewhere (see Resnick et al. 2015), the KM provides a framework to address the question of why a policy change occurs in one geographic locale and not another, in one policy arena but not another, or at one time period but not another. Drawing on other influential studies of policymaking in developing countries (see Fox and Reich 2013; Kaufman and Nelson 2004), the framework focuses on five key elements of the policy cycle: agenda setting, design, adoption, implementation, and evaluation and reform. This allows for tracing why a policy fails to be implemented by taking into account where gaps may have existed during other stages of the policy cycle. As Hall (1993) highlights, policy change is rarely one overarching outcome, but, rather, consists of smaller policy changes related to design, adoption, and implementation along the way. By looking at all elements of the policy cycle, the KM offers more nuanced understandings of when and why smaller changes sometimes cumulate and result in larger outcomes, while other changes do not. In doing so, the KM can help pinpoint bottlenecks to policy change and identify whether improved policies are hindered by low capacity, insufficient political will, or both.

In doing so, the paper highlights two key challenges for land governance reform in Nigeria—policy inertia surrounding the legislative framework and ongoing struggles to implement the systematic land titling and registration (SLTR) across states. In both cases, a key problem has been the wavering commitment of high level policy actors and lukewarm support by governors at the state level. Methodologically, these findings are uncovered through intensive process tracing and semi-structured interviews conducted with knowledgeable stakeholders in Abuja, Nigeria during June 2016. Process tracing focuses on patterns of change and causation through thick description and attention to the sequence of independent variables and observed outcomes (see Collier 2011). The interviewed stakeholders encompassed representatives from the Office of the Vice President; Federal Ministry of Power, Housing and Works; the Office of the Surveyor General; the National Land Transparency Initiative; Abuja GIS; Presidential Technical Committee on Land Reform (PTCLR); Surveyors Council of Nigeria (SURCON); and the Growth and Employment in States (GEMS3) project that is supported by the United Kingdom's Department for International Development (DfID). For the purposes of anonymity, interviewees are identified throughout by their institutional affiliation rather than by name whenever they are directly quoted.

The main implications of the present paper are twofold. First, although land governance is well-recognized as intensely political (see Boone 2013; Cotula et al. 2006; Deininger et al. 2012; Palmer 2007), many recent initiatives have sidestepped this fact to promote more technical interventions. Such interventions, including the SLTR, can be hindered by not more explicitly embracing political realities. Secondly, a variety of fragile and/or post-conflict countries, such as Kenya, Nepal, and Pakistan, are pursuing greater devolution and federalism while grappling with ongoing land governance challenges. Understanding how this dynamic has unfolded in a democratic federal setting such as Nigeria can therefore be illustrative in these other contexts. In terms of organization, the following section reviews the literature on drivers of policy reform and specifically the main variables underlying the Kaleidoscope Model. The next section considers the issue of land governance and specifically the Nigerian context. Subsequently, we discuss how land governance reappeared on the policy agenda in the late 2000s, the choice of the SLTR as the design mechanism for land registration, and the various challenges tied to the implementation of deeper land governance reforms. The



final section concludes by discussing the key factors from the KM that are critical in the Nigerian case and some policy considerations.

## **2. WHAT DRIVES POLICY REFORM?**

Scholarship on the political economy of policy reform is extremely vast but often quite disaggregated according to a particular element of the policy process. By contrast, the KM attempts to provide a comprehensive framework that integrates the insights from cumulative scholarship. As seen in Figure 1, the inner circle of the KM illustrates 16 key variables, labelled “key determinants of policy change,” that the political economy and public policy literatures suggest are significant (see Resnick et al. 2015 for a review of these literatures). The 16 key variables identified in Figure 1 may not be uniformly relevant to all policy domains and country contexts, but a subset of these variables should help provide analytical leverage for understanding blockages in, or facilitators of, the policy process.

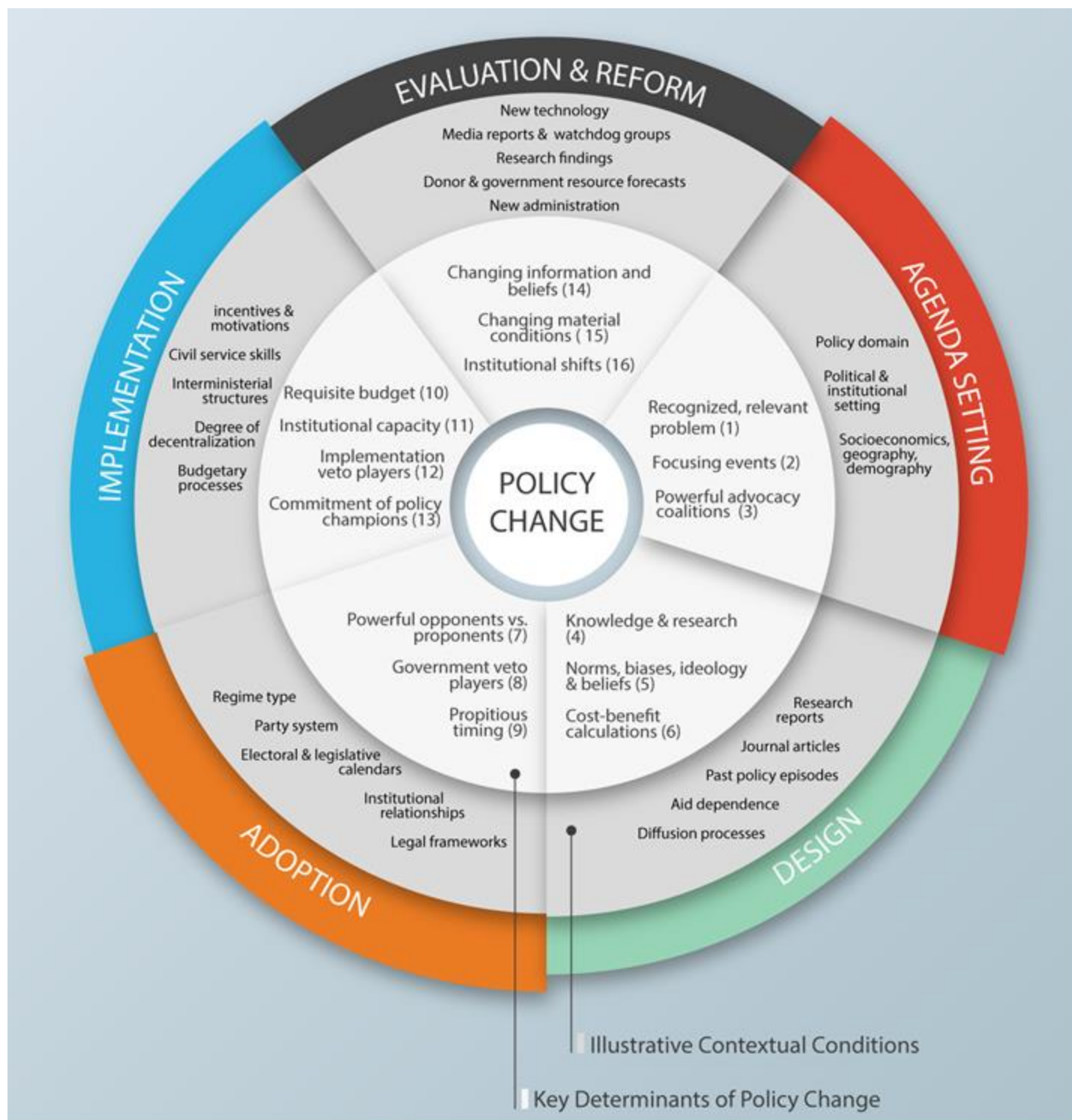
To understand how a policy first emerges on the policy agenda, the KM emphasizes the importance of a recognized and relevant problem, focusing events, and powerful advocates. A recognized, relevant problem is equivalent to the “problem stream” in Kingdon’s (1984) multiple streams approach. The relevance criterion narrows the range of policy issues that could potentially emerge on the agenda because certain issues will have greater or less resonance with decision makers. In turn, a country’s socioeconomic, demographic, and geographic context shapes the resonance of specific issues. For instance, generating smallholder incomes or addressing food insecurity is more important in low-income, more agrarian countries.

The importance of focusing events is well-documented in the literature (see Birkland 1997) and have also been referred to as “critical junctures” (Collier and Collier 1991), “punctuated equilibria” (Pierson 2004; Thelen 2003), or “windows of opportunity” (Kingdon 1984; 1995). In all cases, they refer to exogenous shocks or events that have the potential to shift the policy trajectory. The focusing event may be a major crisis, such as a food deficit or price crisis, an economic collapse, regime change, or a natural disaster. Yet, focusing events and a relevant problem are rarely sufficient on their own to propel an issue on the policy agenda. Instead, there needs to be powerful advocates who push for action on that issue (see Sabatier 2007). These advocates can come from a range of sources, including high-level government officials, political parties, civil society, the private sector, the research community, foreign investors, or donor agencies.

Policy design involves grappling with the much more technical elements and modalities of addressing the relevant problem identified at the agenda setting stage. One factor is empirical research and knowledge disseminated through epistemic communities (Haas 1992) of researchers and experts, as well as donors, policy entrepreneurs, and technocrats. At the same time, these communities may have stark divisions among themselves in terms of an appropriate policy design, and institutionally entrenched technical perspectives can also cause some solutions to be prioritized and others marginalized (see Freeland 2013). A second distinct but related factor driving design issues involves norms, biases, and ideologies. Sabatier’s (1988) notion of different types of policy beliefs is relevant in this regard. While there may be secondary beliefs about the narrow design features of a policy, these may be informed by deep beliefs about human nature shaped by norms and socialization (see also Sabatier and Jenkins-Smith 1993). Ideas and beliefs, however, intersect with a third important factor, which is the cost-benefit calculations of advocates and decision makers. Policy designs shape the type of interest group dynamics that emerge and that may subsequently influence policy adoption. These calculations may involve political goals, such as winning votes or gaining influence, or economic motivations, including the affordability of a particular design.



Figure 1. The Kaleidoscope Model of Policy Change



Source: Resnick et al (2015)

Policy inertia is often more common than change (see Pierson 2004), so even after a set of reform designs has been proposed, it cannot be assumed that a policy reform will be adopted by government policymakers.

Tsebelis (1995: 293) in particular highlights the importance of veto players, which he defines as “an individual or collective actor whose agreement is required for a policy decision” (see also Tsebelis 2002). Institutional factors that underlie different political regimes determine the constellation of veto players (see Lijphart 1999; Shugart and Carey 1992; Thelen and Steinmo 1992). Federalism, for instance, theoretically creates more veto players than do unitary systems of government by not only adding an extra legislative chamber but also powerful state or provincial governors. As we will see in the Nigerian context, this is more likely to constrain policy change, and in turn promote the status quo policy, because a broader coalition in favor of reform is needed. The position of government veto players may be influenced by the relative power of advocates versus opponents, whether financial, electoral, or political. Opponents to adoption may not have existed at the agenda setting stage but emerge after a policy design is solidified. Different regimes typically derive their support and legitimacy from different sets of stakeholders, with democracies often needing to cater to a broader range of stakeholders than is required in authoritarian settings (see Bueno de Mesquita et al. 2003). When and how quickly adoption occurs often involves a degree of propitious timing, which in turn is shaped by the nature of the policy and the motivations of the policy advocates. Such timing may be related to the occurrence of elections, the budget calendar, or the legislative calendar.

Many policies, however, can be adopted but not effectively implemented. Policy implementation refers here to administrative changes, public expenditure outlays, or the delivery of the actual goods and services promised by the policy. Implementation clearly requires a degree of technical capacity within the government bureaucracy, the private sector, or civil society to roll out or scale up policy reform. This encompasses not only technical capacity, which includes education, skills, and relevant infrastructure, but also administrative capacity, such the availability of decentralized institutions or inter-sectoral coordinating mechanisms. Capacity can intersect quite strongly with requisite budgetary allocations, which are essential for most reforms. Delays in resource disbursements may trigger delays in implementation. In cases where decision makers delegate policy implementation to the private sector, civil society, or sub-national government agencies, discretionary application by these agents can lead implementation to deviate from the designers’ intent or even stymie implementation altogether. These are identified as implementing stage veto players in the KM. Finally, implementation requires continued commitment of policy champions, who are typically high-level level bureaucrats or political leaders that sustain momentum even when others’ attention to the issue might fade. As Pelletier et al. (2012: 28) observes, “high-level policy champions may be the only actors capable of generating system-wide commitment on the part of midlevel ministry officials and staff, and the managers and implementers at regional, municipal, and local levels.”

When policies are implemented, the evaluation and reform stage is absolutely critical to determine whether small refinements or a complete overhaul is needed. One impetus for reform at this stage is the changing knowledge and beliefs of existing policy champions about the effectiveness of a policy or the best way to achieve the original policy goal. Hall’s (1993) seminal work on policy paradigms notes that this might occur at three levels: making routine amendments to existing policy instruments, adopting new policy instruments to address existing policy goals, or shifting the goals themselves as policymakers learn from past policy mistakes and become influenced by new ideas and debates. As in the policy design stage, the drivers of belief changes may come from many sources, including media reports, parliamentary inquiries, and advocacy groups that may, for example, uncover misuse of resources or unintended policy consequences. A second factor is a change in material resources available for a policy, which may be linked to new policy crisis or a shift in donor funding. A final factor identified in the KM are shifts in the institutional setting, which can affect policy priorities and preferences. Institutional changes can upend the entire policymaking machinery and include the arrival of a new cabinet minister or president, the passing of a new constitution that re-assigns powers over functions, or the reshuffling of parliamentary committees.

As is well recognized, not all policies are equivalent. Some policies are characterized as being “stroke of the pen,” such as exchange rate devaluation or deregulation (see Doner 2009; Grindle 2004). More broadly, Lowi (1972) delineates three types of policies: distributive, redistributive, and regulatory. Distributive policies involve the distribution of “new resources” and can be “disaggregated and dispensed unit by small unit” (Lowi 1964: 690), and include input or food subsidies that are targeted to specific groups. Regulatory policies, such as those affecting food and seed safety, differ from distributive ones because the short-term winners and losers are much more obvious and such policies tend to occur along sectoral lines: “the impact of regulatory decisions is clearly one of directly raising costs and/or reducing or expanding the alternatives of private individuals” (Lowi 1964: 690). Redistributive policies involve changing the distribution of existing resources, and the impacts of these policies may not be solely on individuals or households but on larger social classes, defined in terms of socioeconomics, ethnicity, race, religion, or even livelihoods. Among others, land governance reforms are quintessential redistributive policies in that they involve reallocating existing resources in a way that may have considerable effects on the welfare and social relations of different classes or societal groups. By applying the KM to the issue of land governance, we can better uncover how “policy determines politics” (Lowi 1972) and in turn, affects prospects for reform.

### **3. LAND GOVERNANCE AND THE NIGERIAN FEDERAL CONTEXT**

Land governance is a multi-faceted concept referring to a broad range of factors integral to efficiently and effectively managing land issues. Palmer et al. (2009: 9) define it as “the rules, processes, and structures through which decisions are made implemented and enforced, the way that competing interests in land are managed.” Based on Dale and McLaughlin’s (2000) seminal work, land administration encompasses four key functions, including juridical (e.g., registering, allocating, delimiting, demarcating), regulatory (e.g., developing and enforcing restrictions on land use and transfer), fiscal (e.g., valuating land and collecting taxes), and information management (e.g., maintaining information systems that help with implementing and enforcing regulations and resolving disputes). These functions are more or less integrated into the five dimensions of the World Bank’s Land Governance Assessment Framework (LGAF) encompassing the legal and institutional framework, land use planning and taxation, public land management, public provision of land information, and dispute resolution mechanisms (see Deininger et al. 2012 and Deininger et al. 2014 for more details). As Borrás and Franco (2010) note, the term is increasingly used to refer to “technical and administrative governance, rather than a matter of democratizing access to and control over wealth and power.”

Much of the more overtly political economy literature recognizes the high level of conflict and contestation associated with land policy. This scholarship has tended to concentrate in two different broad domains. One includes a focus on the role of the state vis-à-vis external actors, particularly investors, and has emerged in the wake of increased attention to land grabs (e.g., Borrás et al. 2010; Nolte 2014; German et al. 2013; Wolford et al. 2013). A second and much more expansive literature focuses on sub-national dynamics. These include analyses centered on the conflicts between statutory and communal tenure regimes and the attendant impact of land policies on the authority and legitimacy of customary authorities (Berry 2009; Bruce and Knox 2009; Ribot 2003). Other work in the same vein highlights the close ties between land ownership and citizenship rights, with particular attention to the implications for migrants versus indigenous communities (e.g., Boone 2007; Boone and Duku 2012; Lund and Boone 2013) and even for electoral politics (Boone 2009; Boone 2014; Klaus and Mitchell 2015).

Yet, the specific contours of land reform in federal systems is often missing from the literature on political economy and sub-national actors. In the Nigerian context, however, this is a critical factor since it shapes the number of veto players and their interests in land governance reform. Indeed, Nigeria is one of Africa’s few

democratic federal systems and the only one in the region where management of surface land is constitutionally deemed a non-concurrent power overseen by the states. While Ethiopia is a federal system, land is a shared competence between the national and regional governments (see Bruce and Knox 2009) and, importantly, land legislation remains the reserve of the federal government (Deininger et al. 2012). South Africa has some characteristics of federalism, but constitutionally promotes a system of “cooperative governance” whereby intergovernmental relations are governed by recognition of three spheres of government (national, provincial, and local) and their functions are distinct but interdependent (see de Villiers and Sindane 2011). Most responsibilities are shared concurrently between the national and provincial levels. Consequently, the federal dimension of land governance in Nigeria can create additional barriers to policy reform than are witnessed in other African countries.

More specifically, Nigeria consists of 36 states and 774 local governance areas (LGAs). Its structure is classified as a “coming together” federalism (Stepan 1999) that emerged at independence in 1960 to promote a more multi-ethnic and integrated country and thereby mitigate against destabilizing demands for autonomy (Suberu 2009). The 1999 Constitution, particularly Part I (sections 2, 3, 6) and Part II (section 7), delineate the contours of the federation. Specifically, the bicameral federal National Assembly consists of 109 Senators and 360 members of the House of Representatives<sup>2</sup>. Each state in turn is overseen by an elected governor and the House of Assembly. Other important executive bodies include the National Council of States (NCS) and the National Economic Council (NEC). The NCS consists of the president, vice-president, all former presidents, all former chief justices, the president of the senate, speaker of the House of Representatives, all governors, and the attorney general. The NEC includes a subset of these actors, including all the state governors and the vice president, as well as the governor of the central bank (Federal Republic of Nigeria 1999).

There are therefore at least three potential axes of political tension: between governors and the president, between governors and state assemblies, and between the president and federal legislators. Indeed, this dimension can be most pronounced when there is a disjuncture between the political parties in control at these different levels. For instance, when the People’s Democratic Party (PDP) was in control from 1999 to 2015, governors from the then opposition Action Congress of Nigeria (ACN) party often faced trouble in accessing inter-governmental transfers, or they could be impeached by their state assemblies through pressure from the president (Fashagba 2015)<sup>3</sup>. Similarly, since governors often have a high degree of control over the career paths of legislators, there is a high level of party defection to the governor’s affiliation. Consequently, a high degree of partisan congruence between the executive and legislative branch is found in almost all of the states. This then allows the governor to use the state legislature as a rubber stamp on executive initiatives (Baba 2015).

For amending any element of the 1999 Constitution, which is known as an “alteration,” supermajority approval is needed. Specifically, it needs to be approved by both two-thirds members in the bicameral National Assembly and the House of Assembly in at least two-thirds of the 36 states in order to pass (Suberu 2015b)<sup>4</sup>.

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<sup>2</sup> There are 109 senatorial districts in Nigeria with 3 in each of the 36 states and one for the Federal Capital Territory of Abuja. There are 360 federal constituencies for electing members of the House of Representatives and these constituencies correspond to population size.

<sup>3</sup> In 2013, the ACN merged with the Congress for Progressive Change (CPC) to create the All Progressives Congress (APC).

<sup>4</sup> There are some exceptions to this. Provisions on human rights and boundary adjustments require a four-fifths approval (see Suberu 2015b).



Presidential assent is then required. The large number of veto players that need to be involved therefore implies that constitutional alterations are relatively rare<sup>5</sup>.

This overview of the constitutional setup is relevant for land governance for at least two reasons. First, residual powers, which are the exclusive domain of the states, include control over surface land even as other functions intimately linked to land, such as housing and mining, are on the concurrent and exclusive federal lists of the 1999 Constitution, respectively<sup>6</sup>. Secondly, Section 315 (5) of the 1999 Constitution notes that the Land Use Act, which is the overarching land legislation in Nigeria, cannot be altered or repealed except through the constitutional amendment process described above (Federal Government of Nigeria 1999).

Introduced in 1978 under the military government headed by Olusegun Obasanjo, the Land Use Decree was announced as a way for land to be “held in trust and administered for the use and common benefit all Nigerians” (cited in Francis 1984: 5). It was intended to standardize control over land tenure between the North and South of the country. Prior to 1978, land in the North was under the Land Tenure Law of 1962, which in turn reflected the Land and Native Rights Ordinance from 1910. The latter stated that all land in Northern Nigeria was public and under the control of the governor who could grant and take away rights of occupancy for the common benefit (Francis 1984). However, in Southern Nigeria, where indirect rule was more common under British colonialism, the land tenure system was much more heterogeneous. Communal and family lands were recognized but lacked identifiable boundaries, and they were subject to abuse by traditional rulers who increasingly sold large tracts of these lands to land speculators in the wake of Nigeria’s independence and increasing urbanization (Adeniyi 2013). This resulted in a large number of land conflicts and litigation (Mabogunje 2010).

The Land Use Decree essentially extended the northern system to the whole country and effectively nationalized land. State governors manage urban lands and issue rights of statutory occupancy (rather than ownership), while LGAs manage rural lands designated for agricultural use and can issue rights of customary occupancy. The maximum amount of undeveloped land in urban areas that could be held is 0.5 hectares, while the equivalent in rural areas is 500 hectares. Land Use Allocation Committees were intended to advise the governors on urban land, while Land Allocation Advisory Committees were supposed to play the same function for LGAs on rural land. Furthermore, the Decree stated that a governor’s consent is required to transfer a statutory certificate of occupancy (CfO) through either mortgage or assignment, while the same is required from the LGA for the transfer of the customary right of occupancy (Adeniyi 2011). The Decree effectively resulted in state appropriation of communal and family lands in the south without compensation. The military and civilian governments incorporated the Decree as an Act into the 1979 and 1999 constitutions, respectively, as a way of “institutional lock-in” to ensure that it would not be easily revoked or altered. To amend the Land Use Act, a draft bill would first need to be sent to the NEC and NCS, which together will serve in an advisory role. In turn, if these bodies feel that it can be tabled, it will be shared with the legislative branch for supermajority approval both at the federal and state levels.

While the resulting Land Use Act facilitated appropriation of land for public purposes and reduced land-related litigation, Adeniyi (2013) and Mabogunje (2010) elaborate on how the Act is both abused and neglected at the same time by governors. On the one hand, governors can take advantage of the need for their consent

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<sup>5</sup> Some constitutional alterations occurred in 2010-2011 with respect to guaranteeing budget autonomy for the Independent National Electoral Commission, streamlined provisions for internal party democracy, established an industrial court, and provided clearer timelines for conducting elections (see Suberu 2015b). In 2015, the requisite legislative supermajorities were obtained to alter the strength of presidential powers outlined in the Constitution, but the outgoing president at the time, Goodluck Jonathan, withheld his assent.

<sup>6</sup> Interviews with officials from Office of the Vice President and Federal Ministry of Power, Housing, and Works, Abuja, Nigeria.

by charging high fees for this service as a means of raising additional state revenue. Moreover, the ability of governors to claim “overriding public interest” as a justification for revoking a right of occupancy can be abused and increase the vulnerability of tenants. As Adeniyi (2013: 12) notes, “governors can allocate property at their discretion. With absolute arbitrary economic and political power in their hands, governors can easily dispossess their political opponents and farmers. Since the procedures for tenure individualization are neither affordable nor clear, people often do not bother applying.” In turn, banks have become increasingly reluctant to accept CfOs as adequate collateral for obtaining a loan. In any case, CfOs only allow for a maximum of 99 years on the land and therefore many do not apply for the CfOs since it otherwise limits their rights to land, thereby contributing to a massive informal land market (see Adeniyi 2013, annex 7.5A).

On the other hand, the need for the governor’s consent to assign or mortgage land hampers the development of the land market since obtaining his or her signature for CfOs can take a great deal of time if the governor is traveling or has prioritized other responsibilities. In addition, only a few state governments have actually established the required Land Use Allocation Committees, and most governors lack accurate information about the distribution of lands within their states and the owners of those lands. This neglect has prompted many citizens to simply reject the assumption in the Land Use Act that all land is vested in the government and continue to advertise familial or communal ownership to ward off buyers.

#### **4. GETTING LAND GOVERNANCE ON THE NIGERIAN POLICY AGENDA**

The legislative framework established by the Land Use Act certainly casts a shadow on efforts to improve land governance in Nigeria, which are sorely needed. Indeed, the LGAF process resulted in Nigeria receiving a score of C or D on 69 of the 88 dimensions that underlie the Framework (Adeniyi 2013).<sup>7</sup> Moreover, the World Bank’s Doing Business rankings classify Nigeria as the worst in Africa after Togo for registering a property (World Bank 2015).

The challenges with the Land Use Act have been widely recognized, and opposition to the Act has been relatively high among lawyers, farmers, land professionals, and traditional authorities since its inception (see Adeniyi 2013; Francis 1984). Yet, as noted, the Act was re-inserted into Nigeria’s Constitution when it transitioned from a military dictatorship to civilian rule. Notably, the first democratically elected president of the Fourth Republic was Obasanjo, who had overseen the articulation of the Decree in 1978. This occurred despite widespread calls for its removal, including by the Constitutional Debate Coordinating Committee that examined contentious issues in the 1999 constitution (Ojo 1999). In many ways, it is seen as a vestige of Nigeria’s military past and not compatible with a democratic regime. In 2005, Obasanjo noted that the Decree would not be abolished, but that it should be removed from the Constitution and enacted as a new Act of Parliament: “The Land Use Decree is not being abrogated. If I may say this, some of the developments that we have carried out in this country would not have been possible without the Land Use Decree. What I am trying to do is to take it out of the Constitution and let it be an act by itself, because in that case it is easier to amend than when it is part and parcel of the Constitution” (cited in Ojedokun 2005). However, no progress was made.

In January 2007, with the approach of the presidential elections, the candidate for the PDP, Umaru Musa Yar’Adua, rolled out his Seven Point Agenda. At the top of this manifesto was a commitment to review the 1999 Constitution and specifically to repeal the Land Use Act in order to attract greater private investment

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<sup>7</sup> LGAF scores range from A (best) to D (worst) on five key areas of land governance discussed in more detail below.

(Ekpunobi 2007). After ultimately winning the elections, he formally launched the Agenda in May of that year. Point two of the Agenda focused on enhancing food security, while point five explicitly targeted land reforms, including again changing land laws. In November of that year, the then-named Federal Ministry of Environment, Housing, and Urban Development organized a series of stakeholder forums on the topic that were overseen by Professor Akin Mabogunje.

In April 2009, Yar'Adua's government submitted the Land Use Act (Amendment) Bill to the National Assembly, which contained 14 amendment clauses specific to sections 5, 7, 15, 21, 22, 23, and 28 of the existing Act. The main aim of the clauses were to restrict the need for governors' consent to land sales only and render it unnecessary for mortgages, leases, and other land transfers. In addition, the Bill intended to recognize customary rights over land ownership and for all farmers to use land as collateral for loans intended to support commercial farming (Ghebru et al. 2014). Yar'Adua also sought the support of the NCS and the Governor's Forum to ensure that the state assemblies would endorse the Bill if and when it was passed at the federal level (*This Day* 2009). In an interview, Yar'Adua articulated why the land was so important for his administration:

*The bottom-line in terms of whatever we do is this: we want to grow the economy so that people will have jobs. So, agriculture and land reform come in here. Land administration because, I always said that one of the things that we failed to do in this country is to bring land to play its part in the development of the national economy as a capital asset. And this is why land reform and modernisation of the land administration form part of the Seven Point Agenda, because it will have a great impact on the modernisation of the national economy (cited in Ogunlesi 2009).*

The Bill received support from key professional bodies, including representatives of the Nigerian Institute of Town Planners and the Nigerian Institution of Estate Surveyors and Valuers (*This Day* 2009). Hansards from the National Assembly reveal that the Bill received rhetorical support from a number of legislators. However, it was then sent to the Constitution Review Committee (CRC) of the Senate and the House before any further deliberations occurred. In March 2010, the House CRC still failed to present its report and the amendment proposals were tabled for a later date for consideration of other legislation proposed by Yar'Adua on electoral reforms. At the same time, however, the House rejected the president's bill to establish a National Land Reform Commission (NLRC), which would have created a depository for land title holders. House Representatives rejected the bill at the second reading, claiming that it encroached on state control over land as specified in the residual list of the Constitution and noted that it would have been more appropriate if only limited to the Federal Capital Territory (Oham 2010).

Even prior to submitting the Bill to the National Assembly, Yar'Adua established a nine-person technical committee, known as the Presidential Technical Committee on Land Reform (PTCLR), and appointed Mabogunje as the head of it. The PTCLR was given seven major terms of reference for its work. Among other responsibilities, it was intended to advise the government on a plan for registering landholdings, creating a national cadastre, and developing mechanisms for land valuation and conflict resolution (Ghebru et al. 2014; USAID 2010). Institutionally, the PTCLR was located within the Office of the Secretary to the Government of the Federation, which was intended to give it high-level visibility and access.



The president was actually working at two levels by trying to first expunge the Land Use Act from the Constitution and amending clauses and secondly, trying to find technical options to reduce the uncertainty surrounding most Nigerians' possessory rights (see Mabogunje 2010).

## 5. CONVERGENCE ON SYSTEMATIC LAND TITLING AND REGISTRATION

As noted above, one of the main mandates of the PTCLR was to help guide the government on how to register landholders. The main approach that was proposed was systematic land titling and registration (SLTR).

Sporadic titling has long been the major approach in Nigeria, whereby someone would only request a title if they needed one. By contrast, SLTR involves verifying parcel use and boundary demarcations in a systematic manner in order to build a registry database of the distribution of ownership, rights, and boundaries of land parcels for the country. Dispute mechanisms are built-in *ex-ante*, because owners are confirmed via engagement with neighbors and community leaders are brought in to resolve problems when they emerge.<sup>8</sup> The intention is to ensure that no parcel is left without an identified owner (Ukaejiofo and Nnaemeka 2014). Though the Continuously Operating Reference Stations, coordinates of the land are confirmed, then titled and registered. The approach requires using general boundaries, defined by natural features, rather than fixed boundaries that are measured more precisely by land surveyors.

Research generally suggests that the approach is less expensive than a more sporadic approach (e.g., Hanstad 1998; Zevenbergen 2004). Policy diffusion from other countries rather than commissioned feasibility studies within Nigeria appears to have motivated the choice of approach. As one member of the PTCLR noted, “The committee was new and stumbled on this approach.”<sup>9</sup> The PTCLR became convinced of the approach after visiting other countries in 2013 that had successfully implemented the approach, including Indonesia, Rwanda, South Africa, and Thailand (Bello 2014).

Initially, the program was intended to be applied in one state in each of the country's six geopolitical zones (i.e. South-East, South-South, South-West, North-Central, North-East, North-West).<sup>10</sup> However, due to a lack of sufficient funding, PTCLR decided to concentrate on just two states, Kano in North-West and Ondo in South-West. One reason that these states were selected was the demand from their respective governors. In the case of Ondo state, for example, the governor (Olusegun Mimiko) had formerly been the Federal Minister of Housing and Urban Development and therefore recognized the salience of reform for enhancing tenure security. Resources for the two pilot states were forthcoming from a variety of major donors, including the World Bank, the United Nations' Food and Agricultural Organization (FAO), and the DfID/Growth and Employment in States (GEMS3) project. In the case of GEMS3, for instance, there were already ongoing efforts in Kano to enhance land titling and registration so the pilot was a natural complement to those activities.<sup>11</sup>

The major hurdle for acceptance of the SLTR was from the professional community of land surveyors. Many felt that the switch to general boundaries that is implicit in the SLTR undermined their profession and perhaps

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<sup>8</sup> Representative of the National Land Transparency Initiative, Abuja, Nigeria.

<sup>9</sup> Interview with member of the PTCLR, Abuja, Nigeria.

<sup>10</sup> Interview with member of the PTCLR, Abuja, Nigeria.

<sup>11</sup> Interview with GEMS3 representative, Abuja, Nigeria.

even their future job prospects. More specifically, members of the National Institute of Surveyors (NIS), which is a non-governmental professional organization, initially opposed the use of general boundaries because the method has a large margin of error in measurement (i.e. plus or minus three meters in area). This lack of precision seemed to contradict the surveyors' training and expertise and the status quo method for delineating parcel boundaries. It also made some surveyors wary that they might be liable if there was ever litigation and a surveyor was asked to defend his or her coordinates.<sup>12</sup> Moreover, some also feared that providing title documents to all occupiers would limit demand for the services of surveyors in the future (Ukaejiofo and Nnaemeka 2014).

In order to overcome this resistance, the Surveyors Council of Nigeria (SURCON), which is an autonomous government body that helps certify surveyors and regulates the profession, engaged in extensive sensitization with members of the profession. This was done through meeting members of the NIS in small sections that correspond to their geographical locations. While there remains some lingering resistance, most surveyors better understand the initiative and all Surveyors-General at the state level have agreed to the approach.<sup>13</sup>

Consequently, SLTR is gaining recognition and demand beyond the initial two states of Kano and Ondo that were selected by the PTCLR. For instance, there has been momentum to adopt the approach in states such as Anambra, Cross Rivers, Jigawa, Katsina, Kogi, and Zamfara. In some cases, the PTCLR approached the state governor to provide sensitization about the program while in others, e.g., Cross Rivers, there was homegrown demand for the program. Yet, in all cases, the critical component has been having the support of the respective state governors who are the key veto players for this registration program to be adopted and implemented.

## **6. LIMITATIONS TO THE IMPLEMENTATION OF GOVERNANCE LAND REFORMS**

While professional concerns over the SLTR design have been increasingly addressed, the larger issue is whether the institutional capacity exists to implement the SLTR at scale. For example, there are only 2,300 registered land surveyors in Nigeria and, therefore, significant capacity constraints. Moreover, while many states are now computerizing their land records, the software used is at the discretion of the state government. In addition, the technological resources to roll out the SLTR remain constrained. While the SLTR program adopted the FAO's SOLA software, migrating to this software has been a challenge in those states that were accustomed to a different software (Ukaejiofo and Nnaemeka 2014). Furthermore, in the pilot states, the Federal Government paid for the installation of Continuously Operating Reference Stations and found suitable officers to read and use the data. However, whether the resources will be available to do this more widely across the country is questionable. Other concerns are that, except for in Ondo, SLTR has not really been integrated into the state land ministries where it has been piloted. To be operational and sustainable as a long-term approach for registration, a department within the state ministries needs to oversee SLTR and to be in a position to fund this function even when donor support has ended.

This is particularly true since the GEMS3 program is entering its final year (at the time of writing). The Nigeria Land Transparency Initiative (NLTI), which is located within the current Federal Ministry of Housing, Power, and Works, but jointly chaired with the Federal Ministry of Agriculture, was intended to provide some long-

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<sup>12</sup> Interviews with SURCON members, Abuja, Nigeria.

<sup>13</sup> Interview with SURCON member and surveyor, Abuja, Nigeria.

term institutionalization of GEMS3 interventions. For example, it was intended to provide a public registry of surveyors from SURCON and NIS as well as help to develop a manual to implement SLTR. They have also been trying to integrate a lot of information about property registration into the public domain and assist with sensitizing the public.<sup>14</sup> Funding, however, now threatens the future of the NLTI, and the merger of the Ministry of Lands and Housing with Power and Works in 2015 has caused other priorities to emerge on the ministerial policy agenda, with NLTI struggling to find a champion to advance its cause. A proposal submitted by the NLTI in 2015 for funding was rejected by the National Assembly.<sup>15</sup>

Budget constraints are even more pronounced for the PTCLR. For instance, members of the PTCLR note that their budget from the federal government has been increasingly reduced.<sup>16</sup> Another challenge is late disbursement of funding, with the PTCLR only receiving its 2016 operating budget in June rather than January, which severely hampers its ability to engage in workshops and other essential sensitization activities.<sup>17</sup> There are three views on why federal resources for the PTCLR have dwindled over time. One view is that the PTCLR disproportionately invests much of its efforts into sensitization activities and sees its role as a “silent enabler.” Since the impact of sensitization is difficult to measure, the National Assembly has been skeptical of the PTCLR’s role: “people want to see value for money.”<sup>18</sup> A different view is that the PTCLR’s unique mandate is not clear given that there are many other institutions involved in land governance in Nigeria, and, in the absence of performance indicators, there is no way to monitor its effectiveness.<sup>19</sup> The third perspective is that the PTCLR has lost the commitment of policy champions to support it. Most notably, Yar’Adua passed away in 2010 and his successor, Goodluck Jonathan, launched the Agricultural Transformation Agenda, which pushed aside the Seven Point Agenda and the prominence that had been accorded to land reform.<sup>20</sup> When Jonathan was prevented from serving a second term after losing the 2015 elections to Muhammadu Buhari, this again hampered the PTCLR’s activities. Since Buhari was from the former opposition party, the APC, his election represented a shift away from the PDP regime, and the PTCLR was left unsure for almost a year as to whether it would still be a relevant entity in the new government.<sup>21</sup> In September 2015, the Federal Ministry of Lands and Housing was merged with Power, Works and Housing and a new minister, Babatunde Fashola, was appointed. One casualty of the merger is that land issues receive less prominence, since power and electricity are viewed as more pressing. Ensuring that land stays on the policy agenda has proved difficult, with a key member of the PTCLR recognizing, “We need support from the top.”<sup>22</sup>

These challenges are compounded by suspicions at the state level that the PTCLR is a federal government entity that intends to undermine states’ control over surface land. Fashola’s record of being a strong supporter of states’ rights, reinforced through his tenure as Lagos State governor, is also suspected as a barrier to obtaining more ministerial support and prominence.<sup>23</sup>

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<sup>14</sup> Interview with GEMS3 and with NLTI, Abuja, Nigeria.

<sup>15</sup> Interview with the NLTI, Abuja, Nigeria.

<sup>16</sup> Interview with member of the PTCLR, Abuja, Nigeria.

<sup>17</sup> Interview with representative of the Federal Ministry of Power, Works, and Housing, Abuja, Nigeria.

<sup>18</sup> Interview with member of the PTCLR, Abuja, Nigeria.

<sup>19</sup> Interview with representatives from the Office of the Surveyor General.

<sup>20</sup> Interview with official from the Federal Ministry of Power, Housing, and Works.

<sup>21</sup> Interview with member of the PTCLR.

<sup>22</sup> Ibid.

<sup>23</sup> Interview with official from the Federal Ministry of Power, Housing, and Works.

Furthermore, the PTCLR's ability to maintain momentum with SLTR is also complicated by the fact that the 2015 elections resulted in a new crop of governors in most states, which required renewed investments in sensitization and building relationships with these executives.<sup>24</sup>

Beyond the SLTR, the PTCLR and its other partners, including the donors, continue to also struggle to gain momentum on the legal framework. A new Draft Regulation for the Land Use Act was prepared in January 2013 that gives high prominence to the SLTR approach. In particular, it takes its point of references from sections 34(2) and 36(2) of the Act, which emphasizes that “where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act *as if* the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act.” Section 36(2) expresses similar language for rural land. The italicized language was targeted and the Draft suggests that those holding developed land before the Land Use Act began should be entitled to the issuance of a certificate of occupancy and be registered under the process of SLTR (PTCLR 2013).

Yet, more than three years later, the draft regulation has stalled at the level of the NES, and there has been difficulty in getting the attention of the ministry that oversees land. One suspected reason for the draft regulation stalling is that governors continue to fear that the federal government is trying to take away their powers. As one member of the PTCLR observes, “We need to explain that no government agency is taking your land away, but we’re trying to make your land more viable.”<sup>25</sup> To push the process forward, the PTCLR and its partners increasingly have attempted to work with the Office of the Vice President, since he oversees the NEC and could mobilize both the minister and the governors.<sup>26</sup>

## 7. CONCLUSIONS AND POLICY IMPLICATIONS

As observed by Adeniyi (2013), the overriding challenge in Nigeria is to determine “how can those benefiting from the very weak system of land administration allow a change in the system?” More broadly, others have observed that technical interventions, such as land titling and registration, are most successful when there is the political will to pursue them (see Byamugisha 2013; Ukaejiofo and Nnaemeka 2014). By applying the Kaleidoscope Model to the difficult case of land reform in Nigeria, we can gain a clear understanding of where the sources of political will are located as well as which elements of the Model are more or less relevant for understanding what is driving or hampering this particular case of policy reform.

Specifically, reform of the Land Use Act, and broader improvements of land governance, was a recognized relevant problem for decades. Although no particular focusing event occurred that increased the salience of reforming the Act, the election to the presidency of Yar'Adua and the transition out of office of Obasanjo, who had originally instituted the Act, resulted in a high level advocate for reform. Yar'Adua pursued a two pronged approach that involved both pushing for legislative reform and creating a visible committee, PTCLR, within the president's office to look at technical solutions. His interest in land governance coincided with donors' growing focus on the issue, motivated by the New Alliance and CAADP commitments, which resulted in an expansion of the advocacy coalition to propel the policy reform agenda forward.

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<sup>24</sup> Interview with member of the PTCLR.

<sup>25</sup> Interview with PTCLR Member, Abuja, Nigeria.

<sup>26</sup> Interview with GEMS3 representative, Abuja, Nigeria.

When considering which design to follow, the PTCLR largely drew on knowledge and research about the benefits of SLTR that emerged from the diffusion of policy experiences from other countries. Donors provided some resources to help initiate pilot interventions in selected states where individual governors were enthusiastic. This generated evidence indicating that the benefits of SLTR outweighed some of its expected costs. Moreover, while there were biases against the general boundaries approach by some of the land surveyors, intensive efforts at sensitization increasingly helped them to become proponents of the intervention, rather than opponents.

The multiple veto players in the Nigerian system hampered legislative reform—as noted earlier, changing the Land Use Act is tantamount to changing the Constitution and requires the consent of a majority of governors. However, the adoption of SLTR was more decentralized and individual governors were given autonomy to choose SLTR for their respective states. In other words, fewer veto players were involved in SLTR adoption, which made adoption easier where there was a willingness to do so.

Yet, to proceed with implementing SLTR at scale, a variety of capacity constraints and institutional challenges will still need to be overcome and renewed enthusiasm will be needed among a new set of governors. Requisite budgetary resources are currently not adequate for the intervention. This largely reflects the loss of a high level policy champion in the wake of Yar'Adua's death in office in 2010. Since SLTR implementation is still in various stages across states, it is difficult to make firm conclusions about evaluating and reforming the modality. However, findings in states such as Jigawa reveal that land owners have low demand for collecting their CfOs, reflecting that policymakers may have overestimated the importance of land titling for some populations.<sup>27</sup> In addition, most state administrations did not budget sufficient resources for the intervention even as donor support is coming to a conclusion. In other words, the changing material conditions listed in the Model may affect SLTR's further expansion. Key institutional shifts have also occurred since SLTR was first proposed by the PTCLR. These include the change in governors during the 2015 elections in some states, the takeover of the federal administration by the erstwhile opposition, and the merging of the federal ministry that historically has overseen land issues.

At least two broader lessons emerge from the case study. First, if political will is lukewarm and threatens resource allocations for policy implementation, then donors need to stay committed for the long term. Many of the donor programs related to land governance in Nigeria operate on a five-year cycle, including GEMS3. Yet, implementing SLTR at scale is known from other contexts to take between 10 and 15 years (see Ali et al. 2015). Aligning donor support with realistic timeframes for policy implementation is therefore critical, as is prioritizing capacity building.

Secondly, reforms with respect to both land governance and in other policy domains need to be sequenced appropriately and correspond with local political realities. While Rwanda is oft-cited as a successful example of SLTR implementation (see Ali et al. 2015; Byamugisha 2013), it has a unitary system and an authoritarian regime that can commit to reforms that require long time horizons (see Poulton 2014). Nigeria, by contrast, has a multi-party democracy where elections actually have shifted government administrations and therefore policy priorities and the availability of policy champions. In addition, it has a federal structure and a constitution that accords states with oversight over surface land as a residual power. While working at the

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<sup>27</sup> Interview with Director of Lands, Jigawa State.

legal and technical levels to improve land governance has some advantages in creating momentum around land reform in Nigeria, the two domains are not mutually exclusive and each require buy-in from governors.<sup>28</sup>

More optimistically, however, while the federal system creates more points of veto power that may exacerbate policy inertia, it also offers the opportunity for greater policy experimentation at the sub-national level. For instance, there have been ongoing efforts by the Federal Government to establish grazing reserves in Nigeria. In July 2012, the “National Grazing Route and Reserve Bill” was deliberated by the Nigerian Senate. Initially, the Senate was divided over whether the Government had the constitutional backing to create grazing reserves in any state and failed to promulgate a new law (see Muhammed et al. 2015). Yet, by mid-2016, the Ministry of Agriculture announced that 11 states donated 5,000 hectares of land each for grazing reserves (Joseph 2016). Similarly, despite all the hurdles, a few Nigerian governors do continue to be committed, at least rhetorically, to SLTR implementation.<sup>29</sup> This optimistically suggests that, in the long run, state level efforts with SLTR may generate a sizeable coalition for change that enables legislative reform at the federal level.

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<sup>28</sup> The case of Liberia is instructive whereby legal reform and capacity constraints have been prioritized to ensure a more gradual implementation of systematic registration (see Byamugisha 2013).

<sup>29</sup> The authors of the present paper are looking at differential implementation of SLTR at the sub-national level in a separate paper.



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