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LAND AND BUSINESS FORMALIZATION FOR LEGAL EMPOWERMENT OF THE POOR

STRATEGIC OVERVIEW PAPER



JANUARY 2, 2007

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Land and Business Formalization for Legal Empowerment of the Poor: Strategic Overview
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ACRONYMS AND ABBREVIATIONS

DFID	UK Department for International Development
EU	European Union
FAO	United Nations Food and Agricultural Organization
GDP	Gross Domestic Product
IIED	International Institute for Environment and Development
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILD	Institute for Liberty and Democracy
ILO	International Labor Office
NGO	Nongovernmental Organization
NRI	Natural Resources Institute
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

The poor most often hold their land and operate their businesses informally. Because of this informality, they forego economic opportunities; formalization promises to help them grow their businesses, enjoy asset appreciation in formal property markets, and access credit more easily. Legal and policy reforms are critical to lowering the barriers posed by the complexities and costs of formal economy participation, and this paper deals with two key areas: formalization of land and formalization of businesses.

Formalization is not a “silver bullet,” and in spite of its promise, it is a complex endeavor with numerous pitfalls. There is fortunately a substantial body of experience in formalization program implementation, and it is possible to derive some lessons from it about strategies that work for the poor.

DESIGN OF FORMALIZATION INITIATIVES

Uneven experiences with formalization suggest the need for careful assessment of the proposed formalization initiatives. When and where the initiatives will pay off, and who will benefit from them, require answers to the following questions:

- Are there actual business opportunities being foregone by informality? Or, are there other inhibiting factors (e.g., remoteness from markets) that would, even after formalization, prevent participants from benefiting?
- Are there other factors necessary to the success of formalization that are absent? For example, badly distorted credit markets that result in unmanageable interest rates or the absence of formal lenders willing to lend to agriculture can nullify many potential formalization benefits.
- Is the context properly classified as informal, or are alternative, customary systems of formality operating? These systems can meet some needs, and their cultural roots and connection to traditional authorities make them difficult to replace with the state’s formal structures. A process of incremental change may be more strategic.
- Will the poor actually benefit from the proposed formalization reforms, or are there downsides to the process? For example, in this particular economic context, are the poor more likely to lose newly-formalized land through desperation sales than to obtain credit using their land as collateral?

The answers to these questions will have important implications for where formalization efforts should be focused and how they should be sequenced with other reforms and public investments. Formalization reforms may be difficult to sustain if they are untimely and do not produce promised benefits. Where formalization initiatives are launched, monitoring and evaluation of impacts should be put in place, especially as regards impacts on the poor.

INCENTIVES FOR AND OPPOSITION TO FORMALIZATION

Governments have clear and strong incentives from revenue and economic growth perspectives to implement formalization programs. Popular demand for formalization is driven by awareness of missed opportunities and the expectation of a benefit to follow. The incentives require careful diagnostic studies

of factors that may affect demand for them, such as the official and unofficial costs involved, broad distrust of government, and skepticism about enforceability of formal rights.

There are also powerful groups who tend to oppose broader access to formality. These include those who already have access to economic opportunities in the formal sector and fear competition; lawyers and other professionals with a vested interest in complexity; bureaucrats who act as gatekeepers to formality and for whom simplification would mean lost opportunities for rent-seeking; and those who are benefiting from cheaper services from informal providers.

High-level political support for formalization programs is critical in dealing with such opposition, but governments change and it is important to carefully cultivate support among key stakeholder groups. This implies major investments in public understanding, accommodation of some vested interests, and reassurance to interested officials and professionals that they have a remunerative role to play in facilitating access to formality.

ELEMENTS IN ROBUST FORMALIZATION PROGRAMS

Legal and administrative reforms are at the heart of any formalization program, but experience suggests that they are not enough. Also needed are:

- Public education and consultations on formalization initiatives, to both inform and test demand;
- Campaigns involving intensive efforts to encourage formalization such as systematic titling and registration of all land in a locality at low costs to beneficiaries;
- Training programs and technical assistance, including legal aid for beneficiary groups to access and navigate the formal sector;
- Improved opportunities through mechanisms such as set-asides in government contracting, targeted credit programs, and tax breaks, all designed to assist small and newly-formalized operations;
- Organization of networks of civil society organizations that advocate on behalf of those operating in the informal sector; and
- Capacity building and reorganization of public agencies responsible for formalization to reach poor informal operators seeking formality.

CONSIDERATIONS IN LAND FORMALIZATION

The elements of land formalization need to be clearly recognized: land law reform, which provides strengthened property rights; land titling, which confers those property rights on identified holders of identified land; and land registration, which provides a public record of those rights, facilitating proof and reducing transaction risks. In developing land formalization programs, it is also important to consider the following:

- Formalization can benefit public and community lands as well as private lands, enhancing incentives for their sound management. Formalization and enhanced tenure security play a role in creating incentives for the efficient management of public land assets and sustainable use of community-managed natural resources. Studies show that the poor benefit disproportionately from commons, so securing these community assets during formalization should be a priority.

- Land formalization can have markedly different impacts on different groups. It can be a means of land grabbing by the powerful; systematic formalization with strong community and nongovernmental organization participation in the process will reduce this danger. Land formalization can disadvantage women if it gives a marketable title to the male head of household; legal safeguards against this must be provided. It can enable significant and politically explosive shifts in ethnic balances of land holding if some groups are better situated to purchase land. Such potential problems must be carefully diagnosed and mitigation strategies developed as part of a formalization program.
- There is a lack of empirical evidence that clarifies the extent to which the poor benefit from land formalization programs, and fears that those with newly-formalized land rights may lose land through ill-considered or desperation sales. Where this is a danger, alternatives such as group titling or emphasis on access to leasehold markets can be considered. There are also mitigating measures for land markets (preferably deployed temporarily): delaying marketability for a learning period; initially allowing transactions only among local residents; requiring spousal consent to land sales; or providing for preemptive family rights to redeem land lost through foreclosure.
- Formalization will confer the most direct benefits on the poor in cases where it legalizes informal occupation of state lands, and it is important that governments not be dissuaded by “moral hazard” arguments. It is clear that expulsion of such occupiers is a vain hope, the threat does not discourage squatting, and expulsions, when they do occur, only yield more conflict. The solution is to regularize existing occupations and redouble efforts to expand the land supply to meet demands.

CONSIDERATIONS IN BUSINESS FORMALIZATION

A common assumption among policy makers is that once formalization costs are reduced, business will flourish. Registration reforms that target costs and the length of time required seem to be the common recipe for business formalization. But different factors may affect the success of these policies, such as:

- Costs and the time required to enter and exit a market could be reduced, but the businesses do not feel there is a tangible benefit in the formal economy.
- Business formalization policies are unknown to informal businesses.
- The informal economy is composed of different types of businesses that require different types of remedies to foster formalization.
- The formal market could be overwhelming for some kinds of informal businesses that are not ready to compete in the formal economy’s market.
- The informal economy may already have its own ways of doing business, making it resist change.
- The informal sector stakeholders would like to be consulted in the process of developing business formalization policies.
- Informal businesses may fail to take advantage of formalization policies because they lack access to credit and training.
- Rampant corruption in the formal sector may dissuade informal businesses to formalize.
- Poor dispute settlement mechanisms and services and infrastructure affect the formal sector’s appeal for informal businesses.

TWO COMMON LIMITING FACTORS

Two matters require particular attention in assessing the potential of formalization initiatives, as they seriously limit their effectiveness.

1. Legal rights enforceability is the crucial, unarticulated premise for most economic reasoning on property rights and formality impacts, yet it is often not present. The courts may be ineffective or corrupt, and the justice system may be hopelessly complex with arcane, complex, and time-consuming processes. These problems lie at the heart of legal empowerment, which depends upon law and legal institutions. Where this is a problem, options such as the recognition of informal or traditional dispute settlement mechanisms, the creation of forums for arbitration or mediation, administrative adjudication facilities, the creation of special land or commercial courts, and legal aid programs for the beneficiaries of the program should be considered in coordination with the formalization program.
2. Formalization programs often assume a response from a formal sector lending institution that does not materialize, especially in the case of small landholders or businessmen. A possible response should not be assumed, but contemplated carefully at the outset. It is possible to design project components to facilitate formal sector lending to the poor that realize formalization's potential. Assisting the poor in documenting their assets or the extent of their business operations can be an important contribution.

FUNDAMENTALS

Finally, there are some fundamentals that need to be stressed:

1. When considering a formalization program, ask first if there is an economic opportunity to be grasped by the beneficiaries. Informality may not always be the most pressing problem for the poor in the areas of assets and business. This could be particularly true in rural areas, where much of the developing world's poverty is concentrated.
2. The position on the rule of law and enforceability of legal and contractual rights and obligations should be examined critically as part of any formalization program planning. Without these, formalization will be able to deliver few of the benefits it promises.
3. Credit is a critical and often problematic element in formalization impacts, and the chain of logic that connects formalization with better credit access must be examined critically for disconnects.
4. Ask if the poor need the formal legal framework developed for businesses and actors with very different situations or whether the challenge instead is to incorporate mechanisms developed by informal actors and communities into national law.
5. Never assume that the poor will benefit from formalization. The empirical basis for such an assumption does not exist. It is something that must be thought through and articulated carefully in the context of each formalization initiative.
6. In developing pro-poor strategies, do not rely too exclusively upon formalization. It should be seen as one important tool in legal empowerment. Remember that many of the poor do not have access to land assets or their own businesses, but simply provide labor. Securing poor laborers the right to organize may be more critical than formalizing their employment relationship.

7. In planning formalization strategies, it is important to not focus exclusively on the role of the state. There are important roles to be played by civil society and private sector actors in facilitating the access of the poor to formality. Legal aid may be as important in this as legal reform.

1.0 INTRODUCTION: THE CHALLENGE

At the turn of the twentieth century, there was a significant shift in the way that many policy makers saw the developing world. It involved a renewed appreciation of the need for reform and implementation of laws for development. The reform of law and property rights has long been a staple of development assistance, a key part of the economic growth agenda. Bringing activities within those legal structures makes sense from a public policy standpoint as well as a business perspective to maximize the positive externalities brought about by new enterprises. The development community has long understood that strong property rights heighten investment incentives, and has acquired a great deal of valuable experience in land tenure reform and formalization. But in the 1990s, policy-makers first became aware of the extent to which land use and business take place outside the “formal” legal frameworks provided by the state, the large potential market value of those assets in the aggregate, and how much of this informally-held land and businesses belong to the poor.

Over the last ten years, a growing appreciation of how the legal and regulatory institutions influence economic outcomes has led to a significant shift in economic development initiatives that address international wealth distribution disparity. Namely, an increased proportion of development assistance has sought to reform national legal codes, public institutions, and bureaucratic processes to create a legal infrastructure conducive to market-led economic growth. While evidence suggests such measures to be effective in promoting development, recent experience has underlined the importance of ensuring that a country’s economic activity actually take place within the formal structures of subject in such reforms. In many cases, efforts to strengthen a country’s system of property rights or to reduce the private sector’s bureaucratic burden have been undermined by the frequency with which ownership and other commercial activities occur outside of the formal sector. The prevalence of such extralegal activity in many developing countries, the high proportion of poverty within countries found in the informal portion of the national economy, and the relationship between formality and economic growth have motivated a substantial body of literature on informality.¹

What is new here is the understanding of the linkages between informality and poverty, in particular formalization’s potential to fight poverty. Increased understanding of this relationship, the informal sector’s composition within particular economies, and the determinants of informality have provided evidence that policies seeking to fight poverty through formalization can be successful. These are themes developed by one of the primary scholars, advocates, and practitioners of these reforms, Hernando de Soto and his Institute for Liberty and Democracy (ILD).² The ILD observes that the poor account for a

¹ The intellectual origins of the movement emerge out of the economic analysis of law and of the new institutional economics. For the economic analysis of law, see for example, Posner, Richard. 2002. *Economic Analysis of Law* (Aspen, 6th edition). For the new institutional economics, see for example, North, Douglass C. 1981. “Structure and Change in Economic History” 5 (1981).

² De Soto, Hernando. 1989. *The Other Path* (New York: Basic Books), and 2000. *The Mystery of Capital* (New York: Basic Books).

large part of those who operate informally. They do so because they have difficulty negotiating bureaucratic obstacles and meeting high costs of entry, such as fees required to register land or to license a business. They may be unable to use their untitled land to secure a loan, or their unregistered small business may be ineligible for a government program to assist such operators. The poor who operate outside legal frameworks lose important economic opportunities that could have a significant impact on economic growth. Making formality more accessible could legally empower the poor to grow their businesses, enjoy the appreciation of their assets in formal property markets, and access credit more easily. This is the vision of formalization as a means to alleviate poverty.

Reform is critical because existing legal frameworks often include elements that exclude the poor. In some cases, the poor are barred from access to the formal sector. They may simply be left out, or the costs may be too high. Lowering these barriers can create new incentives for those operating informally to “go formal.” This is important because it is a matter of choice. Individuals and firms make a great many decisions to operate formally or informally in various aspects of their businesses and lives, and they make these choices rationally. The situations and incentive structures of households and firms in this regard are complex (see Box 5). These actors often operate formally in some matters and informally in others. A business may have been formally organized and registered, and yet it may operate in decidedly informal ways. If the net cost of undertaking an activity in the formal economy exceeds the net benefits of doing so, it is likely that the activity will be conducted informally. Reforms that lower cost and other barriers to formalization or provide incentives can affect those decisions.

Formalization is, of course, neither a panacea nor a “silver bullet.” In any given situation, one must examine the extent to which there are real opportunities for the poor, whether there are pre-conditions that, if not satisfied, will prevent formalization’s desired impact, and whether the poor simply have other more pressing needs. While there is today broad interest in formalization, there is also considerable uncertainty and even disagreement as to the extent of its benefits for the poor. Some critics charge that formalization is a warmed-over version of a growth-first strategy that provides the poor with little protection from market and other forces to which formalization exposes them. Others recognize the basic case for formalization but urge much closer attention to the circumstances in which such benefits will or will not accrue to the poor, the costs and sustainability of formalization initiatives, and possible negative impacts of formalization on some of the intended beneficiaries.³

Fortunately, considerable relevant evidence on these issues does exist, with enough studies to permit some generalization. This paper attempts to mobilize that evidence. Annexes 5 and 6 review the numerous empirical studies on the topic and Annex 7 is an annotated bibliography on formalization, but the paper itself is intentionally brief, written with practitioners in mind. It draws attention to issues and good practices, and its conclusion suggests some effective strategies for formalization. The discussion of experiences is limited to relatively recent experience in the developing world, reflecting a sense that today’s developing countries, while they must learn from the history of developed countries, face some distinctive challenges.

This paper focuses on two topics of formalization, land and businesses. This is a function of the resources available and the limits of the authors’ expertise. In both cases, formalization’s potential is based on the very considerable extent of the assets and activities involved, and the fact that many of these are in the hands of the poor. The common objective is to legally empower the poor to build more effectively on what they possess. There are also some quite specific linkages. For example, a business operator must acquire “legal personality” to register land that they may wish to mortgage. But there are some significant

³ For a thoughtful critique in African circumstances, see Cousins, Ben, Tessa Cousins, Donna Hornby, Rosalie Kingwill, Lauren Royston, and Warren Smit. 2005. Will formalizing property rights reduce poverty in South Africa’s ‘second economy’? Questioning the mythologies of Hernando de Soto. PLAAS Policy Brief No. 18. October 2005. Capetown: Program for Land and Agrarian Studies, University of Western Cape.

differences in the way in which formalization is undertaken, stemming primarily from the immovable nature of land assets and the way in which this facilitates the state's efforts to formalize those assets.

At the same time, the paper oversteps the bounds of "formalization" to some extent. "Formalization" as a prescription refers to bringing activities that have been conducted outside the law within formal legal structures, but to be useful, it must also specify what the formal law should be. Discussions of formalization generally assume a market economy legal framework, but also address the need to incorporate existing practices of informal operators into national law. What should the substance of formalization be? Formalization has little content unless this issue is addressed, and in fact much of the formalization debate has as much to do with content of the formal system than with the process of formalization. In addition, the paper touches upon judicial reform and the provision of access to affordable dispute settlement mechanisms. This is not technically a part of "formalization," but it is a condition precedent for the success of any strategy that relies upon legal frameworks, as does formalization.

Following this Introduction (Section 1), Section 2 explores fundamental concepts, magnitudes, and contexts and examines the geographical and sectoral distribution of informality. It reviews both what is believed to be lost through lack of formality and what can be gained from formalization. Section 3 examines the experience with related reforms, noting the variety of approaches, challenges, and responses faced in reforms, actual impacts of these programs, and some elements of successful interventions. Section 4 identifies key formalization issues in the land and business sectors, suggests some best practices, and flags a number of areas as needing further empirical work. Section 5 reflects on strategic approaches to formalization and its relationship to other measures needed to empower the poor. It is hoped that the paper will provide useful guidance to professionals in their countries and in the many development assistance agencies working in this area. (See Annex 4 for a list of such organizations.)

2.0 INFORMALITY AND THE DEMAND FOR FORMALITY

2.1 CONCEPTS

The term “formalization” only recently entered into common usage and the area of formalization itself is troubled by inexact use of terms. Some suggested definitions:

- **Formalization** is the process by which acts, situations, persons, and entities that are not recognized by law—usually, national law—obtain such recognition. This may happen through individuals taking needed steps to achieve legal recognition, or by the state moving to confer such recognition on its own initiative.
- **Informality** is the status of assets and operations that lack legal recognition by the state; the activity may simply be unrecognized by law or illegal in the sense of incurring civil or criminal sanctions.
- **Customary law** is a body of norms generated and enforced by a sub-state polity governing matters, such as the use of land, for its members. That polity and/or its norms may or may not be recognized by national law. Customary land tenure is best not regarded as informal, because it enjoys social sanction by a polity, albeit at a local, community level (see Box 1).
- **Land tenure reform (or land law reform)** is the reform of the law relating to property rights to clarify and adjust the rights and duties of individuals and entities in relation to those of the state.
- **Land titling and registration** is the process by which the state confers land rights upon or recognizes claims to land rights by occupants or others. This is a major mechanism for landholding formalization.
- **Legal empowerment of the poor** refers to actions and processes, including but not limited to legal reforms, by which the poor are legally enabled to act more effectively to improve their economic situation and livelihoods, allowing them to alleviate or escape poverty.
- **Legal enforcement** means enforcing rights and duties, giving law and legal reforms real consequences and creating a rule of law environment. Formalization’s appeal and impacts depend upon the existence of affordable and effective enforcement mechanisms.
- **Security of tenure** is a confident expectation of continued use of land for as long as necessary on the part of the landholder. Security of tenure is one of the results hoped for from formalization of land occupation (see Box 4).
- **Rule of law** exists when rightholders can enforce their rights efficiently and affordably, when all parties are treated similarly without respect to their status, and when the government itself is subject to law. Achieving formalization’s intended impacts depends upon the existence of a rule of law environment.

BOX 1. ARE CUSTOMARY SYSTEMS INFORMAL?

The term “informality” is used to describe the situation of unauthorized occupants of land, for instance slum dwellers on state or private land in urban areas. This is the appropriate use of the term. But the term “informal” is also sometimes used to characterize the customary land tenure systems that are pervasive in rural Africa (even in some urban areas) and that exist in significant parts of rural Asia and Latin America. In some regions of the world, custom includes elements of Islamic or other religious law. To describe such systems as informal is misleading. These systems have evolved over centuries, reflect cultural values, and are embedded in the local culture and society. They are enforced not simply by consensus, but by traditional authorities that remain an important part of the political landscape. These systems are not so much informal as an alternative formality at the sub-state level. This is an important point because it is far easier for the state to impose legal order where little exists than to replace settled patterns of behavior that have cultural underpinnings and popular legitimacy, defended by vested interests.

Many governments have sought to integrate these systems into their national legal frameworks, but have done so in quite different ways. In Ghana, customary land rights are given formal recognition as part of the common law, and customary interests in land are eligible for registration. In Tanzania, occupancy is often based on customary right, and the state uses it to recognize rights in rural land. In Kenya, government has sought to replace customary ownership of land with private individual ownership, implemented through systematic land titling and registration.

Replacement initiatives tend to falter as governments discover that they lack the capacity to take on land administration on such a scale. Generally, more modest approaches involving recognition and adaptation of customary rules seem to work better. In most rural areas, customary authorities are often better able to deliver land tenure security than the central government. Recognition of such systems must be accompanied by reforms that make traditional administration more transparent, their authorities more accountable, and their norms more gender neutral. In urban and peri-urban areas, these systems disintegrate under the pressure of rising land values and may need to be replaced.

Source: Drawn from Bruce and Migot-Adholla, 1994; Toulmin, 2000; Fitzpatrick, 2005; and Lavigne-Delville, 2004.

2.2 MAGNITUDE OF INFORMALITY

The extent of economic activity taking place outside the formal legal system has only recently becoming understood. The reliability of this information is unknown, however; some estimates are available, notably those on land informality in de Soto’s *The Mystery of Capital*. This publication attempts to estimate the percentage and value of “Urban and Rural Dead Capital in Real Estate Worldwide”: 85% of urban parcels, over 40% of urban housing in the developing world, and a bit less than half of rural land are shown as informal; informal urban dwellings are estimated to have a value of US\$6.74 trillion and the informal rural land a value of \$2.6 trillion. The implication is that much of this value is realizable through formalization.⁴

Box 2 presents estimates of the value of the informal sector, taken as a percentage of gross domestic product (GDP) for several countries and regions.⁵ In many of the provided estimates, the informal sector values are calculated as the estimated sum of the values of all small, non-incorporated businesses operating within the country. The use of such simplified definitions is often necessary to facilitate the task of measuring a portion of the economy that is, by definition, outside of the state’s reach. In such cases, a

⁴ De Soto, H. 1997. *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books, at p. 36. Some of the component estimates are questionable, for example, it is indicated that worldwide, if formalized, rural cropland would have a value of \$3,973/ha and that rural grassland a value of \$138/ha.

⁵ In the case of the regional estimates, each term of the ratio is simply the sum across all of the countries in the region.

firm is typically defined as either wholly formal or wholly informal. While useful in providing a rough estimate of the relative pervasiveness of informal commercial activity in a given country or region, such estimates may seriously understate informality's magnitude due to a failure to accurately classify as "informal" those activities undertaken in an informal mode by businesses that have been organized formally.

Informality is certainly extensive, but the estimates need to be approached with some care, as they sometimes do not state their assumptions. For example, the amount of land held informally in Africa is very large if customary systems are treated as informal, much smaller if they are not. Care is needed because such estimates of magnitude are sometime the basis for assumptions of potential benefits of formalization. For instance, it is often assumed that informal land use necessarily involves insecurity and constrains the economic options of the holder. This is not always the case. Informal landholders in some areas may enjoy security of tenure due to low competition for land, and under some customary systems landholders may participate in land and rental markets and even use improvements as security for loans. There may also not be any significant economic opportunities forgone. In deep rural areas where there is no access to markets, it is probably not meaningful to talk of lack of formality as a constraint, at least not as the binding constraint.

There are also estimates of formalization's returns (for instance, increases in land values), but less discussion of formalization's countervailing costs, which can be considerable. In the case of land, major international borrowing has been needed by developing countries seeking to formalize even a modest portion of their land; developing less expensive approaches is a major challenge. While the potential benefits from formalization are in fact impressive due to the magnitude of the informal sector, there is a need for more rigorous analysis of its size and dimensions and the potential returns to formalization reforms in its various spheres.

BOX 2: SIZE OF THE INFORMAL ECONOMY (AS PERCENTAGE OF GDP)

Bolivia	65.6%*	Regions****	
Peru	57.4%*	Africa	42%
Costa Rica	23.2%*	Asia	26%
Argentina	21.8%*	Latina America	41%
Chile	18.2%*	European Transformation Countries	38%
Thailand	71%*	Organization for Economic Cooperation and Development (OECD)	17%
Philippines	50%*		
Sri Lanka	40%*		
Egypt	68%**		
Nigeria	76%**		
Morocco	39%**		
Ukraine	53.7%***		
Croatia	38.2%***		
USA	8.8%****		

* **Methodology:** Multiple-Indicator-Multiple-Cause (MIMIC) model

Date: Average 1990–1993

Source: Loayza, Norman V. 1996. "The Economics of the Informal Sector: A Simple Model and Some Empirical Evidence from Latin America." Carnegie-Rochester Conference Series on Public Policy 45, pp. 129–162.

** **Methodology:** Physical Input (Electricity) Method

Date: Average 1989–1990

Source: Johnson, Simon, Daniel Kaufmann, and Andrei Shleifer. 1997. The Unofficial Economy in Transition. Brookings Papers on Economic Activity, Fall, Washington, DC.

*** **Methodology:** Physical Input (Electricity) Method

Date: 1999

Source: Lackó, Mária. 1999. Hidden Economy an Unknown Quantity? Comparative Analyses of Hidden Economies in Transition Countries in 1989–95. Working paper 9905. Department of Economics, University of Linz, Austria.

**** **Methodology:** Unknown

Date: Average 1999–2000

Source: Schneider, Friedrich. 2002. "Size and Measurement of the Informal Economy in 110 Countries around the World." The paper was presented at an Workshop of Australian National Tax Centre, ANU, Canberra, Australia, July 17, 2002.

Note: Regional data is average percentage based on the 23 African, 26 Asian, 18 Latin America and the Caribbean, 21 OECD, and 23 European Transformation countries surveyed.

2.3 CONTEXTS OF INFORMALITY

The geographic and sectoral distributions of informality tend to be similar for land and other assets and businesses.

2.3.1 Geographic Distribution

In North America, Western Europe, and Japan, most land is titled and registered and most businesses are conducted under formality. There is some space for informal business, but little for informal landholding.

In South and East Asia, Latin America, Eastern Europe, and the post-Soviet countries, significant land has been titled by the state, and titling is proceeding on a significant scale. In some countries, there is a modest amount of land under customary tenure systems, from remnants of indigenous tenure in the Andes to very substantial areas of Indonesia. It is likely that less than half of the land and half of the businesses in these regions are best characterized as under informality. There is, however, considerable interaction between informal businesses and the formal economy.

In sub-Saharan Africa, due largely to the prevalence of customary land tenure systems (see Box 1), the majority of land is held under one species of formality; the level of protection provided by such customary systems differs greatly within and between countries. There is significant diversity in these customary tenure rules' abilities to provide security and predictability in contractual obligations and in the definition of the scope of the transfer rights afforded to parties. The prevalence of informal customary forms used to operate or organize a business and to form and enforce agreements has led to some acceptance by formal institutions; however such allowances are typically not fully incorporated into a country's formal legal codes. While the majority of business conducted in sub-Saharan Africa takes place outside of the formal sector, formality tends to be higher in urban areas and rural areas that contain foreign investment.⁶

BOX 3. CASE STUDY: THE EXTRALEGAL ECONOMY IN TANZANIA

BACKGROUND

For a period of more than 10 months in 2004–2005, ILD, at the request of the Government of Tanzania, conducted an extensive survey to discern “how the nation's extralegal economy actually operates and how the official legal system interacts with it.”

FINDINGS

Proliferation of an Extralegal Economy in Tanzania

While Tanzania has created much of the legal framework for citizens' participation in the legal economy, the majority of the country's economic activity takes place extralegally.

- 98% of all businesses were found to operate extralegally.
- 89% of properties were found to be held extralegally.
- The extralegal economy contains US\$29 billion in assets, representing a quantity ten times greater than the country's cumulative inflow of foreign direct investment since its independence in 1964.

The Tanzanian Economic Model

While the majority of economic activity in Tanzania is unregulated by the state, the extralegal economy was found to contain a considerable degree of the structural characteristics most frequently associated with the formal sector. In particular, whereas legal contracts, public courts, and traditional financing remain largely absent from commerce, extralegal mechanisms fill roles that are functionally similar to their counterparts in the legal economy. The study identifies 17 “archetypes” within the extralegal economy that typify the indigenous Tanzanian extralegal economic model. Among the identified archetypes were extralegal documents such as contracts, titles, guarantees, and declarations of extrajudicial rulings; mechanisms for price setting; and means for defining and governing the organization of business relationships.

Identified Causes of Extralegality

The survey identified 67 primary causes for the proliferation of the extralegal economy in Tanzania. The causes are characterized by a general discrepancy and, in some cases, incompatibility between economic and social realities and the content of legislative and regulatory requirements. Illustrating the role of such cleavages in preventing participation in the formal sector, the study noted that the majority of the documents necessary to legally operate a business are found only in English, whereas the majority of the country's citizens speaks Kiswahili or tribal languages. Regarding the cost of compliance with legal requirements, the survey notes that a poor Tanzanian entrepreneur would, over the 50 year life of a business, expect to wait 32,216 days—1,118 spent inside government offices—for approval of the various required permits and spend almost US\$180,000 in income and fees. The

⁶ See for example, Moore, Sally Falk. 1973. “Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study”, 7 *Law and Society Review* 719 (1973).

difficulties associated with regulation compliance were also noted to limit credit access, as the prohibitive cost of property registration reduces the potential for guaranteeing loans based on real property.

Source: ILD, 2005.

2.3.2 Sectoral Distribution

Greater formality is associated with businesses that operate in urban contexts. It is there that most registered businesses are located and much urban industrial, commercial, and residential land is titled. (Rural and agricultural land is much less likely to be titled.) On the land side, it is possible to identify some areas of high informality with insecurity of tenure: a) illegally-occupied areas such as peri-urban squatter settlements or lands claimed as forest by the state; b) land reform sectors where beneficiaries' holdings have not been formalized; and c) areas where there is extensive "tenancy" originating in former servile relationships rather than arms-length contracting.

Businesses located in urban areas tend to conduct a greater proportion of their activities within the formal sector as compared to rural firms. Even non-incorporated or non-registered businesses—which, according to some measurements of formality, would be considered wholly in the informal sector—that operate in urban areas frequently conduct a significantly higher portion of operations in the formal sector as compared to comparable rural firms. Besides the high informality that characterizes business activities within rural areas, some *types* of business tend to be distinguished by a higher degree of informality. In general, informality tends to be high: a) in rural areas; b) in businesses that are heavily reliant on the manual skills of the entrepreneur; and c) in businesses that sell merchandise. For example, bartering also tends to be more prevalent amongst merchandisers.

2.4 IMPACTS OF INFORMALITY

Informality means that landholders are deprived of the state's protection. They will also not have the option to sell or mortgage their land with formal sector credit institutions. The influential and powerful are less vulnerable to risk than the poor, because they can mobilize forces other than the rule of law to protect their holdings. They also have other security to offer for loans. The poor feel the full force of insecurity, and it undermines their incentives to invest and produce as well as the possibility of gaining better access to medium- and long-term mortgage credit through use of land as collateral.

Another negative impact is felt among local authorities that are deprived of a valuable source of revenue from property and income tax, leading to lack of basic services for the poor. However, taxation that is onerous, unfair, or administered by corrupt governments without transparency or accountability will also tend to encourage landholders and business to seek out and maintain informality.

FIGURE 2.1 LEGAL EMPOWERMENT AND LAND USE

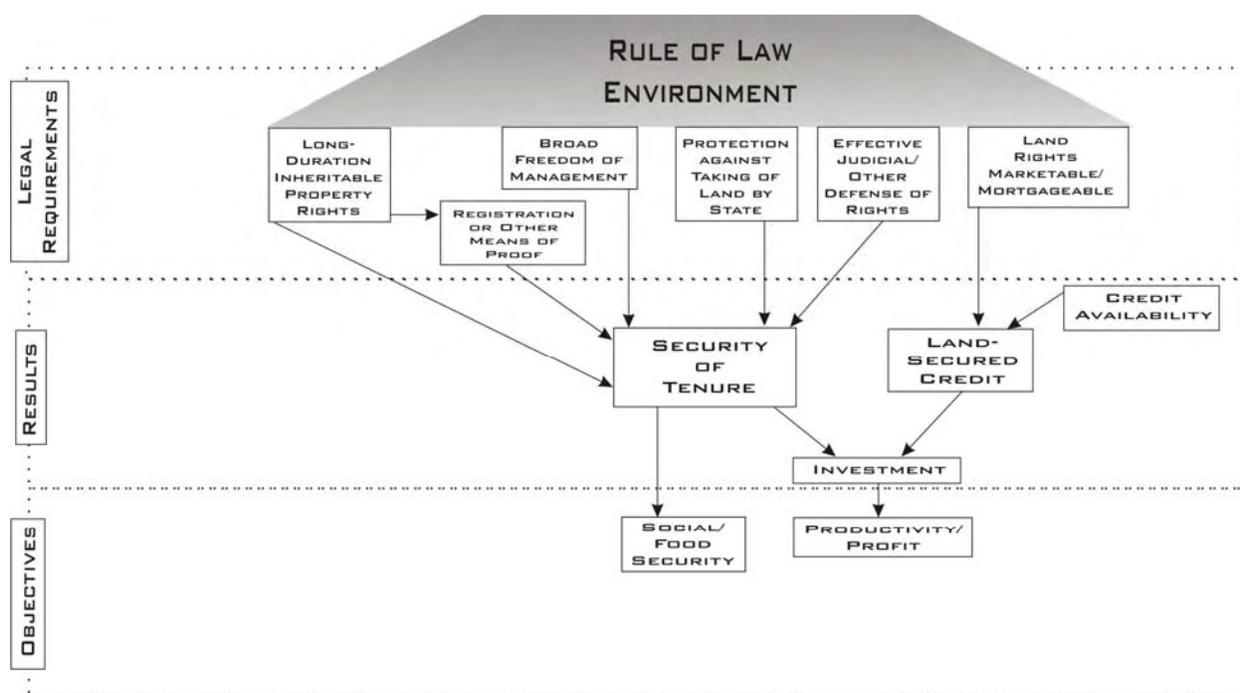


Figure 2.1 above illustrates a conceptual framework linking legal empowerment and legal requirements related to land with security of tenure and agricultural outcomes. The logic of Figure 2.1 can be summarized briefly:

- Legal reforms must provide robust property rights of long duration, rights that confer freedom of management and that are inheritable and protected by law from easy taking by the state, and the means to prove rights. This must take place within a rule of law environment that allows for effective vindication of rights in courts or other fora. These together provide security of tenure, vital for both the social security and commercial production functions of land.
- If the right to alienate land is also part of the bundle of rights, the land may be transferred as needed or mortgaged to obtain credit. Once the land is marketable, the market will move land to those who can pay more for it and who will, in economic theory (if not always in practice), use it more efficiently.
- Security of tenure (see Box 4) increases investment incentives, and the ability to use land as security for loans is expected to make access to credit easier. Anticipated results include increased productivity per unit of land and profitability.
- Not shown in the figure, and not given much attention in the early work by agricultural economists but highlighted in *The Mystery of Capital*, is the potential of the same measures to increase the market value of land, speed up the economic capitalization of developing countries, and allow development of secondary markets in securities.

BOX 4. SECURITY OF LAND TENURE

Security of tenure has been called the Holy Grail of land policy and administration. It is ultimately a state of mind: the confident expectation by a landholder that the holder and his or her family can continue to use the land indefinitely, or at least for a very long time. That belief strengthens a landholder's incentives to husband and invest in the land asset, because it means that they can expect to recoup the returns from investments.

How does one measure security of tenure? To do so, researchers use indicators that reflect some combination of robustness and duration of rights. But there are different ideas about the levels of these measurements. "Security of tenure" has been used to mean: a) full, private ownership of land, including marketability; b) perpetual or long-term, inheritable, and secure possession and use of land, without reference to marketability; c) secure possession for "long enough" (that is, sufficient time to realize the benefit of an investment or set of likely investments); or d) security for the landholder in whatever right he/she has, however limited (for instance, security of tenure in an annual lease).

What is the relationship between formalization and security of tenure? Those who occupy land without legal right may well be insecure. They are, after all, trespassers from a legal standpoint, and most legal systems provide for their expulsion. How does formalization provide them with security of tenure? It recognizes that the occupant has a legal right to the land and places the right under protection of national law and institutions. This may happen as part of a systematic land titling exercise, but it may also be done in an individual case by an official act recognizing a right to particular land for a particular occupant. The right or title conferred may be legally confirmed and made more susceptible to proof by the state registering that right.

Security of tenure is often treated as a matter of titling and registration, but this is too narrow a focus. At least four elements are needed for security of tenure: 1) property rights of long duration, conferring freedom of management, that are inheritable and protected against state as well as private takings; 2) recognition of those rights as held by particular individuals or groups in particular land; 3) registration of those rights in a manner that makes them easier to prove and may also provide further legal confirmation for them, and 4) a rule of law environment in which those rights will be respected and defended by officials and courts.

Source: Place et al, 1994.

2.5 DEMAND FOR FORMALIZATION

Demand for formalization exists at two very different levels: governments and individuals and firms. There is evidence of broad demand by governments for formalization, land titling, and, in particular, registration. For example, the World Bank has over 25 major land administration projects underway around the world,⁷ and other donors, particularly USAID, the Millennium Challenge Corporation, and the European Union, are also very active in this area. The efforts of the ILD to simplify the legal and regulatory frameworks for businesses have been warmly received by development agencies and many governments, as has the *Doing Business* annual review published by jointly by the International Finance Corporation (IFC) and the World Bank.⁸

This demand from governments stems from a variety of sources:

- Increased economic incentives and investments;
- Promotion of markets and their efficiency-enhancing effects;

⁷ See the World Bank Web site (www.worldbank.org) under "Projects" and search for "land administration."

⁸ For example, World Bank and IFC. 2005. *Doing Business 2005, Removing Obstacles to Growth*. Oxford University Press. Washington, DC. See in particular the chapter on "Registering Property" at pp. 33–40.

- An environment that is attractive to both private domestic and foreign investment;
- Increase in government tax revenues from land or businesses;
- Informal actors and assets brought within the state’s regulatory and other powers; and
- Access to substantial donor funding available for implementation of formalization programs.

There is also demand at the popular level, but this is harder to calculate and understand. For instance, the demand for land may be merely defensive and about simple security (perhaps as a bulwark against casual appropriations by the state and others), or it may reflect a desire to do new things with land, to raise capital, and to invest.

What factors contribute to or reduce popular demand for formalization? Demand stems from insecurity felt or disabilities foregone. Popular demand for formalization is driven by the consciousness of missed opportunities and the expectation of a benefit to follow. Such demand has rarely been broadly articulated politically, though specific demands may form part of political platforms—for instance a demand for land titles for informal occupants.

What can lower demand? If there is a perception that opportunities do not exist, there will not be much demand for formalization. As illustrated in Box 5, demand may be low if transition costs are high, such as a requirement of high fees or payment of back taxes. Demand will be depressed if there are significant longer-term costs associated with formal status, like exposure to high taxation or intrusive regulation. Demand may also be low if there is a general distrust of government to fairly deliver formality; there is doubt that legal rights and responsibilities can be enforced effectively; or some aspect of a formalization opportunity is culturally or socially unacceptable.

BOX 5. TWO STEREOTYPICAL CASES: PROS AND CONS OF FORMALIZATION

1. Consider a poor family living in a squatter settlement, operating a small business or service enterprise to make ends meet—selling tacos from a cart, fashioning kitchen utensils from scrap material, growing flowers, or collecting the barrio garbage. No rights are held to the family’s home or to their garden plot that is located on the fringes of the city. The family has few assets of any potential value except the land upon which they reside and farm. They desperately want the land tenure security (and, hence, security of shelter and livelihood) that formalization would provide, but it is not clear that formalization alone is sufficient to build assets and asset value. The household lacks the resources to make the additional investments.
2. Consider also the case of a small- to medium-scale enterprise (SME) that employs six full-time individuals and makes a modest return on its investment. It prefers to remain small and family managed and operated. While it lacks secure property rights, it elects not to register its land so as to maintain anonymity. In addition, rather than seeking financial capital through the formal banking sector, the SME prefers instead to mobilize its financing needs (albeit meager) from family and friends. The enterprise favors the informal economy, not because it offers a secure livelihood, but because the social networks protect it against market swings, tax collectors, costly environmental regulations, and business regulation that formalization is expected to bring.

There are of course an infinite number of profiles that characterize the plight of the poor. These two are common, but certainly not exhaustive. In one case, formalization of land rights is wanted, but the poverty trap in which the family finds itself raises questions about the ability of formalization to create economic wealth. In the second case, formalization may be resisted, not because of any inherent fault, but rather the security of employment, incomes, and livelihood is more certain in the informal economy because the SME is buffered against the shock of political instability and business cycles. A priori, formalization offers both pros and cons and raises important questions of who should make the transition, how, when, and under what conditions.

3.0 THE INTERNATIONAL EXPERIENCE WITH REFORM

3.1 AT THE THRESHOLD: OBSTACLES AND TACTICS

Advocates of formalization measures face a number of obstacles and often active opposition from certain interest groups. There may be a lack of popular and official understanding of formalization’s potential, and there will usually be concerns about the negative impacts. Often, these are not so much opposition to formalization as to the content of the particular formalization initiative—for instance, where formalization is aimed to stimulate land markets—and there are fears of loss of land by poor holders through ill-advised or distress sales. But others are grounded in financial or other interests negatively affected by formalization, and it is important to identify and assess. These have political dimensions,⁹ and advocates should understand and find ways to accommodate their interests where possible.

There is likely to be opposition to formalization from some of the following sources.

- Those who may lose property rights or other entitlements (e.g., the owners of land occupied by squatters whose titling is urged). Their concerns are best addressed through a clear government commitment to adequate compensation or other measures that address their interests.¹⁰
- Those who profit from restricted access to certain business opportunities and who fear competition from newly-formalized businesses. Expensive and complex formalization can serve to protect established enterprises and create effective monopolies.¹¹
- Those private sector actors, such as lawyers and notaries who have an interest in the complexity and high costs of accessing formality. These have, in fact, proved to be among the strongest opponents of simplification measures.¹²

⁹ For a substantial discussion of sources of political opposition to formalization, see de Soto, Hernando. 2000. *The Mystery of Capital*. New York: Basic Books (pp. 198–206).

¹⁰ While there is broad agreement that adequate compensation must include an element of market value, there are reasons why this may not be adequate in some cases (due to manipulation of land prices by government to keep them low) and more than adequate in others (due to the questionable circumstances in which the land was acquired). International practice is not uniform. See Bruce, John W. 2006. “The Role of the World Bank in Land Law Reform” in Bruce, et al. 2006. *Land Law Reform: Achieving Development Objectives*. Washington DC: The World Bank.

¹¹ In *The Other Path* (New York, Basic Books, 1989), de Soto sees many developing economies as mercantilist, enacting economic regulations of a nationalist character, which in fact protect a privileged entrepreneurial clique. He identifies those economic interests as key opponents of broad formalization (pp. 201–230).

¹² See Simpson, Rowton, S. 1976. *Land Law and Registration*. London: Cambridge University Press (p. 170); and de Soto, H. 2000. *The Mystery of Capital*. New York: Basic Books (pp. 200–202).

- Those officials whose incomes, formal and informal, rely on either a) bribery to tolerate activities illegal by virtue of their informality or b) income from their roles as gatekeepers on the road to formalization.
- Those that rely on the lower relative labor cost of the informal labor market compared to that of the formal sector. The use of informal labor markets provides firms with a price advantage relative to the firms that are required to purchase labor in the formal market, which is typically characterized by increased payment obligations for employers and the affordance of a greater degree of negotiating power to wage earners. In cases in which formalization would require a firm to make additional payments for each unit of labor such as those associated with obligatory employee entitlement programs or undertake action to comply with labor standards, a firm's labor cost will tend to be higher in the formal market.
- Those existing informal businesses concerned that formalization will result in an increase in direct costs in excess of the cost savings provided by formality. Through formalization, firms externalize functions such as the protection against unwanted property seizures, the resolution of disputes and conflicts, and the cost of establishing the trust necessary to ensure parties' contractual compliance in an informal context to the state. However, these services—while highly valuable—are fairly abstract, whereas the costs associated with registering a business tend to be more overt.

Political will is instrumental to the success of any of the initiatives mentioned above. If high-level political and administrative officials are not convinced of the benefits that are to be provided by the initiatives (both in terms of their personal political standing and the overall national welfare), they may be unwilling to spend the political capital required to achieve a lasting change. In addition, insufficient understanding of the rationale underlying proposed changes or the perception that the purported benefits of formalization are not being captured by the private sector could hinder the implementation of otherwise sound initiatives (see Box 6).

BOX 6. LAWYERS AGAINST THE NEW PROPERTY LAW IN HONDURAS

In Honduras, only 14% of Hondurans occupy properties legally. The remaining 86% hold property outside the scope of the law, amounting to \$ 12.4 billion in extralegal land possession. Of properties held legally, only 30% are registered. Indicative of the vast gap in property registration is the Comayagua Department where, out of 146,000 lots, 45,000 are registered, only 15,000 correctly.

Because of this, mortgages and credit has been difficult to obtain. In cases where credit is provided, the ambiguity of ownership creates added risks for creditors, who in turn charge high interest rates and further decrease access to credit.

On June 29, 2004, the Property Law (*Ley de Propiedad*) entered into force. The primary purpose of the law was to rationalize the country's chaotic property system by recognizing settlers' rights, resolving title disputes, and modernizing the property registry. The law included the creation of a new entity in charge of property matters, the Property Institute (*Instituto de Propiedad*), which would have authority over real property registration and the cadastre. The real property system was to have a profound effect on credit markets, as mortgages were the primary form of guarantee accepted by creditors.

Although the law was passed unanimously by the National Congress and was supported by labor unions, chambers of commerce, and all political parties, the Supreme Court and most lawyers have opposed it. Some justices recognize that the property system is in trouble, but do not view the Property Law as the appropriate solution. One justice noted a need to strengthen plans to modernize the registries before the reforms brought about by that law were plausible.

Lawyers' and judges' objections seem to stem in part from the fact that the role of notaries would be largely eliminated in the new system. Some justices have expressed concern for reforming the

traditional Spanish-colonial registry, but were unable to provide evidence that changes would violate the Constitution. Within the various chambers of commerce, there is a belief that justices oppose the reform because real property registries would no longer be under judicial authority, resulting in a loss of revenue and authority.

Currently, perhaps due to the complexity of the issues involved, there is a lack of knowledge regarding the intentions and forecasted benefits of the law as it pertains to the daily lives of Hondurans.

Source: USAID, 2004.

Given the potential opposition, broad popular demand for reform from civil society and the private sector and strong political championship are needed. Political supporters may emerge in the land ministry, but vested interests exist there, and the champion may instead appear in ministries such as finance or planning, through institutions such as presidential commissions, or from the presidency itself. Political support can be mobilized by emphasizing potential political benefits of formalization programs (for example, photographing politicians in the field handing out thousands of land titles). On the other hand, too close an identification of a reform with a particular politician can result in initiatives being reversed or rolled back when power shifts.

Building a consensus and broad political support for reform is a safer path, although it may require considerable time and effort. It may also necessitate compromises between vested interests to provide reassurance of a future (though in a facilitating role, rather than a controlling or gate-keeping role).

On a more operational level, reforms may stumble because of lack of technical or managerial capacity, although recent project experience suggests that a realistic choice of technologies and focused training can alleviate most of these problems. Availability of donor funding to support such initiatives does not appear to be a significant constraint. Where some of this support consists of loan funds, there are important cost recovery issues, especially as it is desirable to keep the beneficiaries costs low.

Corruption is another key implementation issue. Programs intended to encourage the transition to formality can still be managed by officials in such a way that access to benefits require bribes. Initiatives designed to minimize opportunities for corrupt practices are important, as is the development at the outset of an agreed-upon list of specific anticorruption strategies. Minimum time requirements for processing requests and their active monitoring can be very helpful, given that delay is so often used to leverage bribes.

Finally, political instability and poor governance are major obstacles to effective formalization implementation. Reformers tend to seek and take advantage of political windows of opportunity.

3.2 REFORM APPROACHES

Governments and donors have sought to advance formalization in a variety of ways (see Box 7). There have been attempts to eliminate obstacles and lower costs, others seeking to subsidize the remaining costs of transition to the formal sector, and still others to provide direct incentives as rewards for formalization, such as set-asides of government contracts for small businesses.

BOX 7. CASE STUDY: ASSISTING THE INFORMAL ECONOMY IN SHANGHAI

BACKGROUND

To address the shifts in employment and economic organization associated with its overall economic liberalization efforts—particularly the high unemployment associated with the reform of state-owned sector in the 1990s—the Chinese government has sought means to address the country's large informal economy. Some of China's most successful policies to ease and encourage workers' transition from the informal to the formal sector have been initiated by the Shanghai Municipal Government.

POLICY INITIATIVES

In 1996, to address the high unemployment resulting from the closing of state-owned enterprises (SOEs) (985,000 Shanghai citizens lost jobs due to these SOE closings between 1996 and 2000), the Shanghai Municipal Government initiated a series of policy measures to provide general economic support for the newly unemployed and to facilitate workers transition. As part of the municipality's larger adjustment assistance program, the Shanghai government created a policy whereby workers in the informal sector could associate to form a novel economic classification deemed informal labor organizations. During the six years following the creation of the new classification, 14,364 informal labor organizations were formed. In 2001, the organizations employed 154,839 workers, 97% of which had been unemployed prior to the initiative.

While informal labor organizations remained technically outside of the formal economy, they received government assistance to encourage their growth and eventual incorporation into the formal sector. The policy was supplemented by a public works program, which provided employment to a portion of informal labor organizations in public services such as street cleaning, security, and public facility maintenance. The Shanghai government provided additional assistance to the informal economy by offering of training, social insurance, preferential tax treatment, and subsidized credit to informal ventures.

The success of Shanghai's adjustment assistance program is illustrated in the drastic reduction in unemployment since the initiative. The Shanghai Labor Bureau found that, of the nearly one million citizens laid off due to SOE closings, only 16,200 remained unemployed in 2001.

Source: Howell, 2002.

The basic reform approaches, complimentary in most cases rather than mutually exclusive, are:

1. Reforming laws to legalize processes and situations that have previously been illegal (or at least not recognized by law), including the elimination of laws that actually prohibit formalization or protect the monopoly of formality by certain interest groups in the economy;
2. Reforming regulations and institutions to eliminate obstacles and impediments to formalization (lowering some fees and eliminating others, simplifying procedures, and generally mitigating costs), making it easier for landholders or businessmen to opt for movement into the formal sector;
3. Creating incentives for formalization, for instance, by tying certain business opportunities to formalization;
4. Developing training programs and technical aid for firms entering the formal sector on topics such as the scope of services provided by the formal sector and the manner in which it can be most efficiently navigated;
5. Developing credit schemes tailored to the needs of the informal businesses, assistance in gaining access to the formal credit market, or financing housing;

6. Combining any of the following means of preferential treatment for formalizing businesses to provide an incentive to formalize: preferential credit terms, special tax treatment, and a newly-formalized quota category for government contracts awards; and
7. Using formalization campaigns, for example, where the state takes the initiative to systematically title and register rights to all land in a locality at little or no cost to the landholders (see Box 8).

BOX 8. SYSTEMATIC TITLING AND REGISTRATION OF LAND

The ability to prove a right is an important element in tenure security. It is also critical to the operation of land markets, as a potential buyer/lessee must be assured that the person seeking to transfer a right is in fact the holder of the right. Registration is any form of public recording to evidence a property right, be it a title from the state or documentation of a land right transfer between private individuals.

There are a variety of registration approaches, the most important distinction being between: a) recording/deposit of the original title, private deed, or other source of right in an office where it is publicly available (e.g., deeds registration); and b) recording the right itself with the state, ascertaining the validity of the right, and, in some cases, providing a state guarantee of the right (“title registration”).

The primary vehicle for the extension of formality to landholdings in the developing world and transitional countries has been systematic titling and title registration. Under the systematic approach, the state takes the initiative to demarcate and survey all landholdings in an area, identifies the rightholders, and then legally recognizes their landholdings by titling and registering the land to them. The individual does not choose formality; rather, the state provides it in campaign mode. Charges to beneficiaries are kept very low so that the poor can be registered. Tenure security is treated as available to all, regardless of ability to pay.

In recent decades, donors have preferred to support this approach rather than sporadic titling and registration, in which formalization takes place at the request of an individual land occupier. In addition to reaching the poor, systematic registration achieves major economies in survey and other processes, and, if well done, it can be impressively efficient and participatory and provide opportunities for rights education. It is also less likely to be abused than sporadic registration, which the powerful often use for a state-sanctioned land grab from customary users, taking advantage of the fact that adjudication of rights in the sporadic case is usually less public and transparent.

Source: Williamson, 2001.

3.3 INTERVENTION ELEMENTS

Changes in laws, regulations, and institutions are often needed to legally empower the poor, but they are usually insufficient. As early as the 1960s, those working on legal reform in Africa began speaking of “ghost legislation,” whose existence beyond the pages of legal gazettes was ephemeral. In order to be effective, legal empowerment of the poor requires more than changes in laws, regulations, and institutions:

- **Applied, diagnostic research:** This type of research can play an important role in establishing the need for formalization, identifying needs for legal or other reforms, assessing potential benefits and disadvantages, and setting substantive and geographic priorities.¹³

¹³ The ILD has carried out a number of elaborate assessments of land and business informality in recent years. Examples are *Centre pour La Libre Entreprise et la Democratie (CLEDE)* and ILD. 1998. *Urban Real Estate Formalization Program in Haiti*. Six Volumes. Port au Prince: ILD; and ILD. 2005. *Program to Formalize the Assets of the Poor in Tanzania and Strengthen the Rule of Law*. Six Volumes. Dar es Salaam: ILD.

- **Public consultation on needs and options:** Consultation is essential in assessing actual demand for formalization measures and the possible response to those measures, as well as providing an opportunity to carry out public education about needed reforms.¹⁴
- **Policy reform:** Specific formalization initiatives or legislative reforms should be explicitly situated within a larger policy framework. It is only within such a framework that reformers can give coherence to proposals for specific reforms and can make a persuasive case for them. Such a policy is critical to the interpretation of legal reforms; they should be interpreted in a manner consistent with their intended objectives, but often those objectives are not clear from the text of the law itself. If the policy is developed in a bipartisan manner, it may outlive the government that promulgates it.
- **Reform of laws and regulations:** These need to include reforms of substantive rules but also those of legal processes to ensure more democratic decision-making and greater transparency and accountability. It is these reforms that give substance to the formalization program.¹⁵ Restrictions on property rights both as contained in the law as written and those imposing *de facto* curtailments of landowners' rights should be minimized.
- **Institutional/organizational reforms:** Broad formalization policy initiatives are often obstructed by the inherent difficulty of coordinating the various functions required by a broad-based, policy initiative, between multiple, often-competing, government institutions. The World Bank and the Inter-American Development Bank (IDB) have found that working with multiple institutions' programs to legally empower the poor is associated with radical reductions in program efficiency, and have thus generally concentrated implementation responsibilities of such projects within a single institution. In cases in which the complete allocation of the project to a single existing institution is not feasible, the World Bank and IDB recommend the development of a "one-stop shop," or a new agency in which the relevant institutions are represented, but accountability for the policy is clearly assigned to the new entity.¹⁶
- **Capacity building in relevant public and private sector institutions:** Once the policy framework is decided upon, and as laws and regulations are passed, government staff in the new entity or entities concerned may need training and capacity strengthening to help harmonize, speed up, and improve implementation. Some land titling projects, concerned with sustainability of efforts given limited numbers of local specialists, have often funded training overseas and even the creation of relevant departments in local universities.¹⁷
- **Mobilization and consultation** with stakeholders from the public sector, private sector, and civil society are critical components of the implementation stage for such reform initiatives. Failure to account for important interests or key social and cultural realities in designing the formal system can lead to reluctance to use the formal system, and the inclusion of project beneficiaries in the consultation project can often bring forward proposals for the incorporation in the formal system of widely-accepted informal or customary mechanisms, increasing the legitimacy and acceptability of the reforms to the public.

¹⁴ There are excellent models for public consultation on land policy. One of the best (and most documented) was carried out by the Presidential Commission of Inquiry into Land Matters in Tanzania: Government of Tanzania. 1994. Report of the Presidential Commission of Inquiry into Land Matters, Vol. I, Land Policy and Land Tenure Structure. Dar es Salaam and Uppsala: Ministry of Lands, Housing and Urban Development, Tanzania, and Scandinavian Institute of African Studies.

¹⁵ Bruce, John W. 2006. "The Role of the World Bank in Land Law Reform" in Bruce et al. 2006. *Land Law Reform: Achieving Development Objectives*. , Washington, DC: The World Bank.

¹⁶ Ibid.

¹⁷ For example, the ongoing multi-donor Land Management and Administration Project (LMAP) Project in Cambodia.

- **Funding and mobilizing implementation activities:** Donor agencies that have pressed for legal reform to achieve greater formalization have sometimes failed to fund the follow-through.¹⁸
- **Resolution of disputes and conflicts:** Some formalization efforts in land titling and business create a surge in the demand for dispute resolution that often exceeds the capacity of formal judicial systems. Alternative dispute resolution has the potential to provide business with faster means of dispute settlement while reducing the burden on resource-strapped formal judicial systems.¹⁹ Working in cooperation with judges, lawyers, and professional legal associations, programs could be developed to improve understanding and use of commercial arbitration and mediation consistent with some of the local informal dispute resolution mechanisms.
- **Advocacy and rights education:** As mentioned earlier, it is not only necessary to give the poor rights to the resources they control, but to make them aware of the new powers they now enjoy over those resources and warn them of dangers implicit in the exercise of those powers.²⁰ Mechanisms include mass media campaigns, community consultations, legal aid, radio and television talk shows, and public information and awareness professional training. Educating producer and trade associations and target groups (including women, the vulnerable, and the poor) may help extend the reach of education, but facilitation may be required to assist with mobilization, capacitation, and erecting content and messages delivered.
- **Legal aid to beneficiaries in realizing rights:** Where disputes over the asset to which rights are to be formalized are common, the poor may need special assistance if they are to obtain fair results when their claims are litigated. The creation of a legal aid program is one important way to deliver such assistance.²¹
- **Monitoring and evaluation:** Monitoring and evaluation must track the success of these efforts, in terms of simple indicators of the extent of formalization and how the new rights are used, but they must also evaluate the specific impacts on the poor, both the expected positive impacts and the negative effects feared by critics of formalization.²²

While legal reform is likely a critical step in a formalization program, it is misleading to focus too narrowly upon it and imagine that victory is in hand upon enactment of reforms (see Box 9). Up-stream and down-stream activities, such as those noted above, are essential to obtaining the desired impacts. This means, among other things, that formalization programs have substantial costs.

¹⁸ For example, USAID supported applied research, development of land policy, and new land laws in Uganda and Mozambique in the 1980s, but its assistance for the land sector dried up as the crucial implementation stage was reached.

¹⁹ The multi-donor Cambodia LMAP provided assistance for the establishment of a university department to train in technical skills related to its land administration program.

²⁰ The Asian Development Bank, in connection with its land law reform program in Cambodia, developed effective teaching material using both comic book formats and short television dramatizations.

²¹ The multi-donor LMAP, mentioned in footnote 18, provided funding to the government to finance NGO legal assistance activities to level the playing field in disputes between state agencies and large landholders and villagers.

²² Bledsoe, David. 2006. "Using Land Titling and Registration to Alleviate Poverty" in John W. Bruce et al, 2006. *Land Law Reform: Achieving Development Objectives*. Washington, DC: The World Bank.

BOX 9. VIETNAM'S ENTERPRISE LAW

In 2000, Vietnam passed the Enterprise Law to simplify business registration procedures and reduce the number of requisite licenses and permits. Prior to this, attaining legal status for a start-up required compliance with 16 different procedures and, after accounting for direct expenses and lost time, cost entrepreneurs an average of 1.8 times the per capita GDP in 1999. Under the new law, the time estimated for ensuring a start-up's legal compliance fell from 98 days to 7. While the law has been enacted in cities, its implementation in rural areas has proved less successful.

Reduction of procedures seems to not yet have played an important role in pushing businesses to formalize and hence reduce informality. According to estimates, only 40% of newly registered firms previously operated in the informal economy.

Sources: World Bank, 2003; Djankov, et al, 2002; Jordan Ryan, 2002.

3.4 IMPACT OF FORMALIZATION

Section 2.4 discusses the impacts of informality and suggests the lack of a formal land title could limit access to credit and investments. This is an area in which there have been numerous empirical studies, largely focused on productivity impacts of farmland formalization; increasingly, however, there have also been studies on urban areas. Some of these provide support for basic tenants of formalization, but others have led to moderated expectations of its economic impacts and raised questions concerning the impact of formalization and land markets on the poor. It is not easy to sort out the various factors that led to the differing results of these econometric studies, but it seems that the number of variables affecting achievement of formalization objectives is substantial (see Box 10, and Annexes 3 and 5).

BOX 10. IMPACTS OF LAND TITLING AND REGISTRATION: EMPIRICAL STUDIES SHOW MIXED RESULTS

While there are studies that bear out the theoretical connection between land titling and investment, (such as Feder and Onchan [1987] and Alston, Libecap, and Schneider [1996]), there are others that make it clear that this is not the general case. For example Deininger and Chamorro (2004) find registration increases land values but otherwise has little impact on access to credit, investment, or productivity. Numerous studies have failed to find the connection. Major comparative reviews of evidence of impacts on investment and access to credit by Bruce and Migot-Adholla (1994) and Feder and Nishio (1996) suggest that titling is most likely to be effective where robust formal financial markets exist and where there are incentives for investment created by factors such as proximity to urban markets and good quality land. Feder, Onchan, and Raparia (1988) find that, where land collateral is permitted and interest rate restrictions are imposed, institutional lenders prefer land collateral to other forms of security, but the studies they review also suggest that large-scale farmers with high value land and more capital are more likely to use this type of collateral than small-scale farmers. Those studies that explicitly dig into impacts on the poor (such as Carter and Olinto [2003]) suggest that credit and other benefits may be heavily skewed toward large landholders. Alternately, some recent studies in the urban context are revealing benefits not considered in earlier writings, such as the additional time available for productive activities to former informal holders who, now having titles, no longer need to be physically present to protect their holdings (Field [2004]).

There is real concern in developing countries that marketability and mortgageability of land as part of the formalization package will fail to deliver the promised empowerment of the poor, but may instead increase landlessness through desperation sales or foreclosures after ill-considered borrowing by poor landholders. There are studies, such as Carter and Salgada (2001), that suggest the poor tend to lose out in land markets, and some major comparative studies have concluded that this is often the case (De Janvry et al [2001]). The most serious problem here appears to be

credit market imperfections. Potential value in urban uses tends to drive up the value of land in rural uses to an extent that it is difficult for rural producers to purchase land. And small landowners often have difficulty getting access to credit using land collateral, with or without a title. The loan amounts are modest, the costs per loan high, and the problems of foreclosure and disposal disproportionate. A lender will generally prefer that the applicant have a reliable income stream in the form of a salary or other assets. This explains a conundrum that had puzzled economists: It has been realized since Berry and Cline (1979) that smallholders are generally quite efficient producers, but they have difficulty obtaining land in land markets, which are supposed to move land to potentially efficient users (Binswanager et al [1995]).

Understanding the role of credit markets in relation to land formalization has led to some important shifts in donor land policies in recent years, particularly at the World Bank where it is now accepted that, for land markets to move land to the poor, targeted credit must be provided. In the absence of such credit, renting land, with the lower threshold access costs involved, may be a more effective way for the poor to get land to use than land purchases (Deininger [2004]).

This suggests that the development of any formalization program should involve a careful initial analysis at the outset of economic returns to formalization; these should not be assumed. This analysis may be most helpful in focusing efforts geographically. It seems clear that prioritizing work in urban and peri-urban areas where land is valuable and markets are already operating will likely have the greatest impacts.

In other areas, it is essential to ask whether other conditions needed to get much impact out of formalization exist. The soundest approach may be to focus formalization activities in urban areas, and gradually expand the coverage of titling and registration to other parts of the country. Even then, hard questions will need to be asked about how to ensure that the poor really benefit from formalization; again, this should not be treated as a foregone conclusion but a hypothesis requiring substantiation in any given instance.

While less empirical work has been done on the impact that business formalization efforts have had on the performance of businesses, there are several findings that usefully illustrate the potential benefits associated with such policy initiatives (see Box 11 and Annex 6). As mentioned in previous sections, formalization serves to expand the potential transaction partners that are available to a business by decreasing the risk associated with undertaking impersonal transactions through state-administered contract enforcement. Besides increasing a firm's sourcing or marketing options, business formalization appears to improve credit access. This benefit appears to be intensified in legal systems that allow the use of moveable collateral such as inventory and accounts receivables.

Studies seeking to determine the causes of informality have identified several factors as relevant to the prevalence of the informal sector. Namely, the strictness of a country's businesses regulations appears to relate to the size of its informal economy. Similarly, the relative size of a country's informal economy appears to relate to the direct and indirect government-imposed costs associated with attaining and maintaining legal compliance. In particular, countries in which the costs of starting or operating a formal business are high and those in which the time spent ensuring legal compliance is great tend to be those in which informality represents a large part of output. The pervasiveness of public corruption also appears to increase informality. The results regarding the impact of taxes on informality are ambivalent. While some studies observe that high taxes increase the size of a country's informal sector, there have been several contradictory results that have not been explained, so no firm conclusions can be drawn (see Figure 3.1).

BOX 11. THE EFFECTIVENESS OF POLICIES TO FORMALIZE BUSINESS

The empirical research on the impact of policy initiatives to formalize businesses is limited by the scarcity of such reforms and the obvious methodological problem associated with measuring a portion of the economy that is, by definition, beyond the government's control to some degree. These obstacles have effectively prevented the realization of cross-country comparisons of formalization policies, leaving primarily descriptive studies of single countries. Nevertheless, the findings of these case studies appear to offer some evidence that formalization policies may promote economic development.

Howell (2002) finds that the policies pursued by the Shanghai Municipal Government to address the high unemployment were successful in facilitating newly unemployed workers' transition into the formal economy (see Box 7). Howell notes the success of Shanghai's adjustment assistance program by observing that of the nearly one million citizens laid off due to SOE closings, only 16,200 remained unemployed in 2001.

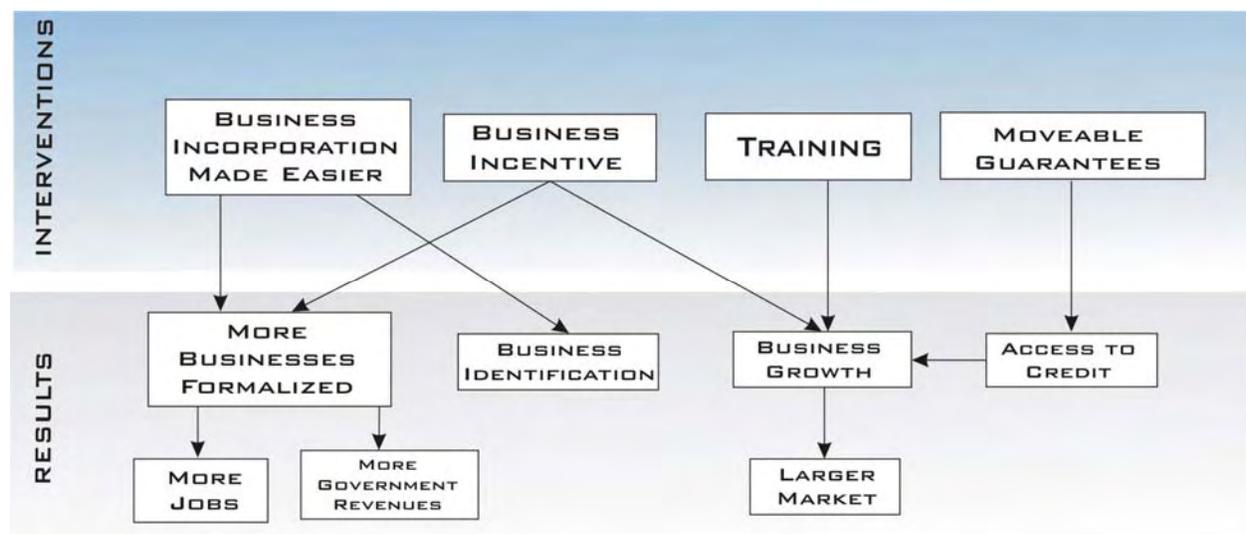
A large-scale formalization program led by the ILD (with an estimated \$20 million initial investment), based in Peru and El Salvador from 1982 to 1996, succeeded in formalizing 300,000 enterprises and increasing annual tax revenues by \$300 million. The program cites the creation of 560,000 legal jobs in Peru and the fact that \$9.4 billion in net benefits have been attained by the poor there.

While formalization policies in Peru, El Salvador, and Shanghai appear to have been beneficial to growth, evidence suggests that such results may be contingent on various domestic factors. Batra and Mahmood (2003) find that direct government support to private enterprises (e.g., of subsidized finance or business development services) is not effective in increasing the performance the recipient firms when the country in question does not have an otherwise sound business environment.

Sanders (2002) finds similar failures in the effectiveness of direct support in a study measuring the impact of a US government program providing technical assistance and credit to American micro-enterprises to promote overall economic wellbeing and incorporating such firms into the formal economy. The study found no statistical difference between the performance of firms that participated in government programs and the control group.

Sources: Howell, 2002; ILD, 1994; Batra and Mahmood, 2003; Sanders, 2002.

FIGURE 3.4 IMPACT OF BUSINESS FORMALIZATION POLICIES



3.5 SUSTAINABILITY OF FORMALIZATION

The belief that, once established, formality will sustain itself does not appear to be the case. To take a system of titling and registration for land, the state must continue to fund the land registry system, a public infrastructure for the private land market.

There are a number of countries, the best known cases being in Africa, where such systems have virtually collapsed with the disappearance of public funding for the system. Uganda and Sudan are classic and well-documented cases (see Box 12). The author himself removed pigeon nests from registry files in courts along the Nile north of Khartoum, and seen the decayed records of land registry offices in central Uganda. Such systems are more likely to be sustainable if there is a sufficient volume of registered transfers to generate fee revenue, if that revenue is available for that purpose. While the experience of some countries (for example, Thailand) makes it clear that such a system can be financially sustainable if correct decisions are made about costs and revenues, it is not clear that this happens very often. It requires that a delicate balance be struck between seeking revenues to sustain the system and making the system so expensive that users reject it. This all raises questions of how far and rapidly such a system should be extended geographically; an extension of such individual titling into deep rural areas where there is little demand for it may be questionable.

Box 12 examines this phenomenon, which is largely a matter of popular unwillingness to continue to work within the system. If titleholders do not register their transfers, the records fall out of date, become increasingly unrelated to on-the-ground realities, and are essentially historic documents. Again, the point made is that demand must be very seriously considered before moving ahead with such a program—especially in Africa where alternative customary systems are in place—but also in cases where other alternative and more affordable informal mechanisms are utilized.

BOX 12. SUSTAINABILITY OF LAND TITLING AND REGISTRATION

Where market forces are not well developed and few major economic opportunities exist, experience suggests that the systematically titled and registered landholders will continue to deal with their land as they always have, relying on customary norms for inheritance and transfers and failing to register either transactions or successions. Kenya and its major program of systematic titling beginning in the 1960s is the case most often cited (Okoth-Ogendo, 1986, and Place and Hazell 1998), but also in Uganda (Eisenhauer, 1998) and Madagascar (Jacoby and Minten, 2005). Additionally, a recent evaluation of the impacts of a GTZ titling project in Cambodia (Deutsch, 2006) suggests that this failure to register is not a thing of the past, and that, in spite of substantial public education activities, many new titleholders are failing to registers transactions and successions. When this happens, the register (established at considerable expense) becomes outdated and can no longer accurately portray the current situation of claims to the land. These cases raise serious questions about the usefulness of major initial investment in titling all holdings on a broad national scale, especially in areas where there is not a felt need for titles. The phenomenon both highlights the need for major public education activities in connection with titling activities and raises a question of whether, for areas where demand for titling is thin, community titling or titling of only individuals who apply (as opposed to all landholders, known as “mass” or “systematic” titling) may be more appropriate.

The sustainability of the proposed reforms depends on public recognition of the changes’ legitimacy within the particular cultural and social conditions where they are to be implemented. A country’s failure to account for relevant social realities in developing its formal governing institutions may prevent the successes of legal reforms that are otherwise cognizant of the larger policy aim of promoting market-driven economic growth. For example, failing to incorporate widely-accepted informal rules, such as the customary forms used in many parts of sub-Saharan Africa, into the proposed formal legal system increases the likelihood of reforms being rejected outright by the private sector.

By legitimizing and strengthening existing networks and organizations of informal enterprises or workers, formalization provides means by which the views of the poor may reach policy makers. While the enfranchisement of those previously outside of the state's regulatory domain will create a mechanism by which the poor are heard, the state's democratic accountability in this regard is of equal importance. However, even in cases of democratic rule, the sustainability of formalization depends on the education of the labor force so that participation in the formal sector is not rejected outright to a portion of a country's population.

Given the complex nature of informality and the diversity of interests involved in the reforms proposed here, the sustainability of the proposed reforms will depend on the behavior of a wide range of stakeholders (see Box 13). The interdependence of the actions of diverse stakeholders indicates that a broad-based approach to reform is more likely to succeed than one that fails to involve the primary parties to be affected by reform. A Swedish International Development Agency project in Sri Lanka that provides training for agricultural workers in the informal sector illustrates the merit of such a broad-based approach (Box 24). In addition to the technical assistance provided by both private sector and government workers, the government established regional centralized markets meant to provide the rural agricultural producers with a location from which they could sell their produce directly to buyers rather than through middlemen. Thus, rather than increasing the technical capacity of the informal workers in vain, the training was combined with the expanded market to promote the sustainability of the reforms.

BOX 13. DURBAN: A HETEROGENEOUS SOLUTION

The city of Durban, South Africa, took a non-restrictive approach to street vending. It demarcated sites throughout the city; changed the legal framework that governed street trading from criminal to administrative law; decreased the amount to pay for trading spaces; and guaranteed services such as basic shelter, solid waste removal, water, toilets, lighting, and storage facilities. The city also created an appeal committee of five members, of whom at least one was required to be a street vendor, where municipal decisions can be reviewed.

However, as the majority of informal businesses were in the traditional medicine sector, it was necessary to provide access to market. Over 30,000 people worked in this sector, most of whom were women. Through direct intervention, Durban built a dedicated market for traditional medicine traders with shelter, storage, water, and toilet facilities. It also trained gatherers on cultivating products and sustainable harvest techniques and is currently planning to establish a company to procure materials from growers, process them in partnership with a pharmaceutical firm, and market the products.

Source: Lund and Skinner, 2005.

4.0 CRITICAL CHOICES AND BEST PRACTICES

Experience to date suggests a number of factors that affect efforts to legally empower the poor through formalization of land rights, businesses, and their operations. This section seeks to note some of the major choices that arise in designing and implementing programs with this objective, and to identify some best practices. It first deals with issues relating to land, then those relating to businesses and business operations, and finally with some important cross-cutting issues.

4.1 LAND FORMALIZATION

4.1.1 Property Rights and Formalization

The formalization of land rights, as depicted in Figure 2.1 and Box 10, is generally accomplished through the conferment or recognition of private rights to land by the state. Many donor-funded projects tend to focus on titling and registration. While these are important tools used in the process, the first critical step is the conferment of the right or entitlement, usually in the form of law reform. For example, the Uganda Constitution of 1995 restores private property rights lost during the Amin nationalizations of the mid-1970s (see Box 14). The Mozambique Land Law of 2002 performs a similar function, providing recognition of customary users' rights.²³ Law reform is thus often the first, key step in the formalization process, and land rights are created through "the stroke of a pen." Where holdings are reasonably free of contestation, this is best practice. Documentation of those rights may take many years, and the holders have legal protection from the state in the interim.

BOX 14. RESTORING PRIVATE PROPERTY IN UGANDA

The Uganda Constitution of 1995 reversed the nationalization of all Ugandan land by the Amin Regime in the 1970s. It provided that:

- "Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this constitution, [and]
- "Land in Uganda shall be owned in accordance with the following land tenure systems: (a) customary, (b) freehold, c) mailo, and d) leasehold."

This provision restored private property rights to millions of poor Ugandans. The constitution mandated the enactment of a new land law within two years and the creation of a Uganda Land Commission and independent Land Boards at the district level.

Source: Article 237. Constitution of Uganda, 1995.

Two different situations call for land titling. First, where the right has already been recognized by law, as in the cases noted above, titling serves to affirm the right of a particular individual to a specific, clearly

²³ Tanner, Christopher. 2002. Law-making in an African Context: The 1997 Mozambican Land Law. FAO Legal Paper. Rome: FAO.

described parcel of land. Second, the law may instead provide for land rights to be conferred in the act of titling itself. The right only exists by virtue of the grant of the title; under this second approach, the right is created and documented by the same act of titling. In that situation, titling is sometimes said to be “constitutive” of the right. This second approach would be appropriate when many competing claims need to be resolved. This would take considerable time. National titling programs often proceed within thirty- to forty-year time frames, although many are organized with more modest objectives (such as coverage of an urban area). In either case, titling is a critical step in making formal rights real and enforceable.

Then what is the role of registration? Registration is a matter of how titles or deeds are recorded by the state, preserved, and made available for review. Land registry systems can be thought of as a state-provided infrastructure for private rights and markets in land. The state provides a place where title holders can register their titles and make them a matter of public record, available for reference. Because registration makes proof of rights easier, it helps make formal rights more easily marketable. Sometimes the law provides that a title is only finally effective when it is registered; thus, registration is the final stage in constitutive titling.

In the end, however, the basis of formalization is the property right legally recognized by law. If those rights do not give landholders the security and freedom to use the land as desired, titling and registration do little to improve them. In any discussion of formalization aimed at legally empowering the poor, the threshold question is whether the right being conferred to the poor is the right that is needed. This is not necessarily full private ownership. While full private ownership may be the gold standard in property rights, there has been growing recognition in recent years that customary rights, inheritable usufructs, and even long-term leases can, in specific circumstances, provide landholders with the needed security of tenure and freedom for decision making. Such interests can be framed to be transferable and mortgageable.

4.1.2 Formalization of Public and Community Lands

Who is the “landholder” recognized in formalization? In many cases, it will be an individual—in legal terminology, a “natural person.” It may also be a “legal person,” such as a company or partnership or a nongovernmental organization (NGO) or any other organization that the law treats as if it were a natural person. In fact, much of the literature on formalization is written as if these were the only entities whose rights required documentation and registration. The owner may also be the state or a state agency, whether a municipality or a district or the central government. Under most legal systems, there are certain categories of state-owned land that can be transacted (in civil law systems, the “private domain of the state”), where the state has the same needs as a private owner. This can be a troublesome area, however, when the regime of public land ownership is not well developed and it is not clear whether units of local government can themselves own land or only ever hold it on behalf of the central government. The experience of registering state lands in Laos is such an example (see Box 15).

BOX 15. THE FAILURE TO REGISTER VILLAGE LANDS IN LAOS

A major program of systematic land titling and registration in Laos, supported by a consortium of donors that include AusAID, GTZ, and the World Bank, was unable to register village lands. Under Laotian law, any land that is not privately held is state land. As a result, village temples, schools, pastures, toilets, and soccer fields are all registered to the central government, thus promoting an unfortunate concentration of this land in the hands of central government. In most cases, the land is assigned back to the villages for management, subject to bureaucratic supervision from the central government. This is both unwieldy and violates the principle of subsidiarity as it applies to public land administration: any public land should be vested in the most local level of government possible to promote more effective oversight and responsive management of the resource.

Source: Bruce et al, 2006

This issue of formalizing public and community rights can be complex in customary systems. A broad customary title may be held by the group, such as a village or clan, but within this area lineages, households, and individuals may have land rights recognized under customary law. Or, to make matters more complex, there may be layers of land rights held by a chief, a sub-chief, and a village chief on behalf of their communities. Should all levels of rights be formalized or only one? These decisions are complicated because some right holding entities under customary law may not be recognized as legal persons (and thus unable to own land) under national law. Should the object be to simplify these systems, and does this mean recognition of the individual and neglect of family and group rights? Or will registering the collective right alone provide sufficient security for community and household land management?

The answer to these questions will depend on whether the primary problem is seen as insecurity, or the source of that insecurity, or whether activation of land markets is a priority. If the concern is incursions on rural poor holdings by the state and state-supported elites (for instance, through irresponsible granting of concessions to commercial interests), then recording and protecting community territories may be the answer. That is the strategy pursued in Mozambique under the 1989 Land Law.²⁴ If community resource management is what is wanted, a group approach may again work (see Box 16). Similar approaches have been pursued for natural resources management in other African countries.²⁵ However, group registration will not be the answer if the priority objective is to develop a land market, in which case, individual titling and rights registration will be more appropriate. In Ghana, a World Bank-funded project is seeking to register customary rights, as called for by the law governing registration, including both the rights of chiefs and the rights of their subjects.²⁶

²⁴ Tanner, op cit. supra.

²⁵ Cousins, Ben. 2000. "Tenure and Common Property Resources in Africa." At 151–180 of Camilla Toulmin and Julian Quan (eds.) *Evolving Land Rights, Policy and Tenure in Africa*. London: DFID, IIED, and NRI.

²⁶ For a searching discussion of the issues involved, see Wiley, Liz Alden, Doug Hammond, and Kasim Kasanga. 2001. *Land security and the poor in Ghana. Is there a way forward?* Land Sector Scoping Study for DFID Rural Livelihoods Program. Accra: DFID.

BOX 16. TITLING COMMUNITY TERRITORIES IN COLOMBIA

The World Bank Natural Resources Management Program began in 1994 and introduced the concept of indigenous territory titling during loan preparation. There was such uncertainty over the authority to use and control the use of land and natural resources and disputes were so common in the heavily-forested Choco Region that the project could not go forward without addressing the problem. Land sales by government in the region had displaced some inhabitants and threatened others, resulting in declining security of tenure. A new 1991 constitution and subsequent laws in 1993 and 1995 allowed local communities who had historically occupied the extensive and largely unmanaged public forest lands to register rights in their territories. After consultation with local communities, a loan was designed that included titling and demarcation of indigenous reserves, titling of Afro-Columbian territories, and local participation through Regional Committees. About a tenth of the \$39 million project budget was devoted to this component.

The project worked closely with local communities and with the ACIA-Integral Peasant Association of the Middle Atrato. The first few years of the project concentrated on community capacity building and awareness raising through workshops and publications. Regional Committees were established and they developed the principles and criteria to guide titling. Community Councils were also created. Boundaries between ethnic territories were established through inter-ethnic consultation and agreements, and subsequently demarcated and titled to the communities. When ethnic competition for territory emerged, Inter-ethnic Regional Committees proved highly effective sites for conflict resolution. In total, 83 titles were granted to 404 communities, affecting nearly 20,000 families and almost two million hectares. The land has been protected against government land sales, and a basis has been established for sound natural resource management. While the titling was well received by the communities, the project was ended in 2000 due to a deteriorating security situation.

Source: Ng'weno, 2000.

In designing the legal framework for land titling and registration, best practices involve provision for land titling to a wide diversity of private, public, and community entities, and the conferring of legal personality (enabling the landownership under state law) on those entities that de facto or customarily own land but that do not already have such personality. In implementation, best practice calls for sensitive use of these options vis-à-vis local communities' understanding of individual, family, public and community rights.

4.1.3 Equity Issues: Gender and Ethnicity

The extent and distribution of benefits from formalization will affect both the political acceptability and sustainability of reforms. That distribution can, in turn, be dramatically affected by power, wealth, and access to information. Gender is of particular consequence because women, commonly disadvantaged in access to land, form such a large part of the population and are the productive population in the farm sector of many countries. There are well-established patterns of formalization projects that have neglected informal or customary rights of wives and daughters in order to concentrate all rights in the male heads of households. One of the most remarkable phenomena of transitions out of socialism has been the reemergence of private property through formalization exercises in a distinctly patriarchal mode. The World Bank recently funded a major comparative study in Azerbaijan, Bolivia, Laos, and Ghana to develop solutions to this problem (see Box 17). Annex 1 provides a more detailed analysis.

Other important dichotomies in this area include those between the poor and wealthy, farmers and merchants, rural and urban people, men and women, landowners and illegal occupants, landlords and tenants, former masters and former slaves, and dominant ethnicities and subsidiary ethnicities or indigenous peoples. Obviously these are not all going to be relevant in a given case. Some, such as that

between men and women, will usually be relevant, while others, such as former masters and former slaves, will appear more infrequently.

Ethnicity is an especially important social cleavage in many countries, and if formalization confers much greater benefits on one ethnic group than another, it can make formalization politically explosive. In Kenya, when customary land tenure was titled and registered as individual private ownership in the 1960s and 1970s and sales of that land first became legal, a few commercially-advanced ethnic groups were able to purchase vast amounts of land from other groups, leading to deep resentment and a violent backlash. In such circumstances, the land markets facilitated by formalization operate on a decidedly uneven playing field.²⁷

BOX 17. SEEKING TO ENSURE THAT WOMEN BENEFIT FROM FORMALIZATION OF LAND

The World Bank study on gender issues made the following recommendations to those designing and implementing land formalization projects:

1. Conduct field research to identify all property rights holders within a household in both rural and urban areas and among various ethnic groups. Include this information in the design of the land administration program.
2. If there is a basis in law for doing so (direct, vague, or permissive language), ensure that rules regarding registration allow for more than one property right holder on the registration forms and that the forms themselves facilitate inclusion of women.
3. Ensure that gender issues are mainstreamed and not seen as an extra project or one that is the responsibility of only women staff or organizations. Make gender programs cross-cutting and everyone's responsibility.
4. Carefully consider special issues such as scheduling of adjudication activities, requirements for documentation, and location of services (e.g., registration offices) that may act as barriers for full participation of women.
5. Consider the local and regional variations in custom, religion, and law when designing and implementing projects.
6. Where appropriate, try to resolve disputes and uncertainties at the local level to provide equitable access to the processes.
7. Coordinate titling with support services, such as credit and training, to ensure maximum benefits of the process.
8. Increase gender equity in land administration organizations at all levels and in all aspects of the project, including education and training, so as to produce sustainable project results.
9. Ensure that foreign technical assistance and senior staff also consider gender equity and related policies so they can act as role models and mentors.

Source: Giovarelli et al, 2005

To avoid serious skewing of formalization benefits, it is critical that these processes be accompanied by strong public education programs, which may include tools as diverse as village-level education in connection with the formalization itself, television and radio dramas, or comic books in local languages. Where there has been systematic titling, there is often the fear that new owners will make improvident sales, not realizing the market value of their land. It may be wise in some cases to initially limit full marketability, for instance, through the requirement of spousal consent and administrative approval, a

²⁷ Rutten's revealing study of the development of a land market after individualization and titling of land in Kenya makes this point. Rutten, M. 1992. *Selling Wealth to Buy Property. The Process of the Individualization among the Maasi Pastoralists of Kajiado District, Kenya, 1890–1990*. Saarbrücken and Fort Lauderdale: Verlag Breitenbach Publishers.

simple prohibition of sale for a certain length of after transfer (to allow landholders to appreciate the new, enhanced value of their land), or by limiting sales to local community members (to restrict speculative purchases by outsiders). In the long-term, most of these restrictions (with the exception of spousal consent) should not be maintained or they would defeat much of formalization's economic purpose, but they may be prudent in as temporary measures.

The poor would also benefit from a means of conflict resolution support for disputes over land in which the rich were less advantaged in the court system. In fact, many recent titling projects have provided mediation and other dispute settlement frameworks.²⁸ The poor would also benefit if provided with free legal assistance in defending their rights, most appropriately through NGO-managed legal aid programs.²⁹

4.1.4 Ensuring that the Poor Benefit in Individual Titling Programs

The potential contribution that formalized land rights and asset markets bring to development is broadly acknowledged, as are the increases in land values that follow formalization. Many newly-registered owners may benefit as predicted by the economic models if other necessary conditions are met, such as real opportunities and access to credit.

However, there is not a solid body of evidence showing that the poor, even the smallholding "landed poor," ultimately benefit from titling and registration (see Annexes 3 and 5). It is not clear how often and under what circumstances the poor either:

- Are enriched and able to escape poverty through the appreciation in value of their formalized rights in land and their borrowing against those rights for profitable investments; or
- Are unable to access credit even with formalized land rights, but instead lose their land through ill-considered or desperation sales or through mortgage foreclosures, thus plunged deeper into poverty.

This is because the poor have rarely been examined separately in studies of titling impacts, and a body of research that addresses this question is only now being developed (See Box 18).

The second possibility listed above is a real concern of many African policy makers confronted with donor proposals for formalization. While the poor's possession of rapidly-appreciating land assets is a thrilling vision, there are respected tenure experts who argue that land formalized for the poor and made marketable may soon be lost in ill-considered sales. They show that the poor with titled land are often no more able to borrow money in formal markets than those holding land informally. Banks, they point out, are ultimately more interested in a loan applicant's salary and other income streams than in his/her ownership of a small piece of land in a marginal urban neighborhood or rural area.³⁰

Recent writings suggest some possible antidotes. For instance, giving the poor access to land through leasehold markets, while less satisfactory in terms of their sharing in the appreciation of land, does not expose them to loss of land through markets, and more gradual transitions to private ownership may

²⁸ Bruce et al, 2006. op cit. supra, describes some of these processes, referring to the multi-donor Cambodian LMAP Project, for which the television dramas and comic books developed by the Asian Development Bank are best practices. But there is a much larger body of experience from these projects over recent decades that has not yet been systematically mined for potential valuable lessons.

²⁹ An example from Russia is provided by Rolfes, Jr., Leonard and Gregory Mohrman. 2002. Legal Aid Centers in Rural Russia: Helping People Improve their Lives. RDI Reports on Foreign Aid and Development # 102. Seattle: Rural Development Institute. Legal aid was also successfully used in connection with implementing the transitional provisions of the 2003 Land Code in Kazakhstan. Li, Zongmin. 2005. Assessment of Implementation and Impact of the Interim Provisions of Kazakhstan 2003 Land Code. Astana: ARD Inc. for USAID and Government of Kazakhstan.

³⁰ For a discussion of options see Bledsoe, op cit. supra.

reduce dangers of loss of land through distress sales (see Box 18). It may also be appropriate to consider titling the local land-administering community or other group, thereby providing security of tenure to its members without exposing them to the vicissitudes of land markets. Some argue that such measures amount to paternalism, an ill-advised attempt to protect the poor from themselves. But it does seem appropriate to take into account risks implicit in the opportunities provided by formalization, and broad popular acceptance of these programs may depend on whether it is possible to address these risks effectively.

BOX 18. PROTECTING THE POOR IN TRANSITIONS TO LAND MARKETS

Intending to protect new landowners against hasty and ill-considered sale of newly formalized land, some countries have imposed moratoria on land sales after land privatization or titling. These moratoria are generally allowed to eventually lapse out of a desire to unfetter land markets. In Armenia, for example, a 3-year moratorium was enacted when land was privatized and distributed in 1991. The moratorium lapsed in February 1994. In Ukraine, a 6-year sales moratorium is set to expire in 2005 although exemptions have made most agricultural land subject to sale. A Kyrgyz moratorium on the sale of agricultural land was put into place when land was privatized and allocated, but it was subsequently lifted in September 2001. The Moldovan Land Code contained a 10-year moratorium on sales that was declared unconstitutional and lifted in late 1996. Some countries have attempted to protect new landowners from the danger of mortgage foreclosure by setting moratoria on mortgages; for example, a 1997 Russian law prohibited mortgages on agricultural land (Russian Law On Mortgage [1997]). These measures are best practice, and the relatively few years involved pass very quickly. Such actions will be effective, however, only if the time is used for public education on land values and participation in land markets.

Source: Bledsoe, 2006.

The impacts of formalization on the poor are going to vary considerably from one context to another, and will depend on the content of the formalization program. It is important to not assume positive impacts on the poor but to be clear and credible. More specifically, those designing and assessing formalization programs need to find ways to directly benefit the poor, rather than relying on arguments that the poor too benefit from growth. Finally, donors and academics need to develop more effective assessment and monitoring tools for understanding formalization's impacts on the poor.

4.1.5 Commons Access for the Poor

Land formalization can affect access by the poor to commons areas both positively and negatively. The impact is important because the rural poor depend more than other households on food and other products gathered from the commons for their survival. Powerful individuals use the process to appropriate pastures, forests, and other sensitive areas, often from customary users and for extractive, unsustainable use. This is a particular problem in the case of sporadic titling, where land is titled to a particular individual who often pays for the process of survey and demarcation himself, with no broad community involvement and often with little effort by the registration agency to determine whether the applicant does indeed have the best claim to the land. Even in cases of systematic titling, the influential may move to divide commons areas among themselves in anticipation of the titling.

Such negative impacts are not inherent in formalization, but result from the failure to provide for a) titling to communities of historic commons areas and b) processes of demarcation and adjudication of land rights that are participatory and transparent.

On the positive side, titling or other tenuring of commons areas to user or community groups in the context of community-based natural resource management can provide both security of expectations to users and protection to those resources. The resources may be forests, pastures, or hunting grounds. Many

of those programs, such as community forestry programs in India or wildlife management programs in Africa (such as Project Campfire in Zimbabwe), have been designed to benefit poor households and/or communities.³¹ Tanzania is currently devolving land rights and management responsibilities to thousands of villages in a national program intended to promote better natural resource management, an initiative that seems to be an emerging best practice.³²

4.1.6 The Displaced Poor in Post-conflict Situations

Competition for land is a common cause of conflict. The key to ending such conflict is the process of compromise and settlement. Formalizing rights before an agreement is reached can make matters worse and confirms a status quo unacceptable to one or more party. Good solutions are compromises rather than victories for one side over the other. Once there is a resolution of basic differences, formalization has a role to play. The resolution must be given legal effect, and then titling and registration can play an important role in operationalizing the settlement by connecting specific individuals and groups to specific areas of land and recording and confirming their rights to that land. Understanding the potential of registration and associated processes, such as use of satellite imagery and a global positioning system for both negotiation and demarcation of rights, can usefully inform peace negotiations concerning land matters.

In addition, formalization and reforms that facilitate the market in land rights can provide useful opportunities for reintegration of displaced persons with financial resources. Leasing is a useful vehicle for access by those with more limited resources. For refugees returning to their home areas, customary tenure with its rights based on descent may provide the easiest option for accessing land, but this will depend on land availability in the area. While such rights based on descent can not be lost in theory, they sometimes cannot be realized in practice. For instance, at the end of the civil war in Ethiopia, farmers from Tigre Province left southern Ethiopia where they had been forcibly resettled by government for their homes and found it difficult to reclaim their land, a result of already-intense regional overcrowding. However, at the end of the Mozambique civil war, refugees returned from South Africa and Malawi without much difficulty to their own and other communities' land under customary tenure. Programming on this topic must take account both rules of customary tenure and the population densities in the regions of return.³³ For a fuller analysis of these issues, see Annex 2.

4.1.7 The Poor as Illegal Occupants of Land

There is a pressing need to confront the widespread unlawful occupation of land in the peri-urban and frontier areas of many countries. De Soto's writings make a compelling case for a realistic look at the need to "bite the bullet" and regularize these illegal occupations.³⁴ Opponents of regularization will argue that recognizing illegal occupations poses what economists call a "moral hazard" that risks further encouraging illegal occupations. But the record is clear: States fail to remove such occupiers and, when they do, a human disaster is often the result (witness, for example, the recent slum clearances around

³¹ Bruce, John W. 1999. *Legal Bases for the Management of Forest Resources as Common Property*. Community Forestry Note 14. Rome: FAO. For a general discussion of positive impacts, see Deininger, Klaus. 2003. *Land Policies for Growth and Poverty Reduction*, World Bank Policy Research Report (Washington DC: World Bank 2003): 41–42.

³² Alden-Wiley, Liz, *Finding the Right Legal and Institutional Framework for Community-Based Natural Forest Management: The Tanzania Case*. CIFOR Special Publication (CIFOR 1997).

³³ For an excellent discussion of these issues, with several country studies, see Leckie, Scott (ed.) 2003. *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*. Ardsley, NY: Transnational Publishers.

³⁴ De Soto, Hernando, 1989. *The Other Path* (New York: Basic Books); and 2000. *The Mystery of Capital* (New York: Basic Books).

Harare, Zimbabwe). At least part of the international donor community recognizes this fact. The World Bank has for decades urged the need to regularize such holdings. Its involuntary resettlement policy work requires that governments who work with World Bank funds treat “squatters” without reference to the illegality of their land occupation, seeking to avoid their displacement as in the case of landowners. If they must be moved, they must be compensated (with land if possible), not for land they do not own, but for loss of the livelihood represented by the land.³⁵

This issue must be addressed on two levels. The first is how to avoid future occupations. Far more attention needs to be paid by the donor community to the efficient management of state land assets in developing countries; it is a neglected need, and the neglect has serious consequences in terms of squandering a public resource. The second issue is how to deal with already-occupied land. Any legal jurisdiction must develop a consistent policy and agenda on regularization of informal holdings. It is too important an issue to be dealt with on an ad hoc basis but is also too political of an issue for rules that deny government any flexibility. For instance, it is important to avoid provisions such as the 2001 Land Law of Cambodia that seeks to radically restrict the ability of government to compromise on these issues (see Box 19).

It is also necessary to recognize that some illegal occupiers pose sympathetic cases. The term “squatters” may apply to opportunists, but in rural contexts it is sometimes also used for farm households whose claim to their land is not recognized by the state but whose ancestors have used the land for centuries.

There are legal mechanisms that can help meet these needs if incorporated into national law. These models include prescription (a legal right to recognition of ownership based on long and open occupation of land without permission of the owner) and pre-emption (giving a long-standing occupier first option to purchase the land occupied from the owner). The most fundamental need however is that for governments to accept that what cannot be changed should be formalized. Keeping squatters in legal limbo serves no legitimate purpose and does a good deal of harm.

BOX 19. 2001 LAND LAW OF CAMBODIA

Enacted in a period of extensive land occupations and disputes following the fall of the Khmer Rouge from power, the new Cambodian government acted swiftly to try and limit these phenomena, enacting draconian provisions. The 2001 Land Law was directed not only against peasant occupiers but against important institutions (although it has not been effective against the latter). The law was understandable in the context, but it is already seriously constraining attempts by government and donors who are seeking to deal with specific land occupation situations. Article 18 of the law not only declares all unauthorized occupation of public land null and void, but it adds that such occupations “cannot be made legal in any form whatsoever.” This unfortunate provision radically limits the flexibility of the government in dealing with informal occupations of land, lumping together recent land-grabbing and more long-standing, less culpable, land occupation.

Source: Bruce, John. Personal experience.

Ultimately, the extent of irregular land occupations reflects the failure of the state and its subdivisions to meet demand for land, and the only realistic way to prevent future occupations is a dramatic expansion of that supply at modest costs. Given the recent rate of urban expansion in many countries, this is a daunting task for weak administrative agencies, and the answer may lie in simply demarcating plots on state land and making them available—even if not serviced for the time being—in order to avoid illegal occupations in other areas, recognizing that these will ultimately be formalized.

³⁵ Bruce, op cit. supra.

4.1.8 How Can Mass Titling and Registration be Made More Sustainable?

Frequently, the record of land rights established in mass titling is not kept up-to-date, and the system falls into disuse (See Box 12). Keeping the system vital and current depends upon those who hold registered rights in land and those who acquire them registering their transactions and successions. Failure to do so is frequent and occurs for a number of reasons. The costs imposed, for instance, by fees or by taxing transactions, may be too high. The system may have become corrupt, driving away beneficiaries with heavy illegal charges. The landholders may not understand the system and its potential benefits to them or, if they do understand, they may not consider them worthwhile. They may simply be more comfortable with customary practices.³⁶

This is a fundamental problem of mass titling efforts, one which has not been studied systematically. Projects rarely monitor whether subsequent transfers are being registered, and they tend to declare success before this problem becomes evident. (In fact, these projects often do little by way of systematic examination of impacts on beneficiaries.³⁷) The failure to register subsequent transactions may be a problem associated primarily with premature formalization (in the sense that the market economy is not well developed in the area), but it may also be more pervasive, occurring even with regard to valuable land in urban contexts. In the West Bank and Gaza, for instance, landowners have largely abandoned the land registry system for notarial instruments that they feel provide a reasonable level of tenure security at much lower cost.

Some factors have been identified that discourage registrations, and best practice is to avoid them. They include:

- 1) organizational arrangements that involve multiple visits to multiple offices to register transactions;
- 2) highly centralized systems where travel to the land registry, sometimes in the national capital, is required to register a transaction;
- 3) taxes imposed (in addition to reasonable fees for services) through the registry system; and
- 4) attempts to enforce land use restrictions (such as limits on subdivision among heirs) through the registry system.

Best practice is to avoid these. But little real data exists, and there is an urgent need for further study and creativity in framing more user-friendly systems for registration of subsequent transfers. The task appears to be more challenging than is generally recognized, nothing less than creating a “culture of registration” in which the need to register is common knowledge and few obstacles exist.

4.2 BUSINESSES

A common assumption among policy makers is that once costs of formalization are reduced, business will flourish. There is evidence of a correlation between the levels of the complexity of regulatory requirements and those of informality, suggesting that the former encourages the latter (see Box 20). This does not mean that those requirements are the only items causing decisions for informality. Experience shows that there are several factors that discount the likelihood of this outcome. There is first the need to

³⁶ See Bruce and Migot-Adholla, *op cit. supra*.

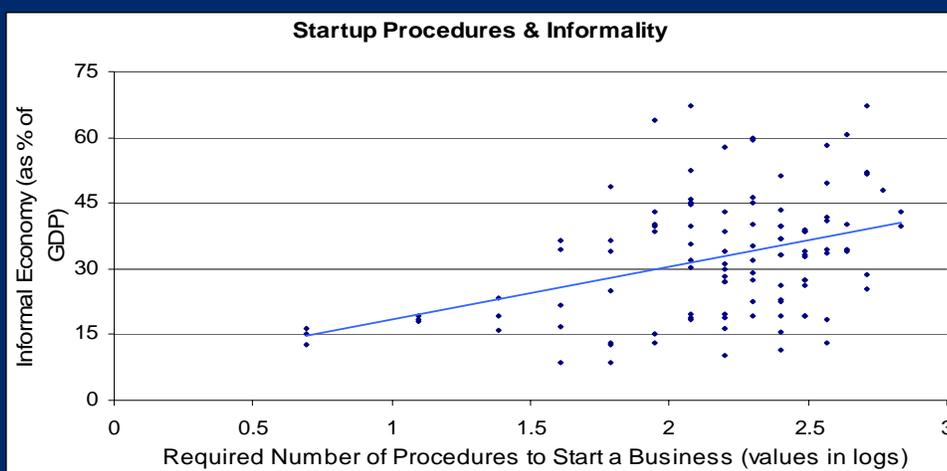
³⁷ An important recent exception is the beneficiary study carried out by GTZ and other donors associated with the Cambodian LMAP Project. Deutsch, Robert. 2006. *Beneficiary Assessment of Land Title Recipients under the Land Management and Administration Project*. Phnom Penh: Ministry of Land Management, Urban Planning and Construction and GTZ.

establish how we measure informality so that progress can be tracked realistically. Simply measuring the number of businesses registered might not reflect a number of other informal activities, such as contracting and labor. In addition, the number of businesses formalized might still not reflect the benefits delivered in terms of empowerment of the poor. Several key issues and opportunities are reviewed below.

BOX 20. REGULATION AND INFORMALITY

A 2002 study found a positive relationship between the strictness of government regulation for business entry and the size of the informal economy. In particular, informality was observed to be more pervasive in countries requiring entrepreneurs' compliance with a large number of procedures to start a business and in those in which the time and cost associated with business entry were high. The scatter plot provided below illustrates the positive relationship between the number of procedures (provided here in logs) necessary to start a formal business and the relative size of a country's informal economy.*

The study also finds a positive relationship between the degree of regulation on entry and the incidence of public corruption. As strictness of regulation was not observed to relate to low product quality or a greater degree of environmental degradation, the study contradicts public interest theories of regulation and supports public choice models in that the primary benefactor of regulation appears to be bureaucrats.



* Describing the manner in which the number of required procedures was operationalized, the authors sought to “record all procedures that are officially required of an entrepreneur in order to obtain all necessary permits and to notify and file with all requisite authorities.”

Source: Djankov et al, 2002.

4.2.1 What If Formalization Reduces the Cost of Entry and Exit but Offers No Benefit?

The most commonly cited issue affecting the success of formalization is the lack of benefits. The costs of entering or exiting (or even utilizing) formal structures for various purposes might be high, but if the benefits of doing so exceed that cost, formalization is most likely. If, in exchange for formalization, agents make more money or receive better services, protection, or access to credit and training, the equation can favor formalization. Indeed, if the costs of formalizing are lowered to a minimum but they are not faced with tangible benefits, the equation will favor informality. In most cases, the lack of benefits is so palpable that the agents do not have any option but to be informal.

The informal market can provide some tangible benefits and, in some occasions, better benefits than the formal sector. That occurs when:

- The informal market is larger;
- The public services provided by the government are poor;
- There is no access to credit or training in the formal sector; and
- There is no protection to their rights under formality (see Box 10).

Reforms that intend to foster formalization need to look equally at cost reduction and benefits provision. There is a dilemma here: Some governments are not in a position to invest in public services if they cannot collect taxes from the informal sector.

A full appreciation of the range of costs is necessary. If there is a perception in a given country or sector that the costs of formalization outweigh the benefits of policies aimed at incorporating business into the legal sector, the policies will tend to suffer regardless of the government's economic growth objectives. The importance of the cost/benefit analysis to policy success requires the accurate assessment of the total costs that participation in the formal sector would impose on entering firms. Often, when policy makers consider the net welfare effect that a hypothetical reform would have on an enterprise, obvious costs are reduced but the hidden costs in the formal sector are ignored. For example, an incorporation fee may be reduced to attract informal enterprises, but if the bureaucratic steps required to incorporate are excessive, the larger cost imposed remains a deterrent to formalization. Another hidden cost concerns the processes required to terminate a failed business. In one study, ILD, under the supervision of the Egyptian Ministry of Finance, conducted a diagnostic survey of the Egyptian extralegal economy and found exit from the legal economy to be hindered by procedural ambiguity for requirements and complex bankruptcy legislation, each of which increased the cost associated with dissolving enterprises from the formal sector. Inexpensive entry and exit from the market would also allow agents to disaffect assets from one business and allocate them to another. Creditors also want to be able to collect debts through the liquidation of the debtor's assets. For this reason, the implementation of modern and viable bankruptcy laws is also necessary (see Box 21).

BOX 21. CASE STUDY: THE EXTRALEGAL ECONOMY IN EGYPT

BACKGROUND:

ILD, under the supervision of the Egyptian Ministry of Finance, conducted a diagnostic survey of the Egyptian extralegal economy to define the nature of the country's extralegal economic activity and identify the primary causes for its proliferation.

FINDINGS:

Proliferation of the extralegal economy in Egypt:

- 40% of the Egyptian labor force is employed by the extralegal economy.
- 88% of entrepreneurs operate extralegally.
- The extralegal economy contains US\$248 billion in assets;—a quantity six times larger than the sum of the country's total savings and time deposits held in commercial banks and 30 times greater than the market capitalization of all the firms trading on the Cairo Stock Exchange.

Identified causes of extralegality:

The survey identifies 40 of the primary causes for the proliferation of the extralegal economy in Egypt. The causes were categorized into four categories based on the stage of a firm's development—entry, operation, expansion, and exit—they tended to impede.

Amongst the identified deterrents to a firm's entry into the legal economy was the complexity of legislation defining legal requirements for incorporation and registration, convoluted and redundancy of the role of public sector institutions in the entry process, and excessive procedural requirements associated with establishing a legally-compliant commercial enterprise. The difficulty associated with navigating the formal entry process is illustrated by the study's observation that opening a bakery in Egypt would require more than 500 days and cost 27 times a minimum monthly salary before operations could commence. The causes of extralegality related to a firm's operation and expansion in the legal economy were found to be similar to those associated with entry, often stemming from the burden associated with navigating complex legislative and institutional frameworks or ensuring continued compliance with obligations. While various factors were identified within the expansion category, a firm's potential for growth within the legal economy was primarily restricted due to impediments to credit access. In particular, access to credit was limited by the extralegal status of most real estate assets (92% of the population was found to hold properties extralegally) by limiting borrowers' ability to use land as collateral. Finally, the study found exit from the legal economy to be hindered by procedural ambiguity for exit requirements and complex bankruptcy legislation, each of which increased the cost associated with dissolving enterprises from the formal sector.

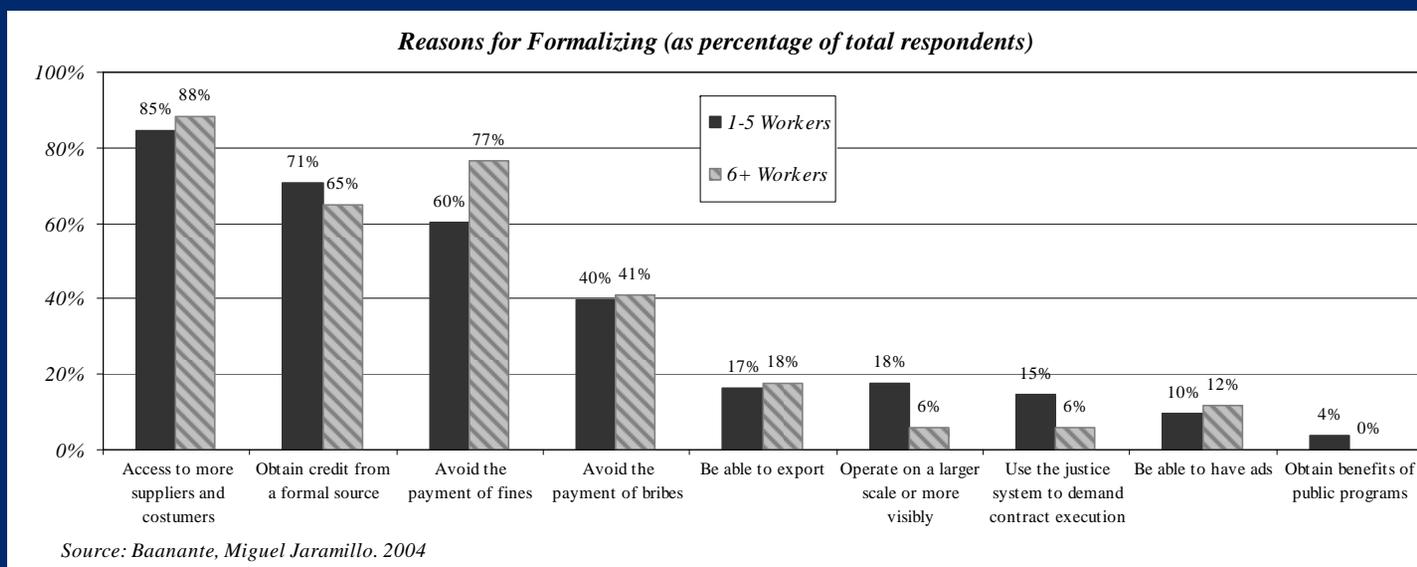
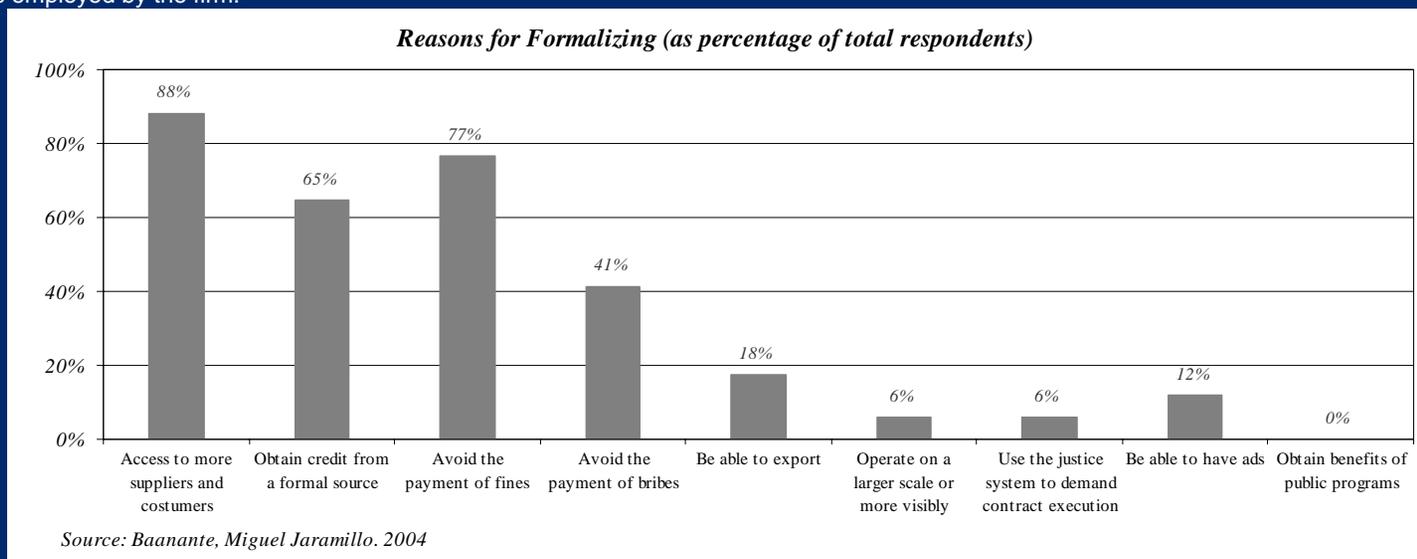
Source: ILD. 2004.

Negative incentives such as penalties for failing to formalize do not appear to have much effect on decisions to formalize. In Guatemala, the imposition of penalties for failure to register an existing business has not diminished the level of informality, and has created fear among the stakeholders that they will be punished retroactively or be asked for bribes during the formalization process—all of which contribute to hesitation by informal entrepreneurs to formalize.³⁸

³⁸ USAID. 2004. CAFTA Commercial Law and Trade Assessment – Guatemala. http://www.bizlawreform.com/country_assess/GuatemalaTCLA.pdf. December 2004.

BOX 22. REASONS FOR FORMALIZING (AS A PERCENTAGE OF TOTAL SURVEY RESPONDENTS)

The figures presented below summarize the reasons for formalizing that were provided by a sample of recently formalized firms within Lima's apparel industry. The data is based on the responses of 120 micro and small Peruvian apparel enterprises to a survey on the transaction costs related to the formalization process. The first figure provides the reasons provided by the sample and the second figure breaks the total respondents into two groups based on the number of workers employed by the firm.



Source: Baanante, 2004.

4.2.2 How is Formalization Constrained by Imperfect Knowledge?

In many places, there is no knowledge of formality's advantages and the steps necessary to become formal. In these situations, countries might undertake substantial and beneficial reforms addressed at eliminating obstacles to become formal. In spite of these reforms, there is often the popular belief that formalization is difficult and costly. Demand for reform can be promoted through information campaigns and rights education on formalization, but this is rarely done (see Box 23).

BOX 23. PROGRAMS TO INFORM OF FORMALIZATION INITIATIVES

Lack of knowledge is a major deterrent of formalization policies. In many countries there are few ways to spread the message of the advantages of formalizing businesses. Programs that include the use of mass media campaigns and workshops have been useful.

In Uganda, a project was launched to develop radio programming and journalism targeting small businesses. The objective was to increase the number and outreach of radio programs focused on the micro and small enterprise (MSE) sector in Uganda, to improve quality, relevance, and value provided by the mass media in Uganda to MSEs and to expand the range of services and information that is being provided by radio to them.

Other initiatives include direct workshops with association of businesses and marketing campaigns using flyers and brochures.

Source: ILD, 2002.

Informal agents are part of a large society and, when rightly motivated, are likely to do their part for the well-being of the others. Through information of formalization's broader *benefits to society* (i.e., better infrastructure, state services, etc. from improved tax collection resulting from increased business registration), states might appeal to their citizens to do their part for society, while also helping themselves. A recent and highly successful campaign in Egypt that appealed to businesses to pay their taxes (which had recently been lowered) shows it is possible.

4.2.3 Does Formalization Need Tailoring?

Not all informal agents are similar. The informal sector is heterogeneous and needs to be treated as such. Policies that promote formalization in urban areas might not function so well in rural areas. What works for micro-enterprises in the furniture industry might not work for a self-employed person in the agriculture industry. Formalization policies should be tailored to the realities of the specific informal sector while productivity is increased, working conditions are improved, and regulations and restrictions, when necessary, are kept to a minimum (see Box 24).

Experience shows that the stakeholder participation is crucial. Formalization policies developed by the public sector have proved to be good tools to empower the poor if they encompass reforms that are useful to all the parties but are broad enough to serve as guidelines that can be accommodated to the needs of each geography, industry, and practice. For example, in El Salvador, the government has substantially reduced the costs and time to incorporate a business. However, that policy has been accompanied by different remedies such as training for small textile businesses or special credit programs for agribusinesses. The priorities of each industry need to be taken into account for tailoring reforms.

BOX 24. ON CUSTOMIZED ASSISTANCE TO THE INFORMAL ECONOMY

In Sri Lanka, the government has developed training programs for people in the informal sector but has also established regional central markets to help the rural agriculture producers sell their products directly to the ultimate buyers.

In Vietnam, government programs to assist the informal sector include the provision of favorable credits to household businesses in rural areas and vocational training to boost non-agricultural activities (at the local level), bringing technology and advanced knowledge to traditional and fish farming through on-site training by staff from local agriculture-boosting units.

In other cases, programs funded by private sector and/or foreign donors target specific sub-sectors of the informal economy. An example of that is the Sweden-funded FONDEAGRO program in Nicaragua. Its purpose is to assist small-scale farmers in the Jinotega and Matagalpa departments by assisting in the production and marketing of coffee.

Source: SIDA, 2004; SIDA, 2002; World Bank, 2006.

4.2.4 What is to be Done if Informal Businesses is Not Ready For Formality?

Some businesses may not have the capability and resources to respond to the requirements of the formal market in terms of time, quantity, and quality. They might require coaching to be fully incorporated into the formal economy. Market customs, ways of doing business, and customer demands can be challenging to informal businesses. In some countries, programs are promoted to foster cooperation and the creation of clusters of informal businesses, while costs of incorporation are reduced and benefits are increased. But a sudden incorporation of informal businesses into the formal economy might be traumatic and create a sense among others who still remain under informality that the formal sector is not worth the sacrifice.³⁹

4.2.5 Should Formalization Reform or Harmonize Customary Forms?

In many countries, the informal sector has created its own order. It usually comes from tradition and seems to work relatively well in the absence of any other option. In many cases, contracts are undertaken orally or written in a non-harmonized way. Businesses exist and conduct transactions with relative success, in spite of the fact that there is no limited liability, there is no business information record, and there is no clear division between labor and management. In some countries with a tradition of customary law where legal contracts, public courts, and traditional financing remain largely absent from commerce, extralegal mechanisms fill roles that are functionally similar to their counterparts in the legal economy. In Tanzania, 17 “archetypes” were identified within the extralegal economy that typify the indigenous Tanzanian extralegal economic model. Amongst the identified archetypes were extralegal documents such as contracts, titles, guarantees, and declarations of extrajudicial rulings; mechanisms for price-setting; and means for defining and governing the organization of business relationships.⁴⁰

These traditional forms might work well within a small community where everybody knows each other. But even when there is a need to interact with other communities of informal agents, the processes and forms developed in one community might not work well in another. The forms may not be harmonized, and centralized information on businesses and individuals may be lacking. Attempts to formalize those sectors occasionally fail to take into account the existing order. They need to perfect, harmonize, and standardize the business forms used by the informal sector and incorporate them into the formal sector

³⁹ Becker, Kristina Flodman. 2004. *The Informal Economy*, Swedish International Development Agency (SIDA), March 2004.

⁴⁰ *Instituto Libertad y Democracia (ILD)*. 2005. *Program to Formalize the Assets of the Poor in Tanzania and Strengthen the Rule of Law*. Six Volumes. ILD, Dar es Salaam.)

4.2.6 What Happens When Formalization is Imposed Without Consultation?

Many countries move to implement formalization reforms that are not the product of consultation with the stakeholders. Consensus has not been built, and the policies may thus face rejection at different levels. Lack of participation reduces the effectiveness of formalization reforms. The sense of having contributed to the outcome of public policies creates a strong bond that usually is beneficial in terms of compliance. Likewise, obscurity on the meaning of regulations tends to be ameliorated. Having participated in the production of the rules makes people understand them more easily.

The formalization policy process requires constant consultation with the informal workers and their organizations as well as relevant interest groups. The policy making process should also make room for the different governmental entities at various levels to share information and build consensus on actions directed to empower the economic strength of the informal businesses and workers.⁴¹

4.2.7 How is Business Constrained by Lack of Access to Credit and Training?

Businesses might have access to credit through microfinance institutions or through specifically crafted endowments. They might also have access to training, but if they remain in the informal sector, the possibilities of using economies of scale are limited in time and space. There is also a lack of programs that promote credit and training for small businesses once they become formal entities. Costs and barriers to do business might be reduced and benefits might be found in the formal economy. It may be, however, that programs devoted to credit and training access are only available for informal businesses, not for small recently incorporated businesses. These newly-formalized businesses can end up being in a world where they do not know how to do business or where there are no tools for them to be competitive.

In general, credit access is a major problem in the informal economy. Due to the risk involved, credit mechanisms available in the informal sector tend to charge unaffordable interest rates. The formal sector credit mechanisms might require guarantees that the informal economic agents cannot offer, such as security in land that cannot be used because it is untitled, or there is no framework for giving and taking loans against security in moveable assets such as inventory and accounts receivable. As a result, most financing in the informal sector comes from savings or loans from family (see Box 25 and Annex 3).

BOX 25. HOW DO INFORMAL BUSINESSES GET FINANCING?

Informal businesses might fail to grow due to lack of financing. In general, businesses grow from investments made out of the entrepreneurs' own funds, investors' funds, or credit. In the case of the informal businesses, those three options are limited. The entrepreneurs' own funds are dearth and mostly devoted to survival matters such as housing and meals, which take priority to business financing. If something is left, it can be invested in the business. In absence of funds to invest in the business, most informal entrepreneurs rely on loans from family.

On the other hand, the lack of formalization hinders the possibility of investors financing businesses. Investors take risks and wait for investments to yield returns, but they need certainty. Investors usually invest in businesses through bonds or stocks either privately or publicly through exchange markets. When the business is not registered, when there is no information about that business, when there is no legal framework for equity investments in businesses entities, and when there is no stock exchange market, the investors fail to make investments in others' businesses, and those businesses miss the opportunity to finance their operations through other parties' investments.

⁴¹ Women in Informal Employment: Globalizing and Organizing (WIEGO). 2001. A Policy Response to the Informal Economy.

Informal entrepreneurs also have the possibility of obtaining a personal loan. However, in the informal sector, the loans available are scarce (in some cases available only through pawn shops), usually cover a small fraction of what is needed, and charge very high interest rates. Microfinance institutions are not always in place, might not be well endowed, or might require guarantees that the informal entrepreneurs are in no position to give. For example, if the guarantee demanded is mortgage, only the entrepreneurs who have title to land will be able to obtain credit. In Honduras where only 16% of the population has title to land, this leaves out an important part of the population.

But businesses intrinsically have other assets upon which collaterals can be granted. They rely on many moveable mechanisms for their operations, some tangible and some intangible. Things such as machinery or vehicles can be used as a collateral for obtaining a credit. But intangibles such as accounts receivable, business inventories, merchandise, and even the good name of the business (“good will”) or know-how duly registered under the intellectual property registry can be moveable guarantees that open the door to credit. However, many countries lack the legal framework that allows moveable guarantees. Some allow them only on tangible assets such as machinery and vehicles, but do not have the framework for intangible moveable guarantees. And even then, the moveable guarantee registry is not in place or has outdated information. Thus, a crucial element in the path towards empowering the poor who do business in the informal economy is the implementation of a legal framework on all moveable guarantees, along with a registry, which is essential due to the nature of the moveable guarantees. The registry provides information on the collateral and makes it traceable. The Organization of American States has produced a model law on moveable guarantees, which—it is advocated—should be accompanied with an electronic registry of guarantees.

Source: De Soto, 2000.

4.2.8 How Does Formalization Aid in Curbing Corruption?

Corruption increases transaction costs because businesses cannot determine in advance the cost of corruption. Excessive and discretionary regulations are a regular source of corruption. Thus, even when formalization costs are kept low and the formal economy offers significant benefits, the existence of corruption can deter formalization of economic activities. Policy must focus on eliminating corruption through administrative reforms on the reduction of bureaucratic steps and discretion, greater transparency, changes in institutional incentives, education and punishments, and above all the political will to remove corrupt officials.⁴²

4.2.9 Does Lack of Adequate Dispute Settlement and Enforcement Constrain Business?

For those considering registering their business, the fact that the formal sector offers efficient and fair dispute settlement could be critical to his/her decision. The informal sector might have its own enforcement mechanisms utilizing peer pressure, de facto enforcement, or other customary approaches. Judicial dispute resolution in the developing world is often painfully slow and, as suggested by the old adage, justice delayed is justice denied. When the judicial systems are corrupt, unprofessional, and unpredictable, the risk and costs of being exposed to them are so high that they undermine any potential benefit of becoming formal. Poorly trained judges and lawyers and a lack of proper offices and physical infrastructure and accurate current legal information (for example, due to the absence of publication of

⁴² Friedman, E., S. Johnson, D. Kaufmann, and P. Zoido-Lobaton. 2000. “Dodging the Grabbing Hand: The Determinants of Unofficial Activity in 69 Countries,” *The Journal of Public Economics*, June 2000.

precedents in common law systems) are factors that add to unstable legal and institutional frameworks and too often create a sense of a chaotic judicial system.⁴³

In the end, it may be necessary to reinvent judicial systems and dispute settlement mechanisms rather than strengthen a system that is unworkable. New approaches may be needed (see Box 26). For instance, an accurate system of data on defaulters might be sufficient to enforce rights, as a failing party will not be interested in being recorded as a default debtor. Reputation is central to ensuring contract performance in all societies. In deciding whether to contract with a party, the economic agents are guided by what they know about the other party's history of complying with its obligations. Most disputes are, however, handled by administrative agencies or by informal or customary adjudication mechanisms. There is a need to consider utilizing customary or informal dispute settlement processes, legalizing those that exist as customary in local societies. Alternative dispute resolution mechanisms may not be well-developed, though they may also be present in customary forms. Such mechanisms are helpful but cannot take the place of a judicial system. Settlement or even arbitral awards often require the assistance of courts for enforcement. In this sense, proper individual, land, and businesses identification systems, complemented with ongoing information, are essential to enforcing rights. Land and businesses registries endowed with old, irrelevant, and non-public information are of no use.

BOX 26. RECENT REFORMS ON CONTRACT ENFORCEMENT

Major reforms of the contract enforcement mechanisms are crucial to empower the poor in general and to make formalization policies attractive.

In Serbia and Montenegro, the civil procedure and enforcement of judgment laws were reformed. Now a debtor has only three days to file an appeal after a judge's ruling, and the judge has three days to decide on the merits of the case. Previously, it took ten months to appeal and obtain a judgment.

In Burundi, a summary procedure for debt recovery was introduced and private bailiffs can undertake enforcement. Likewise, other African countries, like Rwanda, have created specialized chambers in trial courts for litigation related to business, financial, and tax matters that are presided over by a judge as opposed to the previous three-judge jury. This has reduced the costs of enforcing contracts by 15%.

Summary proceedings to enforce collaterals have proven to substantially reduce the costs and time involved in dispute settlement. In some countries, only 2 pieces of evidence are required. Albania introduced a summary proceeding in 1999. With a registered collateral agreement in place, a creditor may seek an enforcement order from the court when a borrower defaults, after giving the debtor five days' notice. The order is then issued within a few days. An execution officer may then seize the collateral and deliver it to the creditor. Enforcement takes less than a month. Bulgaria, India, and Romania all have introduced similar proceedings. Such reforms are especially successful when they limit grounds for appeal and allow enforcement to proceed pending appeal.

Source: World Bank, 2006.

4.2.10 How is Business Affected by Unstable Institutions and Poor Services?

A sudden change of laws, a lack of respect of rights, and weak and non-independent institutions that guarantee continuity of policies affect the formalization of businesses. When informal businesses have their own methods of organizing and operating, the idea of adapting to an unstable new order discourages incorporation in the formal economy. The formal sector might not provide sufficient or efficient public services. Informal businesses might be suspicious of the idea of formalizing without receiving reliable

⁴³ Dakolias, Maria. 1995. "A Strategy for Judicial Reform: The Experience in Latin America," *Virginia Journal of International Law*, 36, 167 (1995)

public services. Poor infrastructure, for example, might deter the growth of formal businesses. In those cases, the cost of formalizing may exceed the benefits to the intended beneficiaries.

4.2.11 Helping Newly-formalized Small Businesses Access New Opportunities

In many cases, informal entrepreneurs fail to take advantage of the benefits offered by the formal economy due to incapacity to comply with the formal economy's demands. For example, even if a bidding opportunity is set aside for newly-registered small businesses, the entrepreneurs might lack the experience to cope with the requirements. In such cases, the possibility of partnering with other entrepreneurs who have experience under the legal form of a joint venture or any other kind of ad hoc relationships could be useful. For instance, small entrepreneurs could form clusters through contractual arrangements for exporting purposes only. But two things appear to be necessary for the formalization of clusters: 1) the existence of a modern and flexible legal framework on behalf of business associations; and 2) wide knowledge of the business formalization incentive programs and the business partnering possibilities.

Likewise, training to satisfy the quality, timing, and quantity of requests of the formal economy might be very useful to complementing the business formalization incentive programs. At the same time, an informal entrepreneur might fail to benefit from set-aside business opportunities due to an investment requirement that he or she is unable to access.

Best practice shows that coaching and mentoring programs tailored to newly-registered businesses can complement the business formalization incentive programs. The impacts and usefulness of these programs seem to be well established. Similarly, the legal reforms that foster the formation of clusters and micro-credit programs, along with legal reforms that allow loan guarantees on account receivables and inventories, have been researched as successful models.

4.2.12 Identifying Thresholds for Business Formalization

In some cases, even in the absence of business formalization incentive programs, some informal entrepreneurs find sufficient benefits in the formal economy to formalize. The key here is to find that threshold after which it makes sense to formalize a business. Should the businesses be of specific size to formalize? Is there a stage in business development after which, if not formalized, the business will not grow? If so, what are the most common benefits found by informal entrepreneurs in the formal economy after that stage?

In some countries, legal reforms have been necessary to accommodate the needs to the upcoming business class. For example, the implementation of legal reforms whereby individual entrepreneurs are allowed to register and limit their business liability to their business ventures has been instrumental to motivating the formalization of certain types of businesses. Likewise, the creation of one-stop shops for small businesses could make formalization more appealing. In El Salvador, a one-stop shop for small businesses has been responsible not only for concentrating all steps necessary to formalize a business, it has also been responsible for compiling information about governmental business opportunities suitable to small businesses. After a business is registered, the Salvadorian small business one-stop shop enters information into a database of products and services offered, including production capacity and geographic location. The one-stop shop then matches specific procurement opportunities with the information in its database, contacts the businesses, and eventually offers assistance to bid.⁴⁴

⁴⁴ Inter-American Development Bank. 2005. *Reporte de la Iniciativa del Clima de Negocios de El Salvador*. Washington, DC: IADB.

However, the impact of assistance programs tailored to the realities of upcoming informal businesses has yet to be measured. Given the fact that the informal economy is extremely heterogeneous, some of those programs have proved to be of use for businesses of a certain size, at certain level of growth, or in a specific type of industry and not for others.

4.3 THE UNARTICULATED PREMISE: ENFORCEABILITY OF RIGHTS AND OBLIGATIONS

Legal rights are meaningless unless they can be enforced, and many legal reforms fail in this regard. “Ghost law,” coined by students of African law, is a term for laws that never achieve a reality beyond the pages of the national legal gazette. The enforceability of legal rights is the crucial unarticulated premise for most economic reasoning on the impact of property rights and formality. Enforceability is, in fact, often not present. The courts may be ineffective or corrupt, or the justice system may be hopelessly complex, its processes arcane and time-consuming. These problems go to the heart of legal empowerment, which relies upon law and legal institutions. A land title that will not prevail in court in defense of one’s property is simply a piece of paper, and it provides, at best, the illusion of tenure security. An incorporation that does not limit creditors to firm assets is similarly ineffective as legal empowerment.

Starting out on the right foot when planning reforms for easier formalization of land or business matters requires recognition that enforcement and dispute settlement mechanisms must be treated with the same importance as law reform itself. This requires a realistic viewpoint of the available dispute settlement mechanisms. Total reform of the judicial system may be desirable, but is likely not feasible within the relevant time frame, or it may be too costly. Recognition of some informal sector enforcement mechanisms may help. Likewise, the creation of specialized courts for settling disputes can provide a more consistent jurisprudence on these topics. For example courts, arbitration centers, or mobile dispute resolution centers that handle small numbers of disputes, orally conduct proceedings, and deliver decisions on the spot may provide partial solutions. At local levels, these institutions need not adjudicate, but can mediate and arbitrate. Donor funds can help with transitions by creating such specialized institutions, but we must recognize that these are not long-term solutions, and countries find them difficult to sustain.

Does the solution then lie in more preventive approaches, such as legal simplification, legal education, or legal aid programs that target assistance at those seeking to make the transition to formality? Real solutions may involve work at five different levels: 1) reform and simplification of law; 2) reform of judicial institutions and processes; 3) alternative dispute resolution; 4) public education on law and rights; and 5) legal aid. Some scholars have suggested that far too much attention is paid to law reform and far too little to helping the poor through activities to help them to realize the rights they have. It is futile, they point out, to provide the poor with more rights than are enforceable, and they suggest a substantial shift to a strategy that emphasizes legal aid and other community-level activities (see Box 27). In fact, legal aid to rural people on land problems and a dialogue between donors and governments on policy and legal reforms can, in a well-planned project, complement each other. The legal aid offices can feed up-to-date information on real grassroots problems back to the policy and law reform discussions and significantly improve the quality of those discussions and the prospects for success.⁴⁵

In addition to the right to efficient dispute resolution, a sound business climate requires that economic agents at all levels be empowered with procedural rights whereby they are guaranteed due process of law in all matters, not necessarily those related to disputes, and the right to expedite administrative

⁴⁵ USAID’s Central Asia Land Tenure Reform Project is a good example. Li, op cit. supra.

procedures. It has been well-established that a main deterrent to formalization can be found in opprobrious administrative procedures required to obtain the right to carry on a business. Because of obstacles and costs, procedural rights are, in effect, denied to those who cannot afford the time and money. This results in fewer channels through which to submit inputs to the public sector—a factor that by itself fosters informality and does not contribute to poverty reduction.

BOX 27. FORMALIZATION AND LEGAL EMPOWERMENT

Do efforts to legally empower the poor through formalization focus too much on law reform and state action? Golub suggests that this is the case:

“The international aid field of law and development focuses too much on law, lawyers, and state institutions and too little on development, the poor, and civil society. In fact, it is doubtful whether “rule of law orthodoxy,” the dominant paradigm pursued by many international agencies, should be the central means for integrating law and development...An alternative, more balanced approach often is preferable: *legal empowerment—the use of legal services and related development activities to increase disadvantaged populations’ control over their lives*. This alternative paradigm, a manifestation of community-driven and rights-based development, is grounded in grassroots needs and activities, but can translate community-level work into impact on national laws and institutions. It prioritizes civil society support because it is typically the best route to strengthening the legal capacities and power of the poor. But legal empowerment engages government wherever possible and does not preclude important roles for dedicated officials and ministries. It also addresses a central reality that rule of law orthodoxy overlooks: In many developing countries, laws benefiting the poor exist on paper but not in practice unless the poor or their allies push for the laws’ enforcement.”

Source: Golub, 2003.

4.4 AN UNANSWERED QUESTION: CREDIT MARKETS

A theme that runs across the land and business organization issues in this paper is access to credit. The poor do not have much money, and one element in their legal empowerment must be to facilitate access to funds for investment. Normally, the poor and others in the informal sector have limited access to formal financial services, and so credit access is limited to that which may be available from informal sources. They do not have formal titles to mortgage, nor do they have the documentation needed to convince formal lending institutions to borrow against their business prospects.

In regards to land, the issue is whether reforms made in the legal and institutional frameworks for credit can make affordable loans available to the poor. Creativity will be needed. It is not clear that a registered title to land, for instance, actually provides the holder of a small piece of land with much better access to formal credit (see Box 10). Banks want reliable borrowers, and the availability of security seems to be of secondary consideration. In addition, the use of land for loan security is a two-edged sword. See Box 10 and the associated discussion of fears that formalizing the poor’s landholdings will lead to distress sales and leave them landless. Can the roles of marketability and mortgageability in capital formation, urged as key by De Soto and other students of development, be reconciled with the concerns that these mechanisms will create greater landlessness among the poor?

On the business side, a loan applicant who operates largely in the informal sector may have difficulty documenting their ability to pay back a loan. The limited access to credit that comes with informality concerns the increased lack of security related to their pledged assets. Financial institutions depend on the credibility of formal documentation to provide the security and enforceability necessary to extend credit. As informal businesses commonly do not possess land title or a standing relationship with a bank, the most prevalent forms of loan guarantee, real estate and fiduciary collateral, are generally unavailable. As formal lenders typically require borrowers to provide financial statements and credible documentation

related to the lender's recent operations (bank statements, invoices, etc.), informal entrepreneurs unaccustomed to separating their business and personal transactions or recording and maintaining the firm's information, or who use informal suppliers who are unable to provide documentation as solicited by the lender, will be required to make significant adjustments to their daily operations.

The greater the exposure to risk that a banking institution assumes due to lack of credible documentation or an unreliable legal framework, the more it needs to charge higher interest rates as high as 70% in Peru, and guarantees to loan ratio requirements. Thus, in many developing countries, bank loan portfolios are often over-collateralized (guarantees to loan ratios of greater than one), which further limits credit access. In Honduras, creditors ask for a guarantee of 150 percent of the value of a loan. The low access to credit in the developing world also relates to limited competition in the financial services industries of many countries and the state's imposition of high licensing requirements on financial intermediaries. There are also fundamental problems of scale in lending that do not favor those with meager assets.

Innovative lending schemes, such as the group-lending pioneered by the Grameen Bank, have been able to somewhat circumvent the problem of the poor's limited access to collateral. By tying each group member's ability to receive loans to the repayment of other members (i.e., one member's failure to make a loan payment results in the loss of credit for the other members), loans are essentially secured by peer pressure. However, such lending schemes should not be considered a replacement for traditional credit providers, as their small lending portfolios, often prohibitively high interest rates, and reliance on external funding limit the potential reach.

Financial markets are critical to the productive activities of the private sector. The World Bank estimates that a two-fold increase in a country's private sector credit-to-GDP ratio would increase long-term growth by two percent. While the primary economic utility offered to businesses through access to credit is the increased capacity to make medium- and long-term capital investments, short-term credit markets are also central in facilitating daily business transactions. While these benefits may be generated by informal credit, such as is often provided by family members, friends, informal moneylenders, or non-profit organizations in developing countries, such sources are generally limited in their financing capacity. Banerjee and Newman⁴⁶ note that informational asymmetries between borrowers and lenders may be smaller in the informal sector because friends and family tend to know more than a bank regarding a lender's reliability and likelihood of repayment.

In much of the developing world, access to credit is largely limited to projects that are guaranteed through long-term assets such as mortgages or fixed assets. Revenue-based lending is limited by the lack of reliable business information and legal and institutional shortcomings. If a business is unable to pledge a mortgage or fixed assets to guarantee a loan, credit access is often prohibited due to the lack of legal means by which enterprises are able to use current or intangible assets such as accounts receivable, business inventories, goodwill, or merchandise as collateral to secure credit. In addition, non-liquid rights on real property, such as portfolios of mortgage credits, cannot be secured and converted into tradable instruments in many countries.

Procedural burdens on potential borrowers further decrease credit access by imposing unnecessary costs on both borrowers and lenders. In many Latin American countries for example, mortgages or letters of credit require authentication by a notary. Besides imposing additional transaction costs on parties, this requirement can prove troublesome as notaries are poorly-regulated and may be fraudulent. The state's imposition of caps on interest rates charged also tends to limit credit access.

Public initiatives may be able to mitigate some of the problems addressed here. For example, in cases of *de facto* ownership, the proof of property burden on the owner can be reduced by using alternative means

⁴⁶ Banerjee, Abhijit and Andrew Newman. 1998. "Information, the Dual Economy, and Development," *Review of Economic Studies*, 65, pp. 631–653.

of recognition such as long-term usufruct or the allowance of witnesses in support of ownership claims. In order to overcome informal entrepreneurs' potential reluctance to use the banking system and deal with public institutions. While some degree of state support for formalizing businesses may be appropriate to create sufficient incentive to promote a large-scale entry into the formal sector, it is worth noting that the provision of preferential lending terms may actually reduce access to credit on the whole for a given country.

It is clear that the obstacles to improving credit access in the informal sector extend beyond whether a business or property is classified as informal. Access to credit is one of the strongest arguments for land and business formalization, but the realization of growth in credit access from such policies has only been substantiated in a few studies, suggesting that continued evaluation of the assumed effects of such reforms is necessary, especially in relation to their effect on the poor.

5.0 EXPERIENCE-BASED STRATEGIES

While the term “formalization” has become current only relatively recently, donor agencies have been involved for many years in land titling programs, private sector support programs, and programs essential to supporting formalization (such as those supporting the rule of law). Some of the lessons learned have been developed in Section 4 of this paper, some at operational level, but some with implications for formalization strategies. Among the most important to bear in mind when conceptualizing and planning formalization initiatives are presented below.

5.1 ENSURE THAT OTHER KEY ELEMENTS NEEDED FOR BENEFICIAL IMPACTS FROM FORMALIZATION ARE IN PLACE

While there are arguable many elements that limit or promote the effectiveness of formalization as a development strategy, three stand out and should be examined carefully when planning formalization programs:

- **Business Opportunities:** When considering a formalization program, ask first if there is an opportunity to be grasped by the beneficiaries of formalization. Informality may not always be the most pressing problem for the poor in making the most of their assets and businesses. This will be particularly true in rural areas, and much of the poverty in the developing world is concentrated in rural areas. In an area without farm-to-market infrastructure, a road is a higher priority than formalization, simply because formalization is enabling and will only produce benefits if there are opportunities to which it enables residents to respond.
- **Rule of Law:** Formalization is essentially a matter of the poor bringing their assets and activities within the framework of law. This should provide legitimacy and protection, but it often does not. The position with regard to rule of law and the enforceability of legal and contractual rights and obligations should be examined critically as part of the planning for any formalization program. Without these, formalization will be able to deliver few of the benefits it promises.
- **Credit Access:** Credit is a critical and often problematic element in formalization impacts, as stressed in Section 4.4. Many of those who hold land lack capital to invest, and improved access to credit would benefit them, but the chain of logic that connects formalization with better credit access must be examined critically for broken links. In the case of land formalization, there may be no formal lenders operating in rural areas or credit institutions in distorted credit markets, facing high per-loan processing costs, may not want smallholdings as security, titled and registered or not. Formalization will not achieve its credit access objective unless these limitations of credit markets are addressed.

Each of these factors suggest that payoffs to formalization are likely to be highest in urban and peri-urban areas, where infrastructure is better, business opportunities more numerous, judicial and other dispute resolution institutions more competent, and formal credit institutions more common. Much of the earliest titling and registration by the donor community prioritized rural areas, searching for farm productivity impacts with disappointing results. They should have instead focused in the areas around cities, where the

need and ability to deliver services are greater. This is also how capacities and institutions working in titling and registration can best be developed—both public agencies and private sector actors (such as survey firms). Managerial and technical skills needed for formalization programs are most easily built in urban areas and then gradually spread into rural areas. If a program cannot successfully title and register land in downtown Accra, for example, there is no reason to imagine it will be able to do so in rural areas.

5.2 REMEMBER THAT THE SUBSTANCE OF THE LAW MATTERS

Often practitioners focus on bringing those who are operating informally within the formal system without asking whether the formality they are promoting is the right one for the poor. De Soto, in developing his compelling case for formalization, suggests that it often is not, and he stresses the need for both substantive law and legal processes reform. One of the challenges he poses to reformers is to ratify and incorporate into national law the mechanisms developed by informal actors and communities, rather than seeking to force them to use legal forms developed for businesses and actors in very different situations. A similar challenge is posed for those considering the role of customary law. These are the rules that have evolved in local communities to meet the needs of local people, most of them poor. How can they inform our reform efforts and be incorporated into national law?

5.3 MAKE SURE THAT THE INCENTIVES EXIST TO MAKE FORMALIZATION SUSTAINABLE

Formalization sustainability depends on the beneficiaries. As is suggested in the body of this paper, beneficiaries make repeated decisions for and against formality. The holder of a registered title to land must decide whether or not to register the sale or inheritance that has just occurred. A business owner must decide whether he should sub-divide and lease out rooms on the second floor of store informally, in spite of the fact that this violates a zoning restriction, or whether he should pursue a zoning exception and prepare a proper contract for the tenant. Formalization programs sometimes include incentives such as waivers of fees or back taxes to encourage participation. These may be justified to help overcome the inertia of old ways, but such subsidies should be modest, and there must be careful evaluation of whether, without continuing subsidies, beneficiaries will have sufficiently strong incentives to continue to operate within the formal system.

There is another side to sustainability. To the extent that a public infrastructure is needed to maintain formality (such as a land administration system), care must be taken to assess the burden this will place on the public budget and the likelihood that the burden can be sustained. This needs to be approached carefully because of the conflicting need to keep fees low to encourage participation, while at the same time generating funds to cover the system's operation costs.

5.4 EXAMINE CRITICALLY WHETHER THE POOR WILL BENEFIT FROM A PARTICULAR FORMALIZATION INITIATIVE

The strong interest in formalization is based on the assertion that it can benefit the poor. The assertion that “high tides lift all boats” can certainly be challenged, but the assertion here is that at least these poor do have boats: assets that formalization can mobilize to their advantage. That said, it must also be said that many formalization initiatives, after stating that the poor are the target beneficiaries, do little to seriously examine their situation and needs. The poor are often operating under a number of disadvantages in addition to those posed by informality (for example, an inability to defend their rights in costly litigation), and a formalization program must find ways to address these disadvantages in order to achieve its objectives.

5.5 REMEMBER THAT NOT ALL THE POOR HAVE ASSETS AND BUSINESSES

Formalization seeks to mobilize the assets and businesses that the poor already have, but much poverty is the result of poor having limited or no access to assets in the first place. Formalization alone cannot deal with this issue. Fighting poverty will require measures that also address these poor. On the land side, formalization should not be considered a substitute for land reform, although formalization should normally be a component of programs aimed at broadening access to land. As is suggested in the body of this paper, there is little evidence that formal markets offer the landless poor significant prospects of obtaining land, although leasehold markets (which do not impose heavy up-front costs to tenants and thus do not require credit access) may do this more easily than land purchase markets.

Is not getting new assets in the hands of the poor as important, or even more important, than formalizing the assets they have in hand? A number of countries are today pursuing major land reform programs based on compulsory acquisition of land (Brazil, for example), and a number of other countries are using World Bank funds to pioneer asset redistribution through supporting land purchases by poor communities. This is denominated “community-based land reform” by the World Bank, but it would better be described as “market-mechanism land reform,” and it offers considerable potential for less socially-disruptive land reform.

5.6 DO NOT FOCUS EXCLUSIVELY ON THE ROLE OF THE STATE

The state can reform laws, simplify legal and regulatory requirements, and provide administrative support for formality. But it is civil society and private sector actors, Golub reminds us (see Box 27), who can most effectively promote and facilitate access to formality. This can take place on several levels, involving political parties, NGOs, advocacy organizations, universities, chambers of commerce, and other civil society institutions. This may involve political assistance to the poor in voicing their demands and pressing for the policy and legal changes that they need; legal assistance to protect their rights and press their legal claims; and education on legal rights, obligations, and programs that exist for their benefit.

In conclusion, it is important to remember that land and business formalization form only a part of the potential of formalization. Formalization includes bringing the poor into formal structures that enable them to voice their demands for reforms in policy and law, appropriate formality for moveable as well as immovable property, and allow workers to organize and collectively bargain with those who employ them.

REFERENCES

- Alden-Wiley, Liz, Finding the Right Legal and Institutional Framework for Community-Based Natural Forest Management: The Tanzania Case. CIFOR Special Publication (CIFOR 1997).
- Alden-Wiley, Liz, Doug Hammond, and Kasim Kasanga. 2001. Land Security and the Poor in Ghana. Is there a way forward? Land Sector Scoping Study for Department for International Development (DFID) Rural Livelihoods Program. Accra: DFID.
- Alston, L.J., G.D. Libecap, and R. Schneider. 1996. The Determinants and impact of property rights: Land Titles on the Brazilian frontier. *Journal of Law, Economics, & Organization* 12(1): 25-61. Oxford: Oxford University Press.
- Baanante, Miguel Jaramillo. 2004. Transaction Costs in Peru: How Much Does it Cost to Start a Garment Firm in Lima? Lima, Peru: *Grupo de Análisis para el Desarrollo*.
- Banerjee, Abhijit, and Andrew Newman. 1998. "Information, the Dual Economy, and Development" *Review of Economic Studies*, 65, pp. 631–653.
- Batra, Geeta, and Syed Mahmood. 2003. "Direct Support to Private Firms: Evidence on Effectiveness." World Bank Policy Research Working Paper No. 3170. Washington, DC: The World Bank, November 18, 2003.
- Becker, Kristina Flodman. 2004. The Informal Economy, Swedish International Development Agency (SIDA), March 2004.
- Binswanger, Hans, Klaus Deininger, and Gershon Feder. 1995. "Power, Distortions, Revolt, and Reform in Agrarian Relations." In J. Berman and T.N. Srinivasan (eds.). *Handbook of Development Economics*. Amsterdam: Elsevier Science, North Holland.
- Bledsoe, David. 2006. "Using Land Titling and Registration to Alleviate Poverty." in John W. Bruce et al, 2006. *Land Law Reform: Achieving Development Objectives*. The World Bank, Washington DC.
- Bruce, John W. 1999. Legal Basis for the Management of Forest Resources as Common Property. Community Forestry Note 14. Rome: FAO.
- Bruce, John W., and Shem Migot-Adholla (eds.). *Searching for Security of Land Tenure in Africa*. Dubuque, IA: Kendall/Hunt, 1994.
- Bruce et al. 2006. *Land Law Reform: Achieving Development Objectives*. Washington, DC: The World Bank.
- Centre pur la Libre Enterprise et la Democracie (CLED) and Instituto Libertad y Democracia (ILD)*. 1998. *Urban Real Estate Formalization Program in Haiti*. Six Volumes. Port au Prince: ILD.
- Casolaro, Luca, Leonardo Gambacorta, and Luigi Guiso. 2005. "Regulation, formal and informal enforcement, and the development of the household loan market. Lessons from Italy," *Temì di discussione* (Economic working papers) 560, Bank of Italy, Economic Research Department.

- Cousins, Ben. 2000. "Tenure and Common Property Resources in Africa," at 151–180 of Camilla Toulmin and Julian Quan (eds.) *Evolving Land Rights, Policy and Tenure in Africa*. London: DFID, International Institute for Environment and Development (IIED), and National Resources Institute (NRI).
- Cousins, Ben, Tessa Cousins, Donna Hornby, Rosalie Kingwill, Lauren Royston, and Warren Smit. 2005. Will formalizing property rights reduce poverty in South Africa's 'second economy'? Questioning the mythologies of Hernando de Soto. PLAAS Policy Brief No. 18. October 2005. Capetown: Program for Land and Agrarian Studies, University of Western Cape.
- Dakolias, Maria. 1995. "A Strategy for Judicial Reform: The Experience in Latin America", *Virginia Journal of International Law*, 36, 167 (1995)
- De Janvry, Alain, Gustavo Gordillo, Jean-Philippe Platteau, and Elisabeth Sadoulet. 2001. *Access to land, rural poverty, and public action*. Oxford: Oxford University Press.
- De Soto, Hernando. 2000. *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York. Basic Books.
- De Soto, Hernando, 1989. *The Other Path* (New York: Basic Books); and 2000. *The Mystery of Capital*. New York: Basic Books.
- Deininger, Klaus. 2003. *Land Policies for Growth and Poverty Reduction*, World Bank Policy Research Report (Washington DC: World Bank 2003).
- Deininger, K. & H. Binswanger, "The Evolution of the World Bank's Land Policy" in *Access to Land, Rural Poverty and Public Action* (Alain de Janvry, Gustavo Gordillo, Jean-Philippe Platteau & Elisabeth Sadoulet, eds.) (Oxford University Press 2001).
- Deininger, K. and J. Chamorro. 2004. Investment and Equity Effects of Land Regularization: The Case of Nicaragua *Agricultural Economics* 30 (2): 101–116.
- Deutsch, Robert. 2006. Beneficiary Assessment of Land Title Recipients under the Land Management and Administration Project. Phnom Penh: Ministry of Land Management, Urban Planning, and Construction and GTZ.
- Djankov, Simeon, Rafael La Porta, Florencio Lopez-De-Silanes, and Andrei Shleifer. 2002. "The Regulation of Entry," *The Quarterly Journal of Economics*, MIT Press, vol. 117(1), pages 1–37.
- Eisenhauer, Janet Marie, et al. 1996. Land Registry Baseline Survey: An Assessment of the Land Registry in Uganda. (Draft) A Report of the Land Access Project. Kampala: Makerere Institute of Social Research. Kampala, Uganda: Makerere University and Madison, Wisconsin: The Land Tenure Center, University of Wisconsin-Madison.
- Feder, G. and A. Nishio. 1996. The Benefits of Land Registration and Titling: Economic and Social Perspectives, *Land Use Policy* 15(1), 25–43.
- Feder, G. and T. Onchan. 1987. Land Ownership Security and Farm Productivity: Evidence from Thailand. *American Journal of Agricultural Economics* 69: 311–320.
- Feder, G., T. Onchan, and T. Raparla. 1988. Collateral, guarantees and rural credit in developing countries: Evidence from Asia. *Agricultural Economics* 2: 231–245.
- Field, Erica. 2004. Property rights, community public goods, and household time allocation in urban squatter communities: Evidence from Peru. *William and Mary Law Review* 45(3): 838–887.
- Fitzpatrick, Daniel. 2005. "'Best Practice' Options for the Legal Recognition of Customary Tenure," *Development and Change* 36(3): 449–275.

Friedman, E., S. Johnson, D. Kaufmann, and P. Zoido-Lobaton. 2000. "Dodging the Grabbing Hand: The Determinants of Unofficial Activity in 69 Countries," *The Journal of Public Economics*, June 2000.

Giovarelli, Renee, Susana Lastarria-Cornhiel, Elizabeth Katz, and Sue Nichols. 2005. *Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report*. Agriculture and Rural Development Department. The World Bank. Report No. 32571-GLB. Washington, DC: The World Bank.

Golub, Steven. 2003. Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative. Working Paper No. 41, Role of Law Series, Democracy and Rule of Law Project. New York: The Carnegie Foundation, October 2003.

Howell, Jude. 2002. Good Practice Study in Shanghai on Employment Services for the Informal Economy. Geneva: ILO.

Instituto Libertad y Democracia (ILD). 2005. *Program to Formalize the Assets of the Poor in Tanzania and Strengthen the Rule of Law*. Six Volumes. Dar es Salaam: ILD.

Instituto Libertad y Democracia (ILD). 2004. "Dead Capital in Egypt." Available at: http://www.ild.org.pe/pdf/posters/egypt_en.pdf.

Instituto Libertad y Democracia (ILD). 2002. Supporting workers in the Informal Economy: A Policy Framework.

Instituto Libertad y Democracia (ILD). 1994. ILD Estimates. Annex 1: Some of the ILD's Practical Achievements and Annex 3: Business Formalization. Available at: http://www.ild.org.pe/pdf/annex/Annex_01.pdf and http://www.ild.org.pe/pdf/annex/Annex_03.pdf.

Inter-American Development Bank. 2005. *Reporte de la Iniciativa del Clima de Negocios de El Salvador*. Washington, DC: IADB.

Jacoby, Hanan and Bart Minten. 2005. Land titles, investment and agricultural productivity in Madagascar. Mimeo.

Johnson, Simon, Daniel Kaufmann, and Andrei Shleifer. 1997. The Unofficial Economy in Transition. Brookings Papers on Economic Activity, Fall, Washington, DC.

Jordan Ryan. 2002. "Viet Nam Needs More and Better Laws", Viet Nam Investment Review, United Nations Development Program.

Lackó, Mária. 1999. Hidden Economy an Unknown Quantity? Comparative Analyses of Hidden Economies in Transition Countries in 1989–95. Working paper 9905. Department of Economics, University of Linz, Austria.

Lavigne Delville, Philippe. 2004. "Registering and Administering Customary Land Rights, Current Innovations and Questions in French-Speaking Africa." Comments to the Expert Meeting Group on secure land tenure; new legal frameworks and tools, organized by FIG Commission 7, UN-HABITAT, the Institute of Surveyors of Kenya and the Commonwealth Association of Surveying and Land Economy, held in Nairobi, 10–12 November 2004, pp. 29.

Leckie, Scott (ed.). 2003. *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*. Ardsley, NY: Transnational Publishers.

Li, Zongmin. 2005. Assessment of Implementation and Impact of the Interim Provisions of Kazakhstan 2003 Land Code. Astana: ARD Inc. for USAID and Government of Kazakhstan.

Loayza, Norman V. 1996. "The Economics of the Informal Sector: A Simple Model and Some Empirical Evidence from Latin America." Carnegie-Rochester Conference Series on Public Policy 45, pp. 129–162.

- Lund, Frances and Caroline Skinner. 2005. *Local Government Innovations for the Informal Economy*. Development Outreach. Washington, DC: World Bank Institute.
- Moore, Sally Falk. 1973. "Law and Social Change: The Semi-autonomous Social Field as an Appropriate Subject of Study", *7 Law and Society Review* 719 (1973).
- Ng'weno, Bettina. 2000. "Titling Collective Property, Participation, and Natural Resource Management: Implementing Indigenous and Afro-Colombian Demands. A Review of Bank Experience in Colombia." Paper for Presentation at the World Bank, October 25, 2000.
- North, Douglass C. 1981. "Structure and Change in Economic History" New York, Norton.
- Okoth-Ogendo, H.W.O. 1986. *The Perils of Land Tenure Reform: The Case of Kenya*. In J. Artzen, L. Ngcongco, and S. Turner, eds. *Land Policy and Agriculture in Eastern and Southern Africa*. Tokyo: UN University.
- Place, Frank, and Peter Hazell. 1973. Productivity effects of indigenous land tenure systems in Sub-Saharan Africa. *American Journal of Agricultural Economics* 75(1): 10-19. February 1973.
- Place, Frank, Michael Roth, and Peter Hazell. 1994. "Land Tenure Security and Agricultural Performance in Africa." In John W. Bruce and Migot Adholla (eds.), *Searching for Security of Land Tenure in Africa*. Iowa: Kendall-Hunt, 1994: 15–39).
- Place, F., and S.E. Migot-Adholla. 1998. The Economic Effects of Land Registration on Smallholder Farms in Kenya: Evidence from Nyeri and Kakamega Districts. *Land Economics* 74: 360–373.
- Posner, Richard 2002. *Economic Analysis of Law* (Aspen, 6th edition). Little Brown
- Presidential Commission of Inquiry into Land Matters in Tanzania: Government of Tanzania. 1994. Report of the Presidential Commission of Inquiry into Land Matters, Vol. I, Land Policy and Land Tenure Structure. Dar es Salaam: Ministry of Lands, Housing, and Urban Development, Tanzania and Uppsala: Scandinavian Institute of African Studies.
- Rolfes, Leonard Jr. and Gregory Mohrman. 2002. *Legal Aid Centers in Rural Russia: Helping People Improve their Lives*. RDI Reports on Foreign Aid and Development # 102. Seattle: Rural Development Institute.
- Rutten, M. 1992. *Selling Wealth to Buy Property. The Process of the Individualization among the Maasi Pastoralists of Kajiado District, Kenya, 1890-1990*. Saarbrücken and Fort Lauderdale: Verlag Breitenbach Publishers.
- Ryan, Jordan, 2002. "Viet Nam Needs More and Better Laws," Viet Nam Investment Review, UNDP.
- Sanders, Cynthia K. 2002. "The Impact of Microenterprise Assistance Programs: A Comparative Study of Program Participants, Non-participants, and Other Low Wage Workers." *Social Service Review*, 76 (2), 321–34.
- Schneider, Friedrich. 2002. "Size and Measurement of the Informal Economy in 110 Countries around the World," The paper was presented at an Workshop of Australian National Tax Centre, ANU, Canberra, Australia, July 17, 2002.
- Swedish International Development Cooperation Agency (SIDA). 2004. *The Informal Economy*. Stockholm: SIDA
- Swedish International Development Cooperation Agency (SIDA). 2002. *Perspectives on Poverty, 2002*. Stockholm: SIDA

- Simpson, S. Rowton. 1976. *Land Law and Registration*. London: Cambridge University Press
- Tanner, Christopher. 2002. Law-making in an African Context: The 1997 Mozambican Land Law. FAO Legal Paper. Rome: FAO.
- Toulmin, Camilla. 2000. "Decentralization and Land Tenure." In Toulmin, C. & J. Quan (eds). *Evolving Land Rights, Policy and Tenure in Africa*. (London: DFID/IIED/NRI, 2000): 229-246.
- USAID. 2004. Trade and Commercial Law Assessment—Honduras, USAID. Booz Allen Hamilton. Available at http://www.bizlawreform.com/country_assess/HondurasTCLA.pdf. December 2004.
- USAID. 2004. CAFTA Commercial Law and Trade Assessment – Guatemala. Booz Allen Hamilton. Available at http://www.bizlawreform.com/country_assess/GuatemalaTCLA.pdf. December 2004.
- Williamson, Ian P. 2001. "Land Administration 'Best Practice': Providing the Infrastructure for Land Policy Implementation" *Journal of Land Use Policy*. Vol. 18 (4), 297–307.
- Women in Informal Economy: Globalizing and Organizing (WIEGO). 2001. A Policy Response to the Informal Economy, 2001. Cambridge, Massachusetts.
- World Bank. 2003. Online discussion on informal economy, The Informal Economy: Large and Growing in Most Developing Countries.
- World Bank. 2006. World Development Report, 2006. Washington, DC: The World Bank.
- World Bank and IFC, 2005. *Doing Business 2005, Removing Obstacles to Growth*. Washington, DC: Oxford University Press.
- World Bank and IFC. 2006. *Doing Business in 2006, Creating Jobs*. Washington DC: Oxford University Press.

ANNEX 1. GENDER ISSUES: THE IMPLICATIONS OF LEGAL CHANGE AND FORMALIZ- ATION FOR WOMEN'S PROPERTY RIGHTS

Few people in the development community have been unexposed to the shocking figures on the disparity between women's enormous productive contributions and their miniscule ownership of assets. According to FAO (2002), rural women in particular are responsible for producing between 60 and 80 percent of the food in most developing countries, but own less than 10 percent of the property⁴⁷. Yet, the very simple message belies the highly varied, nuanced, and complex nature of women's property rights and the implications of policies and solutions built on simplistic notions of gender inequality. The property rights women can lay claim to are frequently governed by multiple institutions⁴⁸; they vary by geographic region, religion, ethnicity, wealth, and even household status; and they are subject to change, manipulation, and evolution affected by others and by themselves. Probably the only generalization that can be upheld is that, relative to men, the ratio of women's contributions to their entitlements tends to be higher, at times shockingly so.

At the root of gender inequality is often the power of others to limit a woman's capacity to exercise the rights she chooses. Local laws and norms affecting women's rights generally prevail over statutory dictates and guarantees, although the former tend to be grounded in traditional patriarchal values while the latter increasingly reflect international standards of human rights and gender equality. Sometimes the resort to local law is a result of inadequate knowledge of statutory law, but more often it is the existence of strong internalized cultural norms and the direct relationships of accountability and proximity of authorities that induce compliance with local law. The consequences of non-compliance with local institutions are more compelling and forthcoming for women, whether in the form of violence, social exclusion, or threats to the welfare and security of her and her family. That being said, socialization is a process of internalizing the norms we learn, such that women themselves can be a significant force in reproducing the limitations on their entitlements. But they are also the leading change agents tackling

⁴⁷ Other accounts of disparity are that women provide 70–80% of agricultural labor, but own only 7% of land, while only 30% are able to control the proceeds generated from the land they cultivate (Eilor and Giovarelli, 2002) and that African women are “more likely than men to be landless, have less rights or fewer land use types than men, and to lose their rights or see them erode.” (Grigsby, 2004).

⁴⁸ The term “institutions” here refers to “the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction (North 1990:3).”

gender inequality and are responsible for most of the progress made in getting women's property rights onto the international development and human rights agenda.

This annex offers a glimpse at the kinds of property rights⁴⁹ women hold, those they lack, and the challenges they face in realizing existing rights and acquiring new ones. A few examples are used to highlight what are often significant gaps between statutory and local institutions, and what plays out in actual practice. We then examine competing arguments regarding whether statutory law or local law offers a more favorable regime for securing women's property rights, improving their welfare, and enhancing their self-determination. This leads to an examination of the impacts of land titling and joint titling on women in light of their prominence among formalization approaches. Several key considerations are posed to facilitate thinking on how formalization might be implemented so as to strengthen women's property rights and their capacity to claim those rights.

WOMEN'S RIGHTS TO LAND IN DIFFERENT GEOGRAPHICAL AND INSTITUTIONAL CONTEXTS

The last few decades have witnessed considerable progress in reforms to statutory law to safeguard the interests of women in matters of property rights. In addition to constitutional guarantees of gender equity, land, inheritance, and marriage laws in many developing countries have been revised to eliminate discriminatory clauses, adopt more gender neutral codes, and, in some cases, even amend laws to specifically enhance women's rights and protections. An important force behind these changes has been the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the United Nations General Assembly. Ratified by 175 countries as of December 2003⁵⁰, it is the only human rights convention that specifically addresses the rights of rural women, providing for their equal access to resources and basic social services (Article 14). Possibly its most progressive feature is its insistence on *de facto*, in addition to statutory, equality which push countries to go beyond simple amendment of the laws. The treaty's potential force comes from the ability of judges in ratifying countries to base their decisions on its provisions and to use it to interpret vague constitutional guarantees of gender equity (FAO, et al., 2004).

Key bodies of law that govern women's land and housing rights are land, inheritance, and marriage laws. Inheritance laws often specify the types and shares that property widows and daughters are entitled to upon the death of the male household head, while marriage laws regulate the division of property in the event of divorce or abandonment. Unfortunately, several countries that are party to CEDAW continue to exempt family and personal law from guarantees of gender equity, allowing those domains to be governed by religious or customary law (FAO, et al., 2004). In other countries women lose their independent legal capacity upon marriage, preventing them from entering into contracts (including credit agreements) and undertaking civil action in their own right (Ibid).

Much of land tenure in Africa is governed by customary law, whether legally recognized or not. Though there is a great deal of variance in indigenous tenure regimes, inheritance of land is patrilineal. Men are allocated land by their lineage, which they pass onto their male heirs.⁵¹ Even in matrilineal systems, men

⁴⁹ "Property" refers specifically to immovable property, namely land and housing.

⁵⁰ With over 90% of UN countries signed onto it, CEDAW is one of the most ratified treaties in history.

⁵¹ Daughters seldom inherit land, although they may be granted temporary use rights before they marry, and less commonly, if they divorce and return to their birth village. Preservation of patrilocal marriage and lineage institutions provide the rationale for women not being able to inherit, since women are expected to move to their husband's village upon marriage (Li and Bruce, 2005). Some also maintain that inheriting land would risk it falling into the hands of her husband or his

typically bequeath land to their brothers or nephews. Women are generally entitled to cultivation rights, which are based on their relationship to men. Husbands, for example, are typically obligated to assign land to their wife or wives. Circumstances differ by region and ethnic group as to whether women control the proceeds of the income generated from their production.⁵² Such institutions do offer married women an important measure of security, yet they often stand to lose their land rights and a principle source of livelihood security for them and their children if they divorce, are abandoned, or become widowed. Cases are replete throughout Africa of women suffering abusive relationships, being dispossessed when they separate from their husbands, and becoming the target of land grabbing by their husband's families upon widowhood (Mackenzie, 1993; Walsh, 2003; Eilor and Giovarelli, 2002).

Countries as diverse as India, China, and Albania adhere mainly to patrilocal marriage institutions in rural areas, thereby underscoring the persistence of patrilineal inheritance practices and the exclusion of women from inheriting independent rights to land from their parents or having equal status with their husband in making decisions concerning household land. In India, both laws and practice are divided along religious and ethnic lines with Hindu law allowing property owners full discretion, but intestate laws providing for equal shares of property among sons, daughters, and widows. Muslims are more restricted in discretionary wills, but only allocate daughters half the share sons receive. In practice, however, women often forfeit or sell their inheritance rights under social pressure. In the event of separation or divorce, all women relinquish rights to land held in their husband's name (Brown and Chowdhury, 2002). China has been more progressive both in its legal treatment of women under the law and in practice, largely as a result of the influence of the Cultural Revolution. However, with the adoption of the Household Responsibility System in the late 1970s and early 1980s, land management authority reverted back to the household, while current legislation does not give women the right to partition her share of household land in the event of divorce. Moreover, most use rights certificates are issued solely in the name of male household heads (Brown, 2003).

Unlike sub-Saharan Africa, China, and other parts of Asia, rural women in Latin America tend not to play a major role in cultivation, though they often are responsible for crop processing and storage and small livestock raising.⁵³ Their more limited roles have served as a justification for not awarding them land rights. Even in land redistribution programs founded on principles of improving equity, women rarely made up more than 15% of the beneficiaries (Katz and Chamorro, 2002). Marriage laws vary in Latin American countries as to whether property acquired after the marriage is considered joint marital property or is accorded to the purchasing spouse, with the latter typically less favorable for women if the couple separates (Ibid). Most inheritance laws designate a minimum portion that must be allocated to surviving spouses. Intestate laws assign equal portions to children regardless of sex, though bequests of agrarian reform land are sometimes restricted to a single heir in the interest of preventing land fragmentation. Even when shares are divided though, common practice is for heirs to consolidate their land and assign control to one or more male siblings (Ibid).

What has hampered women's ability to acquire independent rights to land equal to their male counterparts? Certainly part of the reason lies with male dominance of power structures, which allow those structures to reproduce and legitimate patriarchal values and weaken women's command over assets and economic resources that might enable them to shift the balance of power. Hence, women's stronger

lineage (Gray and Kevane, 1996; WALSH, 2003). Where sons are responsible for the care of their elderly parents, this is also used as a justification (Judd and Dulnuan, 2001; Lin, 2003).

⁵² Women's rights to the income generated from her production often depend on whether the land is designated as women's land (usually devoted to food crops) or family or men's land (in most cases staple grains or cash crops). While African women typically devote substantial labor to all of these, they are likely to only control the proceeds from product grown on women's land (Rocheleau and Edmunds, 1997; Gray and Kevane, 1996).

⁵³ By contrast, women in Caribbean countries and Afro-Latino ethnic groups in Central and South America often are farmers.

rights to land are also seen to threaten the very structures that perpetuate male dominance and protect their decision-making monopoly. Even in countries with highly favorable laws for women, local attitudes and values often discourage women from claiming those rights or appealing to local dispute resolution mechanisms, while they typically lack the economic resources to be able to access justice at higher levels (Giovarelli, et al, 2005). Yet, many studies point to the changes women have staked to break down these structures, their resistance to institutions detrimental to their interests, and creative ways of leveraging their bargaining power to enhance their rights⁵⁴ Collective efforts by women, donor influence pedaling, and the broader women's movement in many countries have played no small part in bolstering progress in women's land rights and gender equality (Ikdahl, et al, 2005; Gray and Kevane, 1996). The Lau Women's Union, for example, was instrumental in getting the Department of Lands to involve them in a systematic titling project providing training to department staff and conducting legal awareness campaigns in Lau villages (World Bank, 2004). The union is also a member of the titling program's oversight committee. In stark contrast to titles awarded outside the project, the majority of land titled by the project is in women's names either as independent or joint holders.

THE PROS AND CONS OF FORMALIZATION FROM A GENDERED PERSPECTIVE

Nevertheless, the path toward gender equality in land rights continues to be murky. Some gender advocates and influentials in the development community have called for efforts to replace local land tenure institutions with statutory laws, while others point to the benefits to women offered under customary laws and other local institutions. Arguments that favor formalizing tenure law argue that local or customary laws are often entrenched in patriarchal values that assign men control over land and sometimes also over the income generated from the land (Crowley, 1999). Women have subordinate access rights at best. Globalization and other forces of economic and cultural change have put pressures on traditional family structures that often break down through divorce, abandonment, migration, violent conflict and the spread of HIV/AIDS, leading to the increased incidence of female-headed households (Lastarria-Cornheil, 1997; FAO, 2002). In Latin American and African cities, women head over 50% of households (UNCHS, 2001). Formalization is therefore needed to reduce women's vulnerability to these changes by providing them opportunities to acquire independent land rights. It is argued that greater control by women over land will enable them to gain independent access to credit and greater control over own production and incomes. It is even hypothesized that women's ability to control land independently is likely to have a higher positive multiplier effect on child welfare than male control. Social empowerment is another perceived benefit of guaranteeing women independent rights, with land offering increased status and authority at both household and community levels, and permitting entry into community organizations and authority structures. Finally, many of the same arguments for formalization in general are used in the case of women, namely that it will lead to greater investment in land and housing improvements by improving women's tenure security.⁵⁵

A less optimistic view of the implications of formalization for women is that women's security can be jeopardized if access to property is primarily determined by markets rather than by social obligation. Although patrilocal marriage institutions often deny women control rights over land, they can also serve as an important source of social stability, enabling communities to preserve their identities and maintain kinship and social cohesion (Hoy, 1996 cited in Hugo, 2005; Johansen and White, 2002). This can be particularly important for poor people, especially in risk-prone environments and where insurance and

⁵⁴ Examples of such strategies include women withholding their labor (Carney and Watts, 1990, and Mackenzie, 1993), female marriages as a means to retain land in the event of widowhood (Gray and Kevane, 1996) and collective action among women to either purchase land or make demands to authorities (Ibid).

⁵⁵ These various arguments are well presented by Katz and Chamorro (2002), Brown and Chowdhury (2002) and Duncan and Ping (2001).

credit markets are distorted and biased against them. Moreover, the flexibility of customary laws enable them to adapt better to risk and help out community members in times of crisis. In Africa, indigenous tenure systems are capable of accommodating multiple and overlapping rights and rights to common property resources and interstitial spaces (not just land, but also water, trees and wildlife) which are important sources for sustaining women's livelihoods, especially among the rural poor (Agarwal, 1994; Rocheleau and Edmunds, 1997). Codifying such complexity is a daunting prospect, and threatens to undermine the flexibility of these systems, which may partly explain the preference for privatization (Platteau, 1996).

Given the advantages offered by local tenure systems, one could easily point to evidence that they are dynamic and rights evolve in response to changing socioeconomic conditions, such that shifts are likely to occur over time that favor women's emancipation. However, evidence is shaky as to whether this necessarily occurs. The profuse accounts of women's and children's dispossession and descent into abject poverty (see for example Walsh [2003]), can leave one questioning the morality of simply letting evolution take its course. However, the alternatives to inaction are rarely black and white.

Tanzania and Mozambique have undertaken bold action to support the application of customary law, but only to the extent that it does not discriminate against women. Land legislation in Tanzania that came into force in 2001 guarantees women the right to acquire, hold, use, and manage land on an equal basis with men, while the Village Land Act stipulates that customary law found to deny women these rights will be "deemed void and inoperative" (Ikdaahl, et al, 2005; 42). Yet, recent shifts in the policy debate toward increasing the marketability of land rights have diluted attention to tenure security and gender equality (Ibid).

IMPACTS OF LAND TITLING AND REGISTRATION ON WOMEN

Increasingly, researchers are testing hypotheses about the formalization of land rights and particularly uncovering the impacts of land titling programs on women. This is a result of the popularity of such programs in the mainstream development community and their widespread adoption in the past few decades.

Most of the earlier land and housing registration and titling efforts paid little regard to gender and were content to assume that gender-neutral laws and policies would produce non-discriminatory outcomes. Often these assumptions proved highly detrimental to women. Whether by law or social custom, titles were overwhelmingly issued in the name of household heads, which by tradition in most societies is an adult male, except where one does not exist. In Kenya, which instituted a freehold titling system in the early 1970s, only 5–7% of registered landowners are female. Despite gender equality being mandated in land reform legislation in the Philippines, 86% of reform beneficiaries are men (Poletico, 1999, cited in Strachan, 2001). Women also tend to receive titles to comparatively smaller plots of land, such that the amount of land women receive relative to men is much smaller than the female-male ratio of titles issued (Giovarelli, et al, 2005). Even where policies encourage registration in the names of both spouses, common practice is to only include the husband's name. Such was the case with the issuance of land use certificates in Vietnam where despite local administrations advising couples to register jointly, only 10–12% of certificates include women's names, and most of these are single or widowed women (FAO, et al., 2004). Although some women have benefited from titling by acquiring independent rights to land, the majority have not been so lucky.

Moreover, boundary adjudication processes accompanying systematic titling have typically failed to include women (Giovarelli, et al, 2005). In Africa, this and the individualized nature of titles have often led to women's secondary, overlapping and interstitial rights being eclipsed and legal recognition only being accorded to the individual rights of men (Shipton, 1988; Lastarria-Cornheil, 1997). Common

property resources have also been carved up in the rush to lay individual claim to land that had not been afforded legal recognition, with detrimental consequences for women (Masika and Joekes, 1997). A more widespread impact, however, is that titling of freehold tenure has effectively awarded legal transfer rights exclusively to men, eroding notions of land as family patrimony in favor of its value as a marketable asset controlled by men (Deere and Leon, 2001). This has enabled husbands and sons to sell and pledge land on which households live and depend without their wives' or mothers' consent or sometimes even prior knowledge (Mackenzie, 2003; Gray and Kevane, 1996). In cases where titling is on-demand, women are frequently disadvantaged by insufficient financial resources, lack of knowledge of titling procedures and how to negotiate the system, too few political connections, weak bargaining power and support from their families and communities, and societal bias against women owning and controlling land (Human Rights Watch, 2003; Lastarria-Cornheil, 1997; Grigsby, 2004). Even efforts to explicitly enhance the security of women's rights by awarding titles to them have back-fired. When land values rose as a result of irrigation investments on women's rice fields in the Gambia, men responded by reclassifying those lands as a type controlled by men, effectively ignoring women's titles while still laying claim to their labor (Carney and Watts, 1990).⁵⁶

De facto discrimination reaches beyond households and communities though. The failure of titling program staff to provide education on women's rights or, where it exists, the possibility of joint titling, leave people unaware of what women are entitled to, while land administration officials are often reluctant to question or block unilateral decisions on land sales (Lastarria-Cornheil et al, 2003). Many informal and formal dispute resolution mechanisms are male-dominated, have poor records of supporting women's claims, and are sometimes ignorant of women's rights under the law (WALSH, 2003; FAO, et al., 2004). These problems are perpetuated by lack of political will and/or resources to invest in education and enforcement. In short, most titling programs have persistently turned a blind eye to (or at least underestimated) *de facto* gender biases, leaving behind a horde of disappointing outcomes for gender equity.

With "gender neutral" gradually becoming a euphemism for "gender blind," more countries are initiating joint titling of married, and sometimes even common law, couples. While in many cases joint titling stops short at policy and requiring land registrar officials to encourage its election (e.g., Indonesia; West Bengal, India), other governments have deemed it mandatory (e.g., Nicaragua, Honduras, Vietnam). Unfortunately, studies reveal that joint titling programs have been plagued by many of the same problems as titling in the name of the household head. In West Bengal, a policy requiring government allocated land to be titled jointly to couples has received little publicity and enforcement (Brown and Chowdhury, 2002). A study by Lastarria-Cornheil, et al (2003) found that strong perceptions of land as men's property weakened the resolve of registration officials to insist on joint titling in Nicaragua, such that four years following the program's initiation, only 7.8% of titles issued were to couples even though joint titling was supposedly mandatory. Shifts in attitudes gradually improved with persistent gender sensitivity training. Between 1994 and 2000, one-third of land titles were issued to women either independently or jointly (Katz and Chamorro, 2002). Failure to register women's names in mandatory joint titling in Vietnam has prompted the World Bank to partner with local government in a pilot project to reissue titles, ensuring space on applications for the inclusion of two names and educating communities on women's rights and gender equity (Agrawal, et al, 2002). Promotion of gender equity has also proven effective in Valle de Guayape, Honduras where issuance of agrarian reform titles in women's names rose from 13% to 56% from 1996 to 2000, while women constituted only 25% of title recipients at a national level during the same period (Lastarria-Cornheil, et al, 2003).

⁵⁶ A study in Senegal by Grigsby (2003) also shows how reclassification of land as "subsistence" has enabled men to evict women from their so-called "bitter tomato" land in an environment of intensifying land scarcity.

Other statutory measures aimed at remedying gender bias require spousal consent for undertaking land transfers. Although it is difficult to know the extent to which such laws have discouraged men from attempting to sell land without their wives' permission, the practice has not been halted and men get around the law by finding public officials and lawyers willing to overlook the requirement, and coercing their wives into giving consent (Lastarria-Cornheil et al, 2003). Essentially, top-down legislative strategies such as mandatory joint titling and spousal consent are inadequate to tackle entrenched *de facto* gender discrimination, but rather require complementary approaches that alter attitudes and values.

The experiences described above demonstrate that where countries have incorporated education and gender awareness training into titling programs, the outcomes for women have been more promising. Nevertheless, women's capacity to enhance their livelihoods through their land will depend not only on titles or independent land rights, but also their capacity to access complementary inputs and control risk. If women face legal or *de facto* discrimination when it comes to borrowing, accessing labor, or taking advantage of a land-attached government program, their opportunities for betterment may be substantially weaker than men's. Nevertheless, preliminary evidence for Nicaragua and Honduras suggests a positive association between women's land rights and control over agricultural income, earnings from off-farm income, better access to credit,⁵⁷ and modest improvements in food expenditures and child education (Katz and Chamorro, 2002).

GENDER EQUITABLE LAND TENURE FORMALIZATION: KEY ISSUES FOR CONSIDERATION

Drawing on what we know about the experiences of tenure formalization from a gendered perspective, the remainder of this annex offers a series of clustered questions to facilitate more comprehensive consideration of the potential outcomes of formalization laws and programs for women and their families.

- Is formalization of land rights likely to improve gender equity and enhance women's control over property?⁵⁸
- What kind of formalization is likely to be most beneficial for equality? Is titling of individualized tenure, or even joint titling, likely to be in women's best interests? Do women stand to lose secondary or overlapping rights they hold under customary institutions? Are they likely to be able to access formalized land rights on the same footing as men, especially if they command fewer economic resources to purchase land and there are strong *de facto* gender biases among communities, public officials and judiciaries? What risks do such programs pose for women, especially in the case of titling freehold tenure? What options are available to curtail these risks?
- Are women's interests better served by revisions to marriage and inheritance laws, especially when these represent their primary modes of access to land?
- What measures are needed to accompany legislative reform to facilitate more gender equitable application of the law, for example incorporating gender expertise into titling programs, awareness raising campaigns on women's rights and legal procedures for claiming rights, gender sensitivity

⁵⁷ No indication is given about whether this refers to credit from formal, informal or both sources. Moreover, credit use is substantially lower for women with land rights in male headed households (3–10%) than female household heads (25–33%).

⁵⁸ Although many studies paint a bleak picture of the application of gender-progressive statutory legislation where strong patriarchal societal values persist, it is important not to abandon revision of statutory law as a mechanism for strengthening women's rights. Even where they are not observed in the short-run, they are often effective in reshaping attitudes and values in the long-run. Moreover, they establish a "right to be fought for" by signaling a commitment by government to women's rights and serving as instrument for women to claim rights (Meinzen-Dick et al, 1997)

training aimed at communities and registration program officials, education for judiciaries on new legal provisions, provision of affordable and accessible legal aid for women, and quotas for women's service on local dispute resolution bodies?

- Are there adequate safety nets and affordable mechanisms for guaranteeing the social security of women and their children independent of men?

REFERENCES

- Agarwal, B. 1994. *A field of one's own: Gender and land rights in South Asia*, Cambridge: Cambridge University Press.
- Agrawal, N. D.T. Nguyen and H.T.M. Pham. 2002. Land use rights and gender equality in Vietnam. *Promising Approaches to Engendering Development*, No. 1. Washington DC: The World Bank. September.
- Brown, J. 2003. Protecting women's land rights through RLCL implementing regulations. Draft Mimeo. May.
- Brown, J. and S. D. Chowdhury. 2002. Women's land rights in West Bengal: A field study. RDI Reports on Foreign Aid and Development No. 116. Seattle, Washington: Rural Development Institute. November.
- Carney, Judith, and Michael Watts. 1990. "Manufacturing Dissent: Work, Gender and the Politics of Meaning in a Peasant Society," *Africa* 60: 207-241.
- Crowley, E. 1999. Women's right to land and natural resources: Some implications for a human rights based approach. FAO Rural Development Division, Land Tenure Service (SDAA) Jan 29, 1999. URL: <http://www.fao.org/sd/LTdirect/LTan0025.htm>.
- Deere, C.D. and M. Leon. 2001. *Empowering women: Land and property rights in Latin America*. Pittsburgh, PA: University of Pittsburgh Press.
- Duncan, J. and L. Ping. 2001. Women and land tenure in China: A study of women's land rights in Dongfang County, Hainan Province. RDI Reports on Foreign Aid and Development No. 110. Seattle, Washington: Rural Development Institute. April.
- Eilor, E. and R. Giovarelli. 2002. Land sector analysis: Gender/family issues and land rights component. Final Report to the Government of the Republic of Uganda. Seattle, Washington: Rural Development Institute. February.
- FAO. 2002. Gender and access to land. FAO Land Tenure Studies No. 4. Rome: FAO.
- FAO, IFAD, and International Land Coalition. 2004. Rural women's access to land and property in selected countries: Analysis based on initial and periodic reports to the Committee on the Elimination of Discrimination Against Women (1997-2003), Volume I: Main Report. Draft.
- Giovarelli, R., S. Lastarria, E. Katz and S. Nichols 2005. Gender issues and best practices in land administration projects: A synthesis report. Paper prepared for the Gender and Rural Development Thematic Group (PREM/ARD) and the Land Policy and Administration Thematic Group (ARD) of The World Bank. Draft. May.
- Gray, L. and M. Kevane, 1996. Land tenure status of African women. Background paper for Project on Gender and Property Rights in Africa, The World Bank. Draft Mimeo. URL: <http://lsb.scu.edu/~mkevane/women.htm>.

- Grigsby, W. 2004. The gendered nature of subsistence and its effect on customary land tenure. *Society and Natural Resources* 17:207–222.
- Hoy, C. 1996. The Fertility and Migration Experiences of Migrant Women in Beijing, China. Unpublished PhD Thesis, Geography Department, Leeds University.
- Hugo, G. 2005. Migrants in society: diversity and cohesion. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. September. URL: <http://www.gcim.org/attachements/TP6.pdf>.
- Ikdahl, I., A. Hellum, R. Kaarhus, T. A. Benjaminsen and P. Kameri-Mbote. 2005. Human rights, formalisation and women's land rights in southern and eastern Africa. *Studies in Women's Law* No. 57, Institute of Women's Law, University of Oslo.
- Johansen, U.C. and D. R. White. 2002. Collaborative long-term ethnography and longitudinal social analysis of a nomadic clan in southeastern Turkey. In *Chronicling cultures: Long-term field research in anthropology*. R.V. Kemper and A.V. Royce, eds. Pp. 81–101.
- Judd, M. and J. Dulnuan. 2001. Women's legal and customary access to land in The Philippines. Environment and Social Sector Unit (EASES), East Asia and Pacific Region (EAP), The World Bank. August.
- Katz, E. and J. S. Chamorro. 2002. Gender, land rights and the household economy in rural Nicaragua and Honduras. Paper prepared for USAID/BASIS CRSP.
- Lastarria-Cornheil, S., S. Agurto, J. Brown and S. E. Rosales. 2003. Joint titling in Nicaragua, Indonesia and Honduras: Rapid appraisal synthesis. Madison, WI: Land Tenure Center, University of Wisconsin-Madison. January.
- Lastarria-Cornhiel, S. 1997. Impact of privatization of gender and property rights in Africa, *World Development* 25(8): 1317-33.
- Li, Z. and J. Bruce. Gender, landlessness and equity in rural China. 2005. In *Developmental Dilemmas. Land reform and institutional change in China*. P. Ho, ed. Pp. 308–337.
- Lin, Z. 2003. Gender, land and poverty in China. Paper prepared for the Gender Poverty Summit, November 9-11, 2003, New Delhi, India.
- Mackenzie, F. 1993. 'A piece of land never shrinks': Reconceptualizing land tenure in a small-holding district, In *Land in African Agrarian Systems*, T.J. Basset and D.E. Crummey, eds. Madison: The University of Wisconsin Press. Pp. 194–222.
- Masika, R. and S. Joekes. 1997. Environmentally sustainable development and poverty: A gender analysis. Report prepared for the Gender Equality Unit, Swedish International Development Cooperation Agency (Sida). October.
- Meinzen-Dick, Ruth S, Lynn Brown, Hillary Sims Feldstein and Agnes R, Quisumbing. 1997. Gender, property rights and natural resources. *World Development* 25(8): 1303–1315.
- North, D. 1990. *Institutions, institutional change and economic performance*. Cambridge, U.K.: Cambridge University Press.
- Platteau, Jean-Philippe. 1996. The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. *Development and Change* 27: 29–86.
- Polestico, R. 1999. Gender Issues in Agrarian Reform. ANGO 20th Anniversary Monograph Series, Volume 2, No. 4. Asian NGO Coalition for Agrarian Reform and Rural Development. Manila.

- Rocheleau, D. and D. Edmunds. 1997. Women, men and trees: Gender, power and property in forest and agrarian landscapes. *World Development* 25(8):1351–1371, August.
- Shipton, P. 1988. The Kenyan land tenure reform: Misunderstandings in the public creation of private property. In *Land and society in contemporary Africa*. R. E. Downs and Stephen P. Reyna, eds. Hanover, NH: University Press of New England for University of New Hampshire. Pp. 91–135.
- Strachan, Lloyd W. 2001. Asset-based development: The role for pro-poor land and land tenure reform. Report prepared for: Policy and Multilateral Branches, Canadian International Development Agency in cooperation with the Popular Coalition to Eradicate Hunger and Poverty. October.
- UNCHS (Habitat). 2001. The state of the world's cities. Nairobi: United Nations Centre for Human Settlements.
- Walsh, Janet. 2003. Double standards: Women's property rights violations in Kenya. *Human Rights Watch* 15(5(A)). March.
- World Bank. 2004. Innovative activity profile: The Lao People's Democratic Republic, Preserving women's land rights in titling". Module 9: Investments in Land Administration, Policy and Markets, *Agricultural Investment Sourcebook*, pp. 411–12.

ANNEX 2. FORMALIZATION IN CONFLICT AND POST-CONFLICT CONTEXTS

Forty-five percent of the world's population depends on land as their primary socioeconomic asset.⁵⁹ It is little wonder then that land is so often a major element in conflict in the third world. Particularly in developing countries, the significance of land stretches far beyond its value as a marketable commodity, or even as production and income-generating capital. For poor people, land is often their primary source of subsistence, risk protection and old age security; it houses valuable structures and resources both on and below it; and it is entwined with strong emotional attachments and functions as a major source of cultural identity and social status. In many countries, it is also an essential instrument of power. Land can be both the root of conflict and a catalyst for mobilizing confrontational action. Although most conflicts over land are located at the individual and household level, its tendency to escalate into violence and far reaching development consequences emerge when it involves competition between different groups (e.g., ethnic, land use, wealth or between the state and communities) and grievances are shared by a large number of individuals. Land conflicts are frequently defined along ethnic lines, at times giving rise to xenophobic responses, such as ethnic cleansing.

SOURCES OF CONFLICT OVER LAND

Although conflict is commonly incited by poor people in response to the injustices of poverty and exclusion, the negative impacts of conflict are also borne disproportionately by them. Poor people disproportionately rely on land as a major source of livelihood and have fewer safety nets to shield themselves from the repercussions of violence.

Disputes over land stem primarily from:

- Feelings of injustice arising from an inequitable distribution of land (quality and quantity) and access to complementary inputs, often compounded by high degrees of landlessness;
- Tenure insecurity, i.e., lack of clarity regarding rights to land or insufficient capacity to assert one's rights, which gives rise to competing claims;
- Feelings of injustice that result from land expropriation or encroachment (by the state and by state and private elites for personal gain); and
- Absence of or highly constricted political spaces for airing of grievances and fair negotiation among different interest groups.

⁵⁹ Bledsoe, David. Land and Violent Conflict. PowerPoint Presentation. Rural Development Institute.

All of these are coupled with the poverty and powerlessness that often is caused or exacerbated by these situations. In Latin America and Asia, highly-skewed land distributions and landlessness often contribute to conflict, while, in Africa, the reasons arise primarily from tenure insecurity, although several exceptions exist. Indeed, most conflicts over land arise from a complex combination of these elements, though one or more elements may dominate. Such perceptions of injustice and insecurity often stem from the following:

- Politics of exclusion and inequities arising from the ability of powerful actors to exert their interests and claims over land and complementary inputs, often at the expense of the less powerful;
- Institutional weaknesses that fail to guarantee tenure security, particularly for the poor and otherwise marginalized groups. The poor are likely to be particularly disadvantaged in their access to affordable administration mechanisms for claiming their rights, justice, information about their rights, and legal aid to assert their rights;
- Increased scarcity of land due to population increases and environmental degradation (including the effects of natural disasters);
- Increased economic value attributed to land, arising from increased scarcity, introduction of new crops and technology, urban unemployment, presence of economically valuable natural resources, and economic uncertainty that raises the speculative value of land; and
- Overlapping rights or competing tenure institutions, whether customary and statutory, competing customary systems such as between pastoralists and farmers, and layered rights arising from successive indigenous, colonial and post-independence tenure regimes.

These factors are not mutually exclusive. Typically several are intertwined and give impetus to one another.

Land disputes emerging in post-conflict situations often are different than those which may have originally fueled conflict. Typically, they relate to:

- Unauthorized occupation of the land of displaced persons and efforts by the displaced to reclaim their land upon return, often with little or no reliable documentary evidence to back their claims. Even when documentation exists or existed, the evidence is often altered or destroyed during violent conflict. To the extent that the occupiers represent powerful interests, their removal can prove intransigent.
- Illegal settlements of refugees springing up in urban and peri-urban environments, largely for security and economic opportunity reasons, and increased competition for land in those areas.
- Land grabbing by elites (including the military) taking advantage of weak tenure systems and positions of political privilege.

While prewar conflicts are most often ignited by inequalities in land access and ineffective land administration, post-conflict disputes tend to be more confined to the latter in response to the changing demographic outcomes of war.

REFORMING LAND ADMINISTRATION IN ORDER TO PREVENT CONFLICT, ACHIEVE STABILITY, OR SUSTAIN PEACE

States have a major role to play in identifying and tackling the source of conflicts over land, whether through redressing inequities, strengthening tenure security, or resolving competing claims.⁶⁰ Yet, solutions need to be highly attuned to the nature of the conflict and country context. Many past attempts have failed or been proven inadequate due to the imposition of blunt instruments that failed to gain adequate appreciation of the context, root causes, and potential consequences of following different courses. For example, redistributive land reforms, while they have succeeded in improving the equity of landholdings, have often failed to address equity in access to complementary inputs, including credit, insurance, infrastructure, and market access. This has limited their potential impact. Moreover, they have also tended to underestimate the political power of landowning classes. In the case of market-assisted land reforms, this power has been effective in driving up sale prices of land and contributing to slow and costly legal processes that dampen political will. Redistribution alone may also neglect to adequately guarantee the tenure security of land reform beneficiaries where this is also a source of conflict. Outbreaks of violence emerged from land reform settlements established in the Brazilian Amazon, where rising immigration and land rents threatened beneficiaries lacking clear title to their land (Alston et al, 1997).

Likewise, efforts to reform tenure typically resist the need to improve the equity of land holdings and access to complementary inputs, given the large political ramifications of contravening elite interests. Such reforms may even be equity regressive if they individualize tenure at the expense of protecting overlapping rights, or buttress inequalitarian agrarian structures. Imposition of imported notions of private property rights can meet with violent resistance by populations who have historically administered land under local institutions or customary law and are committed to the social values that underlie them. Customary institutions in Papua New Guinea, for example, place a high value on environmental stewardship. Violent rebellion has been waged in reaction to the extensive environmental damage imposed by foreign mining interests and inadequate compensation (Boydell, 2001).

Yet, where violence arises from conflicts in tenure regimes fueled by competition over rising land scarcity by different groups (e.g., conflicts between nomadic pastoralists and settled farmers, such as in Darfur), local conflict resolution institutions usually become inadequate and state-backed formalization efforts are likely to be necessary.⁶¹ This is also likely to be the situation where community-based institutions have broken down, or never existed, such as in new settlements.

Land policy and administration reforms undertaken by countries reflect a host of alternative measures designed to achieve or sustain peace, including different mechanisms of conflict resolutions (e.g., arbitration, mediation, adjudication, and alternative dispute resolution processes), land redistribution, strengthening weak land administration institutions, accommodation of customary tenure systems, resettlement, and titling and registration of land use rights and freehold. Importantly, while such reforms have the ability to achieve stability prior to conflict eruption and in post-conflict contexts, they are likely to be inappropriate or even inoperable when violence is being waged. Instead, measures that bring about peace, mitigate and treat the physical and psychological damages suffered by the victims, and restore democratic order should take precedence. East Timor and Kyrgyzstan have built on informal institutions to manage post-conflict disputes over land (USAID, 2004). Likewise, the 1997 land law in Mozambique

⁶⁰ USAID offers a useful tool to aid in this identification. See USAID Office of Conflict Management and Mitigation. 2004. Land and conflict: A toolkit for intervention. Washington DC: USAID.

⁶¹ This is because such local institutions are typically built on group-based norms and are geared to address conflicts within those groups; they tend not to accommodate inter-group conflicts. Moreover, it is unlikely that one group would be willing to participate in a forum dictated by the rules of another group where decisions are made by the other group's authorities.

enshrines customary tenure institutions for land administration and dispute resolution (Daudelin, 2003). In Rwanda, policies have provided for the resettlement of war refugees in planned villages in the wake of stability, with mixed impacts (Pons-Vignon and Lecomte, 2004). For decades, Zimbabwe struggled to implement market-assisted land redistribution amidst festering grievances that later turned violent (Marongwe, 2005), suggesting that inadequate land policy can also contribute to conflict. In Bosnia, the International Police Task Force has been successful in monitoring local authorities to ensure compliance with the law and protect citizen rights (Rose, 2004).

LAND REGISTRATION AND TITLING AS A MEASURE TO AMELIORATE OR CONTAIN CONFLICT

Increasingly, development partners are providing support for land titling and registration to countries emerging from conflict. Although research on the outcomes of these interventions is still very limited, there appear to be situations in which titling has helped to resolve conflicts and create lasting peace. In El Salvador, land titles were awarded to communities following the war combined with support for community decision-making and dispute resolution. Communities then assumed the authority to subdivide the land among their members and reserve portions as common property (USAID, 2004). Similarly, in Bolivia, titling of territories to indigenous communities, which then administer land on behalf of their members, has permitted conflicts to dissipate although they continue to brew over disparate agrarian structures in the eastern part of the country. In situations of ethnic or inter-group conflicts, it may be appropriate to register land to communities rather than individuals. USAID is currently funding community demarcation, mapping and registration of customary land tenure areas in Southern Kordofan and Blue Nile states in Sudan. Customary land areas there had been taken by entrepreneurs from the North, arriving with leases from government in hand, and their tractors. The demarcation is undertaken in consultation with community members and creates a record of community rights in those lands in advance of the creation of state land commissions mandated in the Peace Accords. Overall, the lessons seem to point to the relative success of unconventional forms of land registration that respond adequately to cultural and conflict realities.

Yet, land registration and titling may not always be necessary or represent the best solution. In many situations, titling can lead to detrimental outcomes or even contribute to renewed conflicts. Some of these include situations in which:

- Conflicts are rooted in sustained equity grievances, especially where titling threatens to cement existing distributional disparities, such as in Cambodia and Guatemala (Daudelin, 2003);
- Titling is likely to give rise to an abundance of competing claims, especially where institutions for resolving these conflicts are weak, absent or lack social legitimacy⁶²;
- Systems of overlapping land rights provide critical support to the poor and disadvantaged groups and who also risk being excluded from the benefits of titling, such as Cote d'Ivoire where migrants risk dispossession or countries where women or pastoralists possess secondary rights to land;
- Weak institutions combined with highly differential power structures enable wealthier and better informed individuals to accumulate land at the expense of more vulnerable groups; and

⁶² In Mexico, for example, regularization and titling of *ejido* and communal territory land has resulted in a proliferation of conflicts. The act of documenting and making rights official raises the stakes of clarifying who is entitled to what, and who is not (De Ita, 2003).

- The symbolic and cultural values attached to land overshadow its importance as a commodity. However, it may be possible to provide formal recognition of rights to strengthen tenure security without necessarily commodifying land through issuing freehold titles.

Conflicts broke out in Chiapas, Mexico shortly following tenure reforms that privatized *ejido* land and communal territories in reaction to the halting of an extended history of land redistribution and clashes with rural smallholder (and especially indigenous) perceptions of land as a source of livelihood and cultural identity (Ros and Lustig, 2003; Diego et al, 1998). In Ethiopia, land registration has succeeded in provoking conflicts related to illegal land grabbing, encroachment onto common land and land sales, which particularly threaten the interests of youth and women (Adenew and Abdi, 2005).

Titling is likely to do little, especially for the poor, in the absence of weak and decentralized institutions that facilitate poor people's access to land administration, justice, information about their rights, and legal aid to defend those rights. Moreover, if these systems are seen to cater to the privileged at the expense of the poor, they may ignite renewed conflict, not to mention contributing to worsening poverty and inequality. Strengthening land administration and dispute resolution institutions, along with the suspension of state-sponsored evictions are likely to be critical foundational elements for enabling land tenure security to thrive. While land policy reform and formalization may be important components of conflict resolution, measures that aim to reduce the reliance of the rural poor on land and subsistence agriculture can also be effective, such as creation of secure off-farm employment opportunities, and rural infrastructure development (Pons-Vignon and Lecomte, 2004). Finally, opening up spaces for the poor and other excluded segments of society to effectively participate and shape the political dialogue is likely to be essential to lasting stability.

REFERENCES

- Adenew, Berhanu and Fayera Abdi. 2005. Land registration in Amhara Region, Ethiopia. Research Report 3. London: IIED.
- Alston, Lee J., Gary D. Libecap and Bernardo Mueller. 1997. Violence and the development of property rights to land in the Brazilian Amazon. In *The Frontiers of the New Institutional Economics*. J.N. Drobak and J.V.C. Nye, eds. San Diego: Academic Press. Pp. 145-163.
- Boydell, Spike. 2001. Land tenure and land conflict in the South Pacific. Consultancy report for the Food and Agricultural Organization of the United Nations. September.
- Daudelin, Jean. 2003. Land and violence in post-conflict situations. Report prepared for the North-South Institute and the World Bank. Ottawa. May.
- De Ita, Ana. 2003. Mexico: Impacts of demarcation and titling by PROCEDE on agrarian conflicts and land concentration. Centro de Estudios para el Cambio en el Campo Mexicano SECAM. Red de Investigación Acción sobre la Tierra. URL: <http://www.landaction.org/display.php?article=336>.
- Diego Quintana, R., Concheiro Bórquez, L., Perez Aviles, R. 1998. Peasant logic, agrarian policy, land mobility, and land markets in Mexico. Land Tenure Center Working Paper No. 21. Madison, WI: Land Tenure Center. October.
- Marongwe, N. 2005. Limitations of the legalistic approach in solving Zimbabwe's land problems. In *Summary report of the Conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction, 9-10 December, 2004*. Nairobi, Kenya: ACTS.
- Pons-Vignon, Nicolas and Henri-Bernard Solignac Lecomte. 2004. Land, violent conflict and development. OECD Development Centre Working Paper No. 223. Issy-les-Moulineaux, France.

- Ros, Jaime and Nora Claudia Lustig. 2003. Economic liberalization and income distribution in Mexico: Losers and winners. In *Struggles for social rights in Latin America*. Susan Eva Eckstein and Timothy P. Wickham-Crowley, eds. New York and London: Routledge, pp. 125-145.
- Rose, Laurel. 2004. Land dispute settlement in post-conflict societies: Concept paper prepared for the World Bank. June.
- USAID Office of Conflict Management and Mitigation. 2004 Land and conflict: A toolkit for intervention. Washington DC: USAID.

ANNEX 3. MARKETS, ASSETS, AND USING LAND AS COLLATERAL

Much of the promise of formalization with regard to land lies in the asserted value of land as collateral for lending. Access to credit is seen as critical for investments in land itself or for business startups and expansions, and the ability to offer land as collateral is vital for access to credit. Thus, land must be held under property rights which are marketable and mortgageable.

There is little doubt about the general accuracy of these propositions in developed market economies. Land there is freely marketable, freely mortgageable, and nothing could be more routine than a bank lending against collateral in land for all the purposes noted above. The ability to mortgage land and the role of this in capitalization of households and then the larger economy has recently been pointed to as a key, even **the** key, to Western economic development (De Soto 2004). Few would doubt that there is considerable truth in this.

What is actively debated is whether the poor in developing countries, who have received titles from the state to small plots of land previously held extra-legally or according to custom, have in fact managed to capture much of a resultant appreciation in the value of their land due to titling or have derived much benefit in terms of new or better access to credit. Annex 5 reviews the empirical evidence. A full analysis of those studies is beyond the scope of this paper, but the broad results deserve the attention of the Commission as it begins its work.

The best-known study in this area is by Gershon Feder of the World Bank, with T. Onchan and T. Raparla (Feder et al. 1988) in Thailand. Looking at rural landholders whose tenure had been formalized, the researchers found that those with title were better able to borrow and invest than their untitled counterparts. But a review of the evidence of many other studies in Annex 5 raises questions over whether this is generally the case. While a few find results similar to those in Thailand (for example, Alston et al, 1996, and Dower and Potamites, 2005), others fail to find a correlation between title, credit access, and investment (for example, several studies in Bruce and Migot-Adholla, 1994, Brasselle et al, 1997, and Carter and Olinto, 2003). The latter cite credit market failures as the cause, arguing that small farmers receiving titles are efficient but still cannot access credit.⁶³ Many of the studies conclude that a steady salary may be more important than land ownership to a bank that is scrutinizing a loan application.

In addition, there are practical difficulties, especially when it comes to the poor.

- Formal sector lenders can only spend a certain amount of money on a loan, and many of the costs of lending are fixed in size and not covered by the revenue stream resulting from small loans. Of course, banks may increase interest rates in small loans to adjust for this, but affordability becomes an issue for smallholders, particularly in situations where they are disadvantaged in access to inputs, outputs,

⁶³ See Binswanger et al, 1995, for a discussion of the distorting impact of power on markets.

and technology relative to larger and better connected farmers. This effectively means that banks have a minimum loan amount below which they are reluctant to lend. Many of the credit needs of the poor are modest in size, and hence will not receive assistance from formal sector lenders (nor would they be wise to mortgage their land to secure such small amounts and risk losing it).

- Formal and informal sector lenders may find foreclosure an unacceptably lengthy and expensive process. There may be flaws in the law relating to foreclosure, courts may be clogged with cases, or judges may be sympathetic to the poor. And the issue of scale again arises: is it worth the effort to foreclose on this small property? Proposals to make foreclosure easier might be considered, but in the developing country context, the potential for abuse by lenders is huge.
- Banks are seldom interested in accumulating land and managing farms, but prefer instead ready cash to settle the loan. Even if foreclosure is possible, it may not be easy for formal lenders to realize funds from land sales. In areas where property rights have recently been customary, for example, neighbors and relatives often deeply resent a sale to outsiders on foreclosure, which they regard as belonging to the lineage (individually registered or not). They may interfere, as in some African rural areas where outsiders arriving to participate in a foreclosure sale may find their cars stoned or the air let out of their tires. Consequently, the bank may find itself with only very low offers for the land from members of the borrower's lineage group.

It should not be lightly assumed that in most situations the formalization of land through titling and registration will give the poor better access to credit. The likelihood that it will do so should be required to be established in the particular project instance, before government goes forward on that expectation.

There is also a need for much more research in this area, in particular that which addresses the following questions:

- Do the titled poor in fact often mortgage their land?
- Do they thereby gain access to credit from formal lenders to which they would not otherwise have access, or access it on better terms?
- Do they use such collateral to get access or better terms from informal lenders?
- What factors constrain formal sector lenders from lending to the titled poor?
- If the titled poor borrow against their land, do they manage to redeem their plots, or do they lose them when they fail to repay their loans?
- How long do the poor retain titled land, and do they realize much of the increase in the value of the land due to titling?

Use of land titles for credit purposes other than as collateral also needs a closer look. Titles can be taken as evidence of stability and reliability by formal and informal lenders even where they are not used as collateral. They can also be used in unexpected ways, for instance, deposited with an informal lender, effectively pawned, or sold by the lender in case of default, but held until repayment is made.

Turning from land assets to businesses and their credit needs, informal businesses fail to grow, in part, due to lack of financing. In general, businesses grow out of investments made from the entrepreneurs' own funds, investors' funds, or credit. In the case of the informal businesses, those three options are limited, because the entrepreneurs' own funds are scarce and are mostly devoted to survival matters such as housing and meals, which take priority over business financing. In absence of funds to invest in the business, most informal entrepreneurs rely on loans from family.

Nevertheless, the lack of formalization hinders the possibility of investors financing businesses. Investors take risks and wait for investments to yield returns, but they need certainty. Investors usually invest in businesses through bonds or stocks, either privately or publicly through exchange markets. When the business is not registered, when there is no information about that business, when there is no legal framework for equity investments in businesses entities, and when there is no stock exchange market, investors fail to make investments in others' businesses and those businesses miss the opportunity to finance their operations through other parties' investments.

Informal entrepreneurs also have the possibility of obtaining a personal loan. However, in the informal sector, loans are scarce (in some cases, available only through pawn shops), usually cover a small fraction of what is needed, and charge very high interest rates. Microfinance institutions are not always in place, might not be well endowed, or might require guarantees that the informal entrepreneurs are in no position to give. For example, if the guarantee demanded is mortgage, only the entrepreneurs who have title to land will be able to obtain credit. In Honduras, where only 16% of the population has title to land, that factor leaves out an important part of the population.

Businesses do, however, have other assets upon which collateral can be granted. Businesses rely on many moveable mechanisms for their operations, some tangible and some intangible. Things such as machinery or vehicles can be used as collateral for obtaining credit. But intangibles, such as accounts receivable, business inventories, merchandise, the good name of the business ("good will"), or know-how duly registered under the intellectual property registry are moveable guarantees that can open the door to credit. Many countries lack the legal framework that allows moveable guarantees. Some allow them only on tangible assets such as machinery and vehicles, but do not have the framework for intangible moveable guarantees. Even then, the registry of moveable guarantee is not in place or has outdated information. Thus, a crucial element on the way towards empowering the poor that do business in the informal economy is the implementation of a legal framework on all moveable guarantees, along with a moveable guarantee registry. Due to the nature of the moveable guarantees, the registry is essential. It provides information on the collateral and makes it traceable. The Organization of American States has produced a model law on moveable guarantees which—if it is advocated—should be accompanied with an electronic registry of guarantees.

ANNEX 4. INSTITUTIONS ACTIVE INTERNATIONALLY ON FORMALIZATION OF LAND AND BUSINESS

The institutions listed in this annex are those which have played a major international role with regard to formalization issues and who are having a significant impact on the formalization work in developing countries, both with regard to land and businesses and their operations.

The information obtained for this annex was derived heavily from Web-based searching. Identification of key organizations was derived from personal knowledge of team members based on their past work and Google searches. Owing to the strict time constraints for producing this report, information is based almost exclusively on descriptions found in their respective Web sites. The few exceptions to this were where a member of the team had insider knowledge and experience with a specific organization. Given all of these factors, this list is likely to contain considerable gaps and omissions for which the team takes full responsibility, and we welcome further input to improve accuracy. The extent to which agencies contract out their work or rely strongly on internal capacity is often not readily apparent from a review of their Web sites, so we have generally not attempted to include this information.

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
MULTILATERAL AGENCIES		
Asian Development Bank (ADB)	General http://www.adb.org/	Provides implementation financing, technical assistance, and capacity building for land administration, real estate registration, cadastral mapping, land information systems, and land legislation pertaining to both urban and rural real estate. Key countries: Bangladesh, Mongolia
European Union (EU) (specifically the Directorate General for Development of the European Commission [EC])	General http://europa.eu.int	The EC has provided modest support for post-conflict resettlement, land law and institutional reforms, land registration systems, and land conflict resolution mechanisms. What is perhaps more significant are the recent guidelines that the EC prepared for its support of land policy reform. In December 2004, the commission submitted for confirmation the <i>EU Guidelines to Support Land Policy Design and Reform Processes in Developing Countries</i> . These direct the EU toward supporting land policy that contributes to a more equitable distribution of wealth, women's empowerment, improved access and control over natural resources by indigenous peoples, and recognition of the importance of customary rights. The guidelines also emphasize the importance of local stakeholder participation in land policy reform processes and good governance. Key countries: Angola, Ethiopia, Namibia, South Africa, Suriname, Swaziland, Uganda
International Labor Organization (ILO)	General http://www.ilo.org	
	ILO Informal Economy Resource Database http://www.ilo.org/dyn/dwresources/iebrowse.home?p_lang=en	This database contains over 500 ILO entries directly or indirectly related to the informal economy and recent work. The database is searchable by country, keyword, ILO author unit, and date.
Food and Agricultural Organization of the United Nations (FAO)	General http://www.fao.org	The FAO's Land Tenure Service assists countries with land tenure policy formulation, restructuring of land tenure institutions, and adopting best practices that will strengthen tenure security, especially for poor and disadvantaged groups, and the functioning of land markets. This includes support for land administration, regularization, conflict resolution, and tenure systems for common property. The organization contributes a considerable body of research on such issues as cadastral surveying, land registration, gender, property taxation, decollectivization, and land consolidation. FAO also publishes the Land Tenure Series, which addresses many controversial issues surrounding land tenure, and the Land Tenure, Land Reform, Land Settlement, and Cooperatives bulletin. The service is a critical mass of interdisciplinary expertise on land tenure issues of genuinely global reach. FAO also manages FAOLEX, the most useful general source on legislation relating to land in the developing world. Key regions: Worldwide, with the exception of Latin America. Especially strong on countries in transition.

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
Inter-American Development Bank (IADB)	General http://www.iadb.org/	Delivers legal and policy guidance on rural and urban land issues; technical assistance to strengthen and improve the technical aspects of land administration; support for land tenure regularization, boundary adjudication, land titling and registration; cadastre and other land information services; capacity building to land administration staff; and financing to support reforms to land administration and land tenure to countries in Latin America and the Caribbean. Their support to formalization efforts is substantial. They also sponsor publications and workshops aimed at assessing the impact of land titling on rural households, indigenous peoples, and child health and education. Key countries: The Bahamas, Belize, Bolivia, Colombia, Dominican Republic, Ecuador, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, and Trinidad and Tobago.
	Business Climate Initiative (BCI) , http://www.iadb.org/businessclimate/	In December 2003, the IADB launched the BCI in order to focus on improving the business environment in the western hemisphere. The purpose of the BCI is to support the expansion of private sector participation in the region and increase government effectiveness and efficiency in overcoming or preventing market failures, reducing burdensome transaction costs, and providing an overall sound environment for private sector development.
UN: Working Party on Land Administration	General http://www.unece.org/env/hs/wpla/welcome_wpla.html	As a network of land administration officials in Europe and North America, the Working Party promotes land administration and registration systems that support security of tenure, privatization, and land markets in advanced economies. In addition to organizing workshops and preparing guidelines and policy papers, they provide policy advice to Central and Eastern European countries on land registration and real estate market development. Key regions: Europe (including Central and Eastern Europe) and North America.
UN: Human Settlements Program (UN-Habitat)	General http://www.unhabitat.org/	With a mandate centered on improving the plight of the world's urban poor, UN-Habitat operates two global campaigns, one on urban governance and one on secure tenure. Key facets of the Campaign for Secure Tenure are expanding and exchanging knowledge on land management systems, policy, law, and practice. The campaign places priority on assuring women's tenure security. To that affect, the agency undertakes research, develops and disseminates tools and best practices, promotes improved policies for housing and housing rights, and provides direct technical support to governments on land tenure issues, especially in post-conflict countries. One component of the UN-Habitat/World Bank slum upgrading initiative, Cities Alliance, is the promotion of housing rights.
UN: Development Program	Humanitarian Development Report http://hdr.undp.org/	The UN Development Program issues a report every two years on humanitarian development that measures developing countries in terms of humanitarian rather than merely economic development.

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
The World Bank (WB)	General http://www.worldbank.org	The WB plays a leading role in funding and encouraging formalization efforts, working on both the land and business organization sides. It has recognized the need to provide security of tenure to informal settlements wherever possible and has done important work in this area in connection with its involuntary resettlement policy. It is the largest single funder of land administration (primarily titling and registration) programs, with over 25 projects currently ongoing around the world. The WB's work in this area reflects the organizational separation of work in the institution into urban and rural, which has allowed different emphases to arise concerning the appropriate role for property rights and titling. The bank recently published policy research report on land policies to enhance pro-poor growth, ⁶⁴ a milestone for the institution and the result of broad consultation within and outside the institution. The report maintains the importance of land titling but treats it as less central to the overall tasks in land policy than had earlier WB policy documents. The annual "Doing Business" volume, prepared jointly with the IFC, is an important source of formalization, providing comparative data on the complexities and costs of registering land transactions, but has a more exclusively growth focus. Key countries: Worldwide, see Web site for country project details.
	World Bank Governance Indicators http://www.worldbank.org/wbi/governance/govdata/	The World Bank produces governance indicators for 209 countries for 1996–2004, for six dimensions of governance: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption.
	World Bank Corporate and Public Ethics Indices http://www.worldbank.org/wbi/governance/pdf/ETHICS.xls	The World Bank produces a corporate and public ethics index for 104 countries.
	Investment Climate Surveys, World Bank http://rru.worldbank.org/InvestmentClimate/	
	Doing Business, World Bank/ International Finance Corporation http://www.doingbusiness.org	The WB/ IFC Doing Business database provides objective measures of business regulations and their enforcement. The Doing Business indicators are comparable across 155 economies. They indicate the regulatory costs of business and can be used to analyze specific regulations that enhance or constrain investment, productivity, and growth.
World Economic Forum	Global Competitiveness Report, http://www.weforum.org/gcr	World Economic Forum's Global Competitiveness Report ranks 117 countries on competitiveness issues such as public institutions, corruption, contracts and law, microeconomic competitiveness, and the quality of national business environments.

⁶⁴ Klaus Deininger 2005. *Land Policies for Growth and Poverty Reduction*. Washington DC. Oxford University Press.

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
BILATERAL AGENCIES		
AusAID	General http://www.usaid.gov/	AusAID offers technical assistance to: support land titling and occupation certificates in rural and urban areas, develop legal frameworks and institutional and financial reforms for efficient land administration and registration, improve access to land information, train land administration staff, and increase government revenue generation. Key aims of their work are to improve tenure security and reduce conflicts, stimulate land markets, increase investment through use of titles as collateral, and expand government revenue base through property taxes. Some land projects are undertaken in collaboration with the World Bank, which provides the principal financing. Key countries: East Timor, Laos, The Philippines, Solomon Islands
Department for International Development, U.K. (DFID)	General http://www.dfid.gov.uk/	DFID carries out research on the impacts of land registration and titling on the poor in African and Caribbean countries; investigates methods for improving titling in peri-urban settlements to better address poverty reduction; provides support for equitable land administration and tenure policy, including galvanizing grassroots participation in adjudication, registration and monitoring processes, and strengthening customary and other local-level institutions for land administration; supports the integration of governance of land and natural resource rights and public-private partnerships in land administration; strengthens local community awareness of land rights and capacity to defend them; and contributes to establishing effective dispute resolution mechanisms. DFID places particular emphasis on ensuring that the urban and rural poor are able to benefit from formalization processes. Research on land policy issues constitutes an important part of their work. Support is also provided to the High-level Commission for the Legal Empowerment of the Poor. Key countries: Afghanistan, Bangladesh, Botswana, Ethiopia, Ghana, Guyana, Kenya, Kyrgyzstan, Mozambique, Russia, St. Vincent, and Tanzania
Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)	General http://www.gtz.de/en/	Land management forms a core part of GTZ's development agenda. They contribute to the development of land policy and tenure law and mechanisms for their application and enforcement; offer technical support to land administration and institutional development, including land classification, cadastre surveying, registration, and taxation; promote the stimulation and regulation of land markets; and support redistributive land reform that builds on lessons learned. Priority emphasis is given to the poor, post-conflict situations, and securing women's land rights. The agency also offers guidance in land use planning and management and publishes principles and guidelines for land management in collaboration with other multilateral and bilateral agencies. Other publications on land issues include country studies, workshop reports, reviews of policies and programs, methods and tools, thematic overviews of land tenure issues, guidelines, policy positions, glossaries, and a GIS newsletter. Key countries: Cambodia, Ghana, Mongolia, and Namibia
Norway Ministry of Foreign	General http://odin.dep.no/ud/engelsk/index-	Hosts and provides fundamental support to the High-level Commission for the Legal Empowerment of the Poor, which it established with the support of other Nordic countries.

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
Affairs	b-n-a.html	
NORAD, Norwegian Mapping Authority, and The Department of International Environment and Development Studies (Noragric) at the Norwegian University of Life Sciences (UMB)	General Norwegian Mapping Authority: http://environment.norad.no/centres.cfm?orgid=1008 Noragric: http://www.umb.no/?viewID=8467	<p>Along with the Ministry of Foreign Affairs, NORAD works with 7 centers of “environmental assistance” that carry out the primary work related to the country’s development assistance for the environment. With regard to land tenure, they partner with 2 of these: the Norwegian Mapping Authority and Noragric.</p> <p>The Norwegian Mapping Authority undertakes projects in cadastral mapping, training in land administration, environmental management, and land use planning.</p> <p>Noragric provides technical assistance on land tenure and access to natural resources. Key projects related to land tenure include:</p> <p><i>Appraisal of the de Soto programme, Tanzania</i> Funded by: Royal Norwegian Embassy, Dar es Salaam Period: June–July 2004 Contact: Tor Arve Benjaminsen</p> <p><i>Support to human rights and governance in South Africa’s land and agrarian reform</i> Funded by: University of Oslo; PLAAS Period: 2001–2004 Noragric contact: Tor Arve Benjaminsen</p> <p>CO–GOVERN Funded by: European Commission Period: 2002–2005 Noragric contact: Tor Arve Benjaminsen</p> <p><i>Land reform and poverty in Namaqualand, South Africa</i> Funded by: NFR Period: 2003–2005 Noragric contact: Espen Sjaastad</p> <p><i>Land tenure and natural resource management in Sudan</i> Funded by: Norwegian Peoples Aid Period: 2004 Noragric contact: N. Shanmugaratnam</p>
Swedish International Development Agency (SIDA)	General http://www.sida.se/sida/jsp/sida.jsp?d=121&language=en_US	<p>Undertakes rural and urban land administration initiatives, such as strengthening institutions for cadastre and land registry and training personnel. They contribute to legal frameworks for protection of property rights, methods for updating registries, data interface, and monitoring systems.</p> <p>Key countries: Bosnia-Herzegovina, Croatia, Egypt, Estonia, Ethiopia, Guatemala, Kosovo, Kyrgyzstan, Latvia, Lithuania, Moldova, Nicaragua, Poland, Tanzania, Vietnam, and Zambia.</p>
United States Agency	General	USAID has been a major supporter of strengthened property rights and business

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
for International Development (USAID)	http://www.usaid.gov	<p>formalization. It has supported significant legal and judicial reform, land titling, and registration, in the former Soviet Union and Eastern Europe and, to a lesser extent, elsewhere. It has a relatively nuanced viewpoint on land titling and its limitations outside countries in transition. The agency's understandings have been informed by extensive policy studies carried out by the Land Tenure Center at the University of Wisconsin-Madison and more recently by a number of private contractors. USAID has also been the major funder of the ILD's diagnostic studies and has supported numerous commercial law reform projects. The organization is developing a flagship publication on these issues, and its viewpoints can be inferred from its activities and reports at the country level. USAID was a major supporter of the work leading up to the World Bank's Policy Research Report on land issues.</p> <p>Key Countries: Worldwide, see website.</p>
United States Department of State	<p>Reports on Human Rights http://www.state.gov/g/drl/hr/</p>	<p>These reports are produced every year pursuant to federal law and prepared by US Government.</p>
The Millenium Challenge Corporation (MCC)	<p>General http://www.mcc.gov</p>	<p>This very recently established compliment to USAID in the US's program of foreign assistance is assembling significant expertise in the land area and has begun to make substantial commitments of funds to land formalization programs.</p>
RESEARCH INSTITUTIONS, NONGOVERNMENTAL ORGANIZATIONS, AND NETWORKS		
Center for Development and Enterprise (CDE)	<p>General http://www.cde.org.za/</p>	<p>CDE is an independent policy research and advocacy organization focused on critical national development issues and their relationship to economic growth and democratic consolidation. Through examining South African realities, and looking at international experience where appropriate, CDE formulates practical policy proposals outlining ways in which South Africa can tackle major social and economic challenges.</p>
The Center for International Private Enterprise (CIPE)	<p>General http://www.cipe.org/</p>	<p>CIPE is a non-profit affiliate of the US Chamber of Commerce and one of the four core institutes of the National Endowment for Democracy. CIPE has supported more than 800 local initiatives in 95 developing countries, involving the private sector in policy advocacy and institutional reform, improving governance, and building understanding of market-based democratic systems. CIPE programs are also supported through USAID.</p>
Global Development Network	<p>General http://www.gdnet.org/</p>	
International Development Research Centre (IDRC)	<p>General http://www.idrc.ca</p>	<p>IDRC conducts research, consultation, dissemination, and advocacy on a range of development issues, including land policy and land tenure. Some of the issues they have investigated or supported include: the impact of market-oriented land reforms (including land registration and titling) on the poor, conflict, and alternatives to these policies; the implications of land-related conflict for tenure regularization; channels for land tenancy and use; critical elements for inclusion in land legislation; and informal allocation of urban land and options for improving its delivery. In 2001–2002, they sponsored a research competition on the topic of Gender, Globalization, and Land Tenure, which produced studies addressing</p>

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
		<p>the impact of land tenure reforms in Ghana on women and the links between land tenure and women's well-being in Vietnam. IDRC has also promoted the participation of civil society in public policy formulation and communal titling for indigenous peoples. They have contributed to the technical design of land registries.</p> <p>Key countries and regions: Guatemala, Mali, the Philippines, and Trinidad, and Tobago, with particular emphasis on Latin America.</p>
Institute for Liberty and Democracy (ILD):	General http://www.ild.org.pe/	<p>ILD assists countries in crafting formal property systems that are intended to allow beneficiaries to convert their assets into leveragable capital. This includes widespread publication of the benefits of legal property systems, identification and valuation of extralegal assets, research on informal sector norms governing extralegal assets and institutional constraints to generating capital from them, design of reform policies, and implementation of reform measures through massive registration and formalization campaigns.</p> <p>Key countries: Diagnostic work in Egypt, El Salvador, Haiti, Honduras, Mexico, and Tanzania, with implementation experience in Peru.</p>
International Land Coalition (ILC)	General http://www.landcoalition.org/index.htm	<p>Members of the ILC promote cooperation between intra-governmental, governmental, and civil society organizations worldwide to achieve secure access by the poor to natural resources, especially land. They work directly with the rural poor to further their participation in policy making on critical land issues. ILC engages in advocacy through participation in strategic meetings concerning land; contribution to and monitoring of international agreements; knowledge sharing programs and discussion forums; development of standards and indicators for tenure security; and publication of policy papers, reviews, case studies, workshop proceedings, and a newsletter.</p>
International Federation of Surveyors (FIG)	General http://www.fig.net/	<p>As an international membership organization promoting the surveying profession, FIG seeks to ensure the services offered by the profession meet changing market needs. It is comprised of 10 technical area commissions, of which the Commission on Cadastre and Land Management focuses on technical competence in cadastral reform, surveying, parcel-based land information systems, land titling and registration, land law, urban and rural land consolidation, and national and international boundaries. They hold international technical congresses and working weeks every 4 years and annual regional conferences. They publish policy and technical guidelines, an electronic newsletter, and the FIG annual review.</p>
International Institute for Environment and Development (IIED):	General http://www.iied.org/	<p>IIED is a development think tank based in London and a major recipient of DFID funding for work on formalization-related issues on the land side. It brings an interdisciplinary viewpoint broader than most organizations to these issues, highlighting their social, cultural, and other dimensions, as well as their economic dimension. It has particularly strong credentials on these issues in the African context.</p>
IRIS	General http://www.iris.umd.edu/	<p>IRIS is a research and advisory center located in the Department of Economics at the University of Maryland, College Park. They work to understand and facilitate economic growth and democratic development in poor and transition countries, focusing on the role of institutions—the formal and informal rules by which individuals organize economic, political,</p>

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
		and social activity.
Land Tenure Center (LTC)	General http://www.ies.wisc.edu/ltc/	The LTC conducts multi-disciplinary research and training and provides country-level advisory services related to issues of land tenure, land use, agrarian reform, land markets, land registration and titling, and natural resource management. The center publishes technical and policy paper series, briefs, and books. In recent years, the emphasis has swung toward natural resource management and drylands issues. Key regions: Africa, Asia, Eastern Europe, Latin America, and North America
North-South Institute	General http://www.nsi-ins.ca/	Although dedicated to conducting analysis on a wide range of development issues, it appears to be one of the only research institutes that examines the linkages between land policy and violence. They also produce research on land tenure as it relates to indigenous peoples and collaborate with IDRC on studies addressing the impacts of land tenure reforms.
Oxfam, Great Britain	General http://www.oxfam.org.uk/	As part of a broad agenda of efforts dedicated to the elimination of poverty and suffering, Oxfam engages in advocacy for pro-poor land reform and equitable and secure land rights that specifically benefit the poor both through direct engagement in debates and through support to local organizations. One example is their support to social movements in Brazil that are seeking to reclaim land rights. Oxfam maintains a Web page dedicated to land rights in Africa.
	General http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/index.htm	This page outlines Oxfam's key principles on land rights and provides an extensive library of publications related to poor people's land rights in the African context.
Rural Development Institute (RDI)	General http://www.rdiland.org/	RDI is a think tank and research institute on the legal dimensions of land formalization in developing countries, based in Seattle, WA. RDI is a major source of legal and applied expertise and publishes extensively on these issues. They have particular expertise in land tenure reform as well as onformalization and countries in transition.
Transparency International (TI)	Corruption Perceptions Index (CPI), http://www.transparency.org http://www.transparency.org/cpi/	TI's CPI is probably the most widely used measure of corruption; "a country's CPI score relates to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt)."
Women in Informal Employment: Globalizing and Organizing (WIEGO)	General http://www.wiego.org/	
REGIONAL INITIATIVES		
The Asian NGO Coalition for Agrarian Reform and Rural	General http://www.angoc.ngo.ph/index.html	Reaching around 3000 NGOs drawn from 11 Asian countries, ANGOC engages in advocacy work concerning agrarian reform, food security, sustainable agriculture, and rural development. In addition to policy advocacy and supporting its members to coordinate

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
Development (ANGOC)		public actions, ANGOC organizes regional and national conferences, offers training, provides knowledge and information forums, and produces and disseminates numerous published and unpublished studies.
TierrAmericas (LandNet Ameritas)	General http://www.landnetamericas.org/	Established by USAID and the Organization of American States (OAS), this community of practice aims to facilitate coordination and consensus building among multiple stakeholders concerning the property registration goals set out during the Summit of the Americas process since 1996. Directed to countries in Latin America and the Caribbean, these goals include: clarification of land tenure and property rights, streamlining and decentralizing property registration and integrating alternative dispute resolution mechanisms, providing financial and technical assistance by multilateral and bilateral sources to support reforms, protecting the rights of indigenous populations, regularizing informal property rights, establishing reforms to the formal banking sector that enable the poor to use registered land as collateral, and ensuring that property rights benefit all citizens without discrimination. To this end, the forum organizes activities and events for information exchange and debate, gathers data and generates analyses, mobilizes resources from civil society in support of the Summit goals, and monitors and evaluates progress.
LandNet Africa	General http://www.ossrea.net/projects/landnet.htm	Advocates for the formulation and implementation of pro-poor land policy and administration through cross-fertilization among member countries, undertaking comparative research, strengthening stakeholder information systems, providing services to support multi-stakeholder policy dialogue, and facilitating regional cooperation.
NATIONAL NGOS		
Fundación Tierra, Bolivia	General http://www.ftierra.org/ftierra1104/index.asp (in Spanish)	Fundación Tierra seeks to create greater equality in access to and use of natural resources through supporting local citizen participation and public action. The organization engages in research and dissemination on land issues and participates in policy debates and lobbying, together with farmer's and other rural citizen's organizations, indigenous groups, and public institutions. They have been instrumental in contributing to the content of 2 key laws in Bolivia, one concerning agrarian reform and another on popular participation.
Movimento dos Trabalhadores Rurais Sem Terra (MST), Brazil	General http://www.mstbrazil.org/?q=	Claiming to be the largest social movement in Latin America, MST comprises around 1.5 million landless persons in 23 of Brazil's 27 states. In opposition to the stark inequality of land distribution and wealth in Brazil, as well as the virtual stagnation of redistributive land reforms, MST members peacefully occupy unused land of often-absent landowners where they establish farms, schools, and health care facilities. The fact that Brazil's Constitution mandates that unproductive land be used for the social good has provided a legal foundation for their actions and, according to MST, has led to the granting of over 250,000 titles to poor families, while around 400,000 families have benefited from redistributions advocated by MST.

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
Program for Land and Agrarian Studies, University of the Western Cape (PLAAS), South Africa	General http://www.uwc.ac.za/plaas/	PLAAS engages in research, training and policy advocacy on land issues in South Africa with the aim of contributing to social change, stronger democracy, and equality. Chief areas of focus are land redistribution, restitution, and tenure reform while also supporting institutional restructuring that favors improved land policy in South Africa. PLAAS also aims to strengthen applied scientific scholarship dedicated to land and rural development. Active in the region as well as in South Africa.
Heritage Foundation	www.heritage.org/research/features/index	<p>“Each country receives its overall economic freedom score based on the simple average of the 10 individual factor scores. Each factor is graded according to a unique scale. The scales run from 1 to 5: A score of 1 signifies an economic environment or set of policies that are most conducive to economic freedom, while a score of 5 signifies a set of policies that are least conducive to economic freedom.”</p> <p>The four broad categories of economic freedom in the Index are:</p> <p>Informal Market: “This factor relies on Transparency International’s CPI, which measures the level of corruption in 102 countries, to determine the informal market scores of countries that are also listed in the Index of Economic Freedom.”</p> <p>Government Intervention in the Economy: “This factor measures government’s direct use of scarce resources for its own purposes and government’s control over resources through ownership. The measure comprises both government consumption and government production. Transfer payments (the difference between government expenditure and government consumption), which consist of compulsory exchange of the rights to resources from some people to others, are excluded from this measure.</p> <p>Property Rights: “Methodology. This factor scores the degree to which a country’s laws protect private property rights and the degree to which its government enforces those laws. It also accounts for the possibility that private property will be expropriated. In addition, it analyzes the independence of the judiciary, the existence of corruption within the judiciary, and the ability of individuals and businesses to enforce contracts. The less certain the legal protection of property, the higher a country’s score; similarly, the greater the chances of government expropriation of property, the higher a country’s score.”</p> <p>Regulation: “This factor measures how easy or difficult it is to open and operate a business. The more regulations are imposed on business, the harder it is to establish one. The factor also examines the degree of corruption in government and whether regulations are applied uniformly to all businesses. Another consideration is whether the country has state planning agencies that set production limits and quotas. The scale establishes a set of conditions for each of the five possible grades. These conditions also include such items as the extent of government corruption, how uniformly regulations are applied, and the extent to which regulations impose a burden on business. A very low score of 1 indicates that corruption is virtually nonexistent and regulations are minimal and applied uniformly; a very high score of 5 indicates that corruption is widespread, regulations are applied randomly, and the general level of regulation is very high. A country need only meet a majority of the conditions for a particular score to receive that score.”</p>

INSTITUTION/ ORGANIZATION	WEB REFERENCE	DETAILS
Center for Civil Society (CCS)	General http://www.ccsindia.org/policy/live/	CCS's Center for Law, Liberty and Livelihood is founded on the principle that the quality of life is intrinsically related to the pursuit of livelihood. Choice and pursuit of livelihood is more valuable for those at the bottom rung of the economic ladder—nobody appreciates free enterprise more than the poor hawker. This entails the removal of various licenses and laws, rules and regulations under which citizens live. The rich can always find a way around government controls, the poor have no way out. The free market, not government is best suited to offer opportunities for pursuit of livelihood. Therefore the center develops public policy measures to clear the path for free enterprise and through research, advocacy and outreach activities shift the terms of public debate in favor of deregulation of exit and entry barriers for pursuit of an honest livelihood.

ANNEX 5. EMPIRICAL STUDIES AND IMPACTS OF FORMALIZATION: LAND

Over the past three decades, studies have been carried out which aim to establish causal connections between either legal status (typically, formal or informal) or security/insecurity and their impacts. The studies take a variety of approaches, including:

- Econometric studies, usually involving large samples of households or businesses exhibiting lesser or greater degrees of formality. These allow econometric analyses to indicate causality. While these are methodologically challenging, there are in fact a considerable number of such studies. Most relate to land, such as the well-known Feder et al study of the positive impacts of World Bank-funded land titling and registration in Thailand and other studies, the findings of which are outline below in this annex.
- Case studies, participatory or rapid rural appraisals, anthropological studies, and other non-economic approaches to understanding the dynamic interplay between varying degrees of formality and people’s livelihoods. Some studies of this genre are also included in the Annex 7.
- Considerable evaluative reporting on land titling and registration projects is also available from governments and donors, but it tends to measure the success of projects through indicators such as laws enacted and parcels surveyed, adjudicated, and registered. These tell little about the economic and social impacts of project activities on the intended beneficiaries. It is important to remember that informality is only problematic—or at least only a priority—where it causes insecurity or incapacity and where these are related to a real economic opportunity.
- Studies that link informal business to low income are common. Some of them compare the size of businesses with factors such as number of individuals in households. The inclusion in these studies of indicators such as age, individual income, household income, level of literacy, gender, time in business, and crime rates can provide more sophisticated indications of the impacts of informal business. Likewise the tendency to consider that all informal business is conducted by mostly small, unregistered businesses fails to acknowledge common practices by many large businesses in many countries in the form of oral agreements with the informal sector, use of formal sector forms with unintended purposes, such as the post-dated checks, or failure to report all of the revenues.
- Studies which compare countries or other units in terms of formalization indicators, to see if there is a correlation between formality and desired phenomena, such as investment, are also common. Correlations do not establish causality, but can be suggestive and, if reinforced with other evidence, convincing. An example would be the World Bank/IFC “Doing Business” studies on land registration, credit, business registration and termination, labor contracting, licensing, and contract enforcement.
- Historical studies, with hindsight, discover historical linkages. These can be highly convincing, though they cannot exclude alternative or supplementary explanations. They have the advantage of a

long time-frame, which is most helpful in evaluating the impacts of informality and formalization. De Soto's *The Mystery of Capital* is such an example.

- References to developments of small business over time can be illustrative. Studies of investment climate in different countries during a comparable period of time can be useful. Some important sources are the recent business climate surveys made by the World Bank, for example the papers by Batra and Friedman (see Annex 7).

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Alston, L.J., G.D. Libecap, and R. Schneider. 1996. The Determinants and impact of property rights: Land titles on the Brazilian frontier. <i>Journal of Law, Economics, & Organization</i> 12(1): 25-61. Oxford. Oxford University Press. Country: Brazil	Econometric analysis based on surveys of 206 smallholders in 4 sites in the state of Para and on aggregate agricultural census data at the <i>município</i> level for the states of Parana and Para	Titles have a positive and significant effect on land value due to improved marketability and lower private enforcement costs. Their effect increases with proximity to market centers, with gaps between titled and non-titled land values growing the closer one is (though this finding is not altogether supported in the analysis of the agricultural census data). The probability of farm-specific investment also increases with titling. Existence of conflict does not appear to affect titling incidence, but age of household head does. Yet, actual supply of titling does not correspond with analytical frameworks of titling demand, with many areas characterized by substantial under- or over-titling, reflecting political and cost factors that affect state provision of titles.
Antle, John, David Yanggen, Roberto Valdivia, and Charles Crissman. 2003. Endogeneity of land titling and farm investments: Evidence from the Peruvian Andes. Working Paper, Department of Agricultural Economics and Economics, Montana State University, Bozeman, MT, USA. Country: Peru	Econometric analysis estimating single and simultaneous equation probit models, based on data from 841 parcels located in the Cajamarca regions of Northern Peru	Single equation models show that terracing strongly affects the probability of titling and vice-versa. Specifically, the probability of terracing increases from 17.4% to 38.4% when a farmer acquires a title, and the probability of obtaining a title increases from 49.4% to 75% when a farmer decides to terrace. But when the simultaneous equation model is used, the order of magnitude of the effects substantially decreases, with the mean probability of terracing increasing from 25.8 to only 32.4% with acquisition of a title and the estimated elasticity of response of titling to terrace investment is only .078. This verifies the upward bias of endogeneity on the estimates of the effects of titling when single equation models are used. This suggests that studies that fail to control for endogeneity in their estimate of the effects of titling are likely to produce exaggerated positive results. Lack of formal credit providers in the area meant that titles had no effect on improving farmer access to credit. Likewise, titles did not stimulate land markets.
Barrows, R. and M. Roth. 1990. Land tenure and investment in African agriculture: Theory and evidence. <i>Journal of Modern African Studies</i> 28(2): 265-297. Countries: Kenya, Uganda, Africa	Review of empirical evidence from three countries that have systems for registering freehold tenure.	In all three countries, evidence from studies indicate that state-led registration of freehold tenure has had little impact on reducing the incidence of conflict, improving access to credit and increasing agricultural investment. Its impact on sales markets has been mixed, though there evidence demonstrates that there are often negative impacts on equity and distribution.

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Besley, Tim. 1998. Investment incentives and property rights. In: P. Newman, ed., <i>The New Palgrave Dictionary of economics and the law</i> , Vol. 2. London: Macmillan. Pp. 359–365. Countries: Various	Survey of empirical evidence from Africa, Asia, and Latin America of the effects of land rights on investment	In the case of Africa, one finds widespread evidence that contradicts the theoretical link between property rights and investment. In Asia, the Feder studies identify a link between titled land and improved credit access and investment, but his study in China does not support the hypothesis that tenure insecurity has reduced investment. Lin (1988, 1992), however finds that adoption of the household responsibility system did stimulate investment. With the exception of the Alston et al (1996) study in Brazil, findings on the impact of titling in Latin America are similar to the result for Africa in terms of not identifying a definitive link with investment. In sum, empirical studies in general fail to uncover strong evidence of an association between land rights and investment.
Besley, Timothy. 1995. Property rights and investment incentives: Theory and evidence from Ghana, <i>Journal of Political Economy</i> 103(5): 903–937.	Econometric analysis based on 711 households from 2 regions with differing population, market, agricultural dependency, and evolving tenure characteristics	Accounting for the possibility of endogeneity of land rights and investment, the study finds for the Wassa region that greater breadth in land rights raises the probability for investment in tree planting though this result does not hold when household fixed effects are included in the analysis or when rights are more disaggregated in the analysis. Transfer rights themselves are not associated with investment decisions. More individualized rights are significantly correlated with land acquired by gift or purchase and longer ownership. In Anloga, however, results are not robust and suggest endogeneity. Acquiring land with trees already on it is associated with having fewer rights since the act of planting trees is an important mode of establishing land rights. The study stresses the importance of studying the determinants of rights, and not simply their effects. *Note: Using the same data, these conclusions are the opposite ones reached by Migot-Adholla et al (1994) which did not account for endogeneity.
Boucher, Steve, Brad Barham, Michael Carter, and Juan Sebastian Chamorro. 2002. “Market-friendly” reforms and the operation of credit and land markets in Central America. Presented at the Northeast Universities Development Consortium Conference, Williams College. October.	Descriptive evidence using statistical analysis and non-parametric estimation based on the following data sets: 5 departments in Honduras: Panel data survey: 450 producer households in 1994 (Lopez, 2000), of which 362 were resurveyed in 2001, plus 138 “new” panel households. Cross-sectional data: 350 producer households in 2001. Nicaragua: Panel data survey: 1450	This study finds considerable wealth-bias in non-price rationing of credit following tenure reforms, with only 2% of the lowest wealth quintile in Honduras and Nicaragua receiving formal loans. While in this lowest quintile almost 50% in Nicaragua and 60% in Honduras report being effectively non-price rationed in formal credit markets, in the top quintile only around 13% of those accessing formal loans report being non-price rationed in both countries. The findings suggest that titling reforms have not improved access to the credit for small producers in these countries. Land rental market activity did substantially accelerate in both countries following reforms, with land-rich households mostly renting out, and land-poor households renting in. However, most of the activity is accounted for by land

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	households in 1996, of which 1350 were resurveyed, and 190 additional households comprised those living on land of the 100 missing households who had emigrated	loans between persons well-known to one another, rather than market transactions, while the amounts tend to be very small and produce very little effect on the distribution of operated land in favor of smallholders. Non-parametric estimation confirms the failure of owned land-operated land structures to change following reforms. Likewise, there has been very little change in permanent land transfer markets, with only some small indications of increased land concentration in the case of Nicaragua. The paper argues that neoliberal approaches to tenure reform in Latin America have disregarded the role of factor market failures and consequentially they are poised to yield a host of disappointing results.
Brasselle, Anne-Sophie, Frederic Gaspart and Jean-Philippe Platteau. 1997. Land tenure security and investment incentives: Some further puzzling evidence from Burkina Faso, CRED, Namur, Belgium.	Econometric analysis (two-stage conditional maximum likelihood and IVP/bootstrapping) based on data from 200 agriculture and agriculture-livestock dependent households in 9 villages belonging to the neighboring departments of Satiri and Bekuy, north of Bobo-Dioulasso	Controlling for endogeneity bias and treating use and transfer rights as distinct in equating different rights bundles with increasing tenure security, the study finds that land rights are strengthened by investments (tree planting and parcel delimitation) and are also positively associated with native households with larger initial land endowments. The effect of immigrant status is ambiguous and varies with how the model is specified. Interestingly, estimation of the impacts of land rights on investment reveals that none of the different bundles of land rights (including those suggesting stronger tenure security) has an impact on investment. Joint tests on the coefficients shows that had endogeneity not been controlled for, biased result would have emerged. Factors that influence investment are rather extension of farm size and higher per capita household income. Since credit and sales markets do not exist in the study area, the findings cast doubt on the existence of the "assurance" effect and gains-from-trade effect (through rental markets) of enhanced tenure security on investment.
Broegaard, Rikke J. 2005. Land tenure insecurity and inequality in Nicaragua. <i>Development and Change</i> 36 (5): 845-864. September. Country: Nicaragua	Household survey in one village: n=71 In-depth interviews, focus groups, and participatory mapping with 349 households in 3 villages Secondary data from public registries and cadastre offices. Interviews with NGOs, government, and research institution professionals	Perceptions of land tenure insecurity by households is very high with 20% of landowning households having had claims against their land. People view economic wealth and the ability to pay bribes as a critical element in securing one's property rights in the face of conflict, regardless of title. Local legitimacy of rights, an extended period of possession and good relations with powerful former owners were also cited as important security determinants. Quantitative data reveal that roughly the same proportion (two-thirds) of titled households and untitled households regard themselves as tenure secure. Moreover, those receiving titles issued by lawyers, "patrones" and family head were regarded as providing significantly more security than those issued by state institutions.
Byamugisha, Frank F.K. 1999.	Econometric analysis using time	Land titling is significantly correlated with financial development in the long-

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<p>How land registration affects financial development and economic growth in Thailand. Policy Research Working Paper No. 2241. Rural Development and Natural Resources Sector Unit, East Asia and Pacific Region, The World Bank. November.</p> <p>Country: Thailand</p>	<p>series economy-wide data: 1961–1996</p>	<p>run, though not in the short-run. However, it has a significant negative correlation with economic growth in the short-run, but then gradually becomes positive (and significant) in the long-run (4–12 years).</p>
<p>Calderon Cockburn, Julio. 2002. The mystery of credit. <i>Land Lines</i>. Lincoln Institute of Land and Policy.</p>	<p>Statistical analysis based on National Housing Survey (Peru) data, including 3,572,091 urban housing units in 1998 and 1999</p>	<p>Although there was a significant increase in titled urban housing in 1998 and 1999, this was not accompanied by an increase in credit use in the same period, which also corresponded to an economic recession. Rather, housing expansion and improvements by both informal and regularized households was met primarily through personal resources, relatives and friends. Among those who accessed formal loans, those with titles relied entirely on subsidized public credit sources, while more than a quarter of those without titles obtained them from private banks. This suggests that banks use criteria other than titles to assess creditworthiness.</p> <p>Comparing regularized and informal housing in 1998 and 1999, the percentage of regularized households undertaking investments in housing improvements (improvements in wall, floors and roofs) are notably higher than the proportions for households with informal housing, with an average differential of 35%.</p>
<p>Carter, Michael, Keith Wiebe, and Benoit Blarel. 1991. Tenure security for whom? Differential impacts of land policy in Kenya. In <i>Searching for land tenure security in Africa</i>. J. Bruce and S. Migot-Adholla, eds.</p> <p>Country: Kenya</p>	<p>Descriptive statistics and econometric analysis of 109 farms in the Njoro Divison, 200 km north of Nairobi.</p>	<p>By specifying a model that seeks to disentangle credit supply and demand effects of titling, the analysis reveals that land, labor, capital and insurance market failures contribute to the benefits of titling accruing mainly to large-scale producers. More critical for smallholders than titling is overcoming barriers to accessing these markets.</p>
<p>Carter, Michael R. and Pedro Olinto. 2003. Getting institutions “right” for whom? Credit constraints and the impact of property rights on the quantity</p>	<p>Econometric analysis of panel data from 300 producer households in 1991 and 248 of the 300 in 1994</p>	<p>Titling of land leads to wealth-biased impacts, whereby small producers are not able to gain access to credit in spite of their investment demand and collateralizable titles. As such, their increased tenure security induces them to disinvest in movable capital while they allocate resources to land-attached fixed assets. Conclusions advise substantial credit market reforms need to</p>

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and composition of investment. <i>American Journal of Agricultural Economics</i> 85 (1): 173–86 February. Country: Paraguay		precede tenure reforms in order to curb perverse equity impacts.
Carter, Michael and Ramon Salgado. 2001. Land market liberalization and the agrarian question in Latin America. In <i>Access to land, rural poverty and public action</i> . A. de Janvry, G. Gordillo, J.P. Platteau and E. Sadoulet, eds. Oxford University Press. Countries: Paraguay, Honduras, Chile	Econometric analysis and descriptive statistics (Paraguay); reviews of other studies and descriptive statistics (Honduras and Chile)	The Paraguay study finds that while rental markets offer an avenue for land acquisition by the poor, sales markets are biased toward the wealthy and appear to be contributing to greater land concentration. This is due principally to credit constraints faced by the poor diminishing their competitiveness. Evidence from Honduras suggests that land titling has done little or nothing by way of improving access to credit, stimulating land investments, increasing agricultural productivity, and augmenting land market transactions, though there is one study that provides evidence of improved investment and productivity. In the reform areas, one finds smallholders selling land in more fertile zones to agro-industries and large scale producers of export crops. Similarly, in Chile, land markets has led to concentration in the hands of large, agro-export farmers, particularly in fruit-growing regions, and to well-financed professionals newly acquiring land in rural areas – at the expense of traditional smallholders.
Chalamwong, Yongyuth and Gershon Feder. 1988. The Impact of Landownership Security: Theory and Evidence from Thailand. Washington DC: The World Bank. Country: Thailand	Econometric analysis based on data on 1414 agricultural plots of 529 households in three provinces in Thailand	In all three provinces, titled land is significantly correlated with higher land prices, an effect that is associated more with improved credit access rather than reduced threat of eviction. The values of untitled land are 80, 43 and 47 percent less than titled land in Lop Buri, Nakhon Ratchasima, and Khon Kaen provinces, respectively. Estimates of the social benefits of titling are significant in Nakhon Ratchasima, and Khon Kaen, but minimal in Lop Buri. Social benefits are considerably less than private benefits. These results may relate to the existence of dynamic informal sector credit markets in Lop Buri.
Cotula, Lorenzo, Camilla Toulmin and Ced Hesse. 2004. Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues. London: IIED. Country: Kenya and other African countries	Review of evidence from various studies of the impacts of land registration in African countries, with most evidence pertaining to Kenya	Kenya: registration has: <ul style="list-style-type: none"> ▪ Failed to result in increases in productivity for smallholders, ▪ Failed to stimulate access to credit through use of land as collateral, ▪ Failed to induce land markets where they did not exist, but increased speculation by urban elites where they did. ▪ Undermined women's and pastoralists' secondary rights, ▪ Reinforced wealth and class disparities through manipulation of information asymmetries and corruption.

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<p>Cousins, Ben, Tessa Cousins, Donna Hornby, Rosalie Kingwill, Lauren Royston and Warren Smit. 2005. Will formalizing property rights reduce poverty in South Africa's 'second economy'? Questioning the mythologies of Hernando de Soto. PLAAS Policy Brief No. 18. October.</p> <p>Country: South Africa</p>	<p>Presentation of evidence from two case studies in South Africa, one in urban Cape Town and the other in the rural community of Ekuthuleni, KwaZulu-Natal. Review of additional studies in the South Africa context</p>	<p><i>Capetown study:</i> Due to titling in the name of the household head, tenure security for women and extended family members was often reduced. Bias in the allocation process privileged community leaders, while some long standing residents were dispossessed. Street committees prevented some owners from occupying their residences. Five years after project completion, one finds the land registration system has not been maintained with nearly all of the 30% of titled houses being sold on the informal market. The plot allocation process and small unit sizes also disrupted social and kinship networks.</p> <p><i>Ekuthuleni study:</i> Indigenous land tenure systems of differential, overlapping rights and flexible boundaries collide with formal tenure systems that provide exclusive rights which are precise and rigid.</p> <p>Another South Africa study by Finmark (2004) revealed strong perceptions of tenure security among urban residents without titles and a disinterest in selling their house due to lack of sufficient income to acquire better housing and a perception of one's home as a family asset.</p>
<p>de Janvry Alain, Gustavo Gordillo, Jean-Philippe Platteau, and Elisabeth Sadoulet 2001. Access to land, rural poverty and public action. Oxford University Press.</p> <p>Countries: Various</p>	<p>Edited volume of empirical studies, which apply a variety of methods, including econometric analyses, case study methods, and cross country assessments</p>	<p>Key lessons drawn from the studies include:</p> <ul style="list-style-type: none"> ▪ Tenure security can be achieved through sets of rights that fall short of private ownership, ▪ Efficient land use is not necessarily achieved through individual titling, ▪ Land policy reforms have overemphasized private ownership rights over use rights and have not given sufficient regard to market and institutional failures, ▪ Land rental and sales markets can function well without titling and registration where high levels of social capital and sound informal procedures are present to keep transaction costs low. ▪ Land rental contracts may be more effective in meeting the needs of the rural poor than land sales markets because they can help compensate for market and institutional failures. ▪ To be effective land policy reforms need to be accompanied by comprehensive policy and institutional reforms.
<p>Deininger K. and J. Chamorro. 2004. Investment and Equity Effects of Land Regularization: The Case of Nicaragua <i>Agricultural Economics</i> 30 (2): 101–116.</p>	<p>Descriptive statistics and econometric analysis of four samples totaling 2475 households</p>	<p>Possession of a <i>registered</i> title (as opposed to unregistered agrarian reform titles) is correlated with an average 30% increase in land value, while its effect on investment is small, plot-specific and only significant at low levels. Moreover, investment is decreasing in plot size and is reallocated to land-attached assets. Credit market and land market effects of land titles are absent.</p>

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<p>Feder, G., and A. Nishio. 1996. The Benefits of Land Registration and Titling: Economic and Social Perspectives, <i>Land Use Policy</i> 15(1), 25-43.</p> <p>Countries: Thailand, Philippines, Indonesia, India, Honduras, Paraguay, Brazil, Peru, Ghana, Rwanda, Kenya</p>	<p>Review of empirical evidence of the impacts of land titling, including Feder, et al (1988); Jimenez (1984); Dowall and Leaf (1990); Pender and Kerr (1994); Lopez (1996); Carter and Olinto (1996); Alston et al (1996); De Soto (1989) and Migot-Adholla et al (1991)</p>	<p>Feder et al (1988): titling significantly improved farmer access to credit (52-521% more credit than untitled farmers). Titled farmers also made greater investments on their land and were more productive. Their incomes were higher and prices for their land greater than farmers without titles.</p> <p>Jimenez (1984): housing prices 58% higher in titled residential areas than squatter areas in Davao, Philippines; while rental prices were 18% higher in the former.</p> <p>Dowall and Leaf (1990): titled residential plots in Jakarta priced 10.6% higher than those with only tax receipts and 28.5% higher than those without receipts or title.</p> <p>Pender and Kerr (1994): In Andra Pradesh, India, the ability to transfer land had little effect on investment and credit use, but non-transferable land is worth 15% less than land that can be sold.</p> <p>Lopez (1996): Land-attached investments, access to institutional credit and loan size is significantly higher for farmers with titles in two departments of Honduras. ROR for land registration estimated to be 17%.</p> <p>Carter and Olinto (1996): Land titles significantly affect agricultural productivity though stimulating investment demand and improving credit supply, though the supply is mainly restricted to large scale farmers. Paraguay.</p> <p>Alston, et al (1996): Titled land near market centers in Para, Brazil has significantly higher value than untitled land in the same location, though the effects diminish as one moves away from market centers.</p> <p>De Soto (1989): Average value of real estate on titled lots in Lima, Peru is 9 times that of buildings on untitled lots.</p> <p>Migot-Adholla et al (1991): land registration had no effects on credit access, land improvements nor productivity in rainfed agricultural regions of Ghana, Rwanda and Kenya.</p> <p>The study concludes that titling is likely to be most effective where there exist robust formal financial markets exist, incentives for investment in land (such as proximity to markets and good quality land), demand for land transactions, and an enabling regulatory framework for land registration. To reduce the potential for land grabbing and speculation at the expense of the poor, the authors recommend transparency and involvement of landholders in the registration process, examination of potential effects for women and customary right holders, impact monitoring, and subsidized initial registration. It is also suggested that systematic registration is likely to ensure greater</p>

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		equity.
Feder, G. and T. Onchan. 1987. Land Ownership Security and Farm Productivity: Evidence from Thailand. <i>American Journal of Agricultural Economics</i> 69: 311-320. May. Country: Thailand	Econometric analysis an unspecified number of households in three provinces	Possession of land title is correlated with capital (machinery, equipment and draft animals) formation and higher capital/land ratios in two provinces, while in the third titles did not significantly affect capital/land ratios. Households here instead use credit to purchase more land. In over 80% of the cases, title is also associated with bunding and clearing of tree stumps on land, proxies for land improvements.
Feder, G., T. Onchan and T. Raparla. 1988. Collateral, guarantees and rural credit in developing countries: Evidence from Asia. <i>Agricultural Economics</i> 2: 231-245. Countries: Thailand, India, Korea.	Descriptive statistics for Thailand, India and Korea. Econometric analysis of four provinces in rural Thailand (201 households)	Where land collateral is permitted and interest rate restrictions are imposed, institutional lenders are shown to prefer land collateral to other forms of security. However, evidence from three provinces in Thailand demonstrates that large scale farmers with higher land values and/or more capital are more likely to use this type of collateral than small scale farmers.
Field, Erica. 2004. Property rights, community public goods, and household time allocation in urban squatter communities: Evidence from Peru. <i>William and Mary Law Review</i> 45(3): 838 - 887.	Econometric analysis based on data from 2750 households in urban and peri-urban settlements in 8 Peruvian cities targeted for land titling	Titled households are associated with reduced time spent by members in the household, including a 48% decrease in the portion of households with home-based businesses and a 36% decrease in the fraction of households that keep members at home to guard property. Newly titled households work an average of 17% more hours than those who are awaiting title, and they are 38% more likely to participate in leisure activities outside the home. However, they titled household members are significantly less likely to participate in neighborhood groups who provide public goods.
Firmin-Sellers, Kathryn and Patrick Sellers 1999, Expected Failures and Unexpected Successes of Land Titling in Africa, <i>World Development</i> 27(7), 1115-28. Country: Cameroon	Statistics; analysis of 275 titles in two kingdoms, comparing farmers, businessmen and politicians, and urban, peri-urban and rural titleholders; qualitative interviews; secondary source data	Land titles nationwide were awarded primarily to state elites, who claimed around 83% of all titles. In the study areas, farmers received less than a quarter of all titles; they were allocated predominantly to urban businessmen and politicians. Women were virtually excluded from receiving land titles, a situation that resulted in men exerting claims over women's land due to increasing land values. Only 9% of title holders in the study sites used their land as collateral to obtain credit, which is underdeveloped in the rural areas. Nationwide, only 6% of applicants end up receiving titles given a process that takes more than 5 years for most to complete, and is expensive (post-structural adjustment) and corrupt. Yet farmers have used the initial titling process of boundary demarcation to serve as evidence of their land claims, which is affordable and though not legally enforceable, carries local

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		legitimacy. Econometric analysis demonstrates the probability of receiving title is substantially greater in non-rural areas, farmers are more likely than non-farmers to obtain only boundary markers and not title, and the 1989 fee increase discouraged those with pending applications from pursuing their titles.
Foltz, Jeremy, Bruce A. Larson, and Rigoberto Lopez. Land Tenure, Investment, and Agricultural Production in Nicaragua. HIID Development Discussion Paper No. 738. Country: Nicaragua	Econometric analysis based on survey of 505 households within the regions of Leon and Chinandega	Total credit received was significantly and negatively related to female-headed households and households without documented land rights. Although no association between land rights and overall total and agricultural investment was found, the number of trees planted is related to tenure status. While farm income is positively associated with documented land rights, the opposite is true of off-farm income.
Galiani, Sebastian and Ernesto Schargrotsky. 2004. Effects of land titling on child health and education. Inter-American Development Bank–Research Department Latin American Research Network Country: Argentina	Econometric analysis based on a survey of 290 peri-urban households (comprised of 808 children) and anthropometric analysis of 720 children	Addressing the selection problem of title receipt being determined by factors that influence the outcome of titling, the authors find that there is a positive and statistically significant correlation between titled parcels and child occupant weight-for-height Z scores (indicating short run health status). However, no significant height-for-age differences were found between children residing in titled versus non-titled parcels. Pregnancy rates among young girls (age 14-17) are found to be higher in untitled parcels. Correlations between parcel tenure status and high school attrition rates are not significant, but differences in school repetition rate are statistically significant at the 10% level, at 30.3% and 37.6% for children in titled and untitled households, respectively.
Grover, Richard, Paul Muncro-Saure and Mikhail Soloviev. 2002. Housing tenure change in the transitional economies. In <i>Land, rights and innovation: Improving tenure security for the urban poor</i> , G. Payne, ed. London: ITDG Publishing. Countries: Russian Federation, Romania, Bulgaria.	Cross country comparison	In their pursuit of privatization, many transition countries have achieved rates of owner-occupancy that far exceed those of Western European countries. Yet, despite the benefits of owners having greater control over housing decisions, this has resulted in a substantial decline in social and rental housing that serve the poor and occupationally mobile. In spite of tenure changes, inefficiencies and underdevelopment in the mortgage markets continue to constrain mortgage lending, with most transitional economies generating loans of no more than 3% of GDP. As private markets develop, there has been a considerable shift in housing stock from social housing and apartment blocks to more up-market single-family housing, suggesting regressive implications for equity and housing access by the poor.
Hayes, Joseph, Michael Roth and Lydia Zepeda. 1997, Tenure	Econometric analysis based on data from 120 households in three peri-	More individualized rights emerging under customary tenure, including rights to sell, are associated with a higher probability of investment, which thereby

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Security, Investment and Productivity in Gambian Agriculture: A Generalized Probit Analysis, <i>American Journal of Agricultural Economics</i> 79(2): 369-82.	urban villages, based on a simultaneous equation model	leads to increased crop yields. Increased yields are also significantly related to labor (negative), farm size (negative), and donor supported gardens (positive). However, individualization also occurs at the expense of landless farmers who previously acquired land based on community obligations to lend to them. Individualization is negatively correlated with soil improvements.
Home R. and H. Lim (2004) <i>Demystifying the Mystery of Capital: Land Tenure and Poverty in Africa and the Caribbean</i> London Glasshouse Press. Countries: Botswana, Trinidad and Zambia	Edited volume of case studies which apply extensive, semi-structured interviews with informal settlement residents	The studies from all three countries find that registration and titling have made little or no difference in improving access to credit by the poor through provision of a collateralizable asset. Rather, banks are more interested in indications of creditworthiness besides title, including regular employment and generally regard land from low-income neighborhoods as unattractive collateral. From the perspective of residents, titling can be a costly and opaque process. However, the most fundamental obstacle to formal credit appears to be urban residents' fear of dispossession from their hard-won homes. In some cases, this is reinforced by prior action on the part of government banks to repossess collateral and a general distrust of banks and the government. In the case of Trinidad, however, study respondents attributed an improved sense of well-being to more secure tenure rendered by the titles they received.
Hunt, Diana. Unintended Consequences of Land Rights Reform: The Case of the 1998 Uganda Land Act. <i>Development Policy Review</i> 22(2): 173. March. Country: Uganda	Not stated, though it appears to be a desk study	The Uganda Land Act 1998 sought to strengthen customary and occupancy rights with the potential to upgrade them to freehold title. Unintended consequences of the Act include: 1) imposition of huge costs on urban authority budgets through having to pay compensation for land acquired for public infrastructure and reducing their revenues by transferring the collection of leasehold payments to District Land Boards, 2) creation of new risks for banks by mandating the consent of spouses and dependents for land transfers (e.g., cases of illegitimate children or undisclosed spouses who could suddenly block foreclosures) leading to expanded collateral demands and increased credit rationing; 3) a backlog of disputes due to the annulment of lower courts role in hearing them and delays in the activation of the new tribunals, 4) huge costs to the state in having to acquire public use land at market rates, and 5) the implementation budget estimated in 1999 exceeding the allocations ratified by Parliament by around 500%, Moreover, the lack of credit supply to rural areas make impacts on farmer access to credit unlikely, while enactment of the controversial "lost

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		amendment" of spousal co-ownership of marital property has scope for rendering unintended negative consequences due to lack of precision.
Jacoby, Hanan and Bart Minten. 2005. Land titles, investment and agricultural productivity in Madagascar. Mimeo. Country: Madagascar	Regression analysis based on a survey of 1604 households possessing 2652 rice plots in Lac Alaotra, the principal rice-growing region of Madagascar	The study finds the effect of land titles on recurrent investment to be very weak. There is a very small, though statistically significant impact on productivity (using two measures: seasonal rice yield and net value per hectare of rice harvest), though curiously the effect is stronger for out-of-date titles than up-to-date ones. Titled plots have an average 5.6% greater value than untitled plots, though when endogeneity bias due to plot-level unobservables is considered, the premium is only 3.6%. The authors conclude that the private economic benefits of titling would be minimal, especially compared to their costs.
Jansen, Kees and Esther Roquas 1998, Modernizing Insecurity: The Land Titling Project in Honduras, <i>Development and Change</i> 29: 81-106. Country: Honduras	Ethnographic observation in a single Honduran village	Villagers perceive little change in land transactions as a result of a coercive government land titling program, though they claim it has produced many complications. Since most villagers have documentation of their land purchases and regard them as proof of ownership, they see titling fees as a tax rather than a payment for a received benefit. Fragmented parcels often had to be titled in the names of owners' family members, such that the new titleholders sometimes assumed control of the land against the original holder's wishes. Joint titles were not issued, leading to cases of dispossession of non-titled holders, especially among women. Often the program enabled better informed and more powerful individuals to cheat others out of their land rights. In an effort to collect titling fee debts, officials threatened land holders with dispossession if they failed to pay or show the appropriate documentation. Dispute issues are ignored by titling authorities.
Jimenez, Emmanuel. 1984. Tenure security and urban squatting. <i>The Review of Economics and Statistics</i> 66(4): 556-567. Country: The Philippines	Hedonic price model and econometric analysis based on a sample of 3344 households of squatters (1505) and non-squatters (1839) residing in urban Davao	Up to 35% of developing country urban populations reside in informal settlements (finding of previous study). Housing units prices in the formal sector are 18% higher for renters and 58% higher for owners than equivalent units in squatter settlements, suggesting the premium associated with formality. These differentials are greater for low-income households and larger families.
Kagawa, Ayako and Jan Turkstra. 2002. The process of urban land tenure formalization in Peru. In <i>Land, rights and innovation: Improving tenure security for the urban poor</i> , G. Payne, ed. London: ITDG	Case study: interviews with households and community leaders in informal settlements	Only 10% of households titled under the program are eligible for private sector loans, since steady employment is a key criteria set by banks. Titling efforts have focused mostly on settlements located on state-owned, peri-urban desert land where residents are new and there is no competition for land. Difficulties are foreseen when the program treats areas already privatized and characterized by considerable overlapping rights.

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Publishing. Country: Peru		
Lanjouw, Jean O. and Philip Levy. 1998. Untitled: A Study of Formal and Informal Property Rights in Urban Ecuador. Economic Growth Center Discussion Paper No. 788. New Haven: Yale University. Country: Ecuador	Econometric analysis based on surveys of 400 households in 20 low and middle income communities of urban Guayaquil	The study finds that although households only gain a modest increase in utility from titled parcels compared to untitled, the premium is greater in newer communities with weak systems of informal rights and for more vulnerable households (e.g., female-headed) who have more difficulty accessing informal rights and asserting ownership claims. Yet, households with stronger informal claims face greater difficulties selling their properties because those claims represent a threat to prospective buyers. However, strong informal claims also do increase the transfer certainty of owners in the rental market. Even though costs of applying for titles (equivalent on average to one year's consumption) are high, they average only 6.3% of the property value. The authors conclude that titling programs will confer relatively greater benefits to newer and more disorganized communities and to female-headed households.
Lastarria-Cornheil, Susana, Sonia Agurto, Jennifer Brown and Sara Elisa Rosales. 2003. Joint titling in Nicaragua, Indonesia and Honduras: Rapid appraisal synthesis. Land Tenure Center, University of Wisconsin-Madison. January. Coluntries: Nicaragua, Honduras, Indonesia	Review of legislation affecting women's property rights. Rapid rural appraisal in two sites in each country where systematic titling took place, specifically, interviews with key informants from civil society and titling programs, individual interviews and focal group meetings with women landholders	The study finds that joint titling programs are often plagued by the same problems as traditional programs that titled land in the name of the household head. These include inconsistent or ambiguous legislation and lack of political will to undertake more gender equitable reforms, resistance on the part of men to include their wives' names titles, and neglect on the part of titling and registration officials to inform couples of the requirement or possibility of registering land in the name of both spouses. As a result, few couples end up registering land jointly, in spite of laws permitting or mandating the practice. Whether women actually perceive risks of being dispossessed, however, depends much more on local norms and beliefs about rights to land than on formal legislation. Information campaigns promoting gender equity appear to have positive effects on the incidence of joint titling. In all three countries, titles had no impact on improving access to formal credit for poor households, although recipients in Nicaragua and Honduras reported feeling more secure in their tenure as a result of titling. Both fear of debt by low income households and banks' insistence on borrowers having established businesses act as hindrances.
Lastarria-Cornheil, Susana and Grenville Barnes. 1999. Formalizing informality: The Praedial registration System in Peru. LTC Research Paper No.	Interviews with persons in governmental agencies and NGOs responsible for the registration process and for pre- and post-registration activities; field interviews	Successes of the PROFORM property registration system include the establishment of a simple and low cost alternative to the state system, de-linking taxation from registration, modernizing the system, and raising public awareness about titling opportunities. However, the institution has lacked sustained government support and failed to integrate cadastral information.

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131. University of Wisconsin-Madison. Country: Peru	in urban and rural areas with institution staff, community leaders and property owners.	Contrary to what was promised, the system failed to register possession rights and provide mortgage credit based on those, as was originally planned. Its administrative structure remained centralized, imposing higher costs on those residing outside of Lima and preventing the program from expanding beyond the metropolitan area. Operational problems plagued applications for credit based on titles issued by the Praedial system, while credit insurance was not forthcoming from insurance agencies.
Li, Guo, Scott Rozelle and Jikun Huang. 2000. Land rights, farmer investment incentives, and agricultural production in China. Department of Agricultural and Resource Economics University of California Davis. December. Mimeo. Country: China	Econometric analysis drawn from surveys of 664 households in 31 villages in 6 counties of Hebei and Liaoning provinces, located in North and Northeast China	Land rights associated with increased tenure security, including more secure rental rights, increase the probability of making land-saving investments. However, elasticities of output with respect to land right are generally small, such that policies to expand the length of tenure are likely to have minimal impact.
Miceli, Thomas J., C.F. Sirmans and J. Kieyah. 2001. The demand for land title registration: Theory with evidence from Kenya. <i>American Law and Economics Review</i> 3(2): 275-287. Country: Kenya	Statistics and econometric analysis based on data from 33 districts	Land registration is positively and negatively affected by the potential value of land on the sales market and negatively and significantly affected by the cost of registration.
Migot-Adholla, Shem; Peter Hazell; Benoît Blarel & Frank Place. 1993. Indigenous land rights systems in Sub-Saharan Africa, A constraint on productivity? In <i>The Economics of Rural Organization</i> , K. Hoff, A. Braverman & J. Stiglitz, eds. Oxford: Oxford University Press/World Bank, pp. 269-91. Countries: Ghana, Kenya, Rwanda (same study as Place	Descriptive statistics and econometric analysis of over 950 households in rainfed agricultural regions	The study finds that customary systems are flexible and adapt to changing demographic and economic conditions, suggesting that investments by the state would be better targeted to supporting their flexibility than replacing them with statutory land titling and registration. No significant relationships were found between land rights (nor titles in Kenya) and formal credit access, although for the most part formal credit was very limited in the study regions. Nor was there a relationship with land improvements. Moreover, land rights (or titles) are not associated with increased productivity in Ghana and Kenya. In Rwanda, shorter term rights were associated with higher productivity, though this affect was not significant when multicollinearity with years since plot acquisition was accounted for.

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and Hazell [1993], but with additional analysis on productivity and evolutionary land rights theory)		
Migot-Adholla, Shem E., George Benneh, Frank Place and Steven Atsu. 1994. Land, security of tenure, and productivity in Ghana. In <i>Searching for land tenure security in Africa</i> . J. Bruce and S. Migot-Adholla, eds. Country: Ghana	Statistics and econometric analysis drawing from data on 115 households in Anloga, 150 in Wassa and 158 in Ejura	The study uncovers a weak association between more “complete” land rights (including transfer rights not requiring lineage approval) and credit use, with few farmers accessing commercial bank loans, and among those that do, a tendency not to use land as collateral. Yet, in Angola, access to <i>informal</i> credit is positively associated with complete rights, but the opposite is true in Wassa. Greater individualization of land rights were significantly associated with land improvements in Anloga, weakly so in Wassa, and not at all in Ejura. Land rights were not associated with changes in input use or productivity in all regions.
Migot-Adholla, Shem E., Frank Place, and W. Oluoch-Kosura. 1994. Security of Tenure and Land Productivity in Kenya. In <i>Searching for land tenure security in Africa</i> . J. Bruce and S. Migot-Adholla, eds. Country: Kenya	Statistics and econometric analysis	Low incidence of credit use by titled farmers reflects lack of demand for titles. Farmers are unwilling to risk land as collateral, preferring to use group guarantees, buildings and crop output as security, which banks appear to readily accept. Banks also have difficulties foreclosing on land collateral. In most areas, customary tenure institutions prevail, and land is often restricted from sale despite being titled by the state. Moreover, legal pluralism had led to confusion over which laws to apply in a given situation. Land titles have not contributed to a reduction in the incidence of conflict over land. Remainder of findings are reproduced from Place and Hazell (1993) and Migot-Adholla et al (1993).
Ng'weno, Bettina. 2000. On Titling Collective Property, Participation, and Natural Resource Management: Implementing Indigenous and Afro-Colombian Demands: A review of Bank experience in Colombia. Mimeo. Country: Colombia	Not specified in the paper	In an environment characterized by considerable conflict and instability, collective titles to Indigenous and Black Community territories provide a measure of increased security, legitimacy and permanence to these communities. Members of Afro-Colombian communities assigned greater values to their territory and were less interested in migrating, particularly with the removal of land from the market. Communities are more interested in environmental conservation and planning. The participatory process of titling was also reported as contributing to cultural cohesion and awareness and a stronger sense of ethnic identification.
Okoth-Ogendo, H.W.O. 1986. The Perils of Land Tenure Reform: The Case of Kenya. In J. Artzen, L. Ngcongco, and S. Turner, eds. <i>Land Policy and</i>	Analysis of statistical data, farmer surveys and interviews with key informants for Kisii and South Nyanza districts.	Only slightly more than 2% of registered smallholders were able to obtain credit in the period 1970–1973. Apart from Agricultural Finance Corporation loans, approximately 82% in Kisii and 77% in South Nyanza of loans secured with agricultural land were invested in non-agricultural enterprises in the same period. There is no evidence that farmer planning and decision-making

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<p><i>Agriculture in Eastern and Southern Africa</i>. Tokyo: U.N. University.</p> <p>Country: Kenya</p>		<p>improved post-reform. Indigenous land tenure systems continue to govern farmers' ability to dispose of their land and dispossess those who would have rights to the land under customary tenure. The initial establishment of only two categories of individual rights – cultivation and residential – obviated the possibility of recognition of multiple, overlapping claims, provoking a rush to establish individual claims on public grazing lands and eclipsing recognition women's and children's secondary claims to land. Unregulated land markets developed to enable land consolidation mandated under registration rules, with farmers often selling at depressed prices. Rural elites acquired land as means of bolstering their political status. Limitations imposed on the number of co-heirs (5) were largely ignored and few certificates of succession were ever requested. Establishment of group registration areas restricted herder mobility, such that to minimize drought risks, some groups had to split off and join other ranches, a response that weakened social institutions.</p>
<p>Place, Frank and Peter Hazell. Productivity effects of indigenous land tenure systems in Sub-Saharan Africa. <i>American Journal of Agricultural Economics</i> 75(1): 10-19. February.</p> <p>Countries: Ghana, Kenya, Rwanda</p>	<p>Econometric analysis of over 950 households and applying the same conceptual model as Feder et al for Thailand</p>	<p>On the whole, land rights, including privatized rights, were not associated with investments in land and crop improvements, other than rights to bequeath positively affecting some types of land improvements in Rwanda. Rights also did not affect the probability of formal credit access. Even in Kenya, where land has been titled to individuals, people continue to follow customary restrictions on their rights. Findings suggest there are other more binding constraints on agricultural productivity than could be solved by land titling.</p>
<p>Place, F. and S.E. Migot-Adholla. 1998. The Economic Effects of Land Registration on Smallholder Farms in Kenya: Evidence from Nyeri and Kakamega Districts. <i>Land Economics</i> 74: 360-373.</p> <p>Country: Kenya</p>	<p>Descriptive statistic and econometric analysis based on around 100 smallholder household surveys in each of four districts in Kenya; secondary data</p>	<p>Possession of registered and/or titled land has little bearing of farmers' perceptions of their property rights (e.g., many who are registered claim they cannot sell land, while others who are not registered claim they can). Shallow land markets and high foreclosure costs inhibit credit supply, such that titled land does not facilitate access to credit. While there are mixed impacts on sales markets, rental markets weakened. Finally, the study found no impacts of registration or titling on agricultural productivity.</p>
<p>Platteau, Jean-Philippe. 1996. The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. <i>Development and Change</i> 27: 29-86.</p>	<p>Review of empirical evidence of the impacts of privatization in sub-Saharan Africa, as part of a critical examination of the evolutionary theory of land rights</p>	<p>Land adjudication and registration tends to erode secondary and derived use rights to land, which poorer and socially marginalized groups rely on. High information and other transactions costs preclude states from capturing multiple, overlapping rights to land. Even if all these rights could be recorded and maintained, however, doing so risks undermining the flexibility inherent in uncodified customary systems.</p>

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		<p>Land registration processes have a history of manipulation by state elites, the wealthy and educated to their own advantage and as a mechanism to grant political favors.</p> <p>Lack of social legitimacy of formalized rights has led to high conflict incidence and outright rejection of new laws.</p> <p>Consolidation of land holdings in order to enable titling exposes farmers to higher risk.</p> <p>Governments in SSA in most cases lack the capacity to administer a land registration system over time.</p> <p>Given the many fixed transaction costs of acquiring titles, allocation will most often benefit the rich and well-connected. Likewise, costs of litigation are often too high for the poor to bear, resulting in their dispossession.</p> <p>Land registration has not led to active land markets, in part because of its value as a source of identity and well-being. Sales tend to occur most under distress conditions where social insurance mechanisms have eroded, and purchases are often speculative in nature and land is left unproductive.</p> <p>The impact of title on smallholder access to credit is negligible or none, due to both supply and demand constraints.</p> <p>Recommends a “pragmatic, gradualist” approach to reform rooted in indigenous tenure systems.</p>
<p>Roth, M., Cochrane, J. and W.W. Kisamba-Mugerwa. 1994. Tenure Security, Credit Use, and Farm Investment in the Rujumbura Pilot Land Registration Scheme, Uganda. In Searching for land tenure security in Africa. J. Bruce and S. Migot-Adholla, eds. Country: Uganda</p>	<p>Statistics and econometric analysis based on surveys of 228 households managing 505 parcels in the Kigezi District</p>	<p>Examining the outcomes of a pilot land registration initiative launched in 1958, findings show that registration has contributed to perceptions of greater tenure security (reduced probability of eviction) among title holders. Yet, high costs preclude many unregistered holders from obtaining titles. While the majority of unregistered holders believe titles improve credit access, only slightly more than a third of those with registered parcels felt this was true. However, use of formal credit is low given substantial fear of debt and dispossession. While registration has had a negligible impact on credit use, the analysis shows it has had significant positive effects on some types of land improvement, though this varies as to whether registration is exogenous or purposeful. The results suggest that the demand side (tenure security) benefits of titling are inducing investment behavior, not supply side (credit) ones.</p>
<p>Roth, M., Unruh, J. and R. Barrows. 1994. Land Registration, Tenure Security,</p>	<p>Statistics and econometric analysis based on surveys of 148 households managing 226 parcels in the farming</p>	<p>Both registered and unregistered farmers equated titles with higher degrees of tenure security. High opportunity costs are a significant deterrent for acquiring titles. Improved access to credit due to possession of titles and</p>

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Credit Use, and Investment in the Shebelle Region of Somalia. In Searching for land tenure security in Africa. J. Bruce and S. Migot-Adholla, eds. Country: Somalia	town of Shalambood	greater inclinations to invest in, to sell and to lease land are also perceived by significant majorities of both registered and unregistered holders, though most greatly by registered large-scale producers. For smallholders, credit supply is highly limited. Moreover, sporadic titling combined with high costs of registration has resulted in land being titled mainly to government officials, the better educated, those with large holdings, persons substantially engaged in non-farm activities and from outside the region where land is acquired. Titles were not significantly correlated with land investments.
Torero, Maximo and Erica Field. 2005. Impact of land titles over rural households. IADB Office of Evaluation and Oversight (OVE) Working Paper No. 7. August. Country: Peru	Econometric analysis (kernel matching to obtain treatment effects) using cross sectional and panel data from rural Peru. Surveys of 3204 rural households in 2004, of which 20.22% had PET title, 33.58 other title and 46.19 did not have title. The surveyed households correspond to 95% of the 2000 LSMS survey, 40% of 1997 LSMS and 55% of 1994 LSMS.	Focusing on the impact of the rural titling program, PETF, the study finds households that receive PET titles make greater investments in fences and fertilizer and have higher property values as compared to those without titles or with alternative forms of title, though finding are market values are not statistically significant. For the most part, PET titles do not affect credit access. In communities characterized as more vulnerable, titling appears to lead to increased collective provision of public goods, though the opposite is found for communities where a high degree of informal organization for land allocation had been present.

ANNEX 6. EMPIRICAL STUDIES OF IMPACTS OF FORMALIZATION: BUSINESSES

The following table provides summaries of the results of a sample of the empirical studies that have sought to either measure the impact of business formalization efforts or determine the causes of informality. Descriptions regarding the methodology utilized and the studies' results have for the most part been taken directly from the articles in question.

While determining the causes of informality is complicated by the limited number of policy initiatives aimed at formalizing informal economic activity, taxonomic discrepancies regarding what constitutes “informal”, and the obvious difficulty associated with measuring a portion of the economy that is, by definition, to some degree outside of the state’s reach, there remains a degree of consistency regarding several of the results of studies provided. First, the strictness of a country’s businesses regulations appears to relate positively to the size of its informal economy. Second, the relative size of a country’s informal economy appears to relate to the direct and indirect government-imposed costs associated with attaining and maintaining legal compliance. In particular, countries in which the costs of starting or operating a formal business are high and those in which the time spent ensuring legal compliance is great, tend to be those in which informality represents a large part of output. Third, the pervasiveness of public corruption also appears to increase informality. The results regarding the impact of taxes on informality are ambivalent. While several studies observe that high taxes increase the size of a country’s informal sector, this result has been contested by several contradictory results.

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Cross, John C. and Morales, Alfonso: "Testing the boundaries of the informal sector", special issue of International Journal of Sociology and Social Policy, 2000, Vol. 20, No. 9/10.	N/A	The paper finds that industrial restructuring has resulted in a shift, amongst women already working in the informal sector, towards the segments of the informal economy that provide less income and less security that those sectors in which they were previously employed.
Davis, Steven J. & Magnus Henrekson, 2004. "Tax Effects on Work Activity, Industry Mix and Shadow Economy Size: Evidence from Rich-Country Comparisons," NBER Working Papers 10509, National Bureau of Economic Research, Inc.	Guided by a simple theory of task assignment and time allocation, we investigate the long run response to national differences in tax rates on labor income, payrolls and consumption. The theory implies that higher tax rates reduce work time in the market sector, increase the size of the shadow economy, alter the industry mix of market activity, and twist labor demand in a way that amplifies negative effects on market work and concentrates effects on the less skilled. We also describe conditions whereby cross-country OLS regressions yield unbiased estimates of the total effect of taxes, inclusive of indirect effects that work through government spending responses to tax revenues.	Regressions on rich-country samples in the mid 1990s indicate that a unit standard deviation tax rate difference of 12.8 percentage points leads to 122 fewer market work hours per adult per year, a drop of 4.9 percentage points in the employment-population ratio, and a rise in the shadow economy equal to 3.8 percent of GDP. It also leads to 10 to 30 percent lower employment and value added shares in (a) retail trade and repairs, (b) eating, drinking and lodging, and (c) a broader industry group that includes wholesale and motor trade.
Djankov, Simeon & Rafael La Porta & Florencio Lopez-De-Silanes & Andrei Shleifer, 2002. "The Regulation Of Entry," The Quarterly Journal of Economics, MIT Press, Vol. 117(1), pages 1–37.	We present new data on the regulation of entry of start-up firms in 85 countries. The data cover the number of procedures, official time, and official cost that a start-up must bear before it can operate legally.	Countries with heavier regulation of entry have higher corruption and larger unofficial economies, but not better quality of public or private goods. Countries with more democratic and limited governments have lighter regulation of entry. The evidence is inconsistent with public interest theories of regulation, but supports the public choice view that entry regulation benefits politicians and bureaucrats.
Executive Summary, Program to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law, The Institute for Liberty and Democracy (ILD), Lima, Peru. 2005.	Over 10 months in 2004–2005, the ILD, at the request of the Government of Tanzania, conducted an extensive survey to discern, "how the nation's extralegal economy actually operates and how the official legal system interacts with it."	While Tanzania has created much of the legal framework for citizens' participation in the legal economy, the majority of the country's economic activity takes place extralegally. While the majority of economic activity in Tanzania is unregulated by the state, the extralegal economy was found to contain a considerable degree of the structural characteristics most frequently associated with the formal sector. In particular, whereas legal

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		<p>contracts, public courts, and traditional financing remain largely absent from commerce, extralegal mechanisms fill roles that are functionally similar to their counterparts in the legal economy. The study identifies 17 “archetypes” within the extralegal economy that typify the indigenous Tanzanian extralegal economic model. Amongst the identified archetypes were extralegal documents such as contracts, titles, guarantees, and declarations of extrajudicial rulings; mechanisms for price-setting; and means for defining and governing the organization of business relationships. The survey identifies 67 of the primary causes for the proliferation of the extralegal economy in Tanzania. The causes are characterized by a general discrepancy, and in some cases incompatibility, between economic and social realities and the content of legislative and regulatory requirements. Illustrating the role of such cleavages in preventing participation in the formal sector, the study notes that the majority of the documents necessary to legally operate a business are found only in English whereas the greater proportion of the country’s citizens speaks only Kiswahili or tribal languages. Regarding the cost of compliance with legal requirements, the survey notes that a poor Tanzanian entrepreneur would, over the 50 year life of a business, expect to wait 32,216 days – 1,118 of which would be spend inside government offices – for approval of the various required permits and spend almost US\$ 180,000 in forgone income and fees. The difficulties associated with complying with regulation was also noted to limit credit access as the prohibitive cost of property registration reduces the potential for guaranteeing loans based on real property.</p>
<p>Executive Summary, The Extralegal Economy where the Majority of Egyptians Live and Work: What the Government of Egypt Can Do to Integrate Them into the Mainstream</p>	<p>The ILD, under the supervision of the Egyptian Ministry of Finance, conducted a diagnostic survey of the Egyptian extralegal economy to define the nature of the country’s extralegal economic activity and identify the primary causes for its proliferation.</p>	<p>Amongst the identified deterrents to a firm’s entry into the legal economy was the complexity of legislation defining legal requirements for incorporation and registration, convoluted and redundancy regarding the role of public sector institutions in the entry process, and excessive</p>

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<p>Economy and Substantially Reduce Poverty and Increase Economic Development, The Institute for Liberty and Democracy (ILD), Lima, Peru. 2005.</p>		<p>procedural requirements associated with establishing a legally-compliant commercial enterprise. The difficulty associated with navigating the formal entry process is illustrated by the study’s observation that to open a bakery in Egypt would require more than 500 days and cost 27 times a minimum monthly salary before operations could commence. The causes of extralegality related to a firm’s operation and expansion in the legal economy were found to be similar to those associated with entry; often stemming from the burden associated with navigating complex legislative and institutional frameworks or ensuring continued compliance with obligations. The interdependence of the identified problems is observed by the manner in which the country’s lack of standard accounting practices hindered firms’ operation in the formal sector by delaying the renewal of registrations and licenses, while also affecting its expansion activities by limiting lenders’ ability to accurately access a borrower’s financial standing. Access to credit was further limited by the extralegality of most real estate assets – 92% of the population were found to hold properties extralegally – by limiting a borrower’s ability to use property as collateral. Finally, the study found exit from the legal economy to be hindered by procedural ambiguity for exit requirements and complex bankruptcy legislation, each of which increased the cost associated with dissolving enterprises from the formal sector.</p>
<p>Executive Summary: The Capitalization Of The Poor In Haiti: Urban Real Estate and Business Formalization, Urban Real Estate and Business Formalization Program, USAID/Haiti. Haitian Center for Free Enterprise and Democracy (CLED) and the ILD, 2001.</p>	<p>Over 9 months in 2001, a team of researchers from the Haitian CLED and the ILD, as part of the Urban Real Estate and Business Formalization Program financed by the United States Agency for International Development (USAID/Haiti), undertook a project to understand the Haitian extralegal economy and design a process of institutional and legislative reform to increase the economic utility of latent extralegal or “dead” assets.</p>	<p>The study found that 68% of all businesses were found to operate extralegally and that these firms were estimated to possess US\$ 270 million in machinery and equipment. Amongst the identified causes for extralegality were the lack of limited liability business form for small businesses, and the complexity of the tax code and the laws and procedures related to labor and entitlements. Besides such legislative shortcomings, the study found significant institutional and procedural barriers to participation in the</p>

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REFERENCE	NOTES ON METHODOLOGY UTILIZED	FINDINGS
		formal economy. Amongst the institutional and procedural causes for extralegality were the lack of integration between institutions and processes of business registration and the overly-burdensome renewal process for business licenses and other requisite forms.
Friedman, Eric & Johnson, Simon & Kaufmann, Daniel & Zoido-Lobaton, Pablo, 2000. "Dodging the grabbing hand: The determinants of unofficial activity in 69 countries," Journal of Public Economics, Elsevier, Vol. 76(3), pages 459–493.	Study covers 69 countries	Across 69 countries, higher tax rates are associated with less unofficial activity as a percent of GDP but corruption is associated with more unofficial activity. Entrepreneurs go underground not to avoid official taxes but to reduce the burden of bureaucracy and corruption. Dodging the 'grabbing hand' in this way reduces tax revenues as a percent of both official and total GDP. As a result, corrupt governments become small governments and only relatively uncorrupt governments can sustain high tax rates.
Goldberg, Penny Koujianou & Pavcnik, Nina, 2003. "The Response of the Informal Sector to Trade Liberalization," NBER Working Paper No. 9443, Issued in January 2003.	Econometric analysis: Using data from two countries that experienced large trade barrier reductions in the 1980's and 1990's, Brazil and Colombia, we examine the response of the informal sector to liberalization	In Brazil, we find no evidence of a relationship between trade policy and informality. In Colombia, we do find evidence of such a relationship, but only for the period preceding a major labor market reform that increased the flexibility of the Colombian labor market. These results point to the significance of labor market institutions in assessing the effects of trade policy on the labor market.
Gradstein, Mark & Era Dabla-Norris & Gabriela Inchauste, 2005. "What Causes Firms to Hide Output? The Determinants of Informality," IMF Working Papers 05/160, International Monetary Fund.	Cross-country econometric study using data from the World Business Environment Survey (WBES) compiled by the World Bank	Earlier work has examined the determinants of the size of the informal sector, focusing separately on factors such as tax and regulation burden, financial market development, and the quality of the legal system. We revisit this issue by using an integrated dataset which contains rich information on all these aspects. Testing the channels affecting the degree of informality, we find evidence that all previously identified factors indeed play a role in driving informality. In particular, and consistent with the suggested theoretical model, we find support for the significance of the quality of the legal system.
Howell, Jude, Good Practice Study in Shanghai on Employment Services for the Informal Economy, International Labor Office, Geneva,	Descriptive time-series statistics	In 1996, to address the high unemployment resulting from the closing of state-owned enterprises (SOEs),—985,000 Shanghai citizens lost jobs due to SOE closings from 1996 to 2000—the Shanghai Municipal Government

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2002.		initiated a series of policy measures to provide general economic support for the newly unemployed and facilitate workers' transition into the formal economy. As part of the municipality's larger adjustment assistance program, the Shanghai Government created a policy whereby workers in the informal sector could associate to form a novel economic classification deemed informal labor organizations. During the six years following the creation of the new classification, 14,364 informal labor organizations were formed. In 2001, the organizations employed 154,839 workers, 97% of which had been unemployed prior to the initiative. The policy was supplemented by a public works program, which provided employment to a portion of informal labor organizations in public services such as street cleaning, security, and the maintenance of public facilities. The Shanghai government provided additional assistance to the informal economy by offering of training, social insurance, preferential tax treatment, and subsidized credit to informal ventures. The success of Shanghai's adjustment assistance program is illustrated in the drastic reduction in unemployment since the initiative. The Shanghai Labor Bureau found that, of the nearly one million citizens laid off due to SOE closings, only 16,200 remained unemployed in 2001.
Johnson, Simon & Kaufmann, Daniel & McMillan, John & Woodruff, Christopher, 2000. "Why do firms hide? Bribes and unofficial activity after communism," <i>Journal of Public Economics</i> , Elsevier, Vol. 76(3), pages 495–520.	Regression	Our survey of private manufacturing firms finds the size of hidden 'unofficial' activity to be much larger in Russia and Ukraine than in Poland, Slovakia and Romania. A comparison of cross-country averages shows that managers in Russia and Ukraine face higher effective tax rates, worse bureaucratic corruption, greater incidence of mafia protection, and have less faith in the court system. Our firm-level regressions for the three Eastern European countries find that bureaucratic corruption is significantly associated with hiding output
Lassen, David Dreyer, 2003. "Ethnic Divisions and the Size of the	Cross-section of more than 50 countries	This paper investigates the relationship between ethnic fragmentation and the size of the informal economy.

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Informal Sector,” EPRU Working Paper Series 03-01, Economic Policy Research Unit (EPRU), University of Copenhagen. Department of Economics		Recent experimental and empirical research links, in turn, ethnicity and trust, and trust and tax compliance. In addition, recent empirical studies have identified an unwillingness to contribute to public goods benefiting other ethnic groups. Combining these insights, we argue that increasing ethnic fractionalization decreases voluntary tax compliance, and present empirical evidence at the macro level in a cross-section of more than fifty countries, that more ethnically fragmented societies have significantly larger informal sectors.
Loayza, Norman V., 1996. “The economics of the informal sector: a simple model and some empirical evidence from Latin America,” Carnegie-Rochester Conference Series on Public Policy, Elsevier, Vol. 45, pages 129–162	Multiple country econometric study for several Latin American countries	The model concludes that changes, both in policy parameters and the quality of government institutions that promote an increase in the relative size of the informal economy will also generate a reduction in the rate of economic growth. The paper then uses data from Latin American countries in the early 1990s to test some of the implications of the model and to provide estimates for the size of the informal sector throughout these countries. The empirical approach consists of identifying the size of the informal sector to a latent variable for which multiple causes and multiple indicators exist. The size of the informal sector is found to depend positively on proxies for tax burden and labor-market restrictions, and negatively on a proxy for the quality of government institutions. Furthermore, the empirical results suggest that an increase in the size of the informal sector negatively affects growth by, first, reducing the availability of public services for everyone in the economy, and, second, increasing the number of activities that use some of the existing public service less efficiently or not at all.
Marcouiller, Douglas & Ruiz de Castilla, Veronica & Woodruff, Christopher, 1997. “Formal Measures of the Informal-Sector Wage Gap in Mexico, El Salvador, and Peru,” Economic Development and Cultural Change, University of	Using comparable micro-level data from three countries, we ask what type of person works in the informal sector and whether informal workers earn lower wages than observationally equivalent workers in the formal sector.	The characteristics of informal workers are similar across countries. Surprisingly, when we control for these personal characteristics, we find a significant wage premium associated with formal employment in El Salvador and Peru but a premium associated with work in the informal sector in Mexico. A model of endogenous selection offers little help in explaining the differences in

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Chicago Press, Vol. 45(2), pages 367–92.		wage patterns. The research casts doubt on the received wisdom that the informal sector, always and everywhere, is a poorly-paid but easily- entered refuge for those who have no other employment opportunities.
Mosley, Paul & Hulme, David, 1998. "Microenterprise finance: Is there a conflict between growth and poverty alleviation?," World Development, Elsevier, Vol. 26(5), pages 783–790.	The paper reports on a research project which estimated the impact of 13 microfinance institutions in seven developing countries on poverty and other target variables, and attempted to relate such impact to the institutions' design features.	For each of the institutions studied, the impact of lending on the recipient household's income tended to increase, at a decreasing rate, as the recipient's income and asset position improved, a relationship which can easily be explained in terms of the greater preference of the poor for consumption loans, their greater vulnerability to asset sales forced by adverse income shocks and their limited range of investment opportunities. There are significant outliers to this general pattern (in particular, very poor people who have been able to achieve significant loan impact); but they are the exception rather than the rule, and the relationship is significant at the 1% level for all the institutions studied except the Malawi Mudzi Fund. This relationship defines, in the short term, an "impact frontier" which serves as a tradeoff: lenders can either focus their lending on the poorest and accept a relatively low total impact on household income, or alternatively focus on the not-so-poor and achieve higher impact. The position and slope of the estimated impact curve vary however with the design of the institution: for "well-designed" schemes impact, at all levels of income, is higher than for ill-designed schemes. Hence for many lender institutions the tradeoff can often be moved by appropriate innovations in institutional design, in particular modifications to savings, loan collection, and incentive arrangements for borrowers and staff.
Mitra, Siddhartha Controlling informalization: Punitive versus strategic measures, Indian Statistical Institute, New Delhi, 04-20-2003	Econometric analysis: corruption is measured by the CPI Transparency international Index of corruption and regulation is measured by the average number of procedures needed to register a business	The number of registration procedures has a significant positive effect on informality. A reduction in the number of procedures by 1 results in a decrease in the level of informality by 1.02%. CPI has a negative and extremely significant effect on informality. The results imply that an increase in CPI by one reduces informality by 5.89%

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<p>Srivastava, Pradeep and Patel, Urgit: A Tale of two Sectors: The formal and informal sectors in India. December 1991.</p>	<p>N/A</p>	<p>The paper examines how economic activity in the formal and informal sector in India, as measured by output, responds to the same monetary and fiscal policies. The paper finds the formal sector to be more homogeneous in behavior than the informal sector regarding its response to monetary and fiscal policies. In particular, in the formal sector, total non-agriculture output and total manufacturing output responded to monetary and fiscal policies similarly whereas total output, total non-agriculture output, and total manufacturing output in the informal sector responded differently to the stimulus. The paper also finds that while the responses of the formal sector were typically in-line with those predicted, the informal sector responded to macro-policy the interventions in a manner contrary to anticipated responses.</p>
<p>Sylvain Dessy & Stephane Pallage, 2001. "Why Don't Poor Countries Adopt Better Technologies?," <i>Cahiers de recherche du Département des sciences économiques, UQAM 20-07, Université du Québec à Montréal, Département des sciences économiques.</i></p>	<p>Econometric analysis: a simple heterogeneous-agent model with incomplete markets to explain the prevalence of a large low-productivity, informal sector in developing countries. In our model, the provision of public infrastructure creates a productivity premium for formalization, which increases with infrastructure quality. Our model breaks the symmetry of equilibria and offers endogenous differentiation of rich and poor countries' behavior.</p>	<p>While the model supports multiple stable equilibria in 'rich' countries with varying degrees of formalization, including full formalization, it indicates an absence of equilibrium with full formalization in 'poorer' countries. If legislative intolerance alone suffices to jolt a rich country into the equilibrium with complete formalization, accompanying policies may be required in poor countries to first provide the conditions for existence of such equilibrium.</p>
<p>Zoido-Lobaton, Pablo & Simon Johnson & Daniel Kaufmann, 1999. "Corruption, Public Finances, and the Unofficial Economy," Policy Research Working Paper Series 2169, The World Bank. August 1999</p>	<p>Study covers 49 countries from diverse regions and with varying levels of development</p>	<p>In this sample of 49 Latin American, OECD, and transition economies, it is the ineffective and discretionary administration of tax and regulatory regimes—not higher tax rates alone— as well as corruption that increases the size of the unofficial economy. And countries with a larger unofficial economy tend to grow more slowly.</p>

ANNEX 7. ANNOTATED BIBLIOGRAPHY ON FORMALIZATION

LAND RIGHTS

Adams, Martin and Stephen Turner. 2005. Legal dualism and land policy in Eastern and Southern Africa. Paper presented at the UNDP-International Land Coalition Conference: Land Rights for African Development: From Knowledge to Action, October 31-November 3, 2005.

This paper reviews the historical experience of Eastern and Southern Africa with land-tenure dualism and the disappointing results of efforts by the state to nationalize or privatize land under a statutory system. More recent experiments in the region embrace dualism, recognizing customary tenure, but offering paths to civil or common law governance. The authors advocate regularization of extra-legal tenure, especially in urban and peri-urban areas, rather than replacing it with more modern notions of tenure. Those most vulnerable include youth, who have a higher risk of landlessness, migrants, women and the elderly. While farmers appreciate the potential benefits of registration on tenure security and environmental conservation, they fail to associate it with increased land transactions and use of title for securing loans. Many fear land registration will lead to privatization of common lands. The authors call for improved awareness-raising, capacity building, support for local dispute resolution, and actively involving women in the process.

Adenew, Berhanu and Fayera Abdi. 2005. Land registration in Amhara Region, Ethiopia. Securing Land Rights in Africa Research Report 3. London: IIED. November.

The authors examine two recently implemented approaches to land registration in the Amhara Region of Ethiopia. They find that the process has generated conflicts related to illegal land grabbing, encroachment on common property and land sales.

Alston, L.J., G.D. Libecap, and R. Schneider. 1996. The Determinants and Impact of Property Rights: Land Titles on the Brazilian Frontier. *Journal of Law, Economics, & Organization* 12(1): 25-61. Oxford. Oxford University Press.

Abstract from article: This article provides new empirical results regarding the demand and supply of title, the impact of title on land value, and its effects on agricultural investment on Brazilian frontiers. We present survey data from 1992 and 1993 from the state of Para and data from the Brazilian agricultural censuses from 1940 through 1985. Examining property rights in frontier regions allows us to follow the rise in land values with movement toward a market center, the associated increase in demand for title, and the response of government to those demands. The empirical findings generally support our predictions regarding the effects of title and investment on land value, the role of expected change in value in increasing demand for title, and the contribution of title in promoting land-specific investment. Our results address both broad questions of institutional change and narrower issues of economic development.

Alhassan, Osman and Takyiwaa Manuh. 2005. Land registration in Eastern and Western Regions, Ghana. Securing Land Rights in Africa Research Report 5. London: IIED. November.

The authors analyze the two main systems of land registration, the formal deeds registration process and customary mechanisms, in Wasa Amenfi District (WAD) in the Western Region and the Akuapem South District in the Eastern Region of Ghana. While larger scale commercial agriculture, forestry and mining enterprises used the formal deeds registration process, smallholders had little knowledge of it or interest. Land conflicts were found to act as both a barrier and incentive for registration. Unfortunately, few mechanisms are in place to enable registration to protect poor people from being marginalized.

Associates in Rural Development, Inc. (ARD). 2005. Land Tenure and Property Rights. Series prepared for the United States Agency for International Development, Volume 1-4. Burlington, Vermont. September.

Volume 1: Land tenure and property rights framework

Abstract extracted from introduction and adapted: This first volume in this series of four offers analytical tools for enabling USAID to identify, evaluate, and monitor land tenure and property rights issues, and accordingly design appropriate interventions. They provide USAID with a conceptual framework and the tools to strengthen the understanding of land tenure and property rights issues within agency programming. Its goal is to increase the effectiveness of tenure and property rights in land and related policy and program interventions.

Volume 2. Land Tenure and Property Rights Country Issues and Donor Interventions Report

Abstract extracted from introduction and adapted: This report identifies land tenure and property rights issues and related donor interventions in USAID presence countries. For each country addressed, the report provides a snapshot of current land tenure issues and the donor interventions that seek to address them. The information provided derives from a common set of donor literature.

Volume 3. Land Tenure and Property Rights Country Ranking and Issues Maps

Abstract extracted from introduction and adapted: The purpose of this volume is to assist USAID to identify key land tenure and property rights (LTPR) issues and draw attention to how these issues affect national and USAID development programming. To this end, the LTPR country ranking process was developed to evaluate the severity of land tenure and property rights issues in each USAID presence country. The country ranking process involved the development and the use of the LTPR ranking tool to collect informed judgments on the severity of land tenure issues in each USAID presence country. Ranks generated from this exercise were then used to illustrate country-specific LTPR issues in a visual tool—the LTPR issues maps.

Volume 4. Land Tenure and Property Rights Assessment Tools

Abstract extracted from introduction and adapted: This volume provides an assessment tool for USAID missions and others tasked with developing an in-depth understanding of a country's current land tenure and property rights (LTPR) situation. It allows for assessment of past, ongoing, or completed interventions to inform new USAID interventions. The tools are designed around the LTPR Matrix, which is an analytical framework of LTPR issues and possible LTPR interventions.

Associates in Rural Development, Inc. (ARD). 2005. Land Tenure and Property Rights Assessment for Angola. 2005. Report prepared for the United States Agency for International Development. March.

Abstract extracted from introduction and adapted: This report applies the land tenure and property rights assessment framework to the case of Angola with the purpose of identifying how to best assist its

government in the implementation of the flawed 2004 land law and to craft appropriate supporting initiatives that address a variety of land issues. The study also sought to further refine and test the land tenure and property rights assessment tools developed for USAID.

Associates in Rural Development, Inc. (ARD). 2005. Land Tenure and Property Rights Assessment for Kyrgyzstan. 2005. Report prepared for the United States Agency for International Development. April.

Abstract extracted from introduction and adapted: Kyrgyzstan was one of the first countries from the former Soviet Union (FSU) to privatize agricultural land and remains the only country of the five Central Asian countries that has distributed land to the former collective and state farm members and dismantled the majority of these large farms. This review identifies five main issues related to land tenure and property rights in Kyrgyzstan: 1) conflict/instability, 2) insecure land tenure and property rights, 3) landlessness and inequitable land distribution, 4) poorly performing land markets, and 5) unsustainable resource management. It describes the steps taken to deal with these issues both by the Kyrgyz Government and by international organizations (including, USAID), and at the outcomes and impacts of these interventions.

Antle, John, David Yanggen, Roberto Valdivia, and Charles Crissman. 2003. Endogeneity of Land Titling and Farm Investments: Evidence from the Peruvian Andes. Working Paper, Department of Agricultural Economics and Economics, Montana State University, Bozeman, MT, USA.

Abstract from paper: In this study we estimate the effects of land titling on terrace investments in a region of northern Peru, taking into account the possible endogeneity of both titling and terrace decisions. Evidence shows that financial institutions did not provide credit for terrace construction, and that land transactions were limited, implying that the collateral and gains-from-trade effects of land titling would not operate in this case. Conflicts over ownership, however, were common indicating expropriation was a real concern. Single equation models imply a strong positive effect of titling on adoption of terraces, and vice versa. However, simultaneous equations estimates show that the effects of titling on terrace adoption, and of terrace adoption on titling, are almost an order of magnitude smaller than the values indicated by single equation models. Thus, our results are consistent with the hypothesis advanced in the literature that the endogeneity of titling may lead to upward-biased inferences about the economic effects of land titling on farm investment decisions. This finding reinforces the argument that titling programs need to be accompanied by complementary measures such as an improved financial and legal institutional framework in order to achieve a substantial increase in farm investment.

Atwood, D.A. 1990. Land registration in Africa: the impact on agricultural production, *World Development*, 18: 659-671.

Abstract from article: The conventional view of “traditional” or informal systems of African land rights is that they impede agricultural development, and that land titling or registration is needed to encourage land transfers to more productive farmers, improve farmer access to credit, and create incentives for investment in land improvement, soil conservation and new technology. In spite of growing pressure on land resources and on existing land tenure systems, there is much evidence from many parts of Africa which calls into question this conventional view. The costs of land titling may be quite high, and its effects contrary to expectations. A number of cheaper alternatives to land titling may be more effective in guaranteeing the land rights of African farmers in situations of growing land tenure change and uncertainty.

Barrows, R. and M. Roth. 1990. Land tenure and investment in African Agriculture: Theory and evidence. *Journal of Modern African Studies* 28(2): 265-297.

This seminal article reviews empirical evidence from Kenya, Uganda and Zimbabwe to test the neoclassical economics theories that individualization of land tenure leads to greater security of tenure

and agricultural investment. All three areas have invoked some degree of tenure individualization, with Kenya being by far the most comprehensive. In Kenya, tenure reforms in some areas were instrumental in reducing the incidence of land disputes, especially in places experiencing high population pressure. But in many other cases it contributed to tenure insecurity through the confusion it generated by conflicting customary and statutory law, intensifying disputes. In most regions, communities continued to observe customary law and land registries were not maintained. Failure to accommodate multiple and overlapping rights disadvantaged tenants, women, married sons, and landholders absent during adjudication. The socially and economically privileged also gained at the expense of the poor and less informed. Links between title and investment failed to emerge. Banks remained reluctant to lend to smallholders who lacked status and liquidity while their requirements were inappropriate to smallholder credit needs. Although speculative land sales rose sharply prior to registration in an effort to have land titled in one's name, land markets following adjudication were largely unaffected. Establishment of freehold rights on mailo land in Uganda did little to increase formal credit use and generate increased agricultural investment, partly due to protections on tenant rights. However, it did appear to stimulate sales of land to non-farmers seeking to capitalize on the social and political advantages of landowning and to commercial farmers. In Zimbabwe, it is difficult to draw conclusions about the impacts of individualization in purchase land areas, given the higher management skills, capital endowments, land quality and infrastructure access of farmers in these areas as compared with those in the tribal areas. In light of the findings, the authors suggest that supporting the evolution of indigenous tenure systems may be more appropriate than replacing them with registration of freehold tenure, and that the latter is likely to only be beneficial when customary institutions are blocking adjustment to new economic opportunities or when it is used to safeguard distributional equity.

von Benda Beckman. 2003. Mysteries of capital or mystification of rural property? Focaal—European Journal of Anthropology 41: 187-191.

This critique of de Soto's theories in the *Mystery of Capital* highlights various "blind spots" in his thinking. These include the depiction of "the poor" as an undifferentiated group and ignorance of the realities of the really poor, failure to recognize different forms of property rights aside from private ownership and (non-market) property functions besides capital generation, the likelihood of skewed distributions in wealth resulting from property rights transformation, the neglect of states as property holders, failure to consider regional and rural/urban differences, disregard for the need for redistribution of land, and oversimplification of the historical contributors to the rise of capitalism in the West.

Benjamin, Solomon. 2005. Bhoomi: E-Politics, or An Anti-Politics Machine in Globalising Bangalore? Unpublished draft.

Adapted from paper abstract: The Bhoomi program on the digitization of twenty million land records is considered a 'best practice' model of 'e-governance' to be replicated in other parts of India and elsewhere in poor countries. This study examines the Bhoomi program in 6 taluks (or districts) in Bangalore rural districts. These locations include those of mega-development projects and agro businesses requiring large tracts of land with affluent investors, and two others under relatively less pressure of urbanization. Our study reveals that computerization and the centralization of land records have made it more expensive and less efficient for poorer groups to access and use land records. This is sharpened in those districts with very active land markets. Moreover, the centralization of land management that has accompanied the computerization process reinforces particular types of large player dominated economic and political processes to benefit at the cost of smaller users of land.

Benjaminsen, Tor A. 2002. Formalising land tenure in rural Africa. *Forum for Development Studies* 29 (2): 362-366. December. URL: <http://www.nupi.no/IPS/filestore/FDS-02-02-Debate-Benjaminsen.pdf>.

This short article examines de Soto's propositions based on empirical research in Africa. In Mali, titling has led to a rush by urban residents and speculators to purchase and title peri-urban land from those holding it under customary tenure – before it is expropriated by the state. They are then able to obtain 60 to 80 times the compensation that customary holders receive. Hence, it is the wealthy and well-informed that are benefiting from rising land values resulting from formalization, rather than the poor. In other African countries, privatization has fueled conflicts that emerge from overlapping rights to land. Disastrous environmental consequences are likely if privatization attempts are carried out in dryland areas where pastoralists engage in opportunistic management. They would also exacerbate poverty, eliminate adaptability, and produce negative returns. Finally, the author questions de Soto's position on redistribution of titled assets, such as white-owned commercial farms in South Africa. He concludes by calling for a demand-driven, decentralized and adaptive approach that take into account political and governance issues.

Besley, Tim. 1998. Investment incentives and property rights. In: P. Newman, ed., *The New Palgrave Dictionary of economics and the law*, Vol 2. London: Macmillan. Pp. 359-365.

This article discusses the theoretical links between land rights and investment and provides an overview of the available empirical evidence, including an extensive table that gives a thumbnail description of various studies and their findings. In the case of Africa, one finds widespread evidence that contradicts the theoretical link between property rights and investment. In Asia, the Feder studies identify a link between titled land and improved credit access and investment, but his study in China does not support the hypothesis that tenure insecurity has reduced investment. Lin (1988, 1992), however finds that adoption of the household responsibility system did stimulate investment. With the exception of the Alston et al (1996) study in Brazil, findings on the impact of titling in Latin America are similar to the result for Africa in terms of not identifying a definitive link with investment. In sum, empirical studies in general fail to uncover strong evidence of an association between land rights and investment, while failure to account for endogeneity is more likely to cast doubt on studies that have identified positive effects. What appears to be more problematic is the confounding of legal titles with tenure security. The former is a legal status while the latter is an individual perception.

Besley, Timothy. 1995. Property rights and investment incentives: Theory and evidence from Ghana, *Journal of Political Economy* 103(5): 903-937.

Abstract from article: This paper examines the link between property rights and investment incentives. The author develops three theoretical arguments based on security of tenure, using land as collateral and obtaining gains from trade. The paper then presents empirical evidence from two regions in Ghana. Accounting for the possibility of endogeneity of land rights and investment, the study finds for the Wassa region that greater breadth in land rights raises the probability for investment in tree planting though this result does not hold when household fixed effects are included in the analysis or when rights are more disaggregated in the analysis. Transfer rights themselves are not associated with investment decisions. More individualized rights are significantly correlated with land acquired by gift or purchase and longer ownership. In Anloga, however, results are not robust and suggest endogeneity. Acquiring land with trees already on it is associated with having fewer rights since the act of planting trees is an important mode of establishing land rights. The study stresses the importance of studying the determinants of rights, and not simply their effects.

Binswanger, Hans P., Klaus Deininger and Gershon Feder. 1995. Power, distortions, revolt and reform in agricultural land relations. In *Handbook of Development Economics*, Vol. III. Jere Behrman and T.N. Srinivasan, eds.

This chapter attributes the evolution of unequal land distribution to power relationships and market distortions -- such as subsidies, credit market imperfections and commodity market distortions – which have undermined the capacity of land sales markets to allocate sufficient land to more efficient small

producers. Hence, land reforms have been necessary to correct maldistributions. The various successes and failures of different land policy strategies are discussed, including land registration and titling. Land titling produces efficiency benefits through reducing problems of asymmetric information and uncertainty and can protect against borrower moral hazard in lending through its use as collateral. Yet, formal credit markets may fail to emerge in areas dominated by small farms. If wealthier interests possess superior access to information, they can use it to claim land from those less knowledgeable and capable of defending their rights. Wealth disparities can be further increased if titled land that becomes concentrated in the hands of the wealthy facilitates their access to credit. Policies of systematic, rather than on-demand, titling and widespread information campaigns on rules and procedures are recommended. Lower cost, intermediate alternatives to titling can offer a more attractive alternative for poorer households than formal titling. In communal areas that restrict land transfers to outsiders, titling may only be appropriate at the community level or over common use resources to protect them from encroachment and claims by outsiders.

Boucher, Steve, Brad Barham, Michael Carter and Juan Sebastian Chamorro. 2002. "Market-friendly" Reforms and the Operation of Credit and Land Markets in Central America. Presented at the Northeast Universities Development Consortium Conference, Williams College. October.

Abstract from paper: This paper provides descriptive evidence of the impacts of market-oriented reforms on the operation of land markets in Honduras and Nicaragua. Both countries implemented reform packages in the early 1990s, which were designed to enhance agricultural efficiency and the land access of less well-off households via the activation of land markets. We estimate non-parametric regressions of: i) Land owned versus land operated and ii) Land owned before and after the reforms to evaluate the role of land rental and land sales markets in facilitating the transfer of land to more efficient farmers. We also explore some of the potential interactions between land market and credit market outcomes. We find that policy reforms have not led to the types of large-scale market based land transfers that were anticipated.

Brasselle, Anne-Sophie, Frederic Gaspart and Jean-Philippe Platteau. 1997. Land tenure security and investment incentives: some further puzzling evidence from Burkina Faso, CRED, Namur, Belgium.

Abstract from paper: The commonsense logic associating higher land tenure security and higher incentives to invest has been recently called into question in the case of African agriculture. To be meaningful, empirical tests have to be carefully designed so as to take account of the possible endogeneity of the land rights variable. This is done in this paper by applying suitable econometric methods to original data collected in Burkina Faso. The results obtained cast doubt on the existence of a systematic influence of land tenure security on investment. By reviewing the justifications for skepticism in the recent literature, we are able to conclude that the traditional village order, where it exists, provides the basic land rights required to stimulate small-scale investment.

Brogaard, Rikke J. 2005. Land Tenure Insecurity and Inequality in Nicaragua. *Development and Change* 36 (5): 845-864. September.

Abstract from article: This article uses empirical data from a case study in rural Nicaragua to demonstrate the need for a conceptualization of tenure security as seen from the perspective of the landholder. A large group of farmers in the case study area perceive their tenure situation as being insecure despite the fact that they possess a legal title to their land. The article argues that more attention must be paid to aspects such as inequalities of wealth and power, lack of enforcement and lack of impartiality on the part of the formal institutions when addressing tenure security in an institutionally unstable setting, such as that found in Nicaragua. The article contributes to the ongoing discussion by arguing that future research on how to increase rural land tenure security should explore the concept of tenure security as experienced by farmers.

Bruce, J.W. and Migot-Adholla, S., eds. 1994, *Searching for Land Tenure Security in Africa*, Dubuque, IA: Kendall Hunt Publishing Company.

Using quantitative economic approaches, the chapters in this book assess customary tenure systems in various African countries to understand the extent to which they offer sufficient security of tenure and incentives for land investments. Several chapters examine whether replacement of these systems with statutory individualized tenure and titled land is justified on economic grounds. Key findings include that titles were mainly acquired by largeholders rather than small scale farmers. They made little difference to smallholder access to credit, nor to increasing investment in land improvements. Effects on productivity were mixed, but were mostly a function of farm size and access to markets rather than title. Titling demand was found to stem mainly from desires to protect against arbitrary actions of the state. Yet, in practice many titleholders continued to observe customary rules which better reflected the social security value of land, and that in general statutory law has a very limited impact on actual land management practice. The studies suggest more incremental approaches to changes in land tenure are likely to produce better welfare outcomes for smallholders, and that compulsory, systematic registration and titling efforts should be applied in only particular circumstances of customary system breakdown or absence.

Chapters of most relevance include:

Ch 6: Migot-Adholla, Shem E., Frank Place, and W. Oluoch-Kosura. 1994. Security of tenure and land productivity in Kenya.

The study uncovers a lack of evidence that titles have contributed to increased credit and input use, land improvements, agricultural productivity and active land markets in Kenya. In most areas, customary tenure institutions prevail, and land is often restricted from sale despite being titled by the state. Demand for credit is low, and most farmers prefer alternative forms of loan security rather than their land. Land titles also have not contributed to a reduction in the incidence of conflict over land. The situation holds few incentives for keeping registration systems updated, and has contributed to considerable confusion over which laws are applicable in a given situation.

Ch 7: Carter, Michael, Keith Wiebe, and Benoit Blarel. 1991. Tenure security for whom? Differential impacts of land policy in Kenya.

By specifying a model that seeks to disentangle credit supply and demand effects of titling, the analysis reveals that land, labor, capital and insurance market failures contribute to the benefits of titling accruing mainly to large-scale producers. More critical for smallholders than titling is overcoming barriers to accessing these markets.

Ch 8: Roth, M., Cochrane, J. and W.W. Kisamba-Mugerwa. 1994. Tenure security, credit use, and farm investment in the Rujumbura Pilot Land Registration Scheme, Uganda.

Examining the outcomes of a pilot land registration initiative launched in 1958, findings show that registration has contributed to perceptions of greater tenure security (reduced probability of eviction) among title holders. Yet, high costs preclude many unregistered holders from obtaining titles. While the majority of unregistered holders believe titles improve credit access, only slightly more than a third of those with registered parcels felt this was true. However, use of formal credit is low given substantial fear of debt and dispossession. While registration has had a negligible impact on credit use, the analysis shows it has had significant positive effects on some types of land improvement, though this varies as to whether registration is exogenous or purposeful. The results suggest that the demand side (tenure security) benefits of titling are inducing investment behavior, not supply side (credit) ones. .

Ch 9: Roth, M., Unruh, J. and R. Barrows. 1994. Land registration, tenure security, credit use, and investment in the Shebelle Region of Somalia.

In an area characterized by high population pressure and increasing land scarcity, the study finds both registered and unregistered farmers equated titles with higher degrees of tenure security, but mainly for higher quality land. High opportunity costs are a significant deterrent for acquiring titles. Improved access to credit due to possession of titles and greater inclinations to invest in, to sell and to lease land are also perceived by significant majorities of both registered and unregistered holders, though most greatly by registered large-scale producers. For smallholders, credit supply is highly limited. Moreover, sporadic titling combined with high costs of registration has resulted in land being titled mainly to government officials, the better educated, those with large holdings, persons substantially engaged in non-farm activities and from outside the region where land is acquired. Titles were not significantly correlated with land investments.

Ch 11: Bruce, John W., Shem Migot-Adholla and Joan Atherton. The findings and their policy implications: Institutional adaptation or replacement.

The chapter draws together key findings from the studies elaborated in the volume, including:

- A notable correlation between high population pressure and complete transfer rights,
- Indications of a relationship between commercialization and privatization,
- Weak relationships between land rights or complete transfer rights and formal credit use, though credit availability was highly limited in the study areas as in much of Sub-Saharan Africa,
- Linkages between credit access, holding size and demand for registration,
- Mixed results on the association of land improvements with titling,
- No evidence of a link between title possession and agricultural productivity, even in those regions where impacts on land improvements are positive and statistically significant,
- Mixed evidence on the ability of titles to enhance perceptions of tenure security (defined in terms of reduced probability of eviction) and reduce conflicts – though insecurities derived mostly from past actions by the state,
- Indigenous land tenure institutions, given their roots in local values, tend to persist in spite of statutory reforms.

These findings call into question the economic viability of costly land titling programs in most of Sub-Saharan Africa, suggesting their benefits are likely to be unevenly distributed and will most likely only emerge under conditions of land scarcity, crop commercialization and good access to markets.

Burns, Tony, Chris Grant, Anne-Marie Brits and Kevin Nettle. 2003. Comparative study of land administration systems: Global synthesis of critical issues and future challenges. Report prepared for the World Bank, preliminary version. February.

Drawing on 18 country case studies where land administration projects have been undertaken, this study reviews the characteristics, accessibility, costs, and sustainability of different land titling and registration options. Based on these findings, it identifies relevant policy issues. At a global level, the study finds key obstacles to successful land titling and registration include self-serving state institutions and corruption, conflicts between statutory and customary or informal tenure systems, multiple inconsistent and overlapping laws which complicate conflict resolution processes and inhibit access to justice, imposition of fees above the capacity of beneficiaries to pay, low skill levels and inadequate resources, and lack of community trust in the system which is needed to sustain it.

Byamugisha, Frank F.K. 1999. How land registration affects financial development and economic growth in Thailand. Policy Research Working Paper No. 2241. Rural Development and Natural Resources Sector Unit, East Asia and Pacific Region, The World Bank. November.

Adapted from paper abstract: Using an economy-wide conceptual framework, the author analyzes how land registration affects financial development and economic growth in Thailand. Error correction and cointegration are applied to deal with such problems as time series data not being stationary, while an autoregressive distributed lag model is used to analyze long lags in output response to changes in land registration. Key findings are 1) land titling has significant positive long-run effects on financial development, 2) economic growth responds to land titling initially by falling, then gradual recovery followed by a strong upward trend, and 3) the quality of land registration services, as measured by public spending on land registration, has strongly positive and significant long-run effects on economic growth.

Calderon Cockburn, Julio. 2002. The mystery of credit. *Land Lines*. Lincoln Institute of Land and Policy.

This brief summarizes the results of a study that examined nearly 2 million housing units in informal settlements in three cities in Peru that were either untitled or received a title through the CONFOPRI-RPU program (same as ILD program??). The study concluded that despite the regularization of over 1 million urban housing units, access to loans decreased in 1998 and 1999 coinciding with economic recession. Indeed, non-regularized households relied more on credit from private banks than legalized households, who resorted more to public credit sources (though both receive a larger share from subsidized public rather than private sources), indicating banks place greater weight on other criteria besides titles in judging creditworthiness. Likewise, informal households earned on average greater salaries than their regularized counterparts. Low income families continued to rely predominantly on their own funds and loans from their social networks to meet financing needs. By 2001, only 5% of titling beneficiaries had accessed mortgage credit. The full study is described in: Calderon Cockburn, Julio A. 2001. Comparative analysis of the benefited and non-benefited population by the national formalization plan. In, Has the well-being of the population improved? A balance of the main social policies and programs. Lima: National Institute of Statistics and Data Processing (INEI). Pp. 65-92.

Carter, Michael R. and Pedro Olinto. 2003. Getting institutions “right” for whom? Credit constraints and the impact of property rights on the quantity and composition of investment. *American Journal of Agricultural Economics* 85 (1): 173-86 February.

Abstract from article: Property rights reform is typically hypothesized to boost investment through investment demand and credit supply effects. Yet when the credit supply effect is muted, property rights reform would be expected to induce liquidity-constrained farms to reduce investment in movable capital even as they increase investment in attached capital. This expectation is corroborated by econometric analysis of panel data from Paraguay. While all farmers experience a positive investment demand effect, liquidity-constrained producers correspondingly reduce their demand for movable capital. Given an estimated pattern of wealth-biased liquidity constraints, property rights reform will get institutions “right” for only wealthier producers.

Chalamwong, Yongyuth and Gershon Feder. 1988. The impact of landownership security: Theory and evidence from Thailand. Washington DC: The World Bank.

Abstract from paper: This article develops a model of farmers' land acquisition and investment decisions. The model clarifies the relation between land values, landownership security, and credit markets. The risk of eviction on untitled lands and the advantages in access to credit associated with titled land are shown to account for the higher price of titled land. Furthermore, observed land prices are distorted when credit is priced below the opportunity cost of capital and the risk of eviction is positive. Therefore social benefit analysis of land titling cannot utilize land prices without correcting for these distortions. The article offers

formulas for performing such corrections. Econometric estimates of the value of legal ownership in three provinces of Thailand using cross-section land price data show a statistically significant effect of ownership security on land price. The econometric estimates of ownership security are combined with the formulas generated by the model to yield estimates of the social benefit of land titling in the three provinces. The analysis implies that granting full legal ownership to squatters can be a socially beneficial policy in many provinces.

Chilundo, Arlindo, Boaventura Cau, Marlino Mubai, Denise Malauene and Vitor Muchanga. 2005. Land registration in Nampula and Zambezia Provinces, Mozambique. Securing Land Rights in Africa Research Report 3. London: IIED. November.

Land registration processes in rural Mozambique are explored in order to gauge their impact on poor and vulnerable groups, particularly in light of the 1997 land law permitting the registration of community use rights. Drawing on four community case studies, the research findings indicate that people perceive improvements in tenure security as a result of community registration and that it produced important benefits for vulnerable groups who depend especially on common pool resources. Despite some shortcomings in the registration process, the study finds that overall it cannot be considered anti-poor.

Cousins, Ben, Tessa Cousins, Donna Hornby, Rosalie Kingwill, Lauren Royston and Warren Smit. 2005. Will formalizing property rights reduce poverty in South Africa's 'second economy'? Questioning the mythologies of Hernando de Soto. PLAAS Policy Brief No. 18. October.

Drawing on evidence from urban and rural South Africa, this brief demonstrates that simple titling prescriptions are insufficient, and sometimes detrimental, to the welfare of poor people in South Africa. The authors particularly highlight the experiences of providing freehold titles to state-funded urban housing and awarding ownership to land reform beneficiaries in rural areas. The former shows how many people suffered from decreases in their tenure security, including spouses and other family members whose names were not included on the titles. Five years after project completion, 30% of the houses had been resold on the informal market, rendering the registration system useless. Although much of the social fabric of the original community was destroyed by ignoring kinship relationships in housing assignments, local norms of community kept some owners from occupying their property and permitted others to reside there who did not have legal rights to do so. In rural areas, the study points to the incompatibility of titling land as freehold with people's desire to hold land in common and adapt boundaries to respond to temporal needs. Other studies from South Africa demonstrate the failures of titling to improve the security and livelihoods of urban and rural poor. Various alternative approaches are proposed.

Datta, Kavita and Gareth A. Jones, eds. 1999. *Housing and finance in developing countries*. London ; New York: Routledge.

Drawing on case studies from Latin America, Africa and Asia, the case studies in this book reveal a general unwillingness of banks to serve the low income housing market and to provide housing finance to the poor, who they perceive to be high risk. Finance institutions have been shown to favor households with above-average incomes and male heads employed in the formal sector. Mortgage lending tends to be much more constrained in developing countries as compared to industrialized nations. Moreover, the poor are reluctant to borrow from banks due to their minimum loan sizes, long maturities and regular repayment requirements which are inappropriate for poor people's needs. Many are distrustful of formal financial institutions and fear becoming indebted to them. As a result, poor people rely overwhelmingly on informal sources of financing for housing from family, friends and social networks, as well as their own savings. Yet, evidence exists that lack of finance is a more significant deterrent to household improvements than insufficient tenure security.

Especially relevant chapters in this book include the following:

Klak, Thomas and Marlene Smith. The political economy of formal sector housing finance in Jamaica. Pp. 59-74

This chapter examines mortgage lending by Jamaica's chief housing agency, the National Housing Trust and finds that under neoliberal policies, it has veered away from its mandate to serve the housing needs of low-income groups. Statistics from the late 1980s suggest that more than 90% of Jamaicans lack sufficient incomes or assets to qualify for private sector mortgages for the cheapest housing construction. Although income levels to be eligible for an NHT loan are quite low, low income applicants are rarely approved, with the female head of households (37% of national households) being particularly discriminated against. The authors argue that reorganization of the NHT could allow the agency to fulfill this mandate and redirect a substantial share of its mortgage lending to the poor. Recommendations are to reduce reserve requirements, halve operating costs (half of NHT funds go to its payroll), and direct funds from asset growth and interest subsidies to low-income housing mortgages, the effects of which would more than double the value of the agency's mortgage lending. It is further recommended that the NHT reallocate its portfolio in favor of its intended beneficiaries, the poor, and partner with NGOs working to finance low-income housing.

Siembieda, William J. and Eduardo Lopez Moreno. From commercial banking systems to non-commercial banking systems in Mexico. Pp. 75-88.

Mexico suffers from a housing deficit of around 3 million units, meeting only around 20 percent of its total demand each year. A high degree of centralization, oligopolistic structures, inefficiencies and high operating costs, and unsuitable instruments to meet the needs of low-income groups have contributed not only to shortages of housing finance, but also inequitable lending both by federal agencies and commercial banks. Nationally, less than 12 percent of the population are considered sufficiently creditworthy to receive housing loans, a situation that is worsening with the decline in real wages. Non-commercial bank finance alternatives, including savings and loan societies, limited-purpose finance companies, and self-finance and mutual assistance schemes, have stepped in to fill some of the demand and equity gaps. The social motivation underlying these institutions, their low operating costs, less stringent regulatory requirements and affordability to low-income groups have made them an attractive alternative. The author recommends state support to these alternate sources and state housing institutes to enable them to expand their social coverage.

Datta, Kavita. A gendered perspective on formal and informal finance in Botswana. Pp. 192-212.

With a focus on women's access to housing finance in Botswana, the author highlights the fact that women's under-representation in formal sector employment, their lack of ownership over assets, and the high opportunity costs they face in applying for credit disproportionately marginalizes them from formal housing finance. While informal sources of finance have proven much less costly and more appropriate to low income women's needs and are the preferred strategy for around two-thirds of low-income women and men, the state has channeled most of their support to formal finance sources to address its housing crisis and allowed informal sources to flounder. The result has been a channeling of resources that favor upper and middle income households. Interviews with 119 households, of which 53 were headed by women, and interviews with representatives of formal finance institutions, government ministries and NGOs reveal the particular constraints face by women in accessing housing finance. The author recommends government support to informal finance institutions as well as the forging of linkages between informal and formal finance markets.

Daudlin, Jean. 2003. Land and Violence in Post-Conflict Situations. Report prepared for The North-South Institute and The World Bank. Ottawa: The North-South Institute.

This paper examines the links between land policy and violence. *Excerpt from paper:* "The political implications of the formalization of tenure are just as ambiguous as its economic impact. Formalization

can lessen access to land by depriving some social categories of property rights, as it threatens to do in Ivory Coast. It can weaken security by introducing legal pluralism or challenging the legitimacy of customary arrangements without offering effective alternatives. Finally, it can lock in an unequal distribution of land holdings, as it threatens to do in Cambodia and in Guatemala. When it is successful, its main impact is likely to be limited to tenure security, i.e. it might have no consequences whatsoever on differential access and concentration of land holdings. However, this might still represent a significant contribution to the “pacification” of the countryside, to the extent that many conflicts stem not from broad socio-political discussions but instead very localized disputes about plot boundaries and inheritance... Formalizations of tenure, through systematic survey, the establishment of land registries, as well as titling, can thus consolidate a tenure regime that is profoundly unfair. In many ways, the success of the formalization program in a country like Guatemala today, could have just such an effect. In fact, the consolidation of a class of small land owners could contribute significantly to the expansion of the social base of conservative political forces, further postponing the prospects for a land reform program that would also address the problems of access/landlessness as well as concentration.”

de Janvry, Alain, Gustavo Gordillo, Jean-Philippe Platteau, and Elisabeth Sadoulet 2001. Access to land, rural poverty and public action. Oxford University Press.

This book offers a rich set of studies that explore alternative paths for access to land by the rural poor, including inheritance and inter-vivos transfers, intra-household and intra-community land allocations, community titling of open access resources, different modes of land reforms, land rental markets and land sales markets. It stresses the importance of assessing countries’ unique policy and institutional contexts and market failures to understanding the relative merits and drawbacks of these various routes for equity and efficiency, and especially for addressing the needs of the poor. Key lessons drawn from the studies include:

- Tenure security can be achieved through sets of rights that fall short of private ownership,
- Efficient land use is not necessarily achieved through individual titling,
- Land policy reforms have overemphasized private ownership rights over use rights and have not given sufficient regard to market and institutional failures,
- Land rental and sales markets can function well without titling and registration where high levels of social capital and sound informal procedures are present to keep transaction costs low.
- Land rental contracts may be more effective in meeting the needs of the rural poor than land sales markets because they can help compensate for market and institutional failures.
- To be effective land policy reforms need to be accompanied by comprehensive policy and institutional reforms.

Particularly relevant chapters include:

Ch 1: de Janvry, Alain, Jean-Philippe Platteau, Gustavo Gordillo and Elisabeth Sadoulet. Access to land and land policy reforms.

Abstract is given above.

Ch 4: Otsuka, Keijiro and Agnes R. Quisumbing. Land rights and natural resource management in the transition to individual ownership: Case studies from Ghana and Indonesia.

This study examines the effects of individualization of tenure on investment in tree planting in both a major cocoa-growing region of Ghana and the buffer zone of a national forest in Sumatra, Indonesia. Key findings are that population pressure has reduced land acquisition through customary institutions in favor

of market mechanisms. The practice of forest clearance yields strong individual rights to land as does planting of trees on one's land, supplying incentives to deforest and then replant with commercial, agroforestry varieties. Land sales markets are mostly regressive in Sumatra and progressive in Ghana. The study cautions against installing land titling programs in areas where customary systems have not progressed to high degrees of individualization and where gender inequities are likely to be exacerbated. It recommends policies that provide incentives for low-income farmers living on sloping lands to adopt agroforestry technologies.

Ch 5: Ostrom, Elinor. The puzzle of counterproductive property rights reform: A conceptual analysis.

The chapter provides a conceptual tool for assessing the potential outcomes of property rights reforms. It points out many of the confusions and misunderstandings that have underlie many of the failures of past reform efforts; highlights the importance of recognizing "bundles" of multiple rights, of which the right to alienate property is only one; demonstrates ways of deconstructing property rights systems in order to identify points of policy intervention and promote mixed property regimes; identifies land attributes suitable to common property institutions and mixed systems; and, finally, examines relevant lessons learned that can be applied to future reform efforts. The author advocates stronger recognition of common property institutions as a viable regime for addressing poverty and ecological sustainability, but cautions against upholding any one property system as a panacea without a clear understanding of the resource system and its users.

Ch 8: Sadoulet, Elisabeth, Rinku Murgai and Alain de Janvry. Access to land via land rental markets,

This chapter provides theory and cites evidence of why land rental markets are likely to be more effective than land sales markets in providing access to land, especially for the rural poor. In discussing titling, it notes that while secure titles may protect owners from having their property claimed by tenants, it can also lead to the expropriation of weaker groups. Based on agricultural census and household survey data from Pakistan and Tunisia, land rental markets produce mixed impacts on the poor. In more traditional agricultural regions rental markets tend to cater to the land needs of the poor, while in areas of greater commercialization, there are lower incidences of tenancy, especially share tenancy.

Ch 10: Carter, Michael R. and Ramon Salgado. Land market liberalization and the agrarian question in Latin America.

The chapter sketches important theory underlying agrarian structure and land markets, then turns to empirical evidence in Paraguay, Chile and Honduras to test the theory. The Paraguay study, based on statistics and econometric analysis, finds that while rental markets offer an avenue for land acquisition by the poor, sales markets are biased toward the wealthy and appear to be contributing to greater land concentration. This is due principally to credit constraints faced by the poor diminishing their competitiveness. Review of empirical evidence of various studies in Honduras suggest that land titling has done little or nothing by way of improving access to credit, stimulating land investments, increasing agricultural productivity, and augmenting land market transactions, though there is one study that provides evidence of improved investment and productivity. In the reform areas, impacts on land markets show smallholders selling land in more fertile zones to agro-industries and large scale producers of export crops. Similarly, in Chile, land markets has led to concentration in the hands of large, agro-export farmers, particularly in fruit-growing regions, and to well-financed professionals newly acquiring land in rural areas – at the expense of traditional smallholders. Credit-constraints and the inability to bear the considerable costs of export fruit production combined with the declining profitability of producing traditional crops for the domestic market led many smallholders to sell out. Nevertheless, titles have been shown to have little bearing on the incidence of land sales.

de Janvry, Alain and Elisabeth Sadoulet. 2001. Access to land and land policy reforms. UNU/WIDER Policy Brief No. 3.

Abstract from Eldis: The objective of the research that this policy brief reports on is to analyze different mechanisms of access to land for the rural poor in an era when redistribution through expropriative land reform is largely inconsistent with the forces of political economy. The roads of access to land which are explored are intra-family transfers, access through community membership, land sales and rental markets, and government programs including decollectivization and land-market assisted land reform. The array of instruments is vast, and each can be subsidized to specific policy interventions to make them more effective for sustainable poverty reduction. The paper argues that under conditions of relative land abundance and/or in communities with strong social capital that helps establish a working informal order based on community trust-enforcement mechanisms, land markets can work efficiently and be progressive without formal definition of property rights and without formal registration of transfers. When these conditions do not hold, formalizing the legal definition of property rights and introducing the modern institutions necessary to make land markets work both efficiently and equitably becomes essential. Two measures for this purpose are identified. Measures that need to be introduced specifically to make land sales and land rental markets work are also identified.

Conclusions: There are many alternative paths of access to land, some totally informal and others rigidly formalized, some spontaneous and others relying on extensive government intervention. The efficiency of these paths are specific to the context and to the types of rural household concerned to be effective, land policy reforms need to be embedded in comprehensive policy and institutional reforms, and complemented by effective rural development interventions in support of the competitiveness of beneficiaries.

De Soto, Hernando. 1989. *The Other Path. The Economic Answer to Terrorism.* New York: Basic Books.

The author examines the extensive informal housing, trade and transport in Lima, Peru, and concludes that the poor are in fact generating huge amount of capital, which however does not participate in the larger process of economic development, remaining “dead” capital. He examines the reasons why informal operators tend to remain outside the national legal framework, finding that costs and administrative barriers largely account for this, and concludes that that the costs in terms of investment, capitalization and taxation are huge. He criticizes the “redistributive state” as rife with corruption and ineffective in achieving development for the poor. He uses class analysis to explain the persistence of barriers to entry into the formal sector as an attempt to preserve privileges of existing economic interests, and reviews the comparative experience of European nations in eliminating such barriers over the last century. It is suggested that development of Latin American nations has been retarded by the maintenance in our time of an economic structure and policies that resemble the mercantilist economic model long abandoned in most of the West.

De Soto, Hernando. 2000. *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else.* New York: Basic Books.

Developing a theme on which he embarked in *The Other Path* (1989), the author focuses on the “dead” capital existing in land held without formal titles. He presents estimates extrapolated from data for several countries in which his Institute for Liberty and Democracy has done diagnostic studies, concluding that about 85 percent of urban parcels and between forty and fifty-three percent of rural parcels are “held in such a way that they cannot be used to create capital”. The author suggest that in creating the system of private property to protect land rights, the West unwittingly created a mechanism for the creation of capital, in which the market value of land is captured in legal instruments that take on a life of their own, extending the potential of assets further and further, each time increasing capital. Citing the experience of the United States during its westward expansion, he identifies as critical to US development the decision to formalize through legal mechanisms such a pre-emption wide-spread squatting on public and private lands. He faults Third World governments for failing to give their people “the efficiently crafted legal right to have their property integrated into a formal legal system that allows them to create capital.” He

identifies good law as the primary factor in the creation of capital, rather than surveys or computerization, and identifies law reform as the critical need, urging reformists to draw upon the resources provided by “the peoples’ law” in framing their reforms.

De Soto, Hernando. 2001. Dead capital and the poor. *SAIS Review* 21 (1). Winter-Spring.

Abstract from article: This paper broadly outlines the conceptual lags and the concrete obstacles which impede formalization. It provides evidence from the case of Egypt and contains some policy suggestions that may assist the governments of developing countries.

Deere, Carmen Diana and Magdalena Leon 2001. Who owns the Land? Gender and Land Titling Programs in Latin America. *Journal of Agrarian Change*, Vol. 1(3), 2001c, pp. 440-467.

Abstract from article: The main focus of state intervention in Latin American agriculture in the 1990s was on land-titling programs, designed to promote security of tenure and enliven land markets. A review of seven of these projects suggests that they were often designed without sufficient attention to civil codes and marital regimes that protect women's property rights. They often ignored that a household's endowment of land may consist of three forms of property: the wife's, the husband's and jointly owned property. By assuming that the family farm is owned by the male household head, these projects trampled upon women's ownership rights. Nonetheless, the share of female beneficiaries of land-titling projects has been much higher than the share of women adjudicated land under the agrarian reforms of previous decades. This is partly because the primary way that women acquire land is through inheritance, and inheritance appears to be more gender equitable than other manners of acquiring land. It is also due to the impact of the more gender-equitable agrarian legislation of the current period, itself a product of the impact of women's movements on the state.

Deininger, Klaus. 2003. *Land policies for growth and poverty reduction. A World Bank Policy Research Report. World Bank and Oxford University Press.*

This volume synthesizes the findings from a large body of research on land tenure policies that takes into account the presence of multiple market and institutional imperfections. The book discusses the effects of these distortions on the ability to achieve pro-poor outcomes. It evaluates the implications of these insights for development policy in a manner that makes them accessible to a broad audience and draws from actual experiences in policy implementation from Eastern Europe, Africa, Latin America, and South and East Asia. The author emphasizes the importance of policy discussions and evaluations to enable the adaptation of general principles to local situations so as to achieve poverty reduction and economic growth.

Deininger Klaus and Hans Binswanger. 1999. The Evolution of the World Bank's Land Policy: Principles, Experience and Future Challenges *The World Bank Research Observer* Vol. 14 No. 2 pp. 247-276.

Abstract from article: This article examines the evolution of policy recommendations concerning rural land issues since the formulation of the World Bank's “Land Reform Policy Paper” in 1975. That paper set out three guiding principles: the desirability of owner-operated family farms; the need for markets to permit land to be transferred to more productive users; and the importance of an egalitarian asset distribution. In the 25 years since that paper was published, these guiding principles have remained the same, but it is now recognized that communal tenure systems can be more cost-effective than formal title, that titling programs should be judged on their equity as well as their efficiency, that the potential of land rental markets has often been severely underestimated, that land-sale markets enhance efficiency only if they are integrated into a broader effort at developing rural factor markets, and that land reform is more likely to result in a reduction of poverty if it harnesses (rather than undermines) the operation of land markets and is implemented in a decentralized fashion. Achieving land policies that incorporate these

elements requires a coherent legal and institutional framework together with greater reliance on pilot programs to examine the applicability of interventions under local conditions.

Deininger K. and J. Chamorro. 2004. Investment and equity effects of land regularisation: The case of Nicaragua *Agricultural Economics* 30 (2): 101–116.

Abstract from article: We use data from Nicaragua to examine the impact of award of registered and non-registered title on land values and changes in land-attached investment. Registration, acquisition through purchase, and agrarian reform title all are associated with significant increases in the value of plots. Receipt of *registered* title is found to increase land values by 30% and at the same time greatly increase the propensity to invest, bringing such investment closer to the optimum. In line with descriptive statistics indicating great demand for land right regularisation especially from the poor, this suggests that titling can have a positive distributional effect. At the same time, the legal validity and official recognition of the titles issued appears to be of great importance.

Dickerman, Carol. 1987. Security of tenure and land registration in Africa: Literature and synthesis. Land Tenure Center Paper 137. Madison, WI: Land Tenure Center, University of Wisconsin-Madison. December.

This publication contains over 500 original annotations of publications on and titling and registration in Africa. It is exhaustive, if now somewhat out of date. A synthesis piece at the beginning develops several of the major themes in the publications, a number of them critical of titling efforts in Africa and their impacts.

Doebele W.A. 1994. Urban Land and Macroeconomic Development. In Jones G. and P.M. Ward, eds., *Methodology for Land and Housing Market Analysis*. Cambridge, Massachusetts Lincoln Institute of Land Policy.

The author explores and critiques current understandings of urban land a property markets. He points to the fact that the informal delivery system for land and housing is generally overlooked and little understood, but that it is clearly a major business of immense complexity that rapidly delivers housing to “more than half of many urban populations” offering “an almost infinite range of ‘products’ at a range of prices to fit almost every pocketbook.”(p. 47). It is also accommodates many vested economic and political interests, and functions as a significant source of employment. The chapter highlights various studies that demonstrate legal tenure to be of low priority to poor people, or even rejected by them, including studies undertaken in Peru, Egypt, Zambia and India. Calls are made for improving understanding of why few resales take place in informal settlements and on how competing claims are resolved in these settings. The author cautions that formalization is likely to incite conflict as people are pushed to make official declarations of rights.

Doebele, W.A. 1983. Concepts of urban land tenure. In *Urban land policy: Issues and opportunities*, H. Dunkerley, ed. Oxford: Oxford University Press.

This chapter distinguishes land, and especially urban land, from most other types of commodities and the effect of such differences on land tenure. The author classifies several types of urban tenure and evaluates their advantages and disadvantages in varying policy contexts, providing a very useful framework for assessing land tenure options. Non formal de facto tenure, for example, often contributes to increased land and economic productivity, though investment incentives can be hampered by tenure insecurity. Such forms of tenure are nevertheless capable of responding rapidly to changing demands and contributing to greater social equity. Other forms of tenure are discussed in terms of their impacts on productivity, equity, responsiveness to demand, and compatibility with broader development objectives. While the author concludes that existing land tenure arrangements are usually inadequate in most developing country urban centers, he cautions against imposing radical reforms and advises careful considerations of fundamental

tradeoffs. He suggests that mixed public-private tenure systems may offer the best approach in many countries.

Dower, Paul and Elizabeth Potamites. 2005. Signaling Credit-Worthiness: Land Titles, Banking Practices and Access to Formal Credit in Indonesia. Department of Economics, New York University. Mimeo.

Abstract from paper: It is often suggested that the poor are credit-rationed due to their lack of formal collateral. Using a household survey from Indonesia, we estimate the impact of having a land title on formal credit access. Adopting an instrumental variable approach, we find that having a formal title significantly increases a household's probability of having had a formal loan and the size of working capital loans it receives. Why land titles increase access to formal credit is still not clear. Incorporating data from a unique survey of bankers in Indonesia, we argue that land title increases access because of what it signals to the banker about the household not because of its value as collateral. We apply a simple model of contract choice to show how title can act as an indirect signal.

Durand-Lasserve, A. with V. Clerc. 1996. Regularization and integration of irregular settlements: Lessons for experience. UMP Working paper series 6, Nairobi.

This paper reviews informal settlement patterns in terms of tenure and service provision, and the response of government and private actors and organizations to these issues. In doing so, it identifies those actions which have been most successful, and draws lessons from their experience. The author recommends a unified approach to informal settlement recognition, provision of infrastructure and services and tenure regularization. Keys to success lie in simplified procedures and standards, and decentralized approaches supported by strong political will and participation of communities in decision-making processes.

Ensminger, Jean. 1997. Changing property rights: Reconciling formal and informal rights to land in Africa. In John N. Drobak and John V.C. Nye, eds., *The Frontiers of the New Institutional Economics*. San Diego: Academic Press.

Merging understandings from both institutional economics and anthropology, the author argues that the growing individualization of property rights in Africa alongside an overall rejection of state-led tenure reforms is not inconsistent. Rather, it reflects while demographic and economic factors do tend to induce greater individualization, the implanting of external institutions to govern rights ignores the embeddedness of property rights in broader local institutional structures. Crucially, formal systems of property rights often run counter to local social norms of equality and fail to offer the flexibility and risk-protection benefits offered by lineage based systems. These contradictions collide with farmers' best interests and render formal systems unimplementable and unenforceable. Case study evidence from Kenya is used to support these propositions. Deterrents to conforming to land titling programs there have included: high fixed transaction costs to title land, a lack of stimulus for improved access to credit, restrictions on land fragmentation and inheritance, and failure of formal systems to accommodate secondary and overlapping land rights, and the potential for outsiders to acquire land in communities (e.g., through sale of foreclosed land). Gradually, policies and laws have been enacted which remove many of these restrictions to make formalization more compatible with customary practices.

Feder, G., L.J. Lau, J.Y. Lin and X. Luo. 1992. The determinants of farm investment and residential construction in post-reform China. *Economic Development and Cultural Change* 41: 1-26.

Based on data from four counties in China, the study finds that productive investments in agriculture were considerably lower than housing investments. Indications are that very small farm sizes could serve to undermine investment, given capital indivisibility, although this has not yet proven so. Rather, rationing of divisible inputs is seen to be the cause. Absence of private property does not appear to have affected investment prior to 1989, though the authors warn that the awarding of 15 year contracts combined with

farmers' perceptions that they will not be awarded the same plot of land upon contract expiry may induce tenure insecurity. If input supply is reformed, credit may become a constraint since institutional supplies are highly centralized and controlled while informal credit from friends and relatives is not given for productive investment.

Feder, G., and A. Nishio. 1996. The Benefits of Land Registration and Titling: Economic and Social Perspectives, *Land Use Policy* 15(1), 25-43.

Abstract from article: There is convincing evidence from around the world that land registration has led to better access to formal credit, higher land values, higher investments in land, and higher output/income. However, there are prerequisites for land registration to be economically viable, and social aspects which need to be considered when designing a land registration system. Further studies are warranted on some emerging issues.

Feder, G., T. Onchan and T. Raparla. 1988. Collateral, guarantees and rural credit in developing countries: Evidence from Asia. *Agricultural Economics* 2: 231-245.

Abstract from article: The paper reviews the theory of the impact of loan collateral, and in particular land collateral, in institutional and non-institutional rural credit markets. Evidence from three Asian developing countries is presented, showing extensive use of land collateral among institutional lenders in countries where such collateral is legal. The use of land collateral is more common than other forms of security, except in places where legal inhibitions on mortgaging agricultural land exist. Non-institutional lenders are less inclined to use land collateral. However, lenders who do not have links to borrowers in matters other than finance are more likely to use loan securities. Estimates of institutional credit supply and demand in rural Thailand confirm that the pledging of land collateral affects the supply of credit more than group guaranty. It is also shown that larger farmers are more likely to utilize land collateral. The conclusion is that land collateral is preferred by institutional lenders as it reduces creditworthiness assessment costs. Attempts to ban or limit collateral use by decree are motivated by equity considerations, but they will cause loss of efficiency. Simplification of ownership verification and other policies reducing the transaction cost of collateral pledging will mitigate the negative equity implications of collateral.

Feder, G. and T. Onchan. 1987. Land Ownership Security and Farm Productivity: Evidence from Thailand. *American Journal of Agricultural Economics* 69: 311-320. May.

Abstract from article: The article discusses the impact of land ownership security on farm investment and land improvements. Ownership security enhances capital formation by providing better incentives and improved access to credit. Data from three provinces in Thailand are used to support theoretical propositions and estimate the impact of ownership security. Econometric analysis shows that in two provinces, with a well-developed, informal credit market, ownership security is less important and the impact on capital formation is less significant. Land-improving investments are shown to be significantly affected by ownership security.

Fernandes, Edesio and Ann Varley, eds. 1998. *Illegal cities: Law and urban change in developing countries*. London and New York: Zed Books.

Drawing on research from Asian, African and Latin American cities, the studies in this book challenge old notions of urban areas being governed by a unified legal system based on statutory law. Through examining issues surrounding the proliferation of informal settlements by poor people in and around cities in developing countries, the book uncovers a host of new understandings about how the interface of formal and informal law shape urban change. The studies demonstrate that illegal settlements are a major contributor to urban growth in developing countries, and function as a unique supplier of affordable housing to low-income populations and migrants. However, neglect on the part of the state along with rising property prices often push them to the margins, both politically and physically. The contributors highlight problems faced by the state in many countries in terms of insufficient capacity and lack of

legitimacy to govern urban land administration and implement tenure reforms. While some authors point to the insecurities created by the absence of formal ownership rights or the benefits of tenure regularization, others point to the inappropriateness of formal law to address local realities, the capacity of the more affluent to manipulate statutory law, and the benefits that can emerge from the emergence of local informal institutions and cooperation in terms of neighborhood stability and conflict resolution. While there has been ample study of the economic benefits of tenure legalization, there has been a profound neglect in recognizing its political uses and outcomes.

New paradigms for popular participation in urban management are presented as promising avenues for creating legitimate and effective land policy and management in cities.

Field, Erica. 2004. Property rights, community public goods, and household time allocation in urban squatter communities: Evidence from Peru. *William and Mary Law Review* 45(3): 838 -887.

The article examines the “cost of informality” in terms of time devoted by urban family and community members to property protection and the effects of titling in reducing these costs through freeing up people’s time to enter the labor market and to engage in non-home-based employment. Results from Lima, Peru show that “individuals in titled households spend fewer hours inside the home guarding property and engaging in home-based entrepreneurial activities, and a greater number of hours in both employment and private leisure activities outside the home.” It also finds that households with titles spend fewer hours participating in informal neighborhood projects and more time engaging with government agencies as compared with households with informal claims to their properties.

Firmin-Sellers, Kathryn and Patrick Sellers 1999, Expected Failures and Unexpected Successes of Land Titling in Africa, *World Development* 27(7), 1115-28.

Abstract from article: The imposition of market-oriented economic reforms throughout Africa in the 1990s has sparked renewed debate over the desirability of state-sponsored land titling programs. Proponents argue that land titling is an essential foundation for economic growth. Opponents contend that titling programs are unnecessary and premature at best, or detrimental at worst. This paper addresses these concerns through an examination of Cameroon’s 1974 Lands Ordinance. Using both quantitative and qualitative data, we find that the 1974 Lands Ordinance has not introduced Western-style private property rights in Cameroon’s agrarian sector. Nevertheless, the ordinance is not irrelevant to rural farmers. Rural farmers have used the ordinance to obtain concrete boundary markers on their land, enhancing their tenure security. In addition, administrators have used the ordinance to register underdeveloped land, reducing the contradictions between state law and customary law. These findings suggest that policy-makers could fruitfully redesign their land tenure policies to render them more attractive to rural farmers, and thereby give the state a more constructive role in enhancing tenure security, and in promoting economic growth.

Fitzpatrick, Daniel. 2005. ‘Best practice’ options for the legal recognition of customary tenure. *Development and Change* 36(3): 449-475.

Abstract from paper: Is there a ‘best practice’ model for the legal recognition of customary tenure? If not, is it possible to identify the circumstances in which a particular model would be most appropriate? This article considers these questions in the light of economic theories of property rights, particularly as illustrated by the World Bank’s 2003 land policy report. While these theories have their flaws, the underlying concept of tenure security allows a typological framework for developing legal responses to customary tenure. In particular, this article suggests that the nature and degree of State legal intervention in a customary land system should be determined by reference to the nature and causes of any tenure insecurity. This hypothesis is discussed by reference to a wide variety of legal examples from Africa, Papua New Guinea and the South Pacific. The objective is not to suggest that law determines resource governance outcomes in pluralist normative environments, but to improve the quality of legal

interventions in order to assist customary groups to negotiate better forms of tenure security and access to resources.

Foltz, Jeremy, Bruce A. Larson, and Rigoberto Lopez. Land tenure, investment, and agricultural production in Nicaragua. HIID Development Discussion Paper No. 738.

Abstract from paper: While there is a consensus in Nicaragua that the security of property rights is a fundamental constraint to the long run development of the agricultural sector, there has been little empirical analysis to date of the relationship between land rights and rural economic activity. Using household level data collected between December, 1997–April, 1998 within the regions of Leon and Chinandega (known administratively as Region II), this paper investigates the relationship between rural land rights and agricultural credit, investment, and rural incomes (on farm and off farm). Results indicate total credit received was significantly and negatively related to female-headed households and households with no documented form of land rights. While there is no significant relationship in the data between investment (defined as either total investment or just agricultural investment) and land rights and household characteristics, tenure status is significantly related to the number of trees on the property (a form of long-term land investment). Results indicate that off-farm income is significantly and positively related to the education level of household heads and the lack of any form of documented land rights. Farm income, defined for the purposes of this study as gross agricultural revenues, is shown to be increasing in the degree of tenure security, the education of the household head, farm size, and individual operation, and decreasing in the years since acquiring the property. In sum, these results indicate that improved clarity and enforcement of rural property structures can have a positive impact on rural credit access and farm profitability.

Galiani, Sebastian and Ernesto Scharrotsky. 2004. Effects of land titling on child health and education. Inter-American Development Bank–Research Department Latin American Research Network.

Abstract from paper: This project analyzes the impact of land titling on child health and education. The empirical evaluation of the effect of land property rights typically suffers from selection problems. The allocation of property rights across households is usually not random but based on wealth, family characteristics, political clientelism, or other mechanisms built on differences between the groups that acquire property rights and the groups that do not. In this paper, we address this selection concern exploiting a natural experiment in the allocation of property rights. A homogenous group of squatters occupied a piece of privately owned land in a suburban area of Buenos Aires, Argentina. When the provincial Congress passed an expropriation law transferring the land from the former owners to the squatters, some of the former owners surrendered the land (and received a compensation), while others decide to sue in the slow Argentine courts. These different decisions by the former owners generated an allocation of property rights that is exogenous to the characteristics of the squatters. We take advantage of this natural experiment to evaluate the effect of the allocation of urban land property rights. Our preliminary results show significant effects on weight-for-height Z-scores, school repetition grade and teenage pregnancy. Children in the titled parcels show better nutrition, less grade repetition and lower teenage pregnancy rates than children in the untitled parcels.

Giovarelli, Renee, Susana Lastarria-Cornheil, Elizabeth Katz and Sue Nichols. 2005. Gender issues and best practices in land administration projects: A synthesis report. Prepared for the Gender and Rural Development Thematic Group (PREM/ARD) and the Land Policy and Administration Thematic Group (ARD) of The World Bank. May.

Based on four case studies of Bank-financed land programs in Azerbaijan, Bolivia, Laos and Ghana, the authors examine the gendered outcomes of land policies and projects. The report discusses why gender is important in land administration projects and identifies priority issues for such projects, including 1) understanding intra-household legal and customary rights, 2) identifying property holders 3) conducting

gender-disaggregated field assessment of land rights, 4) grasping the complexity of adjudication and registration processes and mitigating potential gender problems associated with them, and 5) ensuring sufficient education, training and communication directed at project implementers and beneficiaries. Two key lessons emerging from the case studies are that gender equity provisions in formal property rights law are largely ineffective in the face of customary institutions that discriminate against women when it comes to property rights, and that there are often inconsistencies between land law and family and personal laws when it comes to women's and men's property rights.

The Global Drylands Imperative. 2005. Land tenure reform and the drylands. Paper presented at the UNDP-International Land Coalition Conference: Land Rights for African Development: From Knowledge to Action, October 31-November 3, 2005.

This paper presents six challenges for policymakers to consider when making decisions about land tenure in the drylands, drawing particularly on experiences from Asia, Central America and Africa. These challenges are as follows:

- How can we ensure that land tenure systems and land tenure reform processes are truly participatory, accessible, and transparent?
- What actions can be taken at local, national and international institutional levels to support legal aspects of land tenure security and reform?
- How can national processes address the overlaps and contradictions between informal and formal, customary and modern, and 'hybrid' land tenure systems?
- How can potential conflict over the use of land and its resources be minimized?
- How can the rights of marginalized groups, including women, to control land be promoted and protected?
- How can land tenure systems and land tenure reform processes take a holistic, comprehensive and coordinated view of institutional and physical environments?

Several creative policy recommendations emerge from discussion of the challenges.

Gray, Leslie and Michael Kevane. 1996. Land tenure status of African women. Background paper for Project on Gender and Property Rights in Africa, The World Bank. Unpublished draft.

This paper offers an extensive review of women's property rights in Sub-Saharan Africa and examines the impact land registration and titling programs have had on African women. In light of the many disappointing outcomes associated with such efforts, many governments have turned their attention to alternative legal interventions designed to improve gender equity, such as reforms to intestate succession laws, and to funding projects that induce equity-enhancing changes to women's tenure status. The authors also examine how socioeconomic and demographic changes have altered the costs and benefits for men and women to exercise their rights and shaped their respective strategies to deny or assert women's rights. These strategies have in turn affected the broader social structure.

Haile, Wray Witten, Kinfe Abraha, Sintayo Fissaha, Adane Kebede, Getahun Kassa, and Getachew Reda. 2005. Land registration in Tigray, Northern Ethiopia. Securing Land Rights in Africa Research Report 2. London: IIED. November.

Based on a three year study in Tigray, Ethiopia to assess the potential of land registration to benefit poor people, the authors report that the simple, low cost and locally administered land registration system with strong state oversight has enabled a positive effect on poor people. Strong local governance together with a history of egalitarian land distribution have minimized negative land distribution consequences.

Hayes, Joseph, Michael Roth and Lydia Zepeda. 1997, Tenure Security, Investment and Productivity in Gambian Agriculture: A Generalized Probit Analysis, *American Journal of Agricultural Economics* 79(2): 369-82.

Abstract from article: The determinants of investment, input use, and productivity are investigated under customary tenure in peri-urban areas of the Gambia. A structural model is specified to investigate the role of tenure security on farm investments and input use and therefore on yield. Testing of the structural form hypothesis requires simultaneous equation estimation. Containing both continuous and discrete endogenous variables, the model is investigated as a feasible generalized least squares Amemiya's generalized probit. Some of the positive relationships hypothesized between tenure security, investments and yields are corroborated. In particular, tenure security is found to enhance long-term investment, which in turn enhances yields.

Home R. and H. Lim (2004) *Demystifying the Mystery of Capital: Land tenure and poverty in Africa and the Caribbean* London Glasshouse Press.

The studies in this book examine the evolution of land tenure in peri-urban informal settlements in Botswana, Trinidad and Zambia and the impacts of land registration and titling against the theories put forth by Hernando de Soto. In all three countries, extensive semi-structured interviews with residents revealed that registration and titling have made little or no difference in improving access to credit by the poor through provision of a collateralizable asset. The studies find that banks are more interested in indications of creditworthiness besides title, including regular employment and generally regard land from low-income neighborhoods as unattractive collateral. From the perspective of residents, titling can be a costly and opaque process. However, the most fundamental obstacle to formal credit appears to be urban residents' fear of dispossession from their hard-won homes. In some cases, this is reinforced by prior action on the part of government banks to repossess collateral and a general distrust of banks and the government. In the case of Trinidad, however, study respondents attributed an improved sense of well-being to more secure tenure rendered by the titles they received.

Hoy, Michael and Emmanuel Jimenez. 1991. Squatters' rights and urban development: An economic perspective. *Economica* 58 (229): 79-92.

Abstract from article: Up to 35 per cent of urban dwellers in Third World cities are squatters. The characteristics of the squatting phenomenon are both varied and puzzling. Of particular interest are the observations that (1) landowners often do not collect rent from squatters for use of the land and (2) costly evictions are sometimes used without subsequent development of the land which in many cases is resettled by squatters. We present an economic model of landowner-squatter interactions which is consistent with these observations. This model is then used to enlighten certain aspects of socially optimal land management policy for squatter areas.

Hunt, Diana. 2004. Unintended consequences of land rights reform: The case of the 1998 Uganda Land Act. *Development Policy Review* 22(2): 173. March.

Abstract from article: Empirical studies of land rights privatization have tended to underemphasize the unintended impacts of land rights reform relative to establishing whether the predicted impacts have occurred. This article, in reviewing some of the unintended consequences of the 1998 Uganda Land Act, draws attention to ways in which intended impacts may be undercut by lack of both consultation and foresight in anticipating responses to new legal provisions and by lack of adequate resourcing of the reform process. It also recognizes that unintended outcomes may sometimes reflect appropriate adaptations of legal provisions at the local level, and briefly considers what light the Ugandan experience can throw on recent proposals for Normalization of informal property rights in the Third World.

Institute for Liberty and Democracy and the Consortium for the Formalization of Haitian Informal Assets. 1998. Urban real estate formalization program in Haiti. Summary report and volumes I-IX.

This multi-volume document describes the research activities carried out by the Institute of Liberty and Democracy in Haiti between October 1997 to March 1998. The initial document provides an abstract of the study. Volume one serves as an introduction and Volume two comprises the situational analysis which is the main report. Volumes III–IX contain background information, detailed analyses of specific issues, and the operational plan and budget for the project. Characterizing urban informal property in Haiti, the study reports that the vast wealth of real estate and small business assets in Haiti lack proof of ownership necessary for market exchange. Ninety percent of Haiti’s urban population and the majority of its informal settlements are concentrated in four cities, with Port-au-Prince accorded 82% of informal dwellings. Types of informal occupation include extralegal subdivision and squatter occupation of both private and public lands. The study calculated the value of informal housing stock to be U.S. 2.025 billion. Access to credit from the formal banking system is highly restricted due to uncertainties concerning clients’ identities and their income-generating capacity as well as the lack of documentation for collateralizable assets. Most real estate transactions in the informal sector are undertaken verbally and verified by neighbors, who are called upon in the event of disputes. A deficient legal framework contributes to considerable costs in undertaking property-related transactions, such as obtaining mortgages. Objectives and strategies for carrying out an institutional reform are presented, along with a proposal for undertaking an initial pilot project.

Institute for Liberty and Democracy. 2005. Executive summary. Program to formalize the assets of the poor of Tanzania and strengthen the rule of law. Lima, Peru: ILD.

Over 10 months in 2004-2005, the Institute for Liberty and Democracy (ILD), at the request of the Government of Tanzania, conducted an extensive survey to discern, “how the nation’s extralegal economy actually operates and how the official legal system interacts with it.” While Tanzania has created much of the legal framework for citizens’ participation in the legal economy, the majority of the country’s economic activity takes place extralegally. While the majority of economic activity in Tanzania is unregulated by the state, the extralegal economy was found to contain a considerable degree of the structural characteristics most frequently associated with the formal sector. In particular, whereas legal contracts, public courts, and traditional financing remain largely absent from commerce, extralegal mechanisms fill roles that are functionally similar to their counterparts in the legal economy. The study identifies 17 “archetypes” within the extralegal economy that typify the indigenous Tanzanian extralegal economic model. Amongst the identified archetypes were extralegal documents such as contracts, titles, guarantees, and declarations of extrajudicial rulings; mechanisms for price-setting; and means for defining and governing the organization of business relationships. The survey identifies 67 of the primary causes for the proliferation of the extralegal economy in Tanzania. The causes are characterized by a general discrepancy, and in some cases incompatibility, between economic and social realities and the content of legislative and regulatory requirements. Illustrating the role of such cleavages in preventing participation in the formal sector, the study notes that the majority of the documents necessary to legally operate a business are found only in English whereas the greater proportion of the country’s citizens speaks only Kiswahili or tribal languages. Regarding the cost of compliance with legal requirements, the survey notes that a poor Tanzanian entrepreneur would, over the 50 year life of a business, expect to wait 32,216 days – 1,118 of which would be spent inside government offices – for approval of the various required permits and spend almost US\$ 180,000 in forgone income and fees. The difficulties associated with complying with regulation was also noted to limit credit access as the prohibitive cost of property registration reduces the potential for guaranteeing loans based on real property.

Institute for Liberty and Democracy. 2005. Executive summary. The extralegal economy where the majority of Egyptians live and work: What the government of Egypt can do to integrate them into the mainstream economy and substantially reduce poverty and increase economic development, Lima, Peru: ILD.

The Institute for Liberty and Democracy (ILD), under the supervision of the Egyptian Ministry of Finance, conducted a diagnostic survey of the Egyptian extralegal economy to define the nature of the country's extralegal economic activity and identify the primary causes for its proliferation. Amongst the identified deterrents to a firm's entry into the legal economy was the complexity of legislation defining legal requirements for incorporation and registration, convoluted and redundant regarding the role of public sector institutions in the entry process, and excessive procedural requirements associated with establishing a legally-compliant commercial enterprise. The difficulty associated with navigating the formal entry process is illustrated by the study's observation that to open a bakery in Egypt would require more than 500 days and cost 27 times a minimum monthly salary before operations could commence. The causes of extralegality related to a firm's operation and expansion in the legal economy were found to be similar to those associated with entry; often stemming from the burden associated with navigating complex legislative and institutional frameworks or ensuring continued compliance with obligations. The interdependence of the identified problems is observed by the manner in which the country's lack of standard accounting practices hindered firms' operation in the formal sector by delaying the renewal of registrations and licenses, while also affecting its expansion activities by limiting lenders' ability to accurately access a borrower's financial standing. Access to credit was further limited by the extralegality of most real estate assets—92% of the population were found to hold properties extralegally—by limiting a borrower's ability to use property as collateral. Finally, the study found exit from the legal economy to be hindered by procedural ambiguity for exit requirements and complex bankruptcy legislation, each of which increased the cost associated with dissolving enterprises from the formal sector.

Institute for Liberty and Democracy. 2001. Executive summary: The capitalization of the poor and middle-class in Mexico.

Over several months in 1999-2000 a team of researchers from the Institute for Liberty and Democracy (ILD) with the support of local consultants undertook a research project to describe the Mexican extralegal economy and identify causes for its continued prevalence despite reform. Despite efforts by the Mexican Government to regularize land tenancy and formalize business, the Mexican extralegal economy remains large. The study notes that although the state has issued millions of certificates of possession, property titles and formal business authorizations, these documents often fail to provide their holders with the means to leverage the value of the associated assets. The study finds that Mexico holds US\$315 billion in extralegal assets and sites the primary causes for the continued prevalence of the extralegal economy as the Mexican legal and administrative system. For example, to complete the necessary procedures for making a transaction of an unmovable asset takes 24 months; costing each party US\$ 2,580. Similarly, to register a business takes 17 months and would cost the entrepreneur US\$ 12,700.

Institute for Liberty and Democracy. 2001. Honduras: Country diagnostic report.

In 2001, a team of researchers from The Honduran Council of Private Enterprise (COHEP) and the Institute for Liberty and Democracy (ILD) studied the Honduran extralegal economy. The study found that 89% of all businesses were found to operate extralegally, that 86% of all real estate was held extralegally and that the total value of the assets within the extra-legal economy was US\$ 12.9 billion. The study notes that excessive administrative requirements deter formal ownership and businesses' participation in the formal sector. For example, an individual seeking to purchase, divide and build on a real property would have to navigate 430 procedures; waiting an average of 1080 days before the construction may occur.

International Land Coalition. 2005. Analysis of international development agency land policies: An ILC working paper. Paper presented at the UNDP-International Land Coalition Conference: Land Rights for African Development: From Knowledge to Action, October 31-November 3, 2005.

This paper reviews the policy papers of various international development agencies in an effort to identify their approach to land related issues. Specifically, they look at: (1) land reform, (2) formality and security

of tenure, (3) communal tenure and common property systems, (4) women's secure access to land, (5) land titling and land administration, (6) land markets (sales and rental), (7) land, small-holder economies and agricultural trade, (8) land and conflict, (9) environmental sustainability, (10) land, culture and indigenous peoples and (11) participation, democracy and governance.

Jacoby, Hanan and Bart Minten. 2005. Land titles, investment and agricultural productivity in Madagascar. Mimeo.

Abstract from paper: This paper examines the question of land titling in Madagascar, a country where modern and informal tenure systems coexist and overlap to a significant extent. The empirical analysis is based on a large sample of rice plots from an intensively titled area, the Lac Alaotra basin. The data allow a comparison of land-specific investments, land productivity, and land values between titled and untitled plots cultivated by the same household.

The study reviews the three main arguments for land titling and their relevance for Madagascar. Potentially the most important benefit is protection against expropriation, yet simulation evidence suggests that the effect on investment and land values is likely to be minimal. Titles may also facilitate land transactions. However, in the context of rural Madagascar the effect in the land sales market is ambiguous *a priori*, while the effect in the leasing market is found to be empirically unimportant. As for the third argument, collateral, there is no evidence that owning titled land improves access to formal credit or increases the volume of formal credit conditional on access. The main empirical analysis finds no significant effect of having a title on plot-specific investments, principally of the recurrent type (maintenance of canals, bunds, and land equalization). Titling has correspondingly small impacts on land productivity and land values. Our point estimate of the premium for titled land is 6% of plot value, well below comparable figures for Asia and Latin America. A cost-benefit analysis based on these findings suggests that formal titling should not be extended in rural Madagascar and, if anything, should be halted altogether. The estimates also provide a threshold for the costs of any new land rights system in Madagascar above which it would not make economic sense to implement.

Jansen, Kees and Esther Roquas 1998, Modernizing insecurity: The Land Titling Project in Honduras, *Development and Change* 29: 81-106.

Abstract from article: The Honduran land titling project (the *Proyecto de Titulación de Tierra para los Pequeños Productores*), initiated in 1982, was intended to enhance security in land rights, to facilitate credit and to improve agricultural productivity. This study explores how the project has operated in one village, and concludes that it has attained none of its objectives; instead, it has triggered new sources of land conflicts, thus adding to the existing complex of local rules and laws. The authors argue that the failure of the project is not solely a consequence of the organizational incapacity of the bureaucracy, as some evaluations suggest, but that it is rooted in mistaken assumptions about the social organization of property rights and the causes of insecurity. The land titling project is founded on a contradiction: although based on the ideology of the capitalizing family farm in the context of a withdrawing state, its implementation actually requires strong and repressive state intervention. Rather than reducing insecurity in property rights, the project has merely 'modernized' the sources which can be used to contest rights in land.

Jimenez, Emmanuel. 1984. Tenure security and urban squatting. *The Review of Economics and Statistics* 66(4): 556-567.

Abstract from paper: While recent studies have shown up to 35% of the total urban population of the Third World live in squatter settlements, there is a dearth of economic analysis on the phenomenon of squatting. This paper attempts to fill this gap. The equilibrium model argues that the difference in unit housing prices between the non-squatting (formal) sector of a city and its squatter (informal) sector reflects the premium associated with a secure tenure status. The empirical portion of this paper uses

hedonic price techniques to derive the average premium on tenure security in a medium-sized Philippine city, Davao. Results show that formal sector urban dwelling prices are about 18% (renters) and 58% (owners) more than in the informal sector. These equilibrium price differentials were found to be greater for lower income groups, larger household sizes and households with older heads for renters and younger heads for owners.

Jimenez, E. 1982. The value of squatter dwellings in developing countries. *Economic Development and Cultural Change* 30 (Suppl.4): 739-752.

The values of informal housing are estimated and their determinants using data from the Philippines. Value determinants are found to be similar to those for formal sector housing, with external appearance and quality of construction materials being the most important, while water and sanitary facilities rank lower than expected.

Jones, G.A., ed. 2003. *Urban Land Markets in Transition*. Lincoln Institute of Land Policy (CD ROM).

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Kanji, Nazneen, Lorenzo Cotula, Thea Hilhorst, Camilla Toulmin and Wray Witten. 2005. Can land registration serve poor and marginalised groups? Summary report. Securing Land Rights in Africa Research Report 3. London: IIED. November.

Increasing pressures on land, rival claims from outside investors, and socioeconomic changes have contributed to weakening the authority of customary systems over land tenure and led to a rise in the documentation of land rights and transactions, especially land registration in the forms of titling, deeds registration and local documentation of secondary rights and overlapping claims. However, formal registration processes have produced disappointing outcomes, such as accumulation in favor of wealthier interests, vulnerability to dispossession by poor people who lack the resources to register, and loss of secondary rights by women and other disadvantaged groups. At the same time, they have failed to improve smallholder access to formal credit. This paper summarizes the findings of six case studies in Ethiopia, Ghana and Mozambique on the effects of land registration on poor people. The studies suggest that systematic household registration and community land registration do more to protect the interests of the poor than on-demand individual titling. Other facets of pro-poor systems are decentralized and tailored processes, low costs, use of local languages, and flexibility to change. Formal registration is likely to be better reserved for areas experiencing significant conflict and rising land values. Crucial elements of effective land registration are high degrees of transparency and accountability that elicit the trust of potential beneficiaries, good access to information, local participation, socially embedded dispute resolution mechanisms, and active involvement of secondary right holders in the design and implementation of registration processes.

Katz, Elizabeth and Juan Sebastian Chamorro. 2002. Gender, land rights and the household economy in rural Nicaragua and Honduras. Paper prepared for USAID/BASIS CRSP.

This paper supplies a framework for understanding how women's land rights affect the household economy. It then uses this framework to analyze the short-term impacts of land policy reforms in Nicaragua and Honduras and consider their longer run implications. Based on survey data, the study found 22% of the Nicaraguan sample and 26% of the Honduras sample reported individual or joint title held by women, with women accessing land both through inheritance and purchases. Positive correlations were found between women's property rights, their control over agricultural income, receipt of credit and their shares of business and labor market earnings. Women's rights to land were also associated with small increases in food expenditures and child education attainment.

Krueckeberg, Donald A. 2004. The lessons of John Locke or Hernando de Soto: What if your dreams come true? *Housing Policy Debate* 15(1). 1-24.

Abstract from article: Hernando de Soto has presented the most powerful argument for extension of property rights since John Locke's revolutionary *Two Treatises of Government* in 1689. De Soto calls for the legal titling of land for squatters and other illegal occupants of the informal economy on a promise of efficiency (increased productivity of land). However, efficiency arguments, which have dominated recent literature on property law and economics, fall short of an adequate basis for a just doctrine. Drawing on the theories of John Locke, this article addresses the need to understand the rules required to sustain the equity goals of society in the expansion of property ownership. These rules focus on the meaning of property, constraints on its use and accumulation, and delineation of the institutional embeddedness of these rights and obligations. Evidence from the impact of U.S. tax policy on housing illustrates the importance of property rules and their structure.

Lanjouw, Jean O. and Philip Levy. 1998. Untitled: A Study of Formal and Informal Property Rights in Urban Ecuador. Economic Growth Center Discussion Paper No. 788. New Haven: Yale University.

Abstract from paper: In this paper we explore the substitutability of formal and informal property rights. We analyze new survey data from Ecuador, where households have both formal and informal claims to urban residential property. The latter come from a variety of sources, including the activity of a local boss, or organizer. We first develop a theory of the ability to sell or rent land in which a distinction is drawn between transferable property rights (e.g., title) and non-transferable claims (e.g., length of residence). We use this theory of transactions to show that the increase in price that follows the granting of title may be an overestimate of the households' utility gain. In our empirical work we find that the unconditional effect of granting title is to raise properties' value by 23.5%. However, we also find that informal property rights can substitute effectively for formal property rights, so the marginal effect of titling on the ability to transact and on prices can vary widely among communities and among households within a community. For example, the value of property owned by a newly established household with no adult males can increase by 46% with the acquisition of title. These findings suggest that titling programs should be targeted at young disorganized communities if they are to have much effect.

Lastarria-Cornheil, Susana, Sonia Agurto, Jennifer Brown and Sara Elisa Rosales. 2003. Joint titling in Nicaragua, Indonesia and Honduras: Rapid appraisal synthesis. Land Tenure Center, University of Wisconsin-Madison. January.

Based on rapid appraisals undertaken in Nicaragua, Honduras and Indonesia, the authors explore the implementation and effectiveness of joint titling programs in these countries. The study finds that joint titling programs are often plagued by the same problems as traditional programs that titled land in the name of the household head, which derive mainly from traditional socio-cultural norms. These include inconsistent or ambiguous legislation and lack of political will to undertake more gender equitable reforms, resistance on the part of men to include their wives' names titles, and neglect on the part of titling and registration officials to inform couples of the requirement or possibility of registering land in the name of both spouses. As a result, few couples end up registering land jointly, in spite of laws permitting or mandating the practice. Whether women actually perceive risks of being dispossessed, however, depends much more on local norms and beliefs about rights to land than on formal legislation. Information campaigns promoting gender equity appear to have positive effects on the incidence of joint titling. In all three countries, titles had no impact on improving access to formal credit for poor households, although recipients in Nicaragua and Honduras reported feeling more secure in their tenure as a result of titling. Both fear of debt by low income households and banks' insistence on borrowers having established businesses act as hindrances.

Lastarria-Cornhiel, Susana and Grenville Barnes. 1999. Formalizing informality: The Praedial registration System in Peru. LTC Research Paper No. 131. University of Wisconsin-Madison.

The paper identifies and weighs the short-term achievements and problems associated with implementation of the PROFORM property registry system initiated by ILD in Lima, Peru. It finds that the system succeeded in providing a simple and low cost alternative to the state system, de-linking taxation from registration, modernizing the system, and raising public awareness about titling opportunities. However, it has lacked sustained government support and failed to integrate cadastral information. Contrary to what was promised, the system failed to register possession rights and provide mortgage credit based on those, as was originally planned. Its administrative structure remained centralized, imposing higher costs on those residing outside of Lima and preventing the program from expanding beyond the metropolitan area. Operational problems plagued applications for credit based on titles issues by the Praedial system, while credit insurance was not forthcoming from insurance agencies.

Li, Guo, Scott Rozelle and Jikun Huang. 2000. Land rights, farmer investment incentives, and agricultural production in China. Department of Agricultural and Resource Economics, University of California Davis. December. Mimeo.

Abstract adapted from conclusion: This paper estimates the impact of China's land rights on farm investment incentives and agricultural production. By identifying the links between specific land rights, instead of just the land tenure type, and investment incentives, the study provides evidence that land tenure and associated land rights in rural China affect the production behavior of farmers. The strongest, most robust finding is that the better tenure security rights encourage the use of land-saving investments. It also finds that better rental rights positively affect land-saving investments. Tenure security and land rental rights, however, generally do not appear to affect the incentive of farmers to use inputs with short-term effects on land fertility. While the direction of land rights impacts are expected, perhaps the most important and somewhat surprising result is that the elasticities of output with respect to the land rights and certain inputs (e.g., organic fertilizer) are generally small. Small elasticities mean that yield gains from increasing the length of tenure would probably be minimal.

Lund, Christian. 2001. Seeking certainty and aggravating ambiguity: on property, paper and authority in Niger. *IDS Bulletin* 32(4). October.

Abstract from article: The land tenure situation in rural Africa is often described as uncertain and insecure, and recent reforms have addressed this issue. Consequently, it is a paradox that measures taken to reduce the insecurity that rural people face every day in fact often increase uncertainty, or at least reconfigure it. Responses to this by local people and local political entrepreneurs vary and raise fundamental questions about public authority and institutional competition.

The informal recording of property transactions on paper seems to develop proportionally to the states' generally less than successful efforts to formally record the land tenure situation. In many African societies it is either illegal or practically impossible to acquire a formal deed to 'one's' land, either because the state considers itself to be the sole proprietor or because overly formalistic and cumbersome procedures prevent ordinary people from acquiring such documents. Nonetheless, a wide variety of written documents recording property transactions exist in rural Africa. While these are not deeds or contracts in the formal sense, informal practices of public validation by a variety of politico-legal institutions have developed.

In the case of Niger, the promise of registration of customary land rights under the land tenure reform, the Rural Code, created a huge popular demand for registration. However, the state agencies' incapacity to meet this demand opened the terrain for local institutional bricolage and competition. Such local practices are technically non-legal but tolerated by the state, and are the way 'property' is produced. Consequently, the attempt to increase security of tenure has the unintended aggregate result of accentuating the uncertainty of authority: which institution can legitimately validate property?

Lund, Christian. 2000. African land tenure: Questioning basic assumptions. *Drylands Issue Paper E100*. London: IIED.

The author questions two common assumptions about private property: 1) that it is inherently 'un-African,' and 2) that it creates security and leads to investment. He points the considerable degree of privatization that has occurred in Africa without government intervention, often leading to increased tenure security and conflict. The tendency to conflate tenure security with private property is highlighted and discussed, as is the failure to consider the insecurity of those who are excluded by increasing tenure security. The major conclusion of the article is that there are few systematic causal relationships that reliably link property forms with economic, social and political behavior.

Malauene, Denise, Arlindo Chilundo, Boaventura Cau and Marlino Mubai. 2005. Land registration in Maputo and Matola Cities, Mozambique. *Securing Land Rights in Africa Research Report 7*. London: IIED. November.

This paper assesses the implications of land registration in four peri-urban neighborhoods of Maputo and Matola cities. Adopting a case study approach, the authors find that the land registration system has

marginalized poor people due to its high costs, complex and slow bureaucratic procedures, lack of regulations for urban land, lack of public awareness efforts targeting the poor on legal rights and registration procedures, and the incidence of distress sales, sometimes leading to destitution.

Malik, A., and R. M. Schwab. 1991. Optimal Investments to Establish Property Rights in Land. *Journal of Urban Economics* 29 (3): 295-309.

The paper develops an analytical framework for assessing the costs and benefits of formalizing property rights by the state, based on maximizing social welfare. Optimal investment levels are altered when landowners are risk adverse. An alternative policy for restoring efficiency through equating the private and social costs of housing could also be a subsidy to residents.

Manthorpe, John. 2000. Land registration as a business: New roles for the public and private sectors in land titling and registration and cadastral systems. World Bank Study (Draft) Final Report. May.

Examining experience in five Western, industrialized countries (Norway, Canada, The Netherlands, Austria and the United Kingdom), the study explores how coordination between the public and private sectors have improved the efficiency and delivery capacity of land registration services.

McAuslin, Patrick. 2005. Legal pluralism as a policy option: Is it desirable? Is it doable? Paper presented at the UNDP-International Land Coalition Conference: Land Rights for African Development: From Knowledge to Action, October 31-November 3, 2005.

This paper begins by proposing a series of preconditions for workable pluralism: no system of law is subordinate to another, all legal systems are equally candidates for adaptation to constitutional principals and international legal norms, community ownership of land and natural resources is recognized and protected, people are free to opt for the system of their choice, support for both customary and statutory alternative dispute resolution, recognition of alternative land law in the judicial systems, local level land administration, documenting and protection overlapping and secondary rights, transparency and clarity in the rules governing land transactions, recognition of urban 'customary' tenure, and community-level participation in urban planning, and public officials, planners and private institutions reeducated to work with people under different legal systems. The author offers an explanation as to why organizations like the World Bank and the Commission on the Legal Empowerment of the Poor seek to adopt a single and homogenized system of land laws. A unified legal system supplied by the state acts as a means for the state and powerful foreign interests to exercise control over people and land. Yet, recent legal cases in many countries point to the contrary: the radical right held by states under sovereignty are not sufficient to terminate rights to land preexisting the state other than in cases where the state has awarded freehold tenure in its capacity as radical titleholder. Finally, the author criticizes the evolving paradigm in Africa that only titles registered under an Anglo systems of law that pose no hindrances on the ability of banks to foreclose merit mortgages. He concludes that rather than customary systems that need to be changed, it is procedures and processes in land and credit administration that require reform to increase investment in land.

McAuslin, Patrick. 1998. Making Law Work: Restructuring Land Relations in Africa. *Development and Change* 29.

Abstract from article: This article explores a number of issues concerning the appropriate role for the law to play in the restructuring and reform of land relations and land tenure in Africa. Given current (external) donor tendencies, and (internal) pressures for reform from within, this is a particularly topical issue: in seeking to explore it, the author draws on his own experiences and involvement in land law reform, as well as other sources of information, concentrating on countries and events in Eastern and Southern Africa. After examining various models and country experiences, the article concludes that, while there is

no single 'right way' to tackle land tenure reform in Africa, there are a number of factors which may be crucial to success, and in which the law and lawyers can play a vital role.

Miceli, Thomas and Joseph Kieyah. 2003. The economics of land title reform. *Journal of Comparative Economics* 31(2): 246-256.

Abstract from article: This paper develops a model of land title reform in which the voluntary adoption of a new system is not likely to be successful, even if the new system Pareto dominates the existing one. The problem is an externality that prevents individual landowners from internalizing fully the benefits of the new system. Some evidence is presented based on historic efforts to institute land registration in the United States and England. Implications are also drawn for ongoing attempts in developing countries to establish formal property rights systems for land in support of a policy to spur economic growth.

Miceli, Thomas J., C.F. Sirmans and J. Kieyah. 2001. The Demand for Land Title Registration: Theory with Evidence from Kenya. *American Law and Economics Review* 3 (2): 275-287.

Abstract from article: This article examines the role of title registration in providing security of property rights for landowners. A simple model is developed to examine the trade-off between increased security of registering title against the administrative costs of accessing the system. The model predicts that the demand for registration should be increasing in the value of the land, the education of the landowner, and proximity to the central government (the latter two being measures of the cost of accessing the system). Evidence on land registration in Kenya provides support for the model.

Migot-Adholla, Shem; Peter Hazell; Benoît Blarel and Frank Place. 1993. Indigenous land rights systems in Sub-Saharan Africa, A constraint on productivity? In *The Economics of Rural Organization*, K. Hoff, A. Braverman & J. Stiglitz, eds. Oxford: Oxford University Press/World Bank, pp. 269-91.

Abstract from chapter: This study is an empirical analysis of the relationship between indigenous land tenure systems and agricultural productivity in Sub-Saharan Africa. Data were collected from farm households in several regions of Ghana, Rwanda and Kenya during 1987-88. We find that, in general, agricultural productivity is responsive to the individual rights held over land, suggesting that factors other than land tenure are more constraining for agricultural development. Therefore ambitious land registration programs would appear to be inappropriate at this time for the surveyed regions of Sub-Saharan Africa.

Mwangi, Esther and Stephen Dohrn. 2005. Biting the bullet: How to secure access to drylands resources for multiple users. Paper presented at the UNDP-International Land Coalition Conference: Land Rights for African Development: From Knowledge to Action, October 31-November 3, 2005.

Extracted from paper abstract: This paper discusses enduring tension in efforts to secure rights in drylands. On the one hand are researchers and practitioners who advocate for statutory law as the most effective guarantor of rights, especially of group rights. On the other side are those who underscore the complexity of customary rights and the need to account for dynamism and flexibility in drylands environments in particular. It explores innovative examples of dealing with secure access to resources and comes to the conclusion that process, rather than content, should be the focus of policy makers. Any attempt to secure access for multiple users in variable drylands environments should identify frameworks for conflict resolution, in a negotiated manner, crafting rules from the ground upwards, in addition to a more generalized or generic identification of rights. Elite capture and exclusion of women and young people continue to pose significant challenges in such decentralized processes. For rights to be meaningfully secured there is need to identify the nature and sources of threats that create insecurities.

Ngaido, Tidiane. 2004. Reforming land rights in Africa. 2020 Africa Conference Brief 15. Washington DC: International Food Policy Research Institute.

Abstract from brief: Advocates of reforms in land rights and land markets frequently posit two important hypotheses: (1) African countries must grant land titles to farmers because titles increase land tenure security and facilitate access to input, land, and financial markets; and (2) land markets constitute the most efficient mechanism for allocating resources and improving access to productive resources by the poor, especially women and other marginalized groups. Land titling, however, is not a panacea for reforming land tenure systems in Africa. Differences in environmental risks, the level of demand for agricultural land, the performance of existing tenure systems, the legacy of colonial and postcolonial reforms, and other socioeconomic factors mean that the need for and impact of titling will also differ. These diverse conditions have led land rights to evolve along different pathways and thus to require different reform options.

Because land is an immovable resource, all transactions really refer to the bundles of rights associated with a specific piece of land. Land rights set boundaries for opportunities and constraints regarding the control, management, and use of land, whereas land markets are mechanisms by which right holders and non-right holders can transfer, rent, and acquire different bundles of rights to land.

Ng'weno, Bettina. 2000. On Titling Collective Property, Participation, and Natural Resource Management: Implementing Indigenous and Afro-Colombian Demands: A review of Bank experience in Colombia. Mimeo.

Abstract extracted from executive summary: Titling gave a clear and solid ownership over territory and a legal base effective to protect it. In the context of armed conflict the winning of ownership over the land, through NRMP, has represented for many communities of the Pacific a real possibility for the defense of life and a degree of independence from the conflict. Titling has also acted as a base for bargaining and legitimacy. In spite of the insecurity and upheaval brought about by the violent situation, land titles lend a specific long-term stability and permanence to communities.

The efforts to obtain titles and the titling itself have contributed to strengthening the internal forms of government and the community's negotiating capacity. Yet, productive actions that complement the Land Titling components of the NRMP are necessary to ensure the future long-term wellbeing of the communities. The legal status of the collective titles to Indigenous and Black communities affects how they operate as territories and how the councils can operate as governing bodies.

The long-term effect of titling has been conservation through appropriation. The participatory nature of the program increased the community's security in their capacity to make claims and to manage resources helping to recuperate cultural uses of territory and traditional knowledge about biodiversity.

Okoth-Ogendo, H.W.O. . 1986. The Perils of Land Tenure Reform: The Case of Kenya. In J. Artzen, L Ngcongco, and S. Turner, eds. *Land Policy and Agriculture in Eastern and Southern Africa*. Tokyo: U.N. University.

Examining the impacts of Kenya's tenure reform on credit access, farmer decision-making, and land distribution, the author reports that only slightly more than 2% of registered smallholders were able to obtain credit in the 1970-73 period. Apart from Agricultural Finance Corporation loans, approximately 82% in Kisii and 77% in South Nyanza of loans secured with agricultural land were invested in non-agricultural enterprises in the same period. There is no evidence that farmer planning and decision-making improved post-reform. Indigenous land tenure systems continue to govern farmers' ability to dispose of their land and dispossess those who would have rights to the land under customary tenure. The initial establishment of only two categories of individual rights – cultivation and residential – obviated the possibility of recognition of multiple, overlapping claims, provoking a rush to establish individual claims on public grazing lands and eclipsing recognition women's and children's secondary claims to land. Unregulated land markets developed to enable land consolidation mandated under registration rules, with farmers often selling at depressed prices. Rural elites acquired land as means of bolstering their political

status. Limitations imposed on the number of co-heirs (5) were largely ignored and few certificates of succession were ever requested. Establishment of group registration areas restricted herder mobility, such that to minimize drought risks, some groups had to split off and join other ranches, a response that weakened social institutions.

Okoth-Ogendo, H.W.O. 1976. African land tenure reform. In *Agricultural development in Kenya—An economic assessment*, J. Heyer, J.K. Maitha and W.M. Senga, eds. Nairobi: Oxford University Press.

The author describes the historical circumstances that led to the decision to formalize land tenure in Kenya, the content of and processes accompanying the reforms, and the impacts that emerged from them. Despite the granting of freehold rights through title, farmers, customary restrictions on access, inheritance and land transfers prevailed, a practice which is upheld by the Land Control Boards. Indeed, contrary to reformers' expectations, post-reform land markets have largely not emerged. Although the most championed objective of the reforms was to increase smallholder access to credit, credit supply responses to the reforms were remarkably weak since foreclosures are costly and subject to public opposition while banks view smallholders as especially high risk. Instead, much of lending secured on agricultural land was used to fund non-agricultural businesses. Because of narrow definitions given to property rights as individual ownership, commons were quickly appropriated and cultivated and women's rights were largely eclipsed as lands became titled under adult male household heads. Increasing disparities in land ownership have emerged in Central Province as elites purchase land from the poor who migrate to urban zones. Land transfers to wealthier parties, including the state elite, also occurred more broadly to enable the poor to meet expenses, such as school fees and taxes. It is suggested that a major impetus of the reforms was the interest of state and business elites in acquiring land. Accumulations have enabled these elites to solidify their political base. Reforms placed major restrictions on the mobility and adaptability of nomadic herders, though this has been more adequately addressed over time.

Otsuka, Keijiro and Frank Place. 2001. Land tenure and natural resource management: A comparative study of agrarian communities in Asia and Africa. Washington DC: IFPRI.

Adapted from book abstract: The devastating environmental effects of deforestation and the exploitation of other natural resources in the developing world have been well documented, yet their impact on local communities has received far less attention. This volume fills this gap by looking at how land degradation and deforestation are being addressed at the local level, where households have experienced the reduction of farm size and the decline of natural resources. Through a comparison of Asia and Africa, *Land Tenure and Natural Resource Management* examines the evolution of land tenure institutions within diverse cultural, natural, and policy environments. Specific topics include the evolution of customary land tenure, the impacts of land tenure policies, and common property management. A key finding derived from the studies is that land titling programs are likely to reinforce demands for individualized tenure, and where land is collectively owned, such programs will create conflicts among family members, leading to tenure insecurity rather than security. The editors conclude that the best strategy for managing land and forest resources lies in promoting the establishment of property rights and investment in the improvement of the natural resource base.

Payne, Geoffrey, ed. 2002. Land, rights and innovation: Improving tenure security for the urban poor. London: ITDG Publishing.

Abstract from book: Every day millions of people around the world spend their hard-earned income improving houses they do not officially own or legally occupy. The vast majority are poor householders in urban areas of the South, where, in some cities, more than half the population lives in various types of unauthorized housing. As land in urban areas becomes more expensive and globalization accelerates the commercialization of urban land markets, people are forced to occupy unused government land, or purchase agricultural land and build a house without permission - activities that urban authorities are

often seeking to prevent. Land, Rights and Innovation examines the complex issues surrounding land tenure, and the challenges they present for urban planners in the South and in the transition economies of Eastern Europe. Based on extensive research, the book brings together a diverse range of examples from 17 countries where the authorities, non-governmental organizations or communities have evolved practical, innovative approaches to providing tenure for the urban poor. These widen the choices available for residents, encourage local investment to reduce poverty and facilitate the development of more equitable and efficient urban land markets.

Chapters of most relevance include:

Ch 1: Payne, Geoffrey. Introduction.

The chapter describes land tenure and tenure security and their relevance and complexities for extralegal urban residents. Urban extralegal tenure systems have evolved from a failure of statutory and customary systems to meet the needs of poor people. The author offers a typology that correlates urban tenure categories with relative tenure security. The more insecure a tenure category, the lower the entry costs tend to be. Yet policy has tended to overlook the complexity of extralegal urban tenure systems in favor of expropriation and titling measures. In urban areas, titling is presumed to: 1) increase tenure security, 2) enable property owners to use titles as collateral to access credit, 3) improve urban planning and service provision, 4) facilitate taxation, and 5) stimulate efficient property markets. Yet, the evidence falls far short of these objectives. He faults de Soto for overlooking: the degree to which poor people are served by non-formal sources of credit, informal urban land markets, and constraints on credit supply and demand that reach beyond the scope of titles. The author also critiques de Soto for failing to provide evidence to support the causal relationship between private property and affluence in the West and points to contradictory evidence of different countries' proportions of property owners and their wealth, and even studies that find correlations between home ownership and high unemployment. Given the tendency for land titling mechanisms to lack social legitimacy and widen disparities, the chapters in the volume explore alternatives that have legitimacy, increase efficiency and uphold equity objectives. Emphasis is given to the importance of: understanding tenure security as an individual perception with no objective standards, lowering the costs and barriers to formalization and credit access, expanding rights, and consideration of a range of tenure system options.

Ch 2: McAuslin, Patrick. Tenure and the law: the legality of illegality and the illegality of legality.

The chapter gives an overview of the commitments under the Istanbul Declaration and Habitat Agendas regarding urban land, which highlight not only efficient but also equitable delivery of land and tenure security. A chief obstacle to compliance is self interest and opportunities for illicit gain by government officials and politicians in favor of those with financial and political power and often at the expense of poor people (e.g., demolition of slums to benefit real estate developers and landlords). The author critiques the emergence of notions of good governance being associated with non-tolerance of informal occupations and the use of terms such as "illegal", "unauthorized" and "slum" to paint the urban poor as criminals. He notes that the involvement of the formal sector in informal settlement rules and institutions often helps raise security of tenure. Patterns uncovered in most of the more successful cases of urban tenure reform include: 1) their basis on more open and market-oriented decisions, 2) their more decentralized administrative structures, 3) their consultative approach, 4) flexibility in implementation, and 5) the tendency of informal settlements to reproduce the facets of the formal system. Five cases (South Africa, Tanzania, Uganda, Trinidad & Tobago and Namibia) are discussed where governments have enacted laws and adopted policies of acceptance of informal urban settlements. The author concludes by emphasizing the importance of recognizing the legitimacy of informal settlements, enacting secondary implementation legislation and policy guidance concurrently with primary legislation, capacity building for government officials and public education campaigns aimed at residents of informal settlements.

Ch 3: Grover, Richard, Paul Muncro-Saure and Mikhail Soloviev. Housing tenure change in the transitional economies.

The study examines changes in urban housing tenure in the Russian Federation, Bulgaria and Romania since 1990. While the state monopolized the provision of housing in Russia, there was much more private provision of housing in Bulgaria and Romania although housing finance originated from state banks. In Russia, privatization has occurred through granting certified housing occupants private rights. In Bulgaria and Romania housing owned by the state was sold to tenants, primarily at below-market prices, but like many other transition countries, restitution is also a legal mode of acquisition. As a result, many transition countries have rates of owner-occupancy that far exceed those of their Western European neighbors. Yet, despite the benefits of owners having greater control over housing decisions, this has been accompanied by a substantial decline in social and rental housing that serve the poor and occupationally mobile. Inefficiencies and underdevelopment in the mortgage markets constrain mortgage lending, with most transitional economies generating loans of no more than 3% of GDP. With a significant portion of privatization occurring in apartment blocks, responsibility for maintaining common areas often remains unclear or procedures for home owner associations to assume responsibility are complex, with the municipality generally undertaking this role. As private markets develop, there has been a considerable shift in housing stock from apartment blocks to more upmarket single-family housing.

Ch 4: Kagawa, Ayako and Jan Turkstra. The process of urban land tenure formalization in Peru.

Instigated by the pilot project of ILD to register and title informal settlement properties in Lima, Peru, a nationwide program, COFOPRI was launched in 1996 to take over the task at a national scale. By 2002, it had claimed to register over 1 million informal settlement properties in Peruvian cities. The study finds that as an autonomous institution backed by World Bank financing COFOPRI has been able to build a relatively efficient, dynamic and technologically superior institution. Yet, municipalities, which previously were responsible for titling, criticize COFOPRI's centralized approach and its practice of sometimes issuing duplicate titles. Doubts about its future success have also been raised, since titling has targeted mostly state-owned, peri-urban desert land where residents are new and there is no competition for land. As the program moves into privatized areas with overlapping rights, greater difficulties are foreseen. Credit access remains constrained, while banks consider length of occupancy and demonstrated capacity to repay as critical requirements to borrow. A major public sector bank charged with lending to formalized households blames low repayment rates on free titling that gave the impression that what the state gives is free. Critical challenges for the future include the integration of the old and new property registry institutions, which possess very different approaches and institutional cultures, counteracting political manipulation, and evolving into a financially sustainable and accountable institution.

Ch 5: Sims, David. What is secure tenure in urban Egypt?

Over half of all residential areas urban Egypt are informal, with their occupants representing 62 percent of the population in 1996. Construction in informal settlements tends to be good quality and provide shelter not only to the poor, but also to professionals and other middle class families. Although the state has the legal right to evict residents and demolish informal settlements, in practice this is very rare and even when it is undertaken, occupiers are compensated regardless of their tenure status (although at well-below market rates). Costs of rehousing squatters or compensating them act as strong deterrents for the state. Over half of urban residents rent their housing. Local authorities and communities are notorious for defending the rights of tenants threatened with eviction by their landlords. Hence, tenure security tends to be quite robust in urban Egypt. Physical evidence of quality construction and maintenance also shows investment in informal housing is significant, though there are greater risks in the construction phase and in newer settlements. Moreover, new regulations aimed at illegal construction have raised costs and are beginning to squeeze poorer families out of the market. There is little correlation between the formality of a settlement and provision of services and infrastructure. These tend to be based more on political pressure and the size and age of the settlement, with new formal housing neighborhoods also suffering

delays in service provision. Property registration and acquisition of titles is extremely time-consuming and costly. Registering and titling a house in an informal settlement commands a premium of 50-200% in housing price, but strong tenants rights deter the practice of down-raiding. Also, because prohibition of eviction is strictly enforced in Egypt, banks do not accept parcels as collateral to secure loans if tenants occupy it. Although relaxation of the restrictions is expected, the costs of foreclosure on such properties and the threat of collective unrest are likely to ensure they remain unattractive to banks.

Ch 6: Aristizabal, Nora and Andres Ortiz Gomez. Are services more important than title in Bogota?

This chapter describes the types of intermediate forms of tenure provided in Colombian cities that enable poor people access to cheap housing, along with secure living conditions that include infrastructure and service provision. People gain rights through length of occupancy (documented or declared), documentation of sales transactions, and self-help community improvements. Such tenures can respond to a large demand for affordable housing, while at the same time permit households to upgrade to full titles over time.

Ch 11: Yahya, Saad S. The Certificate of Rights story in Botswana.

The two principal forms of legal tenure offered in Botswana's urban areas are the Fixed Period State Grant (a 99 year lease from the state) and the Certificate of Occupancy Rights (CORs). The latter typically issued to low income prospective residents in Self-Help Housing Agency neighborhoods and accompanied by a subsidized building loan. Parcels are allocated free of charge, but subsequently incur a monthly service charge for provision of water, sewage, electricity, and roads. Although the FPSG can be mortgaged, CORs typically cannot. Yet, the COR does not incur the expensive surveying and registration fees of the FPSG and so is much more affordable for the urban poor, who are typically rationed out of the credit market anyway. CORs can provide an intermediate step to the FPSG, though only 7% have done so. Perceptions of tenure security are high among COR holders, many of whom rent out housing to tenants. Moreover, CORs are fully marketable. Today, nearly two-thirds of urban residents live in SHHA neighborhoods, substantially diminishing the incidence of squatting.

Ch 12: Fernandes, Edesio. Combining tenure policies, urban planning and city management in Brazil.

Eighty-two percent of Brazilians reside in urban areas, and the vast majority of them in informal settlements. The urban poor who occupy them experience exclusion from public services and credit, while those who reside in *favelas*, created by invasions of public and private land in more central urban areas, are threatened by eviction, though policies of regularization carried out at the municipal level since the mid-1980s have contributed to a climate of greater tolerance. Yet while regularization programs have mostly succeeded in supplying basic infrastructure and services, legalization of freehold tenure has mostly failed due to its high costs and legal and technical complexities. In recognition of these obstacles, the cities of Porto Alegre and Recife have reignited the legal institute of usufruct rights through issuance of Certificates of Real Rights of Use (a form of long-term leasehold) and accorded substantially more recognition to long-term occupiers rights than most other cities in Brazil. CRRUs are also awarded to couples, rather than household heads. Although the municipality retains ownership of the land, in principle, the CRRU rights can be bequeathed, sold, and rented. In some cases they are issued to collectives, who are accorded shares. Where there has been a solid commitment on the part of city government to the program and substantial service upgrading in the regularized areas, it has been met with strong perceptions of tenure security, community participation in program management, household investments in improvements, creation of safe and stable neighborhoods, and a high incidence of property tax collection. Moreover, CRRU neighborhoods are less vulnerable to commercial real estate developers. While resistance to CRRUs on the part of local judiciaries and registry offices has been problematic, upcoming federal legislation for regulation of CRRUs is likely to eliminate this.

Payne, Geoffrey. 2001. Urban land tenure policy options: Titles or rights? *Habitat International* 25: 415-429.

Adapted from article abstract: This paper addresses urban land tenure and policy options, particularly in developing countries. It draws heavily on a recent review of the literature and a research project involving case studies in more than ten countries. The paper shows that perceptions of tenure security are as important to households as legal status. It demonstrates that in most cities there is a continuum of tenure categories ranging in levels of tenure security from pavement dwellers to freehold owners and that policies involving dramatic transformations from one category to another may distort land markets and expose vulnerable social groups, such as tenants, to eviction. The main conclusion is therefore to adopt a more cautious approach that builds on existing tenure systems, rather than introduce radical changes. This will allow more time for the capacity of land registries and management agencies to improve and more experience to emerge for predicting policy outcomes.

Place, Frank and Peter Hazell. 1993. Productivity effects on indigenous land tenure systems in sub-Saharan Africa. *American Journal of Agricultural Economics* 75(1): 10-19.

Abstract from article: This article uses household survey data from Ghana, Kenya and Rwanda to test if the indigenous land rights systems in sub-Saharan Africa are a constraint on agricultural productivity. Rights which farmers hold over individual parcels of land vary widely, and in many cases are surprisingly privatized. Yet with few exceptions land rights are not found to be a significant factor in determining investments in land improvements, use of inputs, access to credit or the productivity of land. These results cast doubt on the need for ambitious land registration and titling programs at this time.

Place, F. and S.E. Migot-Adholla. 1998. The Economic Effects of Land Registration on Smallholder Farms in Kenya: Evidence from Nyeri and Kakamega Districts. *Land Economics* 74: 360-373.

Abstract from article: Effects of land registration and title on security of tenure, use of formal credit, crop yields, and land concentration are analyzed from household and plot data in four Kenyan sites. Results indicate that the registration and titling program had a weak impact on perceived land rights of farmers, credit use and terms, crop yields, or concentration of land holdings. The conclusion is that titles are acquired for enhancing security of rights rather than for increasing agricultural production. Scarce government resources are best targeted towards providing better infrastructure and market opportunities, which should also foster a greater demand for titling.

Platteau, Jean Philippe. 2000. Does Africa need land tenure reform? In *Evolving land rights, policy and tenure in Africa*. C. Toulmin and J. Quan, eds. London: IIED.

Platteau, Jean-Philippe. 1996. The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. *Development and Change* 27: 29-86.

Abstract from article: The evolutionary theory of land rights can be considered the dominant framework of analysis used by mainstream economists to assess the land tenure situation in developing countries, and to make predictions about its evolution. A central tenet of this theory is that under the joint impact of increasing population pressure, land rights spontaneously evolve towards rising individualization and that this evolution eventually leads rightholders to press for the creation of duly formalized private property rights – a demand to which the state will have an incentive to respond. This article looks critically at the relevance of the evolutionary theory of land rights as currently applied to Sub-Saharan Africa. In particular, the question of whether the establishment of private property rights is an advisable structural reform in the present circumstances is examined, in light of evidence accumulated so far. It will be argued that most of the beneficial effects usually ascribed to such a reform are grossly overestimated and that, given the high cost, it is generally advisable to look for more appropriate solutions that rely on existing informal mechanisms at community level.

Rakodi, Carole. 2005. Land for housing in African cities: are informal delivery systems institutionally robust and pro-poor? Paper presented to World Bank Urban Research Symposium, Brasilia, 4-6 April, 2005.

The paper presents findings from a study of the informal land delivery systems of six Anglophone African cities: Eldoret, Kenya; Kampala, Uganda; Lusaka, Zambia; Maseru, Lesotho; Gaborone, Botswana and Enugu, Nigeria – in order to compare them, assess their strengths and weaknesses, and derive policy implications. The study finds that the social legitimacy vested in informal delivery systems enables them to be effective. They tend to be based on familiar norms that have evolved out of customary tenure institutions and are integrated with formal rules. However, when urban growth sometimes causes these social institutions to break down, urban residents turn to the formal system. While informal settlements are often inappropriately located and laid out and lack adequate services and infrastructure, they do manage to fulfill a large volume of housing needs among the poor. Recommendations for improving security of tenure include ceasing government evictions from informal settlements and basing formal systems on local documentation and practices.

Rattanabirabongse V, R. A. Eddington, A. F. Burns and K. G. Nettle. 1998. The Thailand land titling project—thirteen years of experience. *Land Use Policy* 15(1): 3-23. January.

Abstract from article: At a time when interest in the establishment of effective land administration systems in developing countries is running high, one of the best case studies is the Thailand Land Titling Project. This major project commenced in 1984 and has achieved substantial success. This paper describes the situation in Thailand at the time that the project had its genesis and traces the history from that point. The objectives of the project are outlined and the results of the project to date in meeting those objectives are described. In keeping with its purpose as a case study, the paper discusses the factors which have contributed to the success of the project and also the issues which have emerged and the lessons which have been learnt during the course of the project.

Rose, Laurel. 2004. Land dispute settlement in post-conflict societies. Concept paper prepared for the World Bank. August.

Drawing principally on the experiences of Rwanda, Cambodia Afghanistan, Mozambique and Bosnia, this paper examines the sources of land disputes and hindrances to their effective settlement. The author examines how land disputes settlement contribute to restoring stability and illustrates promising approaches that have been undertaken. Requirements for judicial system reform are outlined as well as a number of other priority issues.

Roy, Ananya and Nezar AlSayyad, eds. 2003. *Urban informality: Transnational perspectives from the Middle East, Latin America, and South Asia*. Lanham, MD: Lexington Books.

Drawing from numerous schools of thought on urbanism and urban informality and experience from Latin America, South Asia and the Middle East, the contributions in this book grapple with the myriad economic and political factors surrounding informal urban settlements. The initial chapters attempt to disentangle the complex relationships between urban informality and the expansion of neoliberalism. The second section highlights the growing social cleavages between those residing in informal settlements and the rest of the urban population and the political uses of informality by the state, ethnic and religious interest groups and the non-poor, often in an effort to further marginalize the poor and less powerful. The chapters comprising the third section employ a “transnational” approach to deepen the understanding of urban informality. Unlike the traditional method of comparing situations in order to extract lesson learned, the transnational approach applies the questions and answers derived from one setting to investigate a wholly different context. What unfolds from the application are calls for legal flexibility, a hard look at the implications of legalization, and an end to picturesque concepts of the informal sector that give rise to the transfer of “best practice” policy.

Shipton, Parker. 1988. The Kenyan land tenure reform: Misunderstandings in the public creation of private property. In *Land and society in contemporary Africa*, R.E. Downs and S.P. Reyna, eds. Hanover and London: University Press of New England, pp. 91-135.

Sjaastad, E and Bromley, DW. 2000. The prejudices of property rights: On individualism, specificity, and security in property regimes. *Development Policy Review*, 18(4):365–89.

URL: http://www.sarpn.org.za/documents/d0000193/P177_Bromley_Prejudice_of_Property.pdf.

Abstract from article: We discuss the links between rights appropriation, tenure security, and investment demand in sub-Saharan Africa. Common assertions regarding indigenous tenure are: (1) insecurity of tenure leads to suboptimal investment incentives; and (2) appropriation of land rights in the public domain is rent-dissipating. We argue that land use and investment decisions among African farmers often have two motives: productivity and rights appropriation. The usual assertions thus seem contradictory. We offer a conceptual model to show that indigenous tenure may provide equal or higher investment incentives than private rights, and may promote modes of rights appropriation that are productive rather than wasteful.

Sjaastad, Espen and Daniel W. Bromley. 1997. Indigenous land rights in Sub-Saharan Africa: Appropriation, security and investment demand. *World Development* 4(3):271–95.

Abstract from article: The authors discuss the links between rights appropriation, tenure security, and investment demand in sub-Saharan Africa. Common assertions regarding indigenous tenure are: (1) insecurity of tenure leads to suboptimal investment incentives; and (2) appropriation of land rights in the public domain is rent-dissipating. They argue that land use and investment decisions among African farmers often have two motives: productivity and rights appropriation. The usual assertions thus seem contradictory. They offer a conceptual model to show that indigenous tenure may provide equal or higher investment incentives than private rights, and may promote modes of rights appropriation that are productive rather than wasteful.

Smith R.E...2003. Land Tenure Reform in Africa: A Shift to the Defensive *Progress in Development Studies* 3 (3): 210-222.

Abstract from article: Land tenure reform has been advocated as an instrument of development in sub-Saharan Africa since before Independence, based on a neoclassical economic model promising greater agricultural productivity as a result of titling. This in turn, it was suggested, would promote land investments, credit supply and efficient land markets. Titling policies were justified in the 1980s by evidence from southeast Asia, particularly Thailand. However, empirical studies in Africa have largely failed to find any of the promised positive effects; indeed they have revealed negative effects of titling policies, especially by worsening the tenure insecurity of poor farmers whom such policies should have helped. In the last decade the discourse of land tenure reform in Africa has departed from promises of increased incomes and shifted to a conservative, defensive stance, focused on preserving livelihoods against élite predation. This paper explores why the neoclassical model has not borne fruit in sub-Saharan Africa, describes inherent weaknesses in the model as applied to the African context and suggests methods by which the model could be better tested before dismissing entirely the use of tenure reform as an instrument against poverty.

Strachan, Lloyd W. 2001. Asset-based development: The role for pro-poor land and land tenure reform. Report Prepared for: Policy and Multilateral Branches, Canadian International Development Agency in cooperation with the Popular Coalition to Eradicate Hunger and Poverty. October.

Presents the arguments for why land reform is back on the development agenda. Land reform is defined herein as “the process whereby the poor gain secure access to land and related assets such as water,

fisheries and forest resources.” The focus on rights, rather than just redistribution, and includes consideration of titling. The report discusses the history of the land reform agenda and its revival and the expected impacts of land reform on poor people: improved food security, reduction of conflict, increased assets of the poorest, reduced ecological degradation, enhanced gender equity, and improved agricultural productivity. It discusses problems of exclusion of landless and women and failure to meet the needs of the poorest that have been experienced in many land reform efforts. The new agenda assumes an asset-based development approach that addresses not only secure tenure to land and physical capital, but also access to financial, human and social capital. The report points to a series of approaches and innovations in the realms of land and land tenure reform, land policy and administration (including the need to consider alternatives to private property and titling), market-assisted land reform, and social mobilization. It concludes with recommendations to CIDA for supporting land reform, particularly in areas of gender equality and improving land tenure security of indigenous peoples.

Teklu, Askale. 2005. Land registration and women’s land rights in Amhara Region, Ethiopia. Securing Land Rights in Africa Research Report 4. London: IIED. November.

This paper reports on the effects of land registration on women in Amhara, Ethiopia. The findings suggest that the promotion of joint titling have created improved opportunities for women to secure land rights, but that those who are socially and economically disadvantaged face greater obstacles to protect their rights. These include lack of resources and cultural norms. Moreover, the absence of women in the land registration process and in conflict mechanisms weaken the accountability of those administering laws and policies to uphold women’s land rights.

Torero, Maximo and Erica Field. 2005. Impact of land titles over rural households. IADB Office of Evaluation and Oversight (OVE) Working Paper No. 7. August.

Property rights are seen as a prerequisite for economic development and poverty reduction essentially because improvements in land rights are assumed to reduce the risk expropriation, increase the possibilities of trade of land, and reduce credit rationing. The Peruvian rural titling program, PETT, distributed property titles to over 1.1 million rural households. This paper conducts an evaluation of the impact over households of having access to a PET title on the reduction of risk of expropriation, gains from trade of land, credit access, including the likelihood of obtaining formal credit, and provision of public goods at the level of the neighborhood. The study finds households that receive PET titles make greater investments in fences and fertilizer and have higher property values as compared to those without titles or with alternative forms of title, though finding are market values are not statistically significant. For the most part, PET titles do not affect credit access. In communities characterized as more vulnerable, titling appears to lead to increased collective provision of public goods, though the opposite is found for communities where a high degree of informal organization for land allocation had been present.

Toulmin, Camilla. 2005. Securing land and property rights in Sub-Saharan Africa: the role of local institutions. In *How to Make Poverty History – the central role of local organizations in meeting the MDGs*. Tom Bigg and David Satterthwaite, eds. London: IIED. URL: <http://www.iied.org/Gov/mdgs/publications.html#3>.

The chapter points out that titling programs in Africa have been slow, expensive and biased in favor of the rich, and calls for simpler, context-based approaches to enhance tenure security. These include improving local institutions of land administration and conflict resolution, recognition of secondary right, focusing titling in areas where the property of the poor and their ability to secure land is under threat, simplification of registration systems and using them as a tax base in order to support system sustainability. She also advocates negotiated solutions to squatter settlements, rather than eviction and urban planning practices that increase housing supply and reduce its cost. Efforts to reduce women’s vulnerability to dispossession need to be supported with women’s representation on land commissions and as community leaders and initiatives that strengthen knowledge on women’s legal rights.

USAID Office of Conflict Management and Mitigation. 2004. Land and conflict: A toolkit for intervention. Washington DC: USAID.

Adapted from the introduction: Aimed primarily at USAID officers, the purpose of this toolkit is to provide a practical introduction to the relationship between land and violent conflict. It is designed to familiarize them with a range of relevant programmatic interventions and to sensitize them to the fact that development activities, including non-land related interventions, such as infrastructure projects and the exploitation of underground resources, can inadvertently cause land conflicts to erupt. In addition to covering key issues, discussing lessons learned, and suggesting relevant program interventions, this toolkit offers a rapid appraisal guide that can help determine which land issues are most relevant to conflict in a particular setting.

Varley, Ann. 2002. Private or public: Debating the meaning of tenure legalization. *Journal of Urban and Regional Research* 26(3): 449.

Abstract from article (adapted): Hernando de Soto's book *The mystery of capital* has renewed debate about illegality in low-income housing in Latin America, Asia and Africa. De Soto and others argue that property titles provide the poor with collateral for loans to improve their housing or set up a business. Critics argue that incorporation into the formal market will displace the original inhabitants. In this article, the author analyzes these debates about legalization as expressions of the dualisms that have shaped western thought. The relation between legal and illegal can be understood as a variant of the public/private dichotomy. Challenging the opposition of legal to illegal, the author argues that the difference between them is not as great as the proponents of legalization assume. This questions the efficacy of legalization as an engine of change. In Mexico, the beneficiaries of legalization have little interest in formal credit, preferring loans from friends or relatives, and legalization does not lead to displacement. The failure of theories about legalization to predict the outcome is a product of their reliance on dualistic thinking and of the exclusion of the private from their accounts of the process.

West, Harry G. and Gregory W. Myers. 1996. A piece of land in a land of peace? State farm divestitures in Mozambique. *The Journal of Modern African Studies* 34(1): 27-51.

Divestiture of the state agricultural sector in Mozambique has yielded few benefits for smallholders in terms of accessing land, and instead resulted in accumulation by wealthier and more politically informed individuals, particularly those who had previously dominated the old regime. Much of this stemmed from the external pressures for divestiture and lack of a clear framework for carrying it out and weak relationships between the central state and local populations. The Municipalities Law of 1994 holds little promise of change. Despite vesting substantial power for land and natural resource management in local-level institutions, municipalities lack the means to raise the necessary funds to support such functions. The 1994 elections produced little in terms of a visionary opposition, though there are stirrings of peasant movements protesting entrenched state control. Real transformation will only emerge from sustained and growing action on the part of Mozambicans to assert their rights.

Williamson, Ian P. 2001. Land administration “best practice.” Providing the infrastructure for land policy implementation. *Land Use Policy* 18 (4): 297-307. URL: http://www.geom.unimelb.edu.au/research/publications/IPW/2_01_ipw_LandAdminBestPractice%28JLUP00%292.pdf

Adapted from paper abstract: This paper provides an introduction to “best practice” in land administration systems ranging from areas in cities with active land markets approaching modern land markets, to whole provinces which are almost completely under traditional or customary tenure. It briefly reviews the development of “best practice” in land administration over the last 50 years and considers the dimensions of land administration reform that influence “best practice” for a specific country or set of circumstances within a country. The paper then sets out a range of “best practices” which draw on a number of internationally recognized documents, the many publications concerned with “best practice” in

the development of land administration, as well as the author's experience. Even though the paper recognizes that each country has different requirements for land administration infrastructures due to their specific social, legal, cultural, economic, institutional and administrative circumstances, the paper identifies some common principles in the design and implementation of land administration infrastructures that are usually applicable to developing countries or countries in transition, either now or in the foreseeable future.

Wachter, Daniel. 1997. Land titling and prospects for land conservation: Lessons from a case study in Honduras. In *Sustainable agriculture in Central America*, J.P. de Groot and R. Ruben, eds. London: Macmillan. Pp. 181-90.

Wachter, Daniel. 1992. The World Bank's experience with rural land titling. DWP No. 35 Washington, D.C.: World Bank, Environment Dept., Policy and Research Division.

World Bank. 2003. *Land policies for growth and poverty reduction: A World Bank policy research report*. Oxford: World Bank and Oxford University Press.

Abstract from World Bank website: Strengthening poor people's land rights and easing barriers to land transactions can set in motion a wide range of social and economic benefits including improved governance, empowerment of women and other marginalized people, increased private investment, and more rapid economic growth and poverty reduction, according to a new World Bank report. Land policies are at the root of social conflicts in countries as diverse as Cambodia and Colombia, Zimbabwe and Cote d'Ivoire. Political controversies, the complexity of land issues, and the fact that benefits of policy improvements accrue to people who are politically weak all hinder reform. As a result, festering land issues slow poverty reduction in many developing countries and sometimes lead to bloodshed, the report says. Yet a growing number of countries are successfully addressing land policy issues. The report, *Land Policies for Growth and Poverty Reduction*¹, shows that countries as diverse as China, Mexico, Thailand, Uganda, and some transition countries in Eastern Europe, have begun to address land policy issues in ways that benefit everybody. Although approaches vary, providing poor people secure tenure and facilitating land transactions are key.

Zoomers, A. and G. van der Haar. 2000. Current land policy in Latin America: regulating land tenure under neo-liberalism. Frankfurt: KIT Publishers; Iberoamericana/Vervuert Verlag.

KIT abstract: Current land policy in Latin America: regulating land tenure under neo-liberalism offers a critical reflection on current land policies in Latin America. Privatization and individualization of land rights, the corner stone of these policies, are analyzed from different perspectives. A number of contributions examine the process of institutional reform and underlying assumptions, indicating some of the major shortcomings and ambiguities. The possible implications of the reforms for land markets, agricultural production, and sustainable resource management, as well as for the rights of women and indigenous peoples, are discussed. Furthermore, a number of case studies (from Costa Rica, Mexico, Bolivia, and Honduras) address the complexities of land tenure regulation. They show that actual dynamics in land tenure often escape the attempts at state regulation, as these are recast or circumvented by local populations.

Particularly relevant chapters include:

Ch 2: Carter, Michael. Old questions and new realities: Land in post-liberal economies. Pp 29-43.

Ch 3: Forster, Nancy R. Back to the basics: Designing tenure institutions for ecologically sustainable resource management. Pp. 45-57.

Ch 4: Zoomers, Annelies. Land in Latin America: New context, new claims, new concepts. Pp. 59-72.

Ch 10: Cordova Plaza, Rosio. Gender roles, inheritance patterns, and female access to land in an ejidal community in Veracruz, Mexico. Pp. 161-173.

Ch 13: Thorpe, Andy. "Modernizing" agriculture: Neo-liberal land tenure reform in Honduras. Pp. 227-248.

Ch 14: Baumeister, Eduardo. Institutional change and responses at the grassroots level: Examples from Nicaragua, Honduras and El Salvador. Pp. 249-257.

Registering property. Who makes registering property easy and how? What else secures property rights? What to reform? Why reform? In, *Doing Business in 2005*. pp. 33-40.

Based on surveys of firm representatives, this article makes the case that registering property stimulates entrepreneurship through the ability to secure mortgage loans in order to launch or expand businesses, increasing tenure security and reducing transaction costs. Yet, it also points out experiences in Africa of failure to maintain property registries and attributes this failure to the high costs of formal property transactions and poor organization of the registries. Criticism is directed to governments that regulate property markets and capital markets. Using different measures, comparisons are made between the relative efficiencies of property registries in industrialized countries (and some countries emerging from the former Soviet Union) compared to those in most developing countries. Other measures that secure property rights are also discussed, namely organization of the registry, the types of tenure available, and the degree of control over land markets. Based on the identified bottlenecks, recommendations are made for land reform and the rationale for undertaking such reforms.

BUSINESS RIGHTS

Amin, N., "The Informal Sector in Asia from Decent Work Perspective," Asian Institute of Technology, Bangkok, ILO, 2002.

Abstract from ILO: Public policy and actions on the informal sector in the Asian region are reviewed in this study under the themes of: (i) fundamental principles and rights; (ii) entrepreneurship and enterprise development; (iii) access to skills; (iv) expansion of micro-credit; (v) social protection; (vi) occupational safety; (vii) organization and representation; and (viii) physical integration. Overall, the review suggests four discernible developments: (i) the decent work paradigm is paving the way in overcoming the dilemma centering the sector; (ii) this allows a shift of focus from enterprise to labor issues; (iii) this is facilitating determination of deficits associated with work in the informal economy; and (iv) consequently, the direction of necessary public policy and actions is getting sharper in turning informal work into decent work.

Arun, Thankom. "Regulating for development: the case of microfinance," The Quarterly Review of Economics and Finance, Volume 45, Issues 2-3, May 2005, Pages 346-357.

Abstract from article: The regulatory concerns of microfinance sector lies in the special nature of these institutions which caters the needs of those who have been marginalized from the formal financial sector. The paper underlines the importance of an appropriate regulatory framework to support sustainable delivery of diversified microfinance services such as savings and insurance. The paper explores the rationale for regulation in the microfinance sector, and followed by a review of major regulatory approaches and its impact on the microfinance sector. The sector-specific regulations along with prudential reforms may facilitate and environment, which allows microfinance institutions to mobilize savings and to reduce the problems in enforcing normal banking regulations. The paper also emphasizes the need to incorporate the country specificities in the regulatory approach to encapsulate the specificities of macroeconomic environment and different stages of development.

Babson, Bradley. Myanmar and North Korea: Informality in Asia's Pariah States SAIS Review - Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: Myanmar (Burma) and North Korea are the only two countries in Asia that remain isolated from the international community and face severe internal economic distress. In both countries, the existence and extent of the informal economy is symptomatic of deep flaws in economic policy and in the relationship of the state to the people. Yet the different historical, geographic, and social contexts of Myanmar and North Korea shape the dynamics of their informal economies in ways that lead to very different characteristics and implications for any strategies intended to bring about positive change in these two countries. This paper examines these differences and argues that a contextual understanding of any informal economic system is needed to shape effective policies and strategies for national development

Batra, Geeta and Mahmood, Syed, "Direct Support to Private Firms: Evidence on Effectiveness" (November 18, 2003). World Bank Policy Research Working Paper No. 3170.

Abstract from article: Governments use a variety of instruments to provide direct support to private enterprises. These include the provision of finance (subsidized and/or directed credit) and business development services (management and marketing advice to small businesses, agricultural extension services, support for enterprise level training and support to technology development). These interventions are distinct from those that support enterprises indirectly by establishing a policy and legal environment conducive to enterprise development. How effective have these direct support schemes been? This paper attempts to provide some answers to this question by surveying the available literature on the effectiveness of direct support interventions. Where available, impact evaluations suggest that the performance has been mixed at best. The evidence indicates that active intervention does not work unless the basic environment for private sector development is sound. Public policy thus needs to focus on creating an enabling environment, key elements of which include a sound legal and judicial system which supports low-cost contract enforcement, good infrastructure, a policy playing field which is level in terms of ease of registration, taxes and investment incentives for all enterprises - large and small, domestic and foreign.

Batra, Geeta, Kaufmann, Daniel and Stone, Andrew H.W., "The Firms Speak: What the World Business Environment Survey Tells Us about Constraints on Private Sector Development" (October 2003).

Abstract from article: This chapter summarizes the salient results of the World Business Environment Survey (WBES). It shows that important dimensions of the climate for business operation and investment can be measured, analyzed, and compared across countries, and that governance is key to the business environment and investment climate. The survey findings suggest that key policy, institutional, and governance indicators affect the growth of a firm's sales and investment and the extent to which firms operate in the unofficial economy. Further, the paper provides empirical support for some commonly held notions, while challenging others. It suggests a link between taxation, financing, and corruption on the one hand, and growth and investment on the other, and it highlights the costs to economies where the state is captured by a narrow set of private interests.

Becker, Kristina, "The Informal Economy", Swedish International Development Cooperation Agency (SIDA), Department of Infrastructure and Economic Cooperation, March 2004.

Abstract from article: The objectives of the study are twofold: 1. Determine the relevance for a SIDA strategy on the informal economy. 2. Provide a background for further analysis of the informal economy in view of the SIDA strategy elaboration. In essence, this study will attempt to provide a comprehensive picture of the informal economy and the relevant issues at stake and thereby assist SIDA in deepening the understanding of what the informal economy really is.

Blunch, Niels-Hugo, Sudharshan Canagarajah and Dhushyanth Raju The Informal Sector Revisited: A Synthesis Across Space and Time, The World Bank, Social Protection Discussion Paper No. 0119; 07/2001.

Abstract from article: The concept of the informal sector (IS) has recently received widespread and growing attention. Indeed, it may be fair to talk about a re-emergence of the concept in the debate related to social protection and poverty reduction. We argue that with this new found prominence, it is even more important that we better understand the IS. Only with an improved understanding of the issues and dimensions of the IS can we design policies and programs which effectively address the needs of workers engaged in informal sector activities. This paper is an attempt to contribute to such an increased understanding by highlighting important pieces in understanding the concept of the IS across (1) time, briefly discussing how our view of the concept of the IS has evolved over time and (2) space, presenting empirical evidence and stylized features across regions. After presenting the current state of knowledge of the IS, we distill key aspects and issues of the IS and discuss their implications for policy design and implementation, especially in the context of fighting poverty and improving livelihoods of the poor in developing countries.

Chen, Martha Alter. Women and Informality: A Global Picture, the Global Movement SAIS Review - Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: Estimates of the size, contribution, and composition of the informal sector vary widely, according to what size of enterprises are included, whether agriculture is included, and how much of women's informal work is included. Like others who have worked closely with women in the informal sector, I would argue that the informal sector is even larger than official statistics suggest. My argument is based on the fact that much of women's paid work, not just their unpaid housework, is not counted in official statistics. If the magnitude of women's invisible paid work, particularly home-based remunerative work, were to be fully counted, both the share of women and the share of informal workers in the work force would increase. Recognizing and, more importantly, counting women's invisible remunerative work would challenge our empirical understanding not only of the informal sector but also of the economy as a whole. Why should we be concerned about women who work in the informal sector? There is a significant overlap between being a woman, working in the informal sector, and being poor. There is also a significant overlap between being a woman, working in the informal sector, and contributing to growth. This paper examines the evidence on the linkages between gender, informality, poverty, and growth; postulates some possible explanations of these linkages; and describes the global movement of women in the informal sector.

Craig McIntosh and Bruce Wydick, Competition and Microfinance, Journal of Development Economics, Volume 78, Issue 2, December 2005, Pages 271-298.

Abstract from article: Competition between microfinance institutions (MFIs) in developing countries has increased dramatically in the last decade. We model the behavior of non-profit lenders, and show that their non-standard, client-maximizing objectives cause them to cross-subsidize within their pool of borrowers. Thus when competition eliminates rents on profitable borrowers, it is likely to yield a new equilibrium in which poor borrowers are worse off. As competition exacerbates asymmetric information problems over borrower indebtedness, the most impatient borrowers begin to obtain multiple loans, creating a negative externality that leads to less favorable equilibrium loan contracts for all borrowers.

Cross, John C. and Morales, Alfonso: "Testing the boundaries of the informal sector", special issue of International Journal of Sociology and Social Policy, 2000, Vol.20, No. 9/10.

The paper finds that industrial restructuring has resulted in a shift, amongst women already working in the informal sector, towards the segments of the informal economy that provide less income and less security than those sectors in which they were previously employed.

Cross, John C. “The Political Economy of Formalization” Two Moments in the Repression of Street Vending in Mexico City.”

Abstract from article: The recent relocation of about 10,000 ambulatory vendors from the streets of Mexico City's Historical Center into newly constructed markets, has been compared by officials to the massive market construction program carried out by Ernesto P. Uruchurtu during his regency from 1952 to 1966. This article investigates this parallel by looking closely at the policies and practices of Uruchurtu with reference to street vendors. It is argued that these policies had the effect of politicizing street vending by forcing vendors to organize within the PRI and established a series of practices that essentially guaranteed the rights of such organized vendors to markets. Once the market program was halted for economic and political reasons, these policies and practices combined to create the subsequent enormous growth in street vending and the powerful street vendor organizations that continue to elude government attempts to control them today.

Davis, Steven J. & Magnus Henrekson, 2004. “Tax Effects on Work Activity, Industry Mix and Shadow Economy Size: Evidence from Rich-Country Comparisons,” NBER Working Papers 10509, National Bureau of Economic Research, Inc.

Abstract from article: Guided by a simple theory of task assignment and time allocation, we investigate the long run response to national differences in tax rates on labor income, payrolls and consumption. The theory implies that higher tax rates reduce work time in the market sector, increase the size of the shadow economy, alter the industry mix of market activity, and twist labor demand in a way that amplifies negative effects on market work and concentrates effects on the less skilled. We also describe conditions whereby cross-country OLS regressions yield unbiased estimates of the total effect of taxes, inclusive of indirect effects that work through government spending responses to tax revenues. Regressions on rich-country samples in the mid 1990s indicate that a unit standard deviation tax rate difference of 12.8 percentage points leads to 122 fewer market work hours per adult per year, a drop of 4.9 percentage points in the employment-population ratio, and a rise in the shadow economy equal to 3.8 percent of GDP. It also leads to 10 to 30 percent lower employment and value added shares in (a) retail trade and repairs, (b) eating, drinking and lodging, and (c) a broader industry group that includes wholesale and motor trade.

De Soto, Hernando. 1989. *The Other Path. The Economic Answer to Terrorism.* New York. Basic Books.

The author examines the extensive informal housing, trade and transport in Lima, Peru, and concludes that the poor are in fact generating huge amount of capital, which however does not participate in the larger process of economic development, remaining “dead” capital. He examines the reasons why informal operators tend to remain outside the national legal framework, finding that costs and administrative barriers largely account for this, and concludes that that the costs in terms of investment, capitalization and taxation are huge. He criticizes the “redistributive state” as rife with corruption and ineffective in achieving development for the poor. He uses class analysis to explain the persistence of barriers to entry into the formal sector as an attempt to preserve privileges of existing economic interests, and reviews the comparative experience of European nations in eliminating such barriers over the last century. It is suggested that development of Latin American nations has been retarded by the maintenance in our time of an economic structure and policies that resemble the mercantilist economic model long abandoned in most of the West.

De Soto, Hernando. 2000. *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else.* New York. Basic Books.

Developing a theme on which he embarked in *The Other Path* (1989), the author focuses on the “dead” capital existing in land held without formal titles. He presents estimates extrapolated from data for several

countries in which his Institute for Liberty and Democracy has done diagnostic studies, concluding that about 85 percent of urban parcels and between forty and fifty-three percent of rural parcels are “held in such a way that they cannot be used to create capital”. The author suggest that in creating the system of private property to protect land rights, the West unwittingly created a mechanism for the creation of capital, in which the market value of land is captured in legal instruments that take on a life of their own, extending the potential of assets further and further, each time increasing capital. Citing the experience of the United States during its westward expansion, he identifies as critical to US development the decision to formalize through legal mechanisms such a pre-emption wide-spread squatting on public and private lands. He faults Third World governments for failing to give their people “the efficiently crafted legal right to have their property integrated into a formal legal system that allows them to create capital.” He identifies good law as the primary factor in the creation of capital, rather than surveys or computerization, and identifies law reform as the critical need, urging reformists to draw upon the resources provided by “the peoples’ law” in framing their reforms.

De Soto, Hernando, Dead Capital and the Poor SAIS Review - Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: This paper broadly outlines the conceptual lags and the concrete obstacles which impede formalization. It provides evidence from the case of Egypt and contains some policy suggestions that may assist the governments of developing countries.

Djankov, Simeon & Rafael La Porta & Florencio Lopez-De-Silanes & Andrei Shleifer, 2002. “The Regulation Of Entry,” The Quarterly Journal of Economics, MIT Press, vol. 117(1), pages 1-37.

Abstract from article: We present new data on the regulation of entry of start-up firms in 85 countries. The data cover the number of procedures, official time, and official cost that a start-up must bear before it can operate legally. The official costs of entry are extremely high in most countries. Countries with heavier regulation of entry have higher corruption and larger unofficial economies, but not better quality of public or private goods. Countries with more democratic and limited governments have lighter regulation of entry. The evidence is inconsistent with public interest theories of regulation, but supports the public choice view that entry regulation benefits politicians and bureaucrats.

Douglas Hibbs & Violeta Piculescu, 2005. “Institutions, Corruption and Tax Evasion in the Unofficial Economy,” Public Economics 0508003, Economics Working Paper Archive EconWPA.

Abstract from article: In this paper we propose a model of how institutional benefits, taxation and government regulations affect the productive activity of private enterprises. We consider an environment in which public officials enforcing tax and regulatory obligations are potentially corruptible, and markets for corruption may therefore arise that give firms the option of producing unofficially and evading taxes and regulations. By contrast to some previous studies that view corruption and bribery as forces driving firms out of official production into the underground economy, our model features the idea that the ‘grabbing hands’ of corrupt bureaucrats may alternatively serve as ‘helping hands’ allowing firms to exploit profitable opportunities in the unofficial sector. And contrary to a traditional view maintaining that high tax rates are intrinsically a major cause of large shadow economies, our model implies that incentives to evade taxation and produce underground depend on statutory tax rates relative to firm-specific thresholds of tax toleration. Tax toleration is determined, among other things, by firm-specific institutional benefits available to official producers and the costs of corruption required to produce unofficially. Some core predictions of the model concerning the determinants of tax toleration and the relative size of unofficial activity and tax evasion receive broad support from empirical analyses based on firm-level data from the World Business Environment Surveys sponsored by the World Bank.

Edgardo Campos, J. & Lien, Donald & Pradhan, Sanjay, 1999. “The Impact of Corruption on Investment: Predictability Matters,” World Development, Elsevier, vol. 27(6), pages 1059-1067.

Abstract from article: This paper argues that it is not only level of corruption that affects investment but also the nature of corruption. Corruption regimes that are more predictable—in the sense that those seeking favors from government do obtain those favors—have less negative impact on investment than those that are less predictable. Using the data collected by World Bank in preparing the World Development Report of 1997, we provide empirical support for the conjecture.

Elisabetta Marzano, 2004. “Dual Labor Market Theories And Irregular Jobs: Is There a Dualism Even in The Irregular Sector?,” CELPE Discussion Papers 81, CELPE (Centre of Labor Economics and Economic Policy), University of Salerno, Italy.

Abstract from article: The research deals with the characteristics of the irregular labor. Current literature considers that irregular labor arises because of the heavy tax burden on labor, or because of the existence of regulations which impose too many constraints on the labor market. In Italy the labor market has some effective constraints, for instance, due to firing regulations, minimum wage legislation, or to regulations on multiple job holdings (for instance it is only since last year that retired people can have new jobs legally), whereas, regarding taxation, we think that it is not always a valid explanation of irregular labor. Actually, during past years there were several facilities to new hiring, especially in Southern Italy. We suggest that irregular jobs can originate from different causes, and, consequently, they can have different characteristics, referred to as good and bad irregular match. As to our opinion, dual labor market theories are the main framework for studying this phenomenon. This theory assesses that there are two tiers in the labor market, therefore, two types of jobs: the jobs in the primary sector and those in the secondary sector; the secondary tier of the market is the one where turnover is more accentuated. This hypothesis is supported by some empirical observation about irregular labor. Actually, data available for Italy, (INPS), tells us that irregular workers, in the most of cases, have been employed very recently. The 85% of irregular workers censored by INPS during 2001 had been working for less than 12 months; the same percentage in 2002 was 0.88. Dual labor market approach has been used by Boeri and Garibaldi (2002), who analyzed irregular labor in depressed areas. We use a similar framework, which is mainly adapted from the research of Acemoglu (2001), where dualism arises as endogenous choice caused by the different technology used in two different sectors.

Executive Summary, Program to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law, The Institute for Liberty and Democracy (ILD), Lima, Peru. 2005.

Over 10 months in 2004-2005, the Institute for Liberty and Democracy (ILD), at the request of the Government of Tanzania, conducted an extensive survey to discern, “how the nation’s extralegal economy actually operates and how the official legal system interacts with it.” While Tanzania has created much of the legal framework for citizens’ participation in the legal economy, the majority of the country’s economic activity takes place extralegally. While the majority of economic activity in Tanzania is unregulated by the state, the extralegal economy was found to contain a considerable degree of the structural characteristics most frequently associated with the formal sector. In particular, whereas legal contracts, public courts, and traditional financing remain largely absent from commerce, extralegal mechanisms fill roles that are functionally similar to their counterparts in the legal economy. The study identifies 17 “archetypes” within the extralegal economy that typify the indigenous Tanzanian extralegal economic model. Amongst the identified archetypes were extralegal documents such a contracts, titles, guarantees, and declarations of extrajudicial rulings; mechanisms for price-setting; and means for defining and governing the organization of business relationships. The survey identifies 67 of the primary causes for the proliferation of the extralegal economy in Tanzania. The causes are characterized by a general discrepancy, and in some cases incompatibility, between economic and social realities and the content of legislative and regulatory requirements. Illustrating the role of such cleavages in preventing participation in the formal sector, the study notes that the majority of the documents necessary to legally operate a business are found only in English whereas the greater proportion of the country’s citizens speaks only Kiswahili or tribal languages. Regarding the cost of compliance with legal requirements, the

survey notes that a poor Tanzanian entrepreneur would, over the 50 year life of a business, expect to wait 32,216 days—1,118 of which would be spend inside government offices—for approval of the various required permits and spend almost US\$ 180,000 in forgone income and fees. The difficulties associated with complying with regulation was also noted to limit credit access as the prohibitive cost of property registration reduces the potential for guaranteeing loans based on real property.

Executive Summary, The Extralegal Economy where the Majority of Egyptians Live and Work: What the Government of Egypt Can Do to Integrate Them into the Mainstream Economy and Substantially Reduce Poverty and Increase Economic Development, The Institute for Liberty and Democracy (ILD), Lima, Peru. 2005.

The Institute for Liberty and Democracy (ILD), under the supervision of the Egyptian Ministry of Finance, conducted a diagnostic survey of the Egyptian extralegal economy to define the nature of the country's extralegal economic activity and identify the primary causes for its proliferation. Amongst the identified deterrents to a firm's entry into the legal economy was the complexity of legislation defining legal requirements for incorporation and registration, convoluted and redundancy regarding the role of public sector institutions in the entry process, and excessive procedural requirements associated with establishing a legally-compliant commercial enterprise. The difficulty associated with navigating the formal entry process is illustrated by the study's observation that to open a bakery in Egypt would require more than 500 days and cost 27 times a minimum monthly salary before operations could commence. The causes of extralegality related to a firm's operation and expansion in the legal economy were found to be similar to those associated with entry; often stemming from the burden associated with navigating complex legislative and institutional frameworks or ensuring continued compliance with obligations. The interdependence of the identified problems is observed by the manner in which the country's lack of standard accounting practices hindered firms' operation in the formal sector by delaying the renewal of registrations and licenses, while also affecting its expansion activities by limiting lenders' ability to accurately access a borrower's financial standing. Access to credit was further limited by the extralegality of most real estate assets—92% of the population were found to hold properties extralegally—by limiting a borrower's ability to use property as collateral. Finally, the study found exit from the legal economy to be hindered by procedural ambiguity for exit requirements and complex bankruptcy legislation, each of which increased the cost associated with dissolving enterprises from the formal sector.

Executive Summary: The Capitalization Of The Poor In Haiti: Urban Real Estate and Business Formalization, Urban Real Estate and Business Formalization Program, United States Agency for International Development (USAID/Haiti). Haitian Center for Free Enterprise and Democracy (CLED) and the Institute for Liberty and Democracy (ILD), 2001.

Over 9 months in 2001, a team of researchers from the Haitian Center for Free Enterprise and Democracy (CLED) and the Institute for Liberty and Democracy (ILD), as part of the Urban Real Estate and Business Formalization Program financed by the United States Agency for International Development (USAID/Haiti), undertook an project to understand the Haitian extralegal economy and design a process of institutional and legislative reform to increase the economic utility of latent extralegal or "dead" assets. The study found that 68% of all businesses were found to operate extralegally and that these firms were estimated to possess US\$ 270 million in machinery and equipment. Amongst the identified causes for extralegality were the lack of limited liability business form for small businesses, and the complexity of the tax code and the laws and procedures related to labor and entitlements. Besides such legislative shortcomings, the study found significant institutional and procedural barriers to participation in the formal economy. Amongst the institutional and procedural causes for extralegality were the lack of integration between institutions and processes of business registration and the overly-burdensome renewal process for business licenses and other requisite forms.

Executive Summary: The Capitalization of the Poor and Middle-Class in Mexico, The Institute for Liberty and Democracy (ILD), 2001.

Over several months in 1999-2000 a team of researchers from the Institute for Liberty and Democracy (ILD) with the support of local consultants undertook a research project to describe the Mexican extralegal economy and identify causes for its continued prevalence despite reform. Despite efforts by the Mexican Government to regularize land tenancy and formalize business, the Mexican extralegal economy remains large. The study notes that although the state has issued millions of certificates of possession, property titles and formal business authorizations, these documents often fail to provide their holders with the means to leverage the value of the associated assets. The study finds that Mexico holds US\$315 billion in extralegal assets and sites the primary causes for the continued prevalence of the extralegal economy as the Mexican legal and administrative system. For example, to complete the necessary procedures for making a transaction of an unmovable asset takes 24 months; costing each party US\$ 2,580. Similarly, to register a business takes 17 months and would cost the entrepreneur US\$ 12,700.

Honduras Country Diagnostic Report, The Institute for Liberty and Democracy (ILD), 2001.

In 2001, a team of researchers from The Honduran Council of Private Enterprise (COHEP) and the Institute for Liberty and Democracy (ILD) studied the Honduran extralegal economy. The study found that 89% of all businesses were found to operate extralegally, that 86% of all real estate was held extralegally and that the total value of the assets within the extra-legal economy was US\$ 12.9 billion. The study notes that excessive administrative requirements deter formal ownership and businesses' participation in the formal sector. For example, an individual seeking to purchase, divide and build on a real property would have to navigate 430 procedures; waiting an average of 1080 days before the construction may occur.

Friedman, Eric & Johnson, Simon & Kaufmann, Daniel & Zoido-Lobaton, Pablo, 2000. "Dodging the grabbing hand: the determinants of unofficial activity in 69 countries," Journal of Public Economics, Elsevier, vol. 76(3), pages 459-493.

Abstract from article: Across 69 countries, higher tax rates are associated with less unofficial activity as a percent of GDP but corruption is associated with more unofficial activity. Entrepreneurs go underground not to avoid official taxes but to reduce the burden of bureaucracy and corruption. Dodging the 'grabbing hand' in this way reduces tax revenues as a percent of both official and total GDP. As a result, corrupt governments become small governments and only relatively uncorrupt governments can sustain high tax rates.

Goldberg, Penny Koujianou & Pavcnik, Nina, 2003. "The Response of the Informal Sector to Trade Liberalization," NBER Working Paper No. 9443, Issued in January 2003

Abstract from article: This paper studies the relationship between trade liberalization and informality. It is often claimed that increased foreign competition in developing countries leads to an expansion of the informal sector, defined as the sector that does not comply with labor market legislation. Using data from two countries that experienced large trade barrier reductions in the 1980's and 1990's, Brazil and Colombia, we examine the response of the informal sector to liberalization. In Brazil, we find no evidence of a relationship between trade policy and informality. In Colombia, we do find evidence of such a relationship, but only for the period preceding a major labor market reform that increased the flexibility of the Colombian labor market. These results point to the significance of labor market institutions in assessing the effects of trade policy on the labor market.

Gradstein, Mark & Era Dabla-Norris & Gabriela Inchauste, 2005. "What Causes Firms to Hide Output? The Determinants of Informality," IMF Working Papers 05/160, International Monetary Fund.

Abstract from article: In many developing countries, a significant part of economic activity takes place in the informal sector. Earlier work has examined the determinants of the size of the informal sector, focusing separately on factors such as tax and regulation burden, financial market development, and the

quality of the legal system. We revisit this issue by using an integrated dataset which contains rich information on all these aspects. Testing the channels affecting the degree of informality, we find evidence that all previously identified factors indeed play a role in driving informality. In particular, and consistent with the suggested theoretical model, we find support for the significance of the quality of the legal system.

Horn, P. et al, The Informal: The Informal Sector in Sub-Saharan Africa, South Africa, Trade Union Research project, ILO, 2002.

Abstract from article's introduction: This report attempts to provide an analysis of available secondary data on the informal sector in Sub-Saharan Africa (SSA).

Howell, Jude, Good Practice Study in Shanghai on Employment Services for the Informal Economy, International Labor Office, Geneva, 2002.

In 1996, to address the high unemployment resulting from the closing of state-owned enterprises (SOEs),—985,000 Shanghai citizens lost jobs due to SOE closings from 1996 to 2000—the Shanghai Municipal Government initiated a series of policy measures to provide general economic support for the newly unemployed and facilitate workers' transition into the formal economy. As part of the municipality's larger adjustment assistance program, the Shanghai Government created a policy whereby workers in the informal sector could associate to form a novel economic classification deemed informal labor organizations. During the six years following the creation of the new classification, 14,364 informal labor organizations were formed. In 2001, the organizations employed 154,839 workers, 97% of which had been unemployed prior to the initiative. The policy was supplemented by a public works program, which provided employment to a portion of informal labor organizations in public services such as street cleaning, security, and the maintenance of public facilities. The Shanghai government provided additional assistance to the informal economy by offering of training, social insurance, preferential tax treatment, and subsidized credit to informal ventures. The success of Shanghai's adjustment assistance program is illustrated in the drastic reduction in unemployment since the initiative. The Shanghai Labor Bureau found that, of the nearly one million citizens laid off due to SOE closings, only 16,200 remained unemployed in 2001.

Hulme, David. Impact Assessment Methodologies for Microfinance: Theory, Experience and Better Practice, World Development, Volume 28, Issue 1, January 2000, Pages 79-98.

Abstract from article: Microfinance programs and institutions are increasingly important in development strategies but knowledge about their impacts is partial and contested. This paper reviews the methodological options for the impact assessment (IA) of microfinance. Following a discussion of the varying objectives of IA it examines the choice of conceptual frameworks and presents three paradigms of impact assessment: the scientific method, the humanities tradition and participatory learning and action (PLA). Key issues and lessons in the practice of microfinance IAs are then explored and it is argued that the central issue in IA design is how to combine different methodological approaches so that a "fit" is achieved between IA objectives, program context and the constraints of IA costs, human resources and timing. The conclusion argues for a greater focus on internal impact monitoring by microfinance institutions.

ILO, Women and men in the informal economy: A statistical picture, ILO, 2002.

Abstract from ILO: The purpose of this report is to provide a statistical picture, using the available data, of the informal economy worldwide. The statistics and indicators presented in this book are designed to give a wide audience of users a better understanding of the size, components and characteristics of the informal economy. Such information is essential in formulating policies and programs at national and international levels to promote decent conditions of work as well as contribute to poverty eradication.

Johnson, Simon H., Kaufmann, Daniel and Zoido, Pablo, “Corruption, Public Finances, and the Unofficial Economy” (August 1999). World Bank Policy Research Working Paper No. 2169.

Abstract from article: In this sample of 49 Latin American, OECD, and transition economies, it is the ineffective and discretionary administration of tax and regulatory regimes—not higher tax rates alone—as well as corruption that increases the size of the unofficial economy. And countries with a larger unofficial economy tend to grow more slowly.

Johnson, Simon & Kaufmann, Daniel & McMillan, John & Woodruff, Christopher, 2000. “Why do firms hide? Bribes and unofficial activity after communism,” Journal of Public Economics, Elsevier, vol. 76(3), pages 495-520.

Abstract from article: Our survey of private manufacturing firms finds the size of hidden ‘unofficial’ activity to be much larger in Russia and Ukraine than in Poland, Slovakia and Romania. A comparison of cross-country averages shows that managers in Russia and Ukraine face higher effective tax rates, worse bureaucratic corruption, greater incidence of mafia protection, and have less faith in the court system. Our firm-level regressions for the three Eastern European countries find that bureaucratic corruption is significantly associated with hiding output.

Jung, Young H. & Snow, Arthur & Trandel, Gregory A., 1994. “Tax evasion and the size of the underground economy,” Journal of Public Economics, Elsevier, vol. 54(3), pages 391-402.

Abstract from article: The theoretical literature on the relationship between the tax system and the ‘underground’ economy is extended using a model similar to the one examined by Watson (Journal of Public Economics, 1985, 27, 231–246), in which tax evasion is possible in one sector of the economy, but is impossible in the other. We prove that a rise in the tax rate increases (decreases) the number of agents in the sector in which tax evasion is possible if preferences exhibit increasing (decreasing) relative risk aversion. We also use our model to investigate the relationship between the tax rate and the total amount of tax evaded.

Kaufmann, D., Kraay, A. and Zoido-Lobato, P., 2003, “Governance Matters III: Governance Indicators for 1996-2002,” draft paper, World Bank, Washington, D.C.

Abstract from article: This paper presents estimates of six dimensions of governance covering 199 countries and territories for four time periods: 1996, 1998, 2000, and 2002. These indicators are based on several hundred individual variables measuring perceptions of governance, drawn from 25 separate data sources constructed by 18 different organizations. We assign these individual measures of governance to categories capturing key dimensions of governance, and use an unobserved components model to construct six aggregate governance indicators in each of the four periods. We present the point estimates of the dimensions of governance as well as the margins of errors for each country for the four periods. The governance indicators reported here are an update and expansion of our previous work, part of a research project on indicators initiated in 1998 (Kaufmann, Kraay and Zoido-Lobato 1999a,b and 2002). We also address various methodological issues, including the interpretation and use of the data given the estimated margins of errors.

King, Kenneth. Africa's Informal Economies: Thirty Years on. SAIS Review - Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: It is almost exactly thirty years since the term informal sector emerged from Keith Hart's fieldwork in Accra, Ghana, and was internationalized by the work of the World Employment Mission to Kenya in 1972. The term itself has been much criticized, but it has proven remarkably robust in French, English, Portuguese, and Spanish; and it has also taken on all kinds of local meanings in different languages. On the eve of the thirtieth anniversary of the term, it may be useful to examine some of the principal developments in the knowledge of the informal economy in Africa. In particular, this

article will explore the special character of the informal sector in the countries of sub-Saharan Africa. Ghana and Kenya, two of the countries where the term was first used, will be examined in detail, but illustration will also be drawn from elsewhere, including South Africa and Tanzania. The article will also look at the ways in which the self-employment potential of the informal sector appears to have influenced other sectors, such as education and training systems. Some of the most stubborn problems that continue to surround this area will be discussed, and a set of agenda items for the future will be offered.

Lassen, David Dreyer, 2003. "Ethnic Divisions and the Size of the Informal Sector," EPRU Working Paper Series 03-01, Economic Policy Research Unit (EPRU), University of Copenhagen. Department of Economics (formerly Institute of Economics).

Abstract from article: This paper investigates the relationship between ethnic fragmentation and the size of the informal economy. Recent experimental and empirical research links, in turn, ethnicity and trust, and trust and tax compliance. In addition, recent empirical studies have identified an unwillingness to contribute to public goods benefiting other ethnic groups. Combining these insights, we argue that increasing ethnic fractionalization decreases voluntary tax compliance, and present empirical evidence at the macro level in a cross-section of more than fifty countries, that more ethnically fragmented societies have significantly larger informal sectors.

Loayza, Norman V., 1996. "The economics of the informal sector: a simple model and some empirical evidence from Latin America," Carnegie-Rochester Conference Series on Public Policy, Elsevier, vol. 45, pages 129-162.

Abstract from article: This paper presents the view that the informal economy arises when excessive taxes and regulations are imposed by governments that lack the capability to enforce compliance. The determinants and effects of the informal sector are studied in an endogenous growth model whose production technology depends essentially on congestable public services. The model concludes that changes, both in policy parameters and the quality of government institutions that promote an increase in the relative size of the informal economy will also generate a reduction in the rate of economic growth. The paper then uses data from Latin American countries in the early 1990s to test some of the implications of the model and to provide estimates for the size of the informal sector throughout these countries. The empirical approach consists of identifying the size of the informal sector to a latent variable for which multiple causes and multiple indicators exist. The size of the informal sector is found to depend positively on proxies for tax burden and labor-market restrictions, and negatively on a proxy for the quality of government institutions. Furthermore, the empirical results suggest that an increase in the size of the informal sector negatively affects growth by, first, reducing the availability of public services for everyone in the economy, and, second, increasing the number of activities that use some of the existing public service less efficiently or not at all.

Loayza, Norman V., 1996. "The economics of the informal sector: a simple model and some empirical evidence from Latin America," Carnegie-Rochester Conference Series on Public Policy, Elsevier, vol. 45, pages 129-162.

Abstract from article: The model concludes that changes, both in policy parameters and the quality of government institutions that promote an increase in the relative size of the informal economy will also generate a reduction in the rate of economic growth. The paper then uses data from Latin American countries in the early 1990s to test some of the implications of the model and to provide estimates for the size of the informal sector throughout these countries. The empirical approach consists of identifying the size of the informal sector to a latent variable for which multiple causes and multiple indicators exist. The size of the informal sector is found to depend positively on proxies for tax burden and labor-market restrictions, and negatively on a proxy for the quality of government institutions. Furthermore, the empirical results suggest that an increase in the size of the informal sector negatively affects growth by,

first, reducing the availability of public services for everyone in the economy, and, second, increasing the number of activities that use some of the existing public service less efficiently or not at all.

Lund F. and Skinner C., Integrating the informal economy in urban planning and governance. A case study of the process of policy development in Durban, South Africa. *International Development Planning Review*, 26(4), 2004, pages 431-456

Abstract from article: Local government in post-apartheid South Africa received a new mandate to play an active role in economic development, as well as to promote public participation. This article explores Durban's attempts to grapple with these new challenges with respect to the informal economy. In 1999 Durban sought a policy to accommodate the need to support the growth of economic opportunities for all informal workers, especially women, at the same time as enabling the regulation of what had become been a rapidly deregulated use of public space for trading. Durban embarked on a consultative process of policy development, which was designed to allow the meaningful participation of different interest groups. It is argued that this policy development process was unusual as it actively sought out consultation with poorer people in their roles as workers; it focused on deepening participation within local government and aimed to secure an integrative approach to the informal economy. The article aims to contribute to debates about participation in development planning processes generally and, more specifically, to speak to more pessimistic assessments of participation at a local level in South Africa in the post-apartheid period.

Lund, Frances and Srinivas, Smita: Learning from Experience: A Gendered Approach to Social Protection for Workers in the Informal Economy. ILO, Geneva, 2000.

Abstract from ILO: Using a gendered approach, this paper provides a conceptual basis and a review of initiatives concerning the extension of protection for workers in the informal economy. It examines the situation of women in this sector as well as their need for social protection. It then proposes an approach for extending this protection, based on a multi-dimensional matrix. Lastly, it presents a series of case studies on innovative systems for covering people working in the informal economy.

Marcouiller, Douglas & Ruiz de Castilla, Veronica & Woodruff, Christopher, 1997. "Formal Measures of the Informal-Sector Wage Gap in Mexico, El Salvador, and Peru," *Economic Development and Cultural Change*, University of Chicago Press, vol. 45(2), pages 367-92.

Abstract from article: Using comparable micro-level data from three countries, we ask what type of person works in the informal sector and whether informal workers earn lower wages than observationally equivalent workers in the formal sector. The characteristics of informal workers are similar across countries. Surprisingly, when we control for these personal characteristics, we find a significant wage premium associated with formal employment in El Salvador and Peru but a premium associated with work in the informal sector in Mexico. A model of endogenous selection offers little help in explaining the differences in wage patterns. The research casts doubt on the received wisdom that the informal sector, always and everywhere, is a poorly-paid but easily- entered refuge for those who have no other employment opportunities.

Maria Beatriz Orlando Pagnataro, The Informal Sector in Venezuela: Catalyst or Hindrance for Poverty Reduction, *Asociacion Civil para la Promocion de Estudios Sociales, Poverty Project Papers Vol. 2. Catholic University Andres Bello (UCAB) - Instituto de Investigaciones Economicas y Sociales*, September 2001.

Abstract from article: In Venezuela, the informal sector has increased its participation in the labor market remarkably. Poverty levels of workers in the informal sector are higher than in the formal sector of the economy. Given the structure of the Venezuelan economy and the global trends, it is very unlikely that the formal sector will be able to absorb the labor force supply at a fast rate. This paper studies the relationship between poverty and informality in Venezuela through the determinants of labor earnings.

Estimating an earnings model, that considers the probability of working in the informal sector, it was possible to determine the impact that education, experience, gender, geographic location and economic activities have on informal workers. The result of the estimation implies that male informal workers with more education and experience, urban, and dedicated to transportation, distribution, and mining, have significantly higher earnings per hour than other informal workers do. Results show that the informal sector remunerates experience at a higher rate than formal schooling. The informal sector also has broad gender gaps. Informal entrepreneurs receive earnings that double, on average, those received by informal self-employed workers and more than double those received by the informal employees. As a conclusion, a strategy directed towards the reduction of poverty should have two parallel aims. First, increase formal employment by policies heading towards economic growth and more flexible labor regulation. The second aim should be to increase productivity and wage levels in the informal sector. This paper finds evidence on the importance of education, experience, and capital access for informal earnings. Programs providing specific training for workers should have positive results on informal earnings. On the other hand, the significant differences between the employer and employee's wages can be related to the difficult access to capital, which is a scarce resource in the informal sector.

Mitra, Siddhartha Controlling informalization: Punitive versus strategic measures, Indian Statistical Institute, New Delhi, 04-20-2003.

Abstract from article: Most developing countries are characterized by large informal sectors, which are plagued by low productivity and other serious problems. This paper suggests a three-fold remedy for formalizing the large informal sector: formalization of property rights, alleviation of corruption and deregulation. In the case of India, which is studied in the paper, it is seen that the first two channels are more promising than the third one. The paper also rejects the notion of continuation of informal business activity by force.

Mosley, Paul & Hulme, David, 1998. "Microenterprise finance: Is there a conflict between growth and poverty alleviation?," World Development, Elsevier, vol. 26(5), pages 783-790.

Abstract from article: The paper reports on a research project which estimated the impact of 13 microfinance institutions in seven developing countries on poverty and other target variables, and attempted to relate such impact to the institutions' design features. For each of the institutions studied, the impact of lending on the recipient household's income tended to increase, at a decreasing rate, as the recipient's income and asset position improved, a relationship which can easily be explained in terms of the greater preference of the poor for consumption loans, their greater vulnerability to asset sales forced by adverse income shocks and their limited range of investment opportunities. There are significant outliers to this general pattern (in particular, very poor people who have been able to achieve significant loan impact); but they are the exception rather than the rule, and the relationship is significant at the 1% level for all the institutions studied except the Malawi Mudzi Fund. This relationship defines, in the short term, an "impact frontier" which serves as a tradeoff: lenders can either focus their lending on the poorest and accept a relatively low total impact on household income, or alternatively focus on the not-so-poor and achieve higher impact. The position and slope of the estimated impact curve vary however with the design of the institution: for "well-designed" schemes impact, at all levels of income, is higher than for ill-designed schemes. Hence for many lender institutions the tradeoff can often be moved by appropriate innovations in institutional design, in particular modifications to savings, loan collection, and incentive arrangements for borrowers and staff.

Nourse, Timothy H. The Missing Parts of Microfinance: Services for Consumption and Insurance SAIS Review—Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: This paper examines the microfinance revolution and its impact. It looks at the characteristics of informal sector businesses and the way in which microfinance was designed to meet business needs. After examining the reported successes of microfinance, the paper shows that, because

informal household and business activities are intermixed, microfinance's emphasis on productive credit for businesses only partially meets entrepreneurs' needs for financial services. As a result, the impact of microfinance initiatives is reduced. Finally, the paper suggests ways in which microfinance can improve its services to better support the informal sector and to meet the economic and poverty-alleviation goals forwarded by its proponents.

Peña, Sergio. "Regulating Informal Markets: Informal Commerce in Mexico City" John Cross & Alfonso Morales (ed.) Testing the Boundaries of the Informal Sector; International Journal of Sociology and Social Policy: Vol. 20:9-10; 37-67, (2000).

Abstract from article: This paper is an attempt to explain the limitations and constraints that government policymakers in developing countries encounter in attempting to regulate and formalize informal activities such as street vending. This paper argues that one of the main obstacles to implementing those policies is the fact that street vendors have developed their own systems of regulation that could complement, compete with, or challenge the efforts of local governments. Mexico City's government has taken the position that street vendor organizations are organized mafias that must be eradicated, however, this article will argue that street vendor organizations provide norms and regulations to reduce the risk and uncertainty that street vendors would face under a normless market environment. The paper is mainly theoretical and tries to answer the following two questions: How, or under what circumstances, do alternatives to state regulation of economic activities emerge? What are the benefits and limitations of those alternate regulatory models from the standpoint of street vending?

Sarte, Pierre-Daniel G., 2000. "Informality and rent-seeking bureaucracies in a model of long-run growth," Journal of Monetary Economics, Elsevier, vol. 46(1), pages 173-197.

Abstract from article: This paper explores the links among growth, the informal economy, and rent-seeking bureaucracies. The presence of congestion associated with the enforcement of property rights implies that informality can be useful. Whether bureaucratic rent-seeking is detrimental to growth then depends on how good a substitute informality is to production in the formal sector. In order to create profits which can be appropriated, rent-seeking bureaucrats limit entry into the formal economy. As a result, firms operate in the informal sector even when the cost of informality is high, in which case lower growth emerges. However, when the cost of informality is low, a large number of firms choose to operate informally irrespective of entry conditions. In the latter case, growth is unaffected by a rent-seeking bureaucracy as entry restrictions in the formal economy do not bind.

Schneider, Friedrich & Dominik H. Enste, 2000. "Shadow Economies: Size, Causes, and Consequences," Journal of Economic Literature, American Economic Association, vol. 38(1), pages 77-114.

Abstract from article: Using various methods, the size of the shadow economy in 76 developing, transition, and OECD countries is estimated. Average size varies from 12 percent of GDP for OECD countries, to 23 percent for transition countries and 39 percent for developing countries. Increasing taxation and social security contributions combined with rising state regulations are driving forces for the increase of the shadow economy, especially in OECD countries. According to some findings, corruption has a positive impact on the size of the shadow economy, and a growing shadow economy has a negative effect on official GDP growth.

Shleifer, Andrei, and Robert W. Vishny. 1994. "Politicians and Firms" Quarterly Journal of Economics, 109 (November): 995-1025.

Abstract from article: The authors present a model of bargaining between politicians and managers that explains many stylized facts about the behavior of state firms, their commercialization, and privatization. Subsidies to public enterprises and bribes from managers to politicians emerge naturally in the model. The authors use the model and several extensions to understand why commercialization and privatization

might work and what forces contribute to effective restructuring of public enterprises. They illustrate the model using examples from several countries.

Srivastava, Pradeep and Patel, Urgit: A Tale of two Sectors: The formal and informal sectors in India. December 1991.

The paper examines how economic activity in the formal and informal sector in India, as measured by output, responds to the same monetary and fiscal policies. The paper finds the formal sector to be more homogeneous in behavior than the informal sector regarding its response to monetary and fiscal policies. In particular, in the formal sector, total non-agriculture output and total manufacturing output responded to monetary and fiscal policies similarly whereas total output, total non-agriculture output, and total manufacturing output in the informal sector responded differently to the stimulus. The paper also finds that while the responses of the formal sector were typically in-line with those predicted, the informal sector responded to macro-policy the interventions in a manner contrary to anticipated responses.

Staudt, Kathleen A. Informality Knows No Borders? Perspectives from El Paso-Juárez. SAIS Review–Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: At the U.S.-Mexico border, where people breathe the same air, use water from the same sources, and work in integrated economies, some advocate a regional approach to address people's well-being. All along the 2,000-mile border, a part of Mexico until the 1848 Treaty of Guadalupe Hidalgo, people cross the border some 47 million times each year to work, shop, and visit relatives. International Relations was once wedded to the idea of nation-state analyses, but more recent work that incorporates examples like El Paso-Juárez now examines borders and frontiers as spaces in which to contest sovereignty and organize transnationally. Nation-state analysis, with its different policies and regulations, may disguise similarities in people's work. This paper focuses on the incidence of informal economic activity on both sides of the U.S.-Mexico border and raises questions about its continuity under the North American Free Trade Association (NAFTA), border militarization, and currency fluctuations, all developments of the late twentieth century.

Steven J. Davis & Magnus Henrekson, 2004. "Tax Effects on Work Activity, Industry Mix and Shadow Economy Size: Evidence from Rich-Country Comparisons," NBER Working Papers 10509, National Bureau of Economic Research, Inc.

Abstract from article: Guided by a simple theory of task assignment and time allocation, we investigate the long run response to national differences in tax rates on labor income, payrolls and consumption. The theory implies that higher tax rates reduce work time in the market sector, increase the size of the shadow economy, alter the industry mix of market activity, and twist labor demand in a way that amplifies negative effects on market work and concentrates effects on the less skilled. We also describe conditions whereby cross-country OLS regressions yield unbiased estimates of the total effect of taxes, inclusive of indirect effects that work through government spending responses to tax revenues. Regressions on rich-country samples in the mid 1990s indicate that a unit standard deviation tax rate difference of 12.8 percentage points leads to 122 fewer market work hours per adult per year, a drop of 4.9 percentage points in the employment-population ratio, and a rise in the shadow economy equal to 3.8 percent of GDP. It also leads to 10 to 30 percent lower employment and value added shares in (a) retail trade and repairs, (b) eating, drinking and lodging, and (c) a broader industry group that includes wholesale and motor trade.

Stiglitz, Joseph with M. Shahe Emran "Price Neutral Tax reform With an Informal Economy," 2004, Public Economics 0407010, Economics Working Paper Archive at WUSTL.

Abstract from article: A Strand of recent literature shows that a reform of import tariff (export tax) and consumption tax (production tax) that keeps consumer (producer) price unchanged enhances welfare and increases revenue under plausible conditions. We demonstrate that the results derived so far critically

depend on the unrealistic assumption that there is no informal sector in the economy, implying that each and every commodity in the economy can be taxed through VAT and production tax. Our results show that, when the feasibility restrictions on the tax instruments imposed by the presence of a large informal and shadow economy is taken into account, such consumer or producer price-neutral reform reduces both revenue and welfare under plausible conditions. The Results add to the emerging skepticism about the desirability of the widely accepted tax reform policies in developing countries that focus on the reduction of trade taxes with coordinated increase in VAT to cover the revenue loss.

Straub, Stéphane, 2005. “Informal sector: The credit market channel,” *Journal of Development Economics*, Elsevier, vol. 78(2), pages 299-321.

Abstract from article: We build a model of firms' choice between formality and informality. Complying with costly registration procedures allows the firms to benefit from key public goods, enforcement of property rights and contracts, that make the participation in the formal credit market possible. In a moral hazard framework with credit rationing, their decision is shaped by the interaction between the cost of entry into formality, and the relative efficiency of formal versus informal credit mechanisms and their related institutional arrangements. The model is consistent with existing stylized facts on the determinants of informality.

Sylvain Dessy & Stéphane Pallage, 2001. “Why Don't Poor Countries Adopt Better Technologies?” *Cahiers de recherche du Département des sciences économiques, UQAM20-07, Université du Québec à Montréal, Département des sciences économiques.*

Abstract from article: In this paper we develop a simple heterogeneous-agent model with incomplete markets to explain the prevalence of a large low-productivity, informal sector in developing countries. In our model, the provision of public infrastructure creates a productivity premium for formalization, which increases with infrastructure quality. Our model breaks the symmetry of equilibria and offers endogenous differentiation of rich and poor countries' behavior. While the model supports multiple stable equilibria in 'rich' countries with varying degrees of formalization, including full formalization, it indicates an absence of equilibrium with full formalization in 'poorer' countries. If legislative intolerance alone suffices to jolt a rich country into the equilibrium with complete formalization, accompanying policies may be required in poor countries to first provide the conditions for existence of such equilibrium.

Thomas, James. 'Decent Work in the Informal Sector: Latin America.' *ILO Employment Sector, Geneva Working Paper 12 (2002).*

Abstract from ILO: The present paper highlights some of the characteristics of the region, including the high overall levels of urbanization and the impact of globalization which has led to retrenchment and normalization of employment in the formal sector. Latin America experienced a debt crisis in the 1980s, but the 1990s was generally a period of economic growth and recovery, decline in inflation and technological progress. However, it was also a period of ‘jobless growth’ which, combined with retrenchment and the search for ever more flexible forms of labor, led to the expansion of the informal sector in nearly every country and a reduction in social protection coverage. The author also observes a growth in the service sector and increasing employment of women in the informal sector. A decline in the real value of minimum wages and high levels of youth unemployment are characteristics of special concern.

Thomas, Jim “What is the Informal Economy, Anyway?” *SAIS Review–Volume 21, Number 1, Winter-Spring 2001, pp. 1–11.*

Abstract from article: This essay attempts to answer the following question: If we define IEA as the production and distribution of economic goods and services whose value is not included fully, if at all, in the National Income Accounts of a country, what characteristics do these activities have?

Tokman, Victor E. “Integrating the Informal Sector in the Modernization Process” SAIS Review–Volume 21, Number 1, Winter-Spring 2001, pp. 45–60.

Abstract from article: There is a general agreement on the need to pay attention to the informal sector, on account of its importance with respect to employment and poverty issues alike. There are also an increasing number of programs aimed at supporting similar informal activities in highly diverse national contexts. This consensus is backed through the adoption, at the highest level, of policy measures that are meeting with growing acceptance and, sometimes, the active support of social actors, in particular among entrepreneurial and trade union organizations. Such a stand is also based on evidence that policies to promote the informal sector are viable and profitable even during economic downswings, and have international financial support. Yet, to the extent that it fails to embrace a shared strategic vision, this is a limited consensus that hinders the effectiveness of policies implemented in this area. While often adequate on an individual basis, they are insufficient and produce limited effects by failing to respond to a more comprehensive approach. This paper will feature some contributions made through recent research conducted by the International Labor Organization (ILO) in the framework of a project financed by the United Nations Development Program (UNDP).

Unni, Jeemol. When Home-Based Workers Raise Their Voices: An Indian Perspective SAIS Review–Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: This paper seeks to draw attention to the size and contribution of the informal economy in South Asia, and India in particular, and to the emergence of new forms of “voice” among organized groups of home-based workers, which attempt to improve the terms of engagement in the domestic and global market economies. The formal and informal sectors or the degree of informality of a worker can be visualized as a continuum rather than a dichotomy. Organization and representation provide a “voice” to the workers that can help them increase their degree of formality, especially in terms of social security benefits. This new form of “voice” is represented by WIEGO and HomeNet, an international alliance of organizations of home-based workers, both self-employed and subcontract workers. Although founded only in 1994, HomeNet has already established regional networks in Southeast and South Asia.

Valodia, Imraan: “Economic Policy and Women’s Work in South Africa: Overlooking Atypical Work?” Paper presented at the Conference of the International Association for Feminist Economics (IAFFE), Bogazici University, Istanbul, Turkey, August 2000.

Abstract from article: The state’s policy response to flexibilization and informalization, and more specifically, the gender implications of this, remains an under-researched area of this literature. This paper attempts to make a contribution to redressing this gap by examining the nature of the regulatory environment and the incentive structure fashioned by the South African state, and drawing out how this relates to the issue of gender in informal and flexible work in South Africa. In order to make the issues tractable, we focus on trade and industrial policy and labor regulations. The paper outlines the growth and extent of atypical forms of employment in South Africa, and the gender dimensions of this. The paper then examines the character of the ANC government’s trade and industrial policy and labor market policies, and analyses the extent to which these policies take account of, and how they impact on, women’s position in the labor market and the growth of atypical forms of work.()The paper argues that, notwithstanding its progressive gender policies in other arenas, the trade and industrial policy of the South African state have not and do not take due cognizance of the structural position of women in the South Africa labor market. As a result, these policies fail to respond, appropriately, to the growth of informalization and flexibilization. The nature of labor market policy on the other hand displays a more nuanced appreciation for and an understanding of the insecure and exploitative nature of atypical forms of work that many women find themselves in.

Windebank, J. (Janice) Evaluating the Formalization of Work Thesis: Evidence from France SAIS Review - Volume 21, Number 1, Winter-Spring 2001.

Abstract from article: A widely held belief is that as economies become more “advanced,” there is a natural and inevitable shift of economic activity from the informal to the formal sphere (herein referred to as the “formalization of work” thesis). Hence, the existence of supposedly “traditional” informal activities is seen as a manifestation of “backwardness” that are assumed to disappear with economic “advancement” and “modernization.” The aim of this paper is to evaluate critically this formalization of work thesis. Taking France as a case study, we first outline the data available for France and, following this, the validity of the formalization of work thesis. Revealing that for some twenty-five years the French economy has been undergoing a process of informalization, we conclude by discussing the wider implications of this finding for understanding economic development.

Yoshiaki Azuma & Herschel I. Grossman, 2002. “A Theory of the Informal Sector,” NBER Working Papers 8823, National Bureau of Economic Research, Inc.

Abstract from article: In many countries, especially poor countries, a heavy burden of taxes, bribes, and bureaucratic hassles drives many producers into the informal sector. Is this situation explicable only as a consequence of either the ignorance or the ineptitude of the state authorities? On the contrary this paper shows that we can attribute the existence of a large informal sector to the fact that, because productive endowments contain important unobservable components, the state cannot adjust the amounts that it extracts from producers in the formal sector according to each producer's endowment. Given this fact we find that, if either the distribution of endowments is sufficiently inegalitarian or the production of private substitutes for public services is sufficiently easy, then the state would extract a large enough amount from producers in the formal sector that poorly endowed producers would choose to work in the informal sector. This result obtains both for a proprietary state, which maximizes its own net revenue, and for a hypothetical benevolent state, which would maximize the total net income of producers. But, we also find that a proprietary state would create an informal sector for a larger set of combinations of parameter values than would a hypothetical benevolent state.

Zoido-Lobaton, Pablo & Simon Johnson & Daniel Kaufmann, 1999. “Corruption, Public Finances, and the Unofficial Economy,” Policy Research Working Paper Series 2169, The World Bank.

Abstract from article: August 1999 In this sample of 49 Latin American, OECD, and transition economies, it is the ineffective and discretionary administration of tax and regulatory regimes—not higher tax rates alone—as well as corruption, that increases the size of the unofficial economy. And countries with a larger unofficial economy tend to grow more slowly. Johnson, Kaufmann, and Shleifer (1997) found that, in post-communist economies, the unofficial economy's share of GDP is determined by the extent of control rights held by bureaucrats and politicians. Exploring in detail the role of taxation and bribery, and using data from an expanded data set of 49 Latin American, OECD, and transition economies, Johnson, Kaufmann, and Zoido-Lobaton find that the unofficial economy accounts for a larger share of GDP where there is great bureaucratic inefficiency and discretion, and where firms experience a greater tax and regulatory burden, as well as more bribery and corruption. The unofficial economy is also much larger where there is less state revenue and where the rule of law is weak. They also find that countries with a larger unofficial economy tend to grow more slowly. Thus, this framework suggests an additional channel whereby corruption and ineffective regulatory and tax administration can result in lower growth: the unofficial economy. Wealthy OECD economies and some Eastern European economies find themselves in the “good equilibrium” of relatively low regulatory and tax burden (not necessarily low statutory tax rates), sizable revenue mobilization, good rule of law and control of corruption, and a small unofficial economy. Several countries in Latin America and the former Soviet Union exhibit characteristics consistent with a “bad equilibrium”: the discretionary application of heavy regulatory and tax burdens, the weak rule of law, heavy bribery, and an active unofficial economy. In this large country sample (unlike in the earlier framework for transition economies only), the authors find that

it is the ineffective and discretionary application of regulatory and tax regimes in many countries - not higher tax rates by itself - that increase the size of the unofficial economy. The tax burden reported by firms appears to be more a function of regulatory and bureaucratic inefficiency and discretion rather than of tax rates alone. This paper - a product of the Governance, Regulation, and Finance Group, World Bank Institute - is part of a larger effort in the institute to improve our understanding of institutional issues and their effects on development and of building a major new database on institutional indicators.

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