# I. INTRODUCTION

Millions of people live or have some rights or form of access to land that they have no legal title/rights over. Security of land rights are important for safety, security of the household, care of vulnerable sections of society such as children, elderly and women (Ubink et al, 2009, p.7). The absence of security results in a diminished socio-economic security of the individual and the household. Furthermore, people lack the incentive to invest in their lands or properties when there is no tenure security. This leads to lower agricultural productivity, lower conditions of housing and infrastructure and a restricted land market as the scope of transactions are fairly limited without formal documents (Wily, 2003, p.33). People cannot avail of credit against a collateral upon which they have no tenure security. Formalisation of land rights was argued as a possible solution to the issue of tenure insecurity.

Traditionally formalisation programmes have been led by governments to provide individual titling and registration in line with the classical theory of property rights (Assies, 2003, p.573). This is because of an assumption that individualised private property is the most secure form of property, which can improve access to credit through collateralisation and in turn facilitate investments in land (Loehr, 2012, p.837). These actions have been supported by Western governments-backed development aid institutions such as the IMF and the World Bank as well as some economists and scholars (Selod, 2012). While in some cases titling and registration have produced desired results, in several others formalisation programmes have either shown no significant relationship with increased tenure security, credit availability or productivity, or have in fact had a negative influence on them (Deininger, 2003, pp.469-84).

This research is focused on the relationship between formalisation programmes and its effect on tenure security. There is indeed an immense diversity in variables on either side of this relationship: that is, formalisation programmes vary based on particularities, modalities, locations, communities and colonial/national histories etc, and tenure security as the term raises questions like whose tenure security, tenure security of what kind of property, real and perceived aspects of 'security' etc. Hence it is imperative to define the scope of this article. First of all, this research is focused on the impact of formalisation programs as a developmental strategy; therefore it will refer to formalisation programs that have been undertaken as post-colonial measures in developing countries. Colonial histories are discussed to the extent that they are relevant to contextualise post-colonial actions. Furthermore, the aim of this research is not to question the core motivations behind formalisation policies (such as social justice and poverty-alleviation, or that of natural resource allocation and management) (Putzel, 2015). It

looks at formalisation programmes *ipso facto.* It hopes to better understand the role of formalisation within the context of land policies, such that it can identify the appropriate conditions for enhancing tenure security.

Given the broad scope of countries and socio-legal contexts, the first part lays down the broad debate around formalisation that has developed over the last decades. This includes the principle-based differences between market-driven neoliberal programmes premised on Peruvian economist Hernando de Soto's ideas of property versus critiques against his theory from economic, sociological and human rights spheres. In addition, this part includes a brief overview of the history of formalisation and the different approaches to it in different countries. The next part lays out a broad introduction to the concept of tenure security, its meaning and dimensions and describes the visions different governments have had while implementing formalisation schemes.

The third part analyses the relationship between formalisation and tenure security, arguing that there cannot be a presumption in favour of enhanced tenure security through formalisation. While it is possible to construct formalisation programmes that increase tenure security, it has not been the experience in many case studies that constitute a representative sample of the different approaches employed: may it be individual titling and registration or recognition of communal or usufruct peasant rights. Furthermore, from a sociological perspective formalisation has shown to have negative distribution effects in almost all instances, as it entails a decrease in security of a larger section of individuals at the cost of increasing security of a few title holders. The article ends with a brief account of the factors that lead to formalisation programmes to have positive implications on tenure security.

## II. THE FORMALISATION DEBATE: HISTORICAL OVERVIEW AND APPROACHES

Land tenure entails the terms and conditions upon which land is owned, possessed, used and transacted (Adams, 1999, p.135). Land tenure in several developing countries has been viewed as a social relation where rules and norms that govern land are derived from different sources of law, resulting in varied patterns of tenure (Durrand-Lasserve & Selod, 2007, p.104). Hence, from the viewpoint of the state land tenure can be legal, illegal or 'extra-legal' (Varley, 2002, p.455). In some countries the line between illegal and extra-legal is so thin that the terms are almost interchangeable. Extra-legal land tenure has meant on the one hand, land rights based on customary law or informal or traditional entitlements, and on the other as any

occupation of public or private land that is legally owned by someone else, or the creation and occupation of unauthorised developments on legally owned land (Ubink et al, 2009, p.12). However, most scholars have drawn a distinction, by identifying extra-legal land tenure to convey only the former meaning. Even though the term 'extra-legal' is not the same as 'illegal', some scholars have raised an objection with regard to use of the term as it connotes only one kind of legality: one recognized and legitimized by the state. There is after all no space for the term 'extra-legal' in a legally plural landscape.

Informal land tenures are rife in both urban and rural settings. A plurality of norms, laws and rules apply to both these settings, yet there is a marked difference in the types of markets and tenures in rural and urban areas. Land values, market pressures, access to neighbourhoods, tenancy arrangements, services and infrastructure etc vary drastically in each setting. In urban areas, private ownership is more widespread along with a more robust land administration machinery. Yet urban and peri-urban areas have several informal tenure regimes too: shanties and slums often operate as a parallel extra-legal market with their own norms, officers and practices. The issues concerning informality of urban and rural lands also differ owing to the larger basic differences. Owing to this sharp difference, this research is focused only on extra-legal land tenure in rural settings (including agricultural lands), where many formalisation programmes around the world have focused their energies on.

The question is usually about the government's administrative capacity in formalisation programmes in both urban and rural areas to deal with such a volume of titles, convert or regularise informal land tenures into legal ones, and maintain records for the continuum of land rights. Rural formalisation programmes have been implemented in many countries in Africa, Asia and South America. However, given the rich variety indigenous cultures in Africa coupled with push towards 'development' with the help of foreign aid, African case studies are quintessential for the highlighting the effects and issues of formalisation. Although most examples are based in Africa, there is nothing uniquely African about this research or the larger debate of formalisation.

Formalisation as a theme includes a wide spectrum of legislative and policy approaches that are based on a variety of factors (see below). While approaches range from individual titling and registration to recognition of indigenous or local land administration practices, most of them resonate with similar input factors and desired output factors.

**INPUT FACTORS:**

- Finance

- Administrative support: creation of new governmental departments, allocation of resources, training of land officers
- Capacity building of communities at local level
- Creation and maintenance of land records

**OUTPUT FACTORS:**
- Increase in tenure security for land holders and future transferees
- Access to credit through collateralisation of land
- Increased investments in land by holders or future transferees
- Increase in agricultural productivity
- Reduction in number of land conflicts with increased certainty of titles and ownership
- Development of a land market

One of the primal output factors that such programs aim to achieve is the enhancement of 'tenure security'. All other benefits that formalisation poses to deliver such as access to credit, increase in investment in land, lifting populations out of poverty etc are a result of or are very closely connected to 'tenure security'. In the next parts of this article, a brief historical account of the waves of formalisation is discussed along with the larger theoretical debate over formalisation. This stands as a background to the analysis that follows.

### i. BRIEF HISTORICAL ACCOUNT OF FORMALISATION (TWO WAVES)

In many developing countries, former colonial authorities pushed for a need for formalisation of land rights in an otherwise informal or extra-legal 'land'scape that prevailed prior to colonisation. Colonial authorities introduced a concept of private property through marking and cordoning off communal and familial land. What colonial regimes called 'customary land tenure' comprised an intricate arrangement of tenure agreements and entitlements, which although informally managed did not lack legal force or authority (Boone, 2003, p.42). Formalisation was undertaken as a means of claiming rights over land to control and access resources of the colonies and to discipline its populations. The imposition of classical property rights on an already well-developed system of informal land management in colonial areas created a wide array of problems (Boone, 2014, pp.71-83).

This colonial strategy also involved a policy of non-interference in 'tribal homelands' in African and Asian colonies. In several colonies colonial authorities decided not to privatise and demarcate lands under individual or family names as they preferred to rule indirectly over tribal groups via their own organisation structures and chiefs. Interference through revamping the land administration would destroy 'tribal solidarity' upon which colonial powers relied to

control rural populations, or that land markets would lead to loss of peasantry land rights, amongst whom a large section were tribal people, and this would lead to rebellions and revolts by floating dispossessed populations (Guha, 1995). Therefore, while some customary land arrangements were completely superimposed with a new order of property rights, tribal lands were often left alone under the existing tribal land arrangement.

Thus, much of post-colonial Africa, South America and Asia emerged out of colonisation with 'neo-customary' land tenure systems. As formalisation policies under colonial regimes had limited penetration and outreach, when colonisers left, a dual system emerged in which some lands were covered by formal title deeds while others were not (40% - 90% of all lands covered under these policies, depending on the country) (Technical Committee Report, 2015, p.15).

Post-independence however, many countries continued the trend of formalising land rights to fulfil certain national objectives and upon recommendations of various international bodies. In the post-colonial African context, formalisation was promoted as a precondition of foreign and international development fund investments, as economic actors would feel more secure against arbitrary state intervention (Manji, 2001, p.327). Despite several criticisms showing that formal land rights were only being formalised so as to divest its holders of the same, it continued unabated in several countries (Roth et al, 1994, p.169).

Formalisation has been lauded for creating greater security of land tenure, resolving disputes more efficiently and quickly and for stimulating investment in some contexts (Feder et al, 1988, p.310). Yet, this understanding has made 'informal' synonymous with 'insecure'. Formalisation policies in most jurisdictions have produced mixed results. For instance, formalisation entails huge operation costs which invariably lead to exclusions at many levels, especially so if the policy recognizes only private individual land holdings (Boone, 2018, p.3). Furthermore, no formalisation policy has been implemented nationwide, this further adds to the already extant postcolonial problem of some lands having formal titles while others having none. Very few land documentation systems are kept up to date which makes such data unreliable (unreliability being a usual criticism against informal land titles). All these issues call into question the economic and social benefits of formalisation (Feder and Nishio, 1998, p.52).

Owing to several criticisms against the 1970-80s' wave of formalisation, governments and observers abandoned the idea that socio-economic development could only be achieved through the formalisation and privatisation of land rights. A different approach where

*adaptation* of existing land rights through the strengthening of local institutions, systems of documentation etc was prioritised over *replacement* of one type rights with another (Bruce & Migot-Adholla, 1994). The emergence of this 'adaptation paradigm' vis-à-vis the 'replacement paradigm' placed greater emphasis on the integration of statutory law with pre-existing local customary law rather than replacement, and in doing so it further highlighted the problems created by previously ill-designed formalisation programmes. For instance, observers drew a distinction between 'recognition' or 'creation' of land rights and 'security' over land tenure. One may lead to the other, but not necessarily so (Platteau, 1996, p.2; Ensminger, 1997, p.90).

In less than a decade, critical assessments against formalisation programmes and the 'adaptation paradigm' as a suitable alternative approach receded into the background while laws and policies promoting systematic land registration and titling gained renewed momentum (Wily, 2003, p.70). This second wave of formalisation of land rights was marked by de Soto's seminal work, *Mystery of Capital* wherein he argued that land comprised dead capital for many societies, and formal land titling had the potential to reduce poverty, as land could only be securitized if it was first privatized (De Soto, 2000, p.6). Several nuances and criticisms of the past decade were soon forgotten in light of a quasi-hegemony of this neoliberal reasoning.

### ii. CRITICAL ASSESSMENT OF DE SOTO'S THEORY ON FORMALISATION

In the post-colonial context, a move towards formalisation resonated with colonial biases towards Western classical property rights theory coupled with a renewed zeal for market-based neoliberal approaches for potential profits to be made in land markets. While political and economic pressures threatened the sustainability of informal land holdings, governments pushed for formalisation of land rights to increase tenure security and create efficient land markets.

Since the 1960s, the World Bank promoted individualised land rights in several developing countries. Along with the World Bank, many international financial organisations required transparent and enforceable land rights as a precondition before giving loans or investing in these countries. One of the most influential economists upon whose advice the drive towards formalisation through individual land titling and registration was embarked upon was Hernando de Soto, a Peruvian academic and intellectual who founded the Institute for Liberty and Democracy in Lima. He assisted the Peruvian government on development studies for solving the poverty problem in urban and rural settings. He saw poverty as a threat to capitalism and believed that inclusions of millions of people in 'third world' countries in the

global economic process was essential for the continuation and growth of capitalism (De Soto, 2003, p.5).

In this respect, de Soto's solution lay in 'capital'. He argued that most people in developing countries do not necessarily lack capital but are unable to gain all the benefits and advantages from assets upon which they have no formal title. He blamed governments, bureaucratic actors and even lawyers for the slow and expensive process of formalisation that in turn forces people to stay outside the realm of formal and legal property rights. Through the formalisation of such 'dead assets' de Soto argued that the poor can gain access to capital and through financial institutions that only recognize formal titles (De Soto, 2003, pp.5-11, pp.52-59). Collateralisation can only be possible if land rights are secure; and in this sense, security meant *transferability*. Thus, for unlocking of this financial wealth, property rights must necessarily be formalised.

His ideas were realised and implemented in his home country Peru where over 3,00,000 units of peri-urban land around the capital Lima were titled and registered between 1990-95. Many saw this as a mark of success, as formalisation did show positive results such as the creation of wealth through capital gains, creation of an efficient land market and the establishment of an accessible system of land records that contained permanent records of land (Clift, 2003, p.8). De Soto's ideas were thus lauded by many and were implemented in many other countries that often vastly differed from the prevalent circumstances in Peru. According to him, to create a successful formalisation plan, one had to first identify which categories and types of assets were not formally recognized, there was also a need for strong political leadership that would start and continue the process of land registration with sustained vigour, a practical operational strategy that would systematically identify and record property rights, and capacity building for people to realise the full potential of formalised property rights (De Soto, 2003, p.55). Following these steps would ensure, according to de Soto a viable means of poverty alleviation across the globe.

Even though de Soto's propositions have been widely adopted, especially within the circles of financial organisations that stand to gain from any formalisation process, there are many who have pointed out several pitfalls in his ideas. Criticisms levelled against him have come from sociologists and economists alike. First, his suggestions about activating dead capital are relevant and appropriate only in certain locations that manifest factors conducive for such programmes. For instance, in areas where individual or family based informal rights exist, it may be easier to transform them into formal rights, however in many parts of Africa

and Asia, communal, tribal land and other forms of land arrangements that do not conveniently fit within the confines of classical individualised property rights are difficult to formalise through titling and registration programmes (Dyal-Chand, 2010, p.57).

Some scholars have criticised de Soto for normative inaccuracies such as a limited construction of 'legality' that does not leave room for plurality of norms and practices. The use of the term extra-legal for legal pluralism is a matter of discontent for many (Musembi, 2007, p.1457). He also believes that the most secure and inevitable end of all formalisation programmes is 'private property'. This is an erroneous assumption that may lead to a "tragedy of the anti-commons" (Heller, 1998, p.660). The change from communal land to individual titles has proven very problematic where the entire land tenure system and social structure of the community is transformed owing to the land policy. Tenure rights and use and access rights are often non-severable. Unravelling this web of interactions and arrangements has proven a costly and wasteful affair in some countries where even after formalisation people have moved back to their informal arrangements for more flexibility, cost-effectiveness and dynamism. Further, the presumption of homogeneity of populations and societies is erroneous, and thus successes in Peru cannot be neatly replicated in the African or South-Asian context (Musembi, 2007, p.1464). De Soto's theory is especially problematic with respect to indigenous or tribal land, where titling and registration can lead to a complete breakdown of social structures and loss of cultural identities (Xaxa, 2008, p.84; Halperin, 2010, p.14).

With respect to the effects of formalisation, studies show that there is no link between formalisation of land titles and increase in access to credit or tenure security. Formalisation also does not lead to increased agricultural yield or improvement, oftentimes owing to increased fragmentation. This is also the case with forest and other ecosystem conservation paradigms wherein dolling out land titles has no guaranteed correlation with better conservation techniques; as is the case with India passing the Forest Rights Act in 2006 (Kalpavriksh & Vasundhara, 2016, pp.26-31). Individual ownership therefore does not necessarily lead to rise in socio-economic and living standards and it thus cannot guarantee the alleviation of populations out of poverty (Peñalver, 2010, pp.57-60). There is also evidence to support that formalisation leads to an escalation in land disputes.

The most prominent critique against de Soto is that the desired benefits that he claims formalisation leads to can be brought about through other means that do not alienate populations by super-imposing one value and legal system on another. The real causes behind lack of access to credit, tenure insecurity, low or inefficient agricultural practices are embedded

in other systemic causes. Lack of credit supply is attributable to the reluctance financial institutions show to small-scale landholders owing to the high administrative costs of lending. Risks and costs of disbursing loans and collection of repayments is higher for smaller holdings compared to large-scale agricultural enterprises. When a cost-benefit analysis is done, formalisation most often leads to greater negative impacts than positive ones. Although there is a large variety of factors at play in different regions, there is indeed some basic lessons to learn from the general theme and scheme of formalisation itself.

# III. TENURE SECURITY AND FORMALISATION PROGRAMMES: OVERVIEW

Tenure security is linked with a complex web of output factors such as investments in land, access to credit, reduction in land disputes, reduction in poverty and so on. It is thus the most important factor, from which other desired outcomes can flow. Several programmes, depending on their design include either a single step of registration and titling (such as many South American and Asian countries) while others include 2 steps: first, demarcation and drawing of boundaries and second, formal legal documentation of land (as in most African countries especially with respect to community parcels of land). Tenure security thus varies not just across countries, but also within the same countries, depending on the programmes initiated. Governments have swung the policy pendulum from a state-controlled programmes that aim to individualize, title and register land, to a belated interest in community land holdings and customary tenure systems (Ubink, 2007, p.219).

## i. TENURE SECURITY: MEANING AND DIMENSIONS

Different definitions of the term 'tenure security' have emerged from legislative/governmental and academic/research factions, which in some way of another relate to 'certainty' of land rights (Ubink et al, 2009, p.11). A study conducted by the Food and Agricultural Organisation on rural land administration defines tenure security as "the certainty that a person's rights to land will be recognised by others and protected in cases of specific challenges" (FAO, 2005, p.18). However some other definitions have moved beyond a such a basic idea to also address different perspectives of security: such as, the extent of rights, a distinction between perceived and actual security, individuals and groups whose tenure security is the subject of formalisation programs and so on. Bruce and Migot-Adholla defined the term as "a perceived right by the possessor of a land parcel to manage and use the parcel, dispose of its produce and engage in transactions, including temporary and permanent transfers without

hinderances of interferences from any person or corporate entity, on a continuous basis" (Bruce and Migot-Adholla, 1994, p.19). Thus, along with a sense of certainty of holding, tenure security also includes rights of enjoying benefits of land: out of labour, capital or other investment therein, or through transfer thereof, as well as the length of time in which these rights may exercised. The interplay of all these elements: certainty, rights and duration, has shown that when all these elements are ascertainable and enforceable, it amounts to tenure security.

By providing a written document of title and acknowledgment of registration, formalisation acts as a proxy for tenure security, such that the holder feels a sense of assurance against the risk for confiscation and encroachment (Dessalegn, 2006, pp.10-13). Thus, in many ways the construct of 'formalisation' itself is created for securing land rights and no other reason (Orellano, 2015, p.660). Most definitions of 'tenure security' focus on the physical elements such as certainty, rights and duration, however the term 'security' connotes a perceived quality alongside the physical attributes. Hence, there may be a possibility where real tenure may or may not coincide with perceived tenure, that is, if a holder does not *feel* assured and secure despite having a written title deed then tenure security of land in this scenario may be said to be low (Ubink et al, 2009, p.15). Such perceived security (as a mental element) can be understood through several ways: one, decisions land holders make for planting certain crops, two, nature of settlements and use of land (other than agricultural land) as to whether such cropping and other forms of investments in land reflect a long-term or short-term trend, and three, how land holders react to certain conflicts and disputes over land, that is, whether they employ traditional means of dispute settlement or enforce their titles through the formal law of the land (Chimhowu, 2019, p.897).

Many studies have often included this mental element of perceived security in their analyses. This is because physical elements are not universally agreed upon as the only elements that make up tenure security, therefore in some studies, perceptions of tenure security are also considered (Bruce & Migot-Adholla, 1994, p.4). Another reason for including perceptions of tenure security in studies is the (methodological) difficulty of measuring real security. Hence, factors such as risk, threat and a perceived sense of security are also included within the understanding of tenure security.

It is pertinent to explore perceptions within the context of tenure security due to its linkage with using land as collateral to secure capital. Here, research shows that formalisation of land rights may or may not lead to a greater perceived sense of security among holders as

borrowers, but it does for moneylenders who look for formal legal rights in assets before accepting them as collateral (Ubink et al, 2009, p.15). Thus, for original holders, formalisation does not necessarily improve access to credit. High transaction costs of formal lending and a deterrence against collateralising land because of a fear of losing land in case of default are the main reasons behind this (Cotula, 2006, p.20). In some cases, where formalisation was promoted as a socially empowering measure of redistribution of land, even lenders were found to be hesitant and unwilling to lend capital to land holders anticipating that the government would favour the borrowers in case of default (Durrand-Lasserve & Selod, 2007, p.25).

As stated above, perceptions among land holders are important in terms of investments they make into the land to increase its value (Musembi, 2007, p.1466). Formalisation in most cases has not drastically affected this factor (Platteau, 1996, p.11). Lack of improvements or investments in land is largely a result of poverty and lack of resources rather than lack of legal rights. If farming, housing rights if are informally recognised through local customary institutions, it usually constitutes sufficient incentive for investing in improvements of the land. There is also no evidence to show that formal rights have increased the quantum of investments in land as there is no real change in the perceived level of security (Deininger et al, 2011, p.318). Perceived and real tenure security closely relate to *de jure* and *de facto* tenure security discussed later in this article.

### ii. Approaches and Schools of Thought in Formalisation Programmes

Countries have employed several strategies towards formalisation that have produced a wide range of results. From the classic propriety-based approach where land titling and registration is undertaken for individual landholders, to a rights-based approach that aims at addressing access, use and sharing rights, many countries have experimented with formalisation in many ways (Deininger et al, 2011).

All approaches should be read within their respective historical and geographical contexts. They can broadly be categorised as top-down approaches as against bottom-up evolution of property rights in Europe (Chanock, 1985, p.39). Property rights were introduced by the (colonial) state to the provinces and local areas. Even the concept of ‘public land’ is a legal demarcation of land created by colonialists. In some countries, several types of public lands were created, and in some cases access and use rights were recognised (Mellac & Castellanet, 2015, pp.83-91). This created a colonial legacy where a duality of private ownership by elites co-existed with an informal extra-legal arrangement of land rights among rural community members (McAuslan, 2013, p.102; Moore, 1986).

A duality of norms is a common feature in several legally plural countries, and do not pose a problem per se if institutions and dispute settlement authorities already recognize the hierarchy of norms. However, the relationship between these norms is often ambiguous, thereby creating a further ambiguity regarding the relationship between the institutions of the state and local authorities (Wily, 2014, p.207).

Apart from the top-down/bottom-up broad distinction, there are several approaches in terms of the process and procedures that countries have put into place. For instance, in Latin America most countries have been conducive to large-scale privatisation of land (concentration of land among a few) alongside also pushing for agrarian reforms for greater tenure security for rural communities. For instance, in Bolivia, successive governments have suggested that indigenous community control and state recognised autonomy over natural resources may lead to some community and local leaders to act as brokers of land thereby leasing or contracting out these lands without much constraint, therefore local customary authorities are not empowered to a very large extent (Anthias, 2016, p.136). Some countries in South-East Asia have taken a more laissez-faire approach towards land rights formalisation, contrasted by socialist regimes such as Vietnam that have collectivised land instead of going down the conventional route of individualising (Moro & Yeros, 2005, pp.213-216).

Approaches and varied formalisation programmes can be classified based on the motivations and visions that various governments have had while framing such programmes (Boone, 2014, p.5).

- <u>VISIONS BEHIND FORMALISATION:</u>

These visions are relevant for further understanding of the physical modalities of formalisation programmes.

- *Titling and Registration of Individual Private Property:*

This approach promoted by the World Bank is based on the theory that individualised land titles will create an efficient market for land (Deininger, 2003, p.247). This approach is based on the commodification of land that leads to the inflow of new capital through mortgaging. This can further lead to financial 'modernisation' and creation of new profitable uses of land that will require labour. This capitalistic process also entails free and easy transferability of land to allow for land to be held by the most productive user. The government through its power of eminent domain retains the power to acquire land through legal and

transparent processes, which further opens the door for international investors who wish to run large-scale agrobusinesses, invest in infrastructure and power or wish to develop real estate in the region.

Over 2 dozen African countries have adopted land reforms to the tune of individual registration and titling. Countries such as Kenya, Zambia, Uganda, Malawi and Côte d'Ivoir have been explicit in creating a market for land through its commodification. Zambia in 1995, Uganda in 1998, Côte d'Ivoire in 1998 and 2015, Malawi in 2002, and Kenya in 2012 (Ali et al, 2014, p.14). Governments in these countries envision that the small landholders and will be able to pull themselves out of poverty through the 'activation' of their dead assets such as their informal land rights. This will create optimal economies of scale through the gradual transfer of land to capital-rich parties who can produce the highest value of land. Countries such as Tanzania, Uganda and Côte d'Ivoir have created an incremental system within this vision, where legal rights are claimed and secured at the initial stage of formalisation at a relatively low cost compared to titling and registration at a later stage which would be extremely expensive. In some of these countries 'customary rights' are recognized; however these are not afforded a high level of special protection – they instead are seen as stepping stones to eventual land privatisation. The 1998 land laws of Uganda and Côte d'Ivoir and changes underway in Tanzania in 2018 have been heavily debated as it has led communal land to become a part of the private land market; although some also argue that the laws if interpreted correctly may prevent the marketisation of these lands (Notess et al. 2020). Customary rights stand at the heart of much debate around formalisation in these countries.

- *Formalisation of Access and Use Rights for Empowering Land Peasantry*

Programmes aimed at formalising land rights of agricultural peasants were largely driven in the '90s as a reaction against market-driven formalisation strategies. Small scale farmers, pastoralists and peasantry who traditionally enjoyed certain use and access rights required protection from dispossession in the wake of privatisation. This includes a threat from dispossession by the government, large-scale agrobusinesses (land grabbers) and even local elites. Advocates of this vision wish to protect access and use rights of vulnerable groups who would lose their rights when land titling and registration programmes are undertaken. Thus, this vision has been implemented largely alongside the market-led approach to protect those who lose out in the process. Some scholars have understood these rights as having the potential of full commodification, and as such see this vision as no different from fully fledged

marketisation of land (Kydd et al, 2002, p.37). However most advocates of this vision aim to constrain the market process in favour of familial and communal holdings and their agricultural practices. These rights restrict the ability of the holder to mortgage or transfer rights easily without the consent of other users. In some cases, spousal or family consent clauses have been incorporated (in Tanzania and Uganda respectively: Tanzanian Certificates of Customary Right of Occupancy (CCROs) under the Village Land Act, 1999 and Uganda's Land (Amendment) Act of 2004), while some sales may require approval by local land board (Kenyan Rift Valley Settlement Scheme 1970), while in some cases, common land is inalienable altogether (Ethiopian Constitution 1995).

Programmes that aim to protect usufruct rights involve local level administration through governmental or customary institutions that aim at involving local communities in the governance of land. Based on recommendations of the Shivji Commission the Tanzanian Village Land Act adopted the user-rights principle (Shivji, 1999). The Ethiopian Constitution also guarantees usufruct rights for smallholders (Lavers, 2012, p.105). Some countries have also created new political institutions at the local level in the process of formalisation of land rights. These institutions promote democracy and local self-governance rather than creating a market for land (Manji, 2001, p.156).

The only major criticism against recognition and formalisation of usufruct rights is the problem of its long-term sustenance. Unless holders of usufruct rights organise themselves into collectives (or through institutions mentioned above) they run the risk of losing these rights in the wake of changes such as growth of extended families, urbanisation in rural and semi-urban areas, change in socio-economic circumstances of parties. Such shifts affect access and use rights as they are less secure than formal title rights. The lack of adequate security can be attributed to the wide variety of access and use rights that necessitate a certain extent of policy open-endedness (Boone, 2018, p.6). Owing to the extent of flexibility that the usufruct rights approach entails, it is often considered a starting point of formalisation as it only ratifies the status quo before more strict and secure rights are formalised. At other times it may be implemented as an intervention to already pursuant formalisation processes.

- *Formalisation and Recognition of Indigenous and other Community Land Rights for Ethno-Justice*

Some groups such as indigenous communities have a special status in international law and resultantly governments are obligated to protect their identity and community customs and

traditions. Such culturally distinct communities are often defined by their relationship with and dependence on natural resources: mainly land and other related resources (UNPFII, 2007). A long association and reliance upon resources not only results in a vast accumulation of traditional knowledge, but also promotes group solidarity over the centuries (Brundtland, 1987, pp.114-116), which justifies their claims to collective ownership and indigenous self-governance of land and natural resources (Metcalf, 2003-2004, pp.101). Most governments in Africa have responded by affirming ethnic rights to land and other privileges by legal recognition and official registration of customary rights. Post-colonial reform agendas have been based on decentralisation of natural resource management. Such programmes have most often created land prerogatives for some communities which not only recognize land rights but also rights of self-administration and governance according to traditional institutions and organisational structures. Legal innovations have been employed to assign these rights (Notess et al, 2020).

Africa is rife with many examples in this context where tribal communities have been provided legally innovative rights to land. These rights relate to larger rights of cultural self-determination and rights against eviction and dispossession of lands. Cultural rights here are also deeply integrated with the lands that these groups occupy (Mamdani, 2012, pp.3-10). Preservation of land entitlements is thus considered a form of preservation of tribal culture itself. Yet within the context of formalisation, a major setback is the possibility of local chiefs and 'tribal' group leaders who can be corrupted into opening the doors for a fully-fledged marketisation process. Land laws in Niger (1993), Côte d'Ivoire (1998) and Uganda (1998) vest authority in neo-customary institutions that comprise governmental and tribal representation to guard against this form of corruption (Kjær, 2017, p.426).

Formalisation of rights of indigenous groups and other communities run into several other issues of formalisation such as determination of membership criteria, problems with decision making within the community, power struggles and corruption among members and conflict resolution with respect to other groups that follow different procedures of dispute settlement. Even when processes are completely community driven, the role of the state as the body assigning legal authority or legitimacy by recognition of lands ownership or membership of a group remains dominant (Anthias, 2016, p.18; Matteo, 2017, pp.17-185). Several countries have formalised a special category of land for indigenous communities. For instance: the quest of Bolivian and Kenyan indigenous people for autonomy of land administration. This can be seen in the interesting case of India, where on the one hand constitutional provisions protected

certain indigenous community lands since 1947, while on the other, several forest dwelling communities (although not categorised officially as 'indigenous' often occupy indigenous lands) were only recognized as legal land holders through the passing of the Forest Rights Act 2006. Even though these communities lived in forestlands for centuries, their claims were *legitimized* after the state declared their occupancy as legal. This looming presence of the state thus remains a constant hindrance for cultural autonomy and traditional informality, where only one form of legality is recognized while others are ignored (Delville & Maolic, 2019). Furthermore, formalisation and recognition of communal lands may lead to 'balkanisation' of landscapes where the fragmentation of national identities is risked at the expense of cultural self-preservation.

- POLICY APPROACHES

Based on the visions described above, approaches include several physical manifestations and techniques towards formalisation. These include formalisation of individual or collective land rights, issuing collective ownership or occupancy/possession documents, formalisation of land transactions only, vesting local authorities with certain powers for registration of titles and transactions. The modalities range from being simple (often too simple) and standardised laws and procedures, to extremely cumbersome and complex bureaucratic procedures. In both cases there is room for abuse by devesting land holders of their rights and titles (Djomo, 2018, p.31).

Some of the major policy approaches adopted by countries comprise a range of possible legal statuses including classic land titles. Madagascar is an interesting example here, where formalisation is carried out through a bundle of rights over land and natural resources. Formalisation also is designed using existing institutions rather than forming new ones. A process of registering all the parcels in a given area (territory, village, commune, etc.) is undertaken, which helps reduce unit costs and facilitates more organised procedures for identifying and validating rights with multi-stakeholder surveys and a publication phase (Séogo & Zahonogo, 2019, p.832).

Some countries have employed professional and technological aid to measure and register land. These sophisticated processes (mapping materials, documenting agreements, information systems, etc.) have been employed in international organisation backed formalisations in Kenya, Tanzania, Uganda and Senegal. For instance, the PACR and River Valley projects in Senegal is an exemplary sophisticated mapping and titling exercise, yet

several issues arose from this: such as excessively high costs, and the creation and working of new or hybrid institutions meant to register land rights (Maconachie & Hilson, 2011). Countries have thus adopted varied approaches in terms of the physical modalities in formalisation programmes depending on the different visions that governments have had from time to time.

# IV. EFFECT OF FORMALISATION ON TENURE SECURITY

While there has been some success in increasing tenure security through titling and registration, this has been largely the case in peri-urban areas or in areas that do not necessarily have a strong communal or traditional system of land administration prior to the introduction of these programmes (Feder et al, 1988; Li et al, 1993, p.63). In countries such as Thailand and China, formalisation has increased tenure security and consequently land values, and agricultural investment. In countries such as Nicaragua, Ecuador and Venezuela formalisation has, in addition to the above, had a positive impact on the socio-economic conditions of land holders and agrarian communities. Almost everywhere, including Africa, people who receive titles and documents for their holdings are happy to receive them, yet the real test lies in security holds against appropriation, encroachment and land grab, and whether they have the impact that was intended.

In most other countries, not exclusively within Africa but largely so, researches over the last 5 decades have shown that there is no significant relationship between tenure regimes whether formal or informal and tenure security (Ubink, 2009, p.8). There is also no marked relationship between tenure regimes and credit availability, agricultural productivity, socio-economic 'upliftment' of people (Bruce & Migot-Adholla, 1994; Atwood, 1990, p.659). Formalisation programmes especially to the tune of individual land titling and registration have proven costly, time-consuming, hard to access for poor people and difficult to keep up-to-date. Thus, very little land has been brought under the fold of formal titles even in places that have actively implemented formalisation programmes.

While the relationship between formalisation and tenure security remains uncertain in some cases, there is evidence to show that formalisation programmes have increased uncertainty and conflicts over land rights, and therefore, if anything, have had a negative impact on tenure security. In most cases, conflicts have been a result of brewing up of latent conflicts, wherein parties realise that formalisation will result in the final adjudication of land rights. Customary entitlements when are formalised can result in decreased security, which is especially true in cases of customary usufruct rights. In most cases these rights are not rendered any protection except when formalisation programmes are explicitly designed to incorporate them.

## i. WHOSE TENURE SECURITY? WINNERS AND LOSERS OF FORMALISATION

Tenure security is understood as a combination of certainty, rights and duration; however, this is true within the paradigm of classical theory of property rights. This means that

a rise in all 3 factors brings about higher tenure security, thereby implying that private property has the highest tenure security (Lund, 2000, p.16). The *end* of tenure security is therefore the certainty and right to exclude others for a perpetual duration. Hence, the higher the tenure security for the excluding party has, the opposite is true for the one excluded (Lund, 2000, p.43). This leads one to ask the obvious question when discussing the benefits and effects of formalisation programmes: whose tenure security is being enhanced, especially when security for one party is premised on the lack thereof of another.

In several individual titling programmes, increased security for one correlates with decreased security of another. When communal or family lands are attributed or registered under individual titles, common access by all members of the group or family, including vulnerable members such as the elderly and women is often neglected Ubink et al, 2009, p.14). Formalisation of land rights has interacted deeply with cultural histories of groups by cutting through a "web of overlapping interests" creating more exclusive forms of land rights (Meinzen-Dick & Mwangi, 2009, p.36).

African case studies have shown that programmes that require registration of family land have a low incidence of registration by women as 'head of the family' or even joint registration by both the man and woman in a household. Formalisation programmes in Kenya, Ghana, Benin, Burkina Faso and Ethiopia have had negative distributive effects owing to the male dominance in social as well as governmental registry institutions (Goldstien et al, 2018, pp.57-59; Karanja, 1991, p.126; Butegwa, 1991, p.95; Tibatemwa, 1995, p.68). Insecurity that is unique to women occurs across the board in most formalisation processes irrespective of modalities and vision. This happens because formalisation legislations and policies have a systemic narrowing process of 'entitlement' coupled with social norms of who can be a head of family and who cannot. A narrow understanding of rights and property results in exclusion and particular insecurity of women.

Vast majority of land rights and usufruct rights of women are informal (even after the launch of formalisation programmes) however seeking a formal title in the presence of a male family member can lead to conflicts within the family or group. In terms of claiming and enforcing rights through a social process women are also at a relative disadvantage as they cannot mobilise as much support for their claims compared to men (Musembi, 2007, p.1470). Thus on the one hand, in terms of enforcing customary rights that are not clearly legalised they face a challenge, while on the other they stand excluded as, only men (often father or grandfather figures) end up registering themselves as owners of land.

### ii. EQUATING TENURE SECURITY WITH TRANSFER RIGHTS:

Ownership in top-down formalisation programmes often results in a consolidation of all rights and interests in a single holder. The right to exclude others from the enjoyment of property culminates in the right to alienate or transfer land. Scholars have pointed out the confusion over interchangeability of 'tenure security' and 'transferability' (Deininger et al, 2011, p.323). One of the most influential arguments put forth by de Soto was the ability of land to create wealth by serving as a collateral for credit. Transferability is a prerequisite for the collateralisation of land. International actors who are interested in investing in land in several parts of the global South look for 'tenure security' as an indication of transferability (Dyal-Chand, 2010, p.59). After all, tenure security incentivises land holders to make improvements in the land, so that they can gain profit from its value. This also includes the right to transfer to another holder for a higher value. Owing to these linkages, tenure security is understood as the power to alienate land altogether. Thus, just as the holding of private property entails higher tenure security for one party, while little and no security for others who are excluded through the formalisation process, the same can be said for transfer of land which further distances people from the lands. Attempts at increasing tenure security have therefore led to an increase in transferability of land. Titling and registration processes when fail to recognise rights such as gathering of minor forest produce, collection of water from a stream or pond, accessing grazing lands for cattle and so on, by simplistically conceiving only 'ownership rights', they in effect diminish several use and access rights (Putzel, 2015, pp.463-65).

This interchangeability or the one-leads-to-the-other presumption with tenure security and transferability are erroneous as this is usually not the case on the ground. Empirical research has shown that in places where there are strong community-based land tenure regimes, people enjoy tenure security without wishing to sell their land or having the right to do so (or having strictly limited rights of transfer) (Duhau, 2009, p.387). In such parts, a restriction on selling land is imposed by the government or the community itself to save people from distress sales. In such scenarios, formalisation to create fully privatised title may lead to loss of land rather than higher tenure security. Individualised rights to transfer property may lead to the loss of communal cohesion over communal lands (Duhau, 2009). Furthermore, a predisposition in favour of private property rights fails to take into account the varied preferences of households informal settings towards a certain type of tenure over and above freehold tenure in the nature of private ownership. As Ubink describes different household preferences of the kind of tenure

they value, as: “the lack of formal title is the price that the poor pay to gain access to plots which they could otherwise not afford” (Ubink et al, 2009, p.14).

Increased tenure security to the extent of transferring land freely leads to fragmentation of lands, and this has several consequences on the management of other related resources which are denied to ‘outside’ users. This changes the social authority that one title holder has over the group and may lead to a complete overhaul of customary institutions and organisational structures due to renewed power dynamics (Swallow et al, 2005, p. 49). Although formalisation processes do not always involve privatisation, where the rights of a group become exercisable by one individual, however, almost any process involves some form of consolidation of rights in a single holder, even if they are not in the nature of classical private rights (Boone, 2018, p.5). Such consolidation is a result of state-led formalisation programmes, where state administrative bodies are not comfortable with a multiple rights and organisational structures. In order to simplify this wide array of arrangements, consolidation of rights is necessary for recording such rights (Meinzen-Dick & Mwangi, 2009, p.38). This also disempowers customary and local institutions that were previously carried out these functions (Meinzen-Dick & Mwangi, 2009).

The quest for greater tenure security usually starts with the assumption that private titling is the most secure form of tenure and ends with an aim to bolster greater land transfer to promote economic growth for private parties. Such land regulations in the nature of formalisation and individualisation act as a means to an end of ‘capitalisation’ of land (Wahi, 2016, p.43). Governments in developing countries implement such policies in the political, social, and environmental contexts such that resources are extracted, produced, and traded (Putzel, 2015, p.459). From the point of view of foreign investors, formalisation of land rights means a higher efficiency of land markets and higher tenure security for ease of doing business (Loehr, 2012, p.840).

At a conceptual level, every kind of formalisation process interacts with histories of ownership, access rights, market configurations, and practices attached to resources and the lands in which they are located (Brueckner & Selod, 2009, p.28). As development policies materialise as top-down approaches, land rights at the local level get restructured based on socio-cultural norms that are valued and cherished at the international and national levels (as against those at the local level) (Durrand-Lasserve & Selod, 2007, p.103). Thus, several risks emerge through the formalisation process; these include, leakage, barriers to small or poor actors, elite capture, and negative effects on women or marginalized groups (Boamah, 2012,

p.11). Hence, it is imperative to re-evaluate the benefits of formalisation of land rights as a necessary requisite for development and efficient natural resource allocation. It may be too late to reverse the execution of certain policies, however, the incorporation of adaptive approaches and accountable monitoring within the formalisation process is essential.

### iii. DE JURE AND DE FACTO SECURITY

As stated above, tenure security entails both real and perceived elements. These closely relate to *de jure* and *de facto* tenure security. Perceptions as to tenure security are formed not only by the legal position of their holding but also the practical situation in which people find themselves. Registration with local authorities, payment and acknowledgement of property taxes, possibility of evictions, pressure to sell-off valuable land to powerful parties etc are all factors that either legally or practically affect one's perception of tenure security (Ubink et al, 2009, p.15). Practically, if one's de facto tenure security is high, then formalisation of land right to increase de jure security may not be effective or even required. Formalisation will hardly have any effect on tenure security in such scenarios as one already enjoys all the benefits that come with tenure security without having formal rights.

What is interesting in many case studies is that de jure tenure security through documentation and registration of land titles does not necessarily lead to de facto tenure security (Ubink et al, 2009, p.15). Many studies have shown that people widely perceive that their lands can still be arbitrarily taken away by the government or other elites, and as such they find themselves in no better position than before. Some believe that documentation will help them to get better compensation in cases of acquisition, however in almost every study people do not believe that such compensation will be adequate. Law reform in any country gains momentum because of some underlying reasons that have less to do with increasing public welfare through enhancing tenure security, but more to do with rising land values, demographic pressure, "land-hunger" from outsiders, and rise in land conflicts, thus arguing that formalisation programmes naturally anticipate tenure insecurity rather than security (Berry, 2002, pp.638-68). Tenure insecurity is also rooted in the fact that land holders cannot redress their claims in case of a conflict or arbitrary eviction irrespective of whether they have legal documentation for it or not. Many researches show that if dispute resolution mechanisms are well developed at the community/local level then formalisation may lead to a further loss of tenure security as people are often hesitant or unable to approach formal courts. A majority

of population in developing countries see courts among the least trusted institutions, and judges, magistrates and judicial officers as the most corrupt (Glaeser, 2016, pp.6-9).

Outside the context of Africa, the recent forest land formalisation legislation in India provides useful insights into the differences between *de jure* and *de facto* tenure security. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also known as the Forest Rights Act (FRA) was passed for restoring forest land and usufruct rights to local communities "to correct historical injustice" committed against FDCs (Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA), Act 2 of 2007, Preamble). This Act creates an administrative system for registering 'claims' that tribal or other forest dwelling communities may furnish.

Aside from some substantive legal issues with the Act, the FRA's biggest weakness as is the case with most formalisation programmes, is its feeble implementation. Several studies show that in the 10 years of its existence it has managed to achieve little success in terms of increasing tenure security at the grassroot level (Bandi, 2015, p.21). Out of a total 4.4 million claims made nationally, only 1.7 million were converted to formal titles. Inter-state variations and problems of implementation in different contexts (Kalpavriksh & Vasundhara, 2016). Even if one assumes a that some claims are dubious, a jarring difference of 2.7 million claims cannot be baseless. The gap between winners and losers is thus clear. Owing to the colonial hangover in the forest bureaucracy, there have several instances where even after getting titles, people were disallowed from entering their lands or realising substantive rights (Kalpavriksh & Vasundhara, 2016, p.50). This points at the difference between *de jure* and *de facto security.* When land authorities are accustomed to treating some communities as encroachers, then that treatment often continues in spite of a formal title. The problem of implementation has been assigned to the lack of political will within the state's forest ministries and bureaucracy (Sigmany, 2015, p.52). Demarcation of forest land by drawing boundaries like never carried out before results in a decreased tenure security for those who were given or denied titles alike (Kumar & Kerr, 2015, p.885). There have been similar experiences in other parts of the world where formalisation led to winners and losers among those who enjoyed informal rights (Bose, 2017, p.8).

# V. FACTORS THAT ENHANCE TENURE SECURITY IN A FORMALISATION PROGRAM

The lack of a clear relationship between formalisation of land rights and tenure security prompts the need for separate actions aimed at increasing tenure security alone. It may be possible to make progress in securing land tenure before charting a path toward land reform and formalisation. This can be done by identifying and anticipating provisions that lead to abuses of power and land dispossession. For example, all opportunities for the state to grant itself rights and powers that do not need to be negotiated at the local level have to be removed (Sjaastad & Cousins, 2008, p.8). Alongside legal formalisation, social recognition of rights also must be incorporated in the registration procedures Payne et al, 2007, p.143). Such social recognition can also be carried out for usufruct rights, and not just title rights.

The next major area that holds the potential for increasing tenure security is the regulation of land markets. Formalisation programmes in Africa have been shown to make land grabbing more conducive (Lanz et al, 2018). It is necessary to limit sizes or introduce substantial taxing for large agricultural holdings (Technical Report, 2015, p.54). Private transactions should include an institutional process whereby parties can access legal expertise and gain a full understanding of the rights and responsibilities of each party. This also includes a strong arbitration and dispute settlement process that is socially recognized as legitimate and fair (Fitzpatrick, 2005, p.449).

All the steps above can be undertaken independent of a formalisation programme altogether. Yet the real question is how to make basic improvements that would yield greater tenure security within the paradigm of formalisation. Some of the most obvious measures include: the elimination of legal and procedural inconsistencies in the formalisation process, holding real and meaningful stake-holder debates and public hearings, accessibility and affordability of registration process and a slow process of implementation. Representation among stakeholders is a major concern in places where groups have their own organisational system vis-à-vis state officials/elected personnel that stand as representatives of such groups.

Most policies claim to be ‘participatory’ as they involve consultations, workshops and capacity building programmes (Bandiera, 2007, p.487). Yet research has shown that this covers a wide range of realities. Participatory programmes often do not involve the most representative sample of individuals, information is usually given at short notice, not much useful information is given in advance for people to understand and raise objection to prior to the programme. Thus, real participation is highly limited (Holden et al, 2011, p.37). The substantive content of

participation also ought to be multi-staged. The process of stakeholder debates should involve consultation (providing basic information to participants and preliminarily addressing their concerns), deliberation (identifying matters of consensus and those of conflict), and finally validation (by the state authorities). This process can take time, often several years, to allow.

At the heart of all successful formalisation programmes is its ability to blend into the socio-cultural fabric of the community. The effectiveness of formalisation programmes can be gauged by the way they handle customary regimes and rights; this is important for not only attributing social legitimacy but also to ensure a smooth transition into the formalised system. A complete abolition runs the risk of creating uncertainty, low registration and high costs for training personnel and maintaining the programme (Platteau, 2000, pp.11-31). The other end of the spectrum where governments simply legalise customary tenures and rights may also prove confusing, one because acceptability and understanding of traditional norms is complicated outside the community/ local setting and legalising customary tenures would lead to a perpetuation of power and authority in the hands of some members of the community vis-à-vis others. There is evidence to show that unelected traditional authorities do not take decisions that are always in the best interests of the group; like any other political authority they are subject to corruption (Kjær, 2017, p.427).

It is hence important to create a middle path which is both certain yet flexible. While a broad framework can be introduced at the national level, evolving a range of different legal statuses and options at the local level can go a long way in securing rights (Burnod et al, 2011, p.137). The key here is interaction and community engagement that makes the process more democratic. Measures at the local level can include simple mechanisms for formalising land transactions, mediating disputes for ascertaining titles and creating accurate records. Formalisation in this sense ought to provide a choice of options for land holders rather than choosing one option over another.

Some scholars have made a distinction between community-based norms and customary norms, and the need to prefer the former over the latter while framing policies (Wily, 2003, p.79). The reason for this is that people are placed with the right and opportunity to absorb as much that is customary into community-based regimes as they (the majority) find useful. This is similar to Demsetz's 'lived customary law' as against a romanticised version of customary law (Demsetz, 1967, p.347). The single most crucial feature of customary norms is sustained community reference, in the sense of community consensus providing the decision-making environment (Ubink, 2007, p.215).

# VI. CONCLUSION

In this article, the relationship between formalization of land rights and tenure security has been explored. It has been seen that while most formalisation programmes that have been initiated as 'development' strategies aim to increase tenure security, this is not what actually unfolds on the ground. Owing to many complications, formalisation does not have a positive effect on security, rather in some cases, it has decreased tenure security for land holders. Aside from land holders, land rights that traditionally and informally operate in a given setting involve a wide range of social relations and interactions among people who enjoy access and benefits of land without being 'owners'. These usufruct rights are often lost in the process of formalisation. Furthermore, while tenure security may increase for a title holder, many other sections of society especially women lose their traditional rights over land in the process of formalization, thereby raising the question of tenure security for *whom*?

De jure and de facto tenure security has also been differentiated to show that formalisation through a title deed does not always lead to greater security in a practical sense. Examples from African countries show that people feel more secure about their properties irrespective of formalisation. Social recognition is often more crucial than legal title deeds, or at least along side formalisation. Thus, formalisation programmes often fail when they try to replace one system with another. Even within the adaptation paradigm, when laws and institutions are replaced it not only leads to faulty implementation but also is very cost-intensive for governments.

It is thus suggested that formalisation although has desirable output factors, the way it is constructed and implemented will decide whether it is successful or not. Social recognition, and other means of adaptation already extant institutions into a new mode of formalisation is important. The transition ought to be slow and gradual that does not lead to confusion or redundancy. In spite of these safeguards, formalisation as a process itself leads to marketisation and commodification of land and hence in the long run will lead to dispossession through the market process, as has been seen through land grabbing in Ethiopia. Hence, increased tenure security through formalisation is after all a contradiction that does not yield benefits for traditional land holding communities as much as for those who wish to buy and access these assets.

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