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Legal empowerment of the poor through property rights reform

Tensions and trade-offs of land registration and titling in sub-Saharan Africa

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Abstract: Land registration and titling in Africa has been seen as a means of legal empowerment of the poor that can protect smallholders' and pastoralists' rights of access to land and other land-based resources. Land registration is also on the ethnojustice agenda in parts of Africa and beyond. Yet legal empowerment via registration and titling is also advocated by those who push for the market-enhancing and aggregate growth-promoting commodification of property rights, whereby market forces will transfer land out of the hands of smallholders and into the hands of 'those who can make most efficient or productive use of it'. This paper contrasts these different visions of legal empowerment, showing that each one, rather than offering a straight and clear path to pro-poor outcomes, entails powerful tensions and trade-offs. Registration and titling often have powerful redistributive implications. This helps to explain why debates over land law reform in general, and over registration and titling in particular, have been divisive in some African countries. The analysis highlights some of the broader political, institutional, and economic forces that shape the design and outcomes of land law reforms that may be undertaken (in part) to promote legal empowerment of the poor.

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1 Introduction

Strange bedfellows rally behind calls to promote registration and titling of the farmland and pasture that sustains 60 per cent, perhaps more, of Sub-Saharan Africa's population. Global actors in the vanguard of the neoliberal revolution rally behind land registration and titling: for them, titling transforms existing land rights into individualized, tradable assets that can circulate within a market economy, thus promoting economic growth by transferring land 'into the hands of those who can use it most productively'. Paradoxically, land rights formalization is seen by other land rights advocates as a way of *protecting* ordinary farmers and pastoralists from the threat of predatory states and markets: registration is seen as a means of legal empowerment that enables the poor to defend their property rights. Human rights advocates promote registration as means to legally empower marginalized ethnic groups and indigenous peoples at risk of territorial encroachment and dispossession: it is on the ethnojustice agenda in parts of Latin America, Africa, and beyond. In policy advocacy, these positions may merge and blur, as they do in the work of Hernando de Soto (2000), who single-mindedly argues that titles empower the poor, and in some 'rule-of-law' approaches that seek politically neutral legal solutions to development challenges. This blurring happens because calls for legal empowerment by formalizing property rights almost always also call for the formalization of *existing* rights, and assume that these rights are thereby strengthened and enhanced.

This paper argues that, in fact, titling almost always involves a transformation and redistribution of rights. Almost inevitably, this produces shifts in the nature and locus of control over property, creating winners and losers, new risks and tensions, and trade-offs. Despite apparent overlaps in some policy discourse, the different visions of legal empowerment through registration and titling that are sketched out above—commodifying land through registration and titling (à la de Soto), shoring up farmers' and pastoralists' rights, and institutionalizing ethnic entitlements—are very different visions of how existing rights to and control of land should be transformed, and for whose benefit. Drawing out these differences in the African context reveals tensions and trade-offs associated with legal empowerment via land registration and titling.

Section 2 places the debates over reform of neocustomary land tenure in Africa in their historical context. Section 3 identifies three positions in current advocacy of registration and titling. It begins with the default position of the World Bank, which has been the most consistent advocate of registration and titling in the post-colonial period (although debates go back much further). For the Bank and other advocates, market-*promoting* titling and privatization, land commodification, and enhanced transferability are the goal. Private property in land is the economic and institutional 'gold standard'. The second position regarding registration and titling, quite different in its long-run implications from the first, is put forward by advocates of legal empowerment of the poor. For these actors, recognition and titling of existing user-rights is the key to protecting today's smallholders and pastoralists from future dispossession. This vision is market-*constraining*: the goal is to stabilize existing rural communities and protect Africa's peasantries. The third position is advanced in ethnojustice movements and promoted by indigenous rights activists. It recommends that African governments uphold historically grounded land rights derived from communal membership (that is, communal, customary, or neocustomary land rights). Not only is it market-constraining, but it also institutionalizes a hierarchy of different types of land claims: it may elevate ancestral land claims over the claims of those who are currently occupying and using the land. In academic and policy advocacy, the first two positions often blur and overlap, as do the last two positions. Yet the different visions of titling and registration involve very different choices about the political structure of society, the nature of citizenship, the desirability of state recognition of group rights, and the scope of state authority.

Section 4 draws out these tensions and trade-offs. It argues that in many, perhaps most, situations, any move toward registration and titling can imply *some sort* of dispossession or exclusion, heightening of societal tension, or exacerbation of inequality. I offer a glimpse of a few African cases in which these tensions and trade-offs have fuelled outright conflict over land law reform. These cases underscore the extent to which variations in context, both national and subnational, shape the practical meaning of land law reform (including its uneven distributional effects across space, different user groups, communities and individuals, and wealthier and poorer land users). They also point to the inherently political nature both of land law reform and of struggles around the implementation and enforcement of changes in land law. The conclusion summarizes and looks beyond the land titling and registration agenda.

2 Neocustomary tenure regimes as targets for reform

This paper focuses on the registration and titling of non-registered rural land, often referred to as land held under customary or neocustomary tenure. Land that is not registered and titled comprises about 90 per cent of the total in Sub-Saharan Africa, varying across sub-regions of the continent and by country.[1] These lands support about 60 per cent of all households, as a cross-country average, and are the foundation of a range of agricultural, pastoral, and other livelihoods. They comprise the homelands, ancestral places, community lands and territories, and sites of residence of the vast majority of the population in most countries. In rural Africa, land and livestock are citizens' main assets. Moves to alter the legal, regulatory, and political status of land rights are thus matters of immediate and vital importance to the lives and livelihoods of some of the world's poorest populations.

It is difficult to sort out the various strands of argument in property rights debates in Africa without placing these ideas in a larger historical and institutional context. Top-down initiatives to alter the 'institutional context of agriculture' for broader political and economic ends have a long history on the African continent. Colonial regimes claimed rights over all land under their dominion at the dawn of the colonial era, and they used controls over land access to organize and discipline populations subjected to their overrule. What the Europeans called 'customary land tenure' was an array of local tenure arrangements that evolved under colonial rule and were formally recognized by the colonial states.[2]

Where land was suitable for agriculture, the Europeans' vision in most places was to create African peasantries organized into officially recognized 'tribes' that would be governed via indirect rule by government-recognized chiefs and elders. Most African subjects were thus constrained to live in officially delimited 'tribal' territorial units, dependent upon chiefs for land-rights enforcement and adjudication, and tied to family-based units of agricultural production that produced for local needs and, in many cases, for wider markets. In zones of smallholder export-crop production such as those in the the coastal economies of West Africa, African peasantries joined the ranks of the world's leading producers of coffee, cocoa, cotton, palm oil, and groundnuts. Even in zones of large-scale land expropriation by white settlers, the 'African reserves' set up as the final destination for populations expelled from their family and/or ancestral lands were imagined as new tribal homelands for partially self-sufficient household producers, who would live in communities firmly

[1] Deininger (2003: xxiii). The history of large-scale land expropriation by white settlers in Eastern and Southern Africa—especially in South Africa, Namibia, Zimbabwe, Mozambique, and Kenya—means that the highest rates of land titling are in these sub-regions. Rates of land titling are very low across most of the rest of the continent.

[2] Boone (2014); Chanock (1998); Mamdani (1996); Moore (1986); Vail (1989).

under the local control of chiefs. African land rights so recognized by government were institutionalized in what the Europeans called 'customary' tenure.

In the so-called 'tribal homelands' under indirect rule, colonial authorities decided not to demarcate parcels, register them in family or individual names, or issue titles. This is because colonial rulers (a) preferred to leave discretionary powers in these domains in the hands of their chosen local agents, chiefs recognized under indirect rule, (b) believed that the rise of land markets would destroy 'tribal solidarity' mechanisms, upon which they relied to control rural populations, and (c) feared that the rise of land markets would result in dispossession of the peasantry and the rise of floating populations—dispossessed and/or proletarianized Africans in the countryside and the cities—who would be a threat to colonial order. The 'neo' in the term 'neocustomary' tenure emphasizes the important role of the colonial state and colonial indirect rule in restructuring and codifying land rights in much of Africa.[3]

Strong tensions and trade-offs arose around the feasibility and desirability of concerted state action to entrench the forms of neocustomary land tenure that were established across much of the continent under colonial indirect rule. Political, environmental, and economic pressures threatened the stability and sustainability of the forms of smallholder tenure that the colonial authorities relied upon as a political basis for ruling the countryside, and that many farming households relied upon for access to land, livelihoods, community, and a place to live.

Some of the structural economic weaknesses of the neocustomary land tenure regimes were clear in many areas from the 1940s, if not before. In response, land registration and titling initiatives were proposed after WWII as ways to modernize land tenure regimes and address a range of perceived problems including low productivity of land and labour; low rates of investment, including low rates of utilization of purchased inputs like fertilizer and improved seeds; and the small size of production units and, thus, limited economies of scale. Political strains arising from neocustomary tenure were also evident in many places. Resistance to chiefs, objections to state-enforced tribalization, and demand for statutory and legally transactable land rights emerged in at least some parts of almost all the African colonies. Yet colonial regimes eschewed the titling agenda, arguably for both political and economic reasons that resembled those that had influenced colonial regimes before the war.[4]

Most of the independent governments made very similar choices in the 1960s, 1970s, and 1980s, either explicitly in land law or implicitly, by upholding and reproducing the existing land regimes (Boone 2014). African governments depended heavily on the political support of African smallholder farmers, who claimed land entitlements in their ethnic homelands and who backed political leaders that confirmed these land rights. Where governments settled new farming populations on lands under direct state administration (i.e. outside regions of indirect rule), such as in the settlement schemes for African smallholders in Kenya's Rift Valley, it was politically

[3] Mamdani (1996, 2012).

[4] The World Bank was very much part of this discussion from 1960 onward. In an analysis of land policy in Tanzania, Askew, Owens, and Stein (2010: 2) write that 'While a major Bank policy stance on land reform was not fully established until 1975, earlier individual country economic reports noted complications arising from existing land institutions. For instance, in Tanzania (then Tanganyika), the 1961 report on economic development identified existing land codes as a limiting factor on long-term economic development, yet it also acknowledged that the transition from traditional communal to formal individual title could result in a large class of landless peasants. The report notes that 80 per cent of land is under 'native law and custom' that is not static or uniform'. See also Amanor (1999); Williams (1981).

convenient for governments not to title land. This kept land-users dependent on the politicians who guaranteed their access to farmlands to which the land-users had no neocustomary claims.

In the 1960s and 1970s, agricultural productivity was increasing along with output in most countries. Bottom-up and endogenous processes of land tenure change, in particular toward greater exclusivity in land rights and the rise of vernacular land markets, were apace in zones where agriculture and pastoralism were more highly commercialized.[5] Gains in productivity and output were highly uneven, but urgency around the idea of systematic land registration and titling was hard to muster.[6] Strong political and economic forces militated against such moves: registration and titling could threaten smallholders' security of access to lands held under neocustomary tenure, as well as farmers' ties to the communities, political leaders, and territorial jurisdictions that connected them to the newly independent African states. Call for gradualism and reliance on endogenous, bottom-up processes and tenure evolution prevailed, especially given 'the great political sensitivity of the issue' (Platteau 1996: 29).

By the 1980s, however, structural constraints on agricultural development began to seem more acute. Many countries were net food importers. During the 'lost decades' of the debt crisis and the SAP-aggravated economic decline that ensued, agriculture and pastoralism received little, if any, sustained policy attention, outside investment, or government assistance. By the mid-1990s, smallholder agriculture had been starved of state support for well over a decade and a half. Landlessness and food insecurity were on the rise in many regions.[7]

New initiatives to promote systematic land registration and titling gained momentum in the 1990s. The thrust and counter-thrust of these initiatives were defined by the all-pervasive pressure of neoliberal reform.[8] Long-standing arguments about the need to reform land tenure regimes were fuelled by a new zeal for neoliberal orthodoxies, and by renewed interest in revitalizing agriculture. Many African countries undertook to rewrite land law as part of 'second-generation' structural adjustment (see Boone 2007: table 1; Alden Wily 2001, 2003). The World Bank and other international lenders/donors were major players. Their priority was the titling and registration of smallholdings to 'bring these assets into the market'.[9] By the 2000s, with arrival on the scene of new investors with voracious appetites for land and subsoil resources, many national governments seemed to grow visibly impatient with smallholder agriculture and to throw their weight behind registration and titling as a way to accelerate the commodification of land, the privatization of land

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[5] See Chimhowu and Woodhouse (2006); Ensminger (1997: 171–73); Joireman (2011); Mathieu (1997).

[6] Bruce and Migot-Adholla (1994: 262); Platteau (1996: 30).

[7] Jayne (2014).

[8] See Alden Wily (2003) for a discussion of land law reform in Africa in the 1990s. As Kay (2016: 511, citing Blomley 2004: 614) explains, property is a central concept in neoliberal governance. 'Neoliberalism is, in part, a language of property—a return to central axioms of 18th century liberalism which locates private property as the foundation for individual self-interest and optimal social good.' Privatization, enclosure, boundary drawing, new regulatory roll-outs, and the roll-back of pre-existing rules are 'central tenets of neoliberal policy-making […] [This involves] framing and reframing of what counts as property.'

[9] The World Bank's lending portfolio for land-related projects expanded dramatically in the 1990s. 'While in FY 1990-94 only 3 stand-alone land projects were approved, the number increased to 19 ($0.7B commitment) and 25 ($1B commitment) in the 1995-99 and 2000-04 periods, respectively. In 2004, land and land-related projects […] alone amount[ed] to $1B and, following the lead of the Bank, other donors are now addressing land issues much more vigorously in their programs as well' (World Bank 2005). By 2009 there were 34 World Bank Land Administration projects in Sub-Saharan Africa (Askew, Owen, and Stein 2010: 4, from the WB Project Database 2010). See also Boone (2007); Moyo and Yeros (2007); Alden Wily (2003).

by domestic elites and investors, and the rise of agribusiness in regions of their countries that were deemed propitious for large-scale agriculture.[10]

Counter-forces also mobilized around land in the 1990s and 2000s (Manji 2001). Civil society in Africa, both national and international, was reinvigorated by the political liberalizations of the decade. Political liberalization opened the door to public airings of long-simmering conflicts and historical grievances over land, some of which were played out in the electoral arena and/or gained strength from rule-of-law and initiatives to promote the legal empowerment of the poor. The end of apartheid in South Africa and the land tenure reforms that followed in its wake were two of the most visible manifestations of this process. Growing anxieties about the spectre of smallholder dispossession, about ecological disaster born of climate change and wanton raw-materials extraction, and about the marginalization and persecution of ethnic minorities, especially indigenous peoples (in Africa, especially pastoralists), also contributed to political pressure for and interest in legal reform—in not only the 'modernization' but also the 'democratization' of land rights. Large-scale land-related civil conflict in many parts of the continent, from Sierra Leone and Liberia to DRC, Rwanda, and Kenya, showed that agrarian social tensions, including acute inequalities and smallholders' vulnerability to arbitrary dispossession, were risks to social and political order. Sara Berry (2002: 638–39) explained that '[e]vidence of growing land pressure and increasing [land] conflict has prompted some observers to argue that land reform, once considered a low priority on a continent with plenty of land to go around, is now a matter of urgency.' The rising spectre of dispossession of smallholders and pastoralists in the face of rising conflict, rising land values, demographic pressure, ongoing commodification, growing land-hunger of 'outsiders' and investors of all stripes, and myriad other pressures on ordinary land-users created momentum for land law reform.[11]

Advocates of legal empowerment of the poor in Africa through land rights registration have thus joined debates and policy processes around land tenure reform that have a long and complex history.[12] In the 1990s and 2000s, political and policy discussions included highly disparate sets of actors with very different interests pushing different visions of legal reform around land.[13] In Section 3, I sketch out three poles in the debate: the agenda centred on the promotion of private property rights, the effort to institutionalize user-rights, and the campaign to reinforce community rights. Section 4 identifies the tensions and trade-offs inherent each of these agendas.

3 Three visions of 'legal empowerment' via registration and titling

3.1 Land registration and titling for individualization and commodification

The World Bank has been a consistent advocate of land registration and titling.[14] The theory is that individualization of control and disposition of land (as in rights to freehold title) will create private property that can be bought, sold, and mortgaged according to market logics and incentives. The mortgaging of land creates a flow of new capital in the form of credit that can finance the modernization of production techniques, new inputs, and intensification. Once land is

[10] See Stein and Cunningham (2015).

[11] See Kydd, Dorward, and Morrison (2004) on stabilizing smallholder agriculture.

[12] See also Peters (2004).

[13] Platteau (1996) and McAuslan (1998) highlighted these tensions in the 1990s.

[14] See Deininger and Binswanger (1999); World Bank (1989: 90, 100–104).

a full commodity, labour will soon follow, and capitalist production units and production processes will emerge. Land passes into the hands of the most productive users, small units are consolidated into larger holdings, and economies of scale are achieved. Individualization, titling, the transferability of land rights, and the state's ability to exercise eminent domain through transparent legal processes also open the door to African and international investors who are seeking land for real estate development, large-scale commercial agricultural investments (in horticulture or biofuels, for example), new infrastructure, and tourism projects.

Jeffrey Herbst wrote in 2000 that 'individual freehold is the avenue that many African countries are attempting to pursue'. Since the mid-2000s, this does appear to be the case. Kent Elbow et al. of the University of Wisconsin-Madison Land Tenure Center wrote in 1996 that 'the majority of African countries are increasingly favoring individualized landholdings as economies based on the production of commodities become more developed, as populations and land pressures increase, and as international donors [like the World Bank] support widespread legal reform.'[15] During the 1990s and 2000s, 'nearly two dozen African countries proposed de jure land [law] reform that extended [the possibility of] access to formal, freehold land tenure to millions of poor households'.[16] Land law reform in Zambia in 1995, Uganda in 1998, Côte d'Ivoire in 1998 and 2015, Malawi in 2002, and Kenya in 2012 was explicit in aiming to clear the way for the full registration, titling, and commoditization of farmland.

The most internationally prominent advocate of land titling, Hernando de Soto (2000), linked this market-promoting vision to smallholder (or peasant) farming via arguments about legal empowerment of the poor.[17] De Soto argued that customary or neocustomary tenure keeps the poor 'locked out' of the market economy. Lack of land titles deprives the poor of opportunities to mortgage their land (or houses), and thus of the opportunity to turn their 'dead assets' into cash and capital. Lack of access to title also prevents the poor from selling their assets, and thus prevents them from capturing the rising value that comes from activated land markets and property holders' ability to buy and sell legally. In this vision, registration and titling puts African smallholders on an equal footing with capitalist businessmen, who can take full advantage of markets to buy, sell, borrow, and invest. 'Dead assets' that are locked up in small, unproductive parcels can be freed to gravitate to higher-return activities elsewhere. The local culmination of this process is the gradual transfer of land rights via the market to capital-rich actors, and the gradual concentration of land ownership in the hands of those who can invest to achieve optimal economies of scale in production and commercialization.

Incremental scenarios by which legal rights are secured initially at low cost, with the option of more formal (expensive) titling in the future, are now built into land law and policy in many African countries, including Tanzania, Uganda, and Côte d'Ivoire. Whether the 'customary rights' certification programmes under way in Tanzania, and provided for in the 1998 land laws in Uganda and Côte d'Ivoire, fall into the market-promoting category is a matter of great political debate. Some see these programmes as a stepping stone to land privatization, while others stress their potential to protect family smallholdings.

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[15] Elbow (1996), as cited in Herbst (2000: 182).

[16] Ali, Collin, and Deininger (2014: 1).

[17] See Cotula and Mathieu (2008) on the 'formalization agenda'.

3.2 Securing the use-rights of farmers to stabilize the peasantry

In the African context, user-rights securization strategies gained tremendous momentum in the 1990s, in part in a reaction against the vision of market-led dispossession of small-scale African farmers and pastoralists. In agricultural areas, the goal of user-rights securization programmes is to shore up and protect the land access and use rights of the small farmers now cultivating the land (including and often especially women). To extend a contrast made by Colin Leys (1996: 137), whereas the privatization/commodification strategy envisions a process whereby African farming comes to look more and more like large-scale commercial farming in the United States, those advocating legal recognition of small farmers' use rights envision African countrysides organized along the smallholder farming models of Taiwan and Japan. Advocates argue that user-rights securization would protect the poor from arbitrary dispossession by the government, powerful local elites (including politicians and neo-traditional authorities), and other land-grabbers by reducing costly and disruptive land conflicts with neighbours and extended family members and strengthening the position of women in such conflicts, and by enhancing incentives for investment and agricultural intensification on family farms. Holding clear, formal, and state-enforced (legally enforced) land rights could also help to promote rental and leasing markets, which would benefit ordinary land holders (and those seeking access to land) and could to help make some kinds of investment and new technology adoption less risky for ordinary farming families.

Some advocates of user-rights securization see it as a stepping stone to titling and full commodification, as in the market-promoting vision mentioned above. The user-rights vision I am describing here aims at a different goal: it aims to *constrain*, rather than promote, markets in land in order to strengthen family agriculture.[18] This is to be achieved by constraining the mortgageability and transferability of land rights. Some securization proposals do so by adding spousal consent clauses, but this is a low bar.[19] Others subject sales to the consent of both spouse and children.[20] Some subject sales of registered land to approval by a local land board, as was the case in Kenya from the 1970s with lands in the Rift Valley settlement schemes (a mechanism that was used to ward off foreclosures and evictions under Moi in the 1980s). Ethiopia makes the registered lands of smallholders completely non-alienable.[21] As Lavers explains (2012: 6 [ms page]),

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[18] As I reported in an earlier version of this research (Boone 2007), in 2003, Senegal's Conseil National de Concertation et de Coopération des Ruraux found that many smallholders in the groundnut basin supported registration and titling if this could be done in a way that strictly *limited* the transferability of land rights (CNCR 2003: 3, 6, 8–9).

[19] Tanzania's Certificates of Customary Right of Occupancy (CCROs) are an example. As Stein and Cunningham (2015: 2) write, Tanzania's 1999 Village Land Act fully recognized established user-rights and placed them on an equal footing with statutory or granted rights. Under this law, elected Village Assemblies were empowered to manage village lands. In the period after 2004, Tanzania initiated two large-scale pilot programmes (one directly sponsored by the World Bank, the other designed and run in cooperation with De Soto's Institute of Liberty and Democracy in Lima) to delimit the boundaries of village lands, and then to register, survey, and title individual holdings therein via the issuance of CCROs. Since 2011, has been possible to obtain CCROs for group holdings. Askew, Owens, and Stein (2010: 16, 18) reported that by mid-2010, the World Bank programme had delivered 6,800 titles to village offices, and that 17,500 CCROs had been delivered under the ILD-affiliated initiative. Villagers are now encouraged to register spouses' names on the land certificates.

[20] In Uganda, after a long debate, Museveni assented to the Land (Amendment) Act of 2004, which reinforced the (weak) land-transaction sanction powers of family members (wives and children) that existed in the market-promoting 1998 Land Act (Gay 2016).

[21] See Deininger, Ali, and Alemu (2011). They define the non-alienability feature of Ethiopia's programme as a departure from traditional approaches to land titling (2011: 312) and report that Ethiopia's land registration programme was one of the largest in the world: between 2005 and 2010, Ethiopia registered more than 20 million parcels of rural land to some 6 million households (2011: 315). This followed a similar programme implemented in the Tigray region in 1998.

the government has sought to guarantee usufruct rights for smallholders in the politically critical highlands (the political base of the ruling EPRDF), 'arguing that land privatisation would lead to distress sales and displacement of the peasantry.'

In contrast to formalization policies designed to displace village agriculture and promote agribusiness, registration scenarios that aim at the securization of smallholder user-rights often envision local-level land administration and governance institutions that could empower rural communities and their members to govern their own assets locally. Most optimistically, land tenure reform could provide a basis for building new secular political institutions at local level, investing these with some autonomy vis-à-vis the centre, and perhaps making them democratic. This was the ideal that guided the Shivji Commission recommendations that helped to shape the debate over the 1999 Village Land Act in Tanzania. Tanzania's law was founded upon the user-rights principle, and aimed at the explicit institutionalization and secularization of local land administration (Mallya 1999; Palmer 1999). It did not aim to be market-creating and was envisioned as creating conditions for local self-governance and democracy.

Proponents of the user-rights securization position often do not address the question of how land tenure regimes centred on user-rights will be sustained over time in the face of changes such as the growth of extended families, ongoing socioeconomic differentiation in rural communities, and/or continued adverse shifts in national and international regulatory contexts for smallholder agriculture. As I have argued elsewhere (Boone 2007), this is at least partly due to the recognition that the full political implications of user-rights strategies would vary a great deal across space. Such open-endedness in the policy prescription (and in the specification of the end goal) is one reason why the user-rights approach is often considered to be a flexible and practical way forward. Proponents of user-rights securization see this kind of intervention as simply ratifying a status quo land distribution (although this may not be the case, as argued below).

3.3 Strengthening communal rights for ethnojustice and territorial autonomy

Those who advocate the formalization in law of the ancestral, communal, or customary rights of 'culturally distinct' ethnic or indigenous communities are generally seeking legal protection for a status quo in which a 'natural community' manages its own resources in ways that promote group solidarity and some degree of economic autonomy.[22] The contemporary demand is for state recognition of ethnic claims to the collective ownership of ancestral territories and some if not all of the natural resources therein, as well as rights to indigenous self-governance. In the African context, such demands can closely parallel political calls for legally affirming ethnic land rights that were institutionalized under colonial indirect rule (or extending such rights to groups not yet recognized by the state).[23]

International advocates of the legal recognition and official registration of communities' neocustomary rights cut their teeth on Latin American and Central American cases in the 1980s. They gained considerable policy traction in Africa in the 1990s (Hodgson 2011), sometimes dovetailing with reform agendas centred on decentralization and community-based national resource management. In Senegal and Burkina Faso, the decentralization programmes of the 1990s

[22] See Anthias (2016) on Bolivian indigenous communities' quest for territorial recognition as the basis of a range of rights, including land rights, and for political autonomy that exceeds autonomy over land. See also Brinks (2016); Engle (2010).

[23] As, for example, in the case of the Ogiek in Kenya; see Di Matteo (forthcoming).

reinforced the land prerogatives of established communities and of long-standing local elites.[24] New land laws in Niger (1993) and Côte d'Ivoire (1998) bolstered communal rights that *circumscribed* market forces, recognized the claims to property of those claiming to be autochthonous, and offered renewed state recognition to neocustomary authorities. These legal innovations were designed to affirm the kinds of land entitlements that were institutionalized under colonial indirect rule. In debates over Uganda's 1998 land law, Baganda nationalists pressed for authority over land in Buganda to be vested in land boards. Their aim was to defend Bagandan land rights against government encroachment and current land users ('squatters'), who were to be protected by the 1998 law's (and the 2007 amendment's) proposed recognition of tenants' rights (user-rights) (Gay 2014, 2016; Green 2006; Joireman 2007; Kjaer 2016: 11).

Yet another set of demands for the legal recognition of 'communal rights, defined as cultural, ethnic, or ancestral rights', emerged in Africa in the 1990s and early 2000s: that of pastoralists. Representatives of some pastoralist peoples, such as the Maasai in Tanzania, joined the international indigenous rights movement to press their demands for the legal recognition of their territorial claims, to put an end to land expropriations and expulsions, and to assert their rights to cultural self-determination. The economic goal was livelihood security through the preservation of the viability of transhumant livestock management systems (Hodgson 2011: 70 inter alia).

Legal efforts to institutionalize community rights and the group management of natural resources almost always entail attempts to formalize membership criteria, group decision-making and accountability mechanisms, and territorial jurisdictions (or boundaries). This almost inevitably entails efforts to constrain the prerogatives of indigenous, cultural, or ethnic leaders whose authority rests in part on extra-legal sources of legitimacy (hereditary or religious legitimacy, for example), even though this may cut against the traditional character of the authority that advocates of cultural autonomy seek to preserve.[25] In Africa there is the danger of deepening the balkanization of national territory into separate ethnic homelands.

4 Tensions and trade-offs

Rather than offering a straight and clear path to pro-poor outcomes and to the mitigation of ethnic inequalities, the assignment and formalization of property rights in land can generate powerful tensions and trade-offs. As the discussion below shows, this is because (a) the different land rights registration agendas entail different visions of the relations between individuals, communities, and the state; and (b) each land registration and titling path entails some sort of redefinition and redistribution of rights, creating winners and losers (albeit different ones).

[24] Kaag (2001); Ouedraogo (2001: 1); Ribot (2004). The World Bank considered a pilot land titling programme for Senegal that would commence in FY 2005 (World Bank 2003: 23). The plan was eventually dropped and titling proposals did not resurface in Senegal for over a decade.

[25] Kenya's Community Land Law of 2016 opened the door to high degrees of secularization of the 'registered groups' that can extract land from domains formerly managed by county councils as 'Trust Lands'. These lands can now be registered and titled as 'community lands' held corporately by a group of named (listed) members. Community lands are to be managed by elected individuals, who act as the group's agents and are supposed to abide by decision-making rules (formal meetings, quorum, voting) stipulated by law. Here the issue of 'group identity' seems to be resolved in allowing a definition of 'group' that is separated from culture or cultural distinctiveness.

4.1 Land individualization and privatization: tensions and trade-offs

Privatization's implications for the (re)distribution of land rights can be understood in terms of market effects and broader political, legal, and property effects. In terms of market effects, it is true that privatization would create winners. Winners will be those able to expand their holdings, defend them in court, borrow, and invest successfully in their landholdings (or sell their land and invest the proceeds in an alternative, sustainable livelihood). Yet markets expose the poor and politically vulnerable to high risks of loss of property, through the market itself, through legal manoeuvre, or perhaps through the government's increased latitude to exercise the power of eminent domain and lawful eviction.

How property loss happens via market effects is easy to see. One important mechanism is distress sales, due to economic recession, bad harvest, illness or death in the family, or calamity such as mortgage default. This is, after all, a historical path to land consolidation in the US, much of Europe, and elsewhere, in the absence of explicit market restraints (such as homestead or other laws against foreclosure and eviction, or restrictions on land transactions and transferability) designed to safeguard the homes and property of the poor. Markets offer many chances for opportunistic behaviour, and tend to favour strong market actors: that is, those with the capital, know-how, and information to protect and expand their property rights, and to buffer themselves against risk.

Privatization's implications for ordinary farming communities cannot be understood in terms of the exposure of individually held parcels to land market risks only. Great asymmetries of political and legal power also work to favour the strong. The 'subversion of justice by the strong' may well be the norm rather than the exception.[26]

Individualization may cause dispossession by what Ha-Joon Chang (2007: 22–23) calls the 'coverage problem'—i.e. it does not recognize all existing forms of property or rights-holders. Neocustomary land tenure systems that prevail in most of Sub-Saharan Africa are built around land rights that are multiple and overlapping.[27] Systematic, market-promoting registration and titling spells the demise of the commons, or land held by collectivities and governed by them (community grazing land, watershed, forests, sacred sites, water-access areas, etc.). Not only do groups such as members of extended families claim shared rights to particular lands, but also the rights themselves are complex bundles (of rights to farm, graze animals, hunt, gather wood, access water points, transverse, etc.) that give different classes of person different kinds of access at different times. The *individualization* of control over a parcel of land, by definition, dispossesses the holders of multiple and overlapping rights to that land.[28] Where communal rights and land management systems (e.g. community management of the commons and unallocated farmland) prevailed in earlier periods, losers would include community members, members of extended families, and future generations. Erosion of these familial and community-level entitlements may impose the highest costs on precisely those least likely to hold onto their property through market

[26] Glaeser et al. (2016: 22) report that 'in the WJP general survey [of 2015], respondents in developing countries see courts as among the least trusted institutions, and judges and magistrates among the most corrupt officials.' On corruption in the legal profession itself, see Askew, Maganga, and Odgaard (2013); Joireman (2011); Manji (2012).

[27] For example, land cultivated by a household may be opened to other community members for post-harvest grazing; a community's reserve land may be subject to legitimate claims from multiple claimants; an extended family may have exclusive control over land, but individual family members may own crops (or trees, grazing rights, forest-collection rights, watering rights, etc.) upon that land. See Bassett and Crummey (1993) and Downs and Reyna (1988).

[28] See Atuahene (2016) on expanding the legal definition of 'takings' to cover these sorts of loss.

mechanisms. At the same time, land privatization undermines other aspects of the social safety net function of community and (neo)customary ties.

Changes that erode communal coherence and structure enhance the economic autonomy of individuals vis-à-vis extended families, community leaders, and the community at large. This is indeed sometimes the intended effect. The argument appears explicitly in the advocacy of those who see titling and registration as a way to help free women from the patriarchal biases of neocustomary land tenure. Women's movements in Uganda, for example, have called for 'rights-based' land systems that 'improve women's ability to buy, own, sell, and obtain titles on land' (Tripp 2004: 1–2). The World Bank's Frank Byamugisha (2013) and others have also advocated registration and titling as a route to the legal empowerment of women.

Where the process of land law reform has played out in the public sphere in African countries, many of the market risks associated with market-promoting individualization are cast in stark relief. Major issues that emerge time and time again have to do with the security of existing rights, especially for the poor, and of communal claims. In Zambia, Malawi, Senegal, and Kenya, proposed or enacted measures to accelerate the privatization of land have encountered strong protests from defenders of existing users' land rights. In central Senegal, small-scale farmers and *Organisations paysannes* joined the Conseil National de Concertation et Coopération des Ruraux (CNCR) to oppose the government's market-promoting land law reform in 1998. The CNCR's stark argument against the reform was: 'We will not [simply] disappear.'[29] Chiefs in Zambia argued against the socially disruptive and disintegrative impact of the land individualization thrust of the 1995 Zambia Land Act, contributing to the largely successful opposition to implementation of the law in the 1990s (Mbinji 2006: 33). In 2010, parliamentarians from northern Uganda resisted the systematic certification and individualization of land because they saw it as opening the door to government-facilitated land-grabbing by powerful locals and outside investors (Gay 2016: 584; Kjaer 2016).[30]

4.2 Registration of user-rights to protect peasant holdings: tensions and trade-offs

The securization of user-rights is the top priority for many international and Africa-based advocates for the interests of smallholder farmers; they seek to shelter smallholders from predatory markets and arbitrary dispossession and eviction. Some policies provide incremental paths to full individualization and title, and some securization programmes build in mechanisms for progressive and democratic political reform at local level.

Yet, as in the case of market-promoting reforms, movement from neocustomary rights to the registration of individual or household user-rights would strip land of (part of?) its connection to ancestral and extended-family rights, contributing to the erosion of communal/kinship bonds. Even if the market were held at bay, registration is highly likely to contribute to the break-up of complex interdependencies around community- and family-level resource-sharing and -use.

The formal institutionalization and secularization of local governance and land administration, as provided for by the 1999 Tanzanian Village Land Act mentioned above, is designed to address this possible trade-off between 'communal' and individualized land management. Yet in Tanzania,

[29] CNCR (n.d.); Tamba (2004).

[30] As Kjaer (2015: 12) explains, in both northern Uganda and Buganda, 'many people do not so much assess the [1998 land] act as it looks on paper, but more its politics, and they fear that the act can be used as an excuse for the government to grab land.' See also Joireman (2011). In a study of rural Viet Nam, Quy-Toan Do and Iyer (2008) found that politically connected households were the most likely to have land titles.

there was fierce debate over whether a democratic or a bureaucratic-authoritarian form of government would take hold at local level. Some were optimistic that the Tanzania land law could expand local democratic control over land management, since the village assemblies with land prerogatives would be elected, open to local participation (rather than centrally controlled), and easier for villagers to monitor and sanction (Manji 2001). Issa Shivji (1999) was pessimistic on this front, fearing that the registration of villages and user-rights would greatly enhanced the power of the state at the expense of communities.

> The most striking feature of the two [land] bills is the enormous powers over the ownership, control, and management of village land placed in the hands of the Ministry [of Lands], and through the Ministry, the Commissioner. The Commissioner has even greater powers over reserved and general land. The role of more elective bodies, like the village assembly, as been virtually done away with (Shivji 1999, cited in Manji 2001: 334).

One of the most striking ways in which the registration of village lands has expanded state power is the way it has solidified state control over lands not included in the village circumscriptions. As Stein and Cunningham (2015) argue, by delimiting village territories in Tanzania, the government has 'freed up' lands outside these limits for allocation to outside investors. In some cases, they argue, the authorities appear to have drawn village limits to deliberately excise choice tracts from the village domain so that these could be leased for international agribusiness ventures.[31] When surveyors and lawyers operate on behalf of powerful actors, and where information asymmetries favour well connected elites, outcomes that impose great costs on existing users and established communities may be achieved without explicit illegality or corruption.

User-rights can also conflict with ancestral or communal rights. In some situations, upholding user-rights means overriding the rights of those who claim ancestral rights, rights as 'original inhabitants' or first-comers, or neocustomary rights. Users may be in-migrants (settlers, strangers, foreigners, newcomers, tenants, sharecroppers) who have displaced, moved in alongside, or entered into farming contracts with indigenes. Tenancy and contracting arrangements are common in zones of commercialized smallholder agricultural production in many parts of West Africa. In settings in which 'users' do not have general social recognition as legitimate possessors or 'owners' of the land, the titling of user-rights can imply a radical exertion of state power to transfer rights from 'indigenous inhabitants' to in-migrants, settlers, or newcomers. It would also usurp the right of the 'natural community' to govern land.

In some of Sub-Saharan Africa's bitterest political struggles over land rights, user-rights have been pitted against communal rights. The tension between user-rights and neocustomary rights was on full display in the debate over the 1998 Uganda Land Act. Conflict arose over the government's move to register and title user-rights as the first step in a process that would lead straightforwardly to the full individualization and commodification of land. Baganda petitioners, politicians, and local government councillors mounted broad opposition to the 1998 law. The Land Act promised to make user-rights secure by registering the land rights of farmers who had occupied a parcel of land for 12 or more years without paying rent (see Kjaer 2016: 14). Baganda leaders saw this as an

[31] Drawing on the work of Linda Engström (2013), they describe a Kigoma, Tanzania, case in which, as part of the formalization process, a village's land was surveyed by the regional commissioner. Nearly 7,700 hectares were carved out of the village and put into the general land category, and thus made available to investors. The 'new' border was moved away from the river, which is now outside the village. A joint Belgian–Tanzanian company obtained a 99-year lease covering 4,258 hectares and has called upon the police to evict unauthorized users from this space. The process has been contentious.

outright expropriation of Buganda lands in favour of pro-government Rwandans who had settled on their lands during the long years of unrest and civil war. Baganda leaders demanded that control over Buganda land be vested in a regional-level land board, which would act on behalf of the Buganda king, the Kabaka, in his role as trustee of Buganda lands. The Ugandan government resisted, arguing that creating a Buganda Regional Land Board in Mengo would 'revive historical conflicts and rivalries in respect of land' (Green 2006: 383). Joireman (2005: 11) wrote that 'parliamentary debate over the [1998 land act] was vigorous, inciting such great controversy over the specifics of the Land Act that the government feared civil unrest.'

4.3 Registration of communal and ethnic land rights: tensions and trade-offs

William Munro (1998: 40) argued that in Africa, the land tenure regime pegs the state to either the individual or the community. Where land ownership is registered in the name of a descent-based group, the state is pegged to the community, defined as a territorial entity, an administrative jurisdiction, and a political collectivity that is nested within a wider polity. In the ethnojustice vision, these political collectivities are recognized as the natural constituent units of modern nations that the postcolonial state seeks to bring into being.

Critics of the ethnojustice land agenda (Branch 2011; Mamdani 1996; Ribot 1999) stress the extent to which a land tenure regime that institutionalizes ethnic territories as subnational jurisdictions can consolidate 'local states', which may be insulated from pro-democratic and progressive political currents and possibilities that may prevail in the wider political arena of the secular state.[32] The reach of the national state, rule of law, and national democratic institutions may be compromised by the presence of local states whose legitimacy and efficacy is judged in part on their ability to reproduce the 'natural community'. Local authorities cannot be truly democratic, Mamdani (1996) argues, because their authority is at least partly derived from, and exercised through, non-democratic principles or practices.

Along with local states comes sub-national citizenship, identities, rights and duties, and legal entitlements that are reserved for those whose status as indigenes is confirmed by the local community and, by extension, the state itself. Those not indigenous to a given locality would have second-class status therein: they would lack not only the economic but also the political rights of indigenes. This form of local citizenship competes with the project of developing truly *national* citizenship.

Dilemmas that communal or community-based property rights regimes pose for the modern state emerged starkly in post-apartheid South Africa. In the late 1990s, the Department of Land Affairs experimented with transferring land ownership rights in 'communal areas' to groups that coalesced to form legal entities (such as Communal Property Associations).[33]

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[32] This critique overlaps with critiques of consociationalism, colonial indirect rule, and other institutional constructs that allot representation on an ethnic basis and divide national territories into ethnic sub-regions. These institutional innovations may have the effect of 'hardening' identities and artificially creating group boundaries (thus perhaps laying institutional bases that structure future conflict along these very boundary lines); creating incentives for continued ethnic identification, and disincentives for the strengthening of national identities, national legal and political norms, and national law; and creating subnational citizenship hierarchies in which 'ethnic homelands' contain populations of disenfranchised ethnic outsiders or second-class citizens who are not members of the titular ethnic group. It also overlaps with critiques of 'neocustomary' authority as patriarchal and at odds with individual rights in a myriad of other ways. Some analysts may also highlight the market-constraining and rent-generating aspects of these tenure systems (as, for example, in restricting land ownership and land transactions to ethnic insiders).

[33] See also Kepe (1999) on 'the problem of defining community'.

> Multiple problems and conflicts emerged in the test cases: Could land be transferred to 'tribes,' as some groups demanded? In [that] case, how could the state ensure democratic decision-making, principles of equity, and rights of due process? In some cases, one group within the community expressed support for traditional structures but was opposed by others who preferred 'democratic' structures. […] Another challenge was the definition of what constituted a democratic majority—where did the boundaries of the group lie, particularly in situations where smaller and larger groups were in conflict? (Cousins 2002: 89, cited in Boone 2007).

At the same time, the legal recognition of communal rights can legitimate rules of land access that discriminate along the lines of ethnicity, gender, age, religion, or other ascriptive status. Ribot (2004) critiqued land law reform strategies that shore up neotraditional authority and neotraditional institutions as anti-democratic.[34]

The tension between neocustomary (or communal) rights and user-rights lies at the heart of Côte d'Ivoire's 1998 land law. Although the law was originally envisioned by some of its drafters in the 1990s as a move that would both make smallholder rights more secure and set in motion a long and gradual process of commodification and privatization of land, it was interpreted very differently by the Gbagbo regime that came to power in 2000. The law not only barred non-nationals from registering acquired land rights, but also promoted the land rights of autochthones over those of others (Boone 2009). The law gave responsibility for certifying landholdings (which could then be registered and, eventually, titled) to committees of village-level chiefs and elders whose mandate was to certify the claims of those holding neocustomary or ancestral rights to the land. The *initial allocation of rights* was thus to be done on the basis of autochthony. User-rights clearly lost out to rights based on communal membership.

The shift in the distribution of power over the land proved to be politically explosive in the south-central and southwestern parts of Côte d'Ivoire, where massive immigration since the 1950s had created a regional population comprised largely (at perhaps the 50 per cent level) of non-indigenes, who had spearheaded the creation of smallholder coffee and cocoa plantations all across the southwest. The 're-traditionalization' or neo-traditionalization of the land rights allocation process effectively dispossessed in-migrants to Côte d'Ivoire's southwest on a massive scale, contributing decisively to the outbreak of civil conflict in 1999, armed rebellion in 2002, and paralysis of the county until 2011 (Chauveau 2000: 113–14). With the coming to power of Alassane Ouattara in 2011, the tables were turned. Conflicts that pit holders of user-rights against holders of customary rights continue to burn in Côte d'Ivoire.

Echoes of these struggles are heard in Kenya today. Kenya's new (2010) constitution and subsequent implementing legislation have created 47 counties, to which many central government functions are to be devolved. The accompanying 2012 Land Act declares that all land in Kenya be registered by 2012. Both moves have been hailed as reforms that will empower ordinary citizens and small landholders to fight corruption, predatory politicians, and land-grabbers. Among the first conflicts to arise in the land domain, however, were precisely conflicts over whether the devolved administration of land rights would shore up the land claims of those currently farming the land, including those who had purchased land in earlier decades (titleholders or not), or

[34] Anthias's (2016) case studies of 'The New Extraction' in Bolivia suggest that the realization of indigenous autonomy via state-recognized communal control over natural resources may empower local leaders to act as brokers vis-à-vis outsiders, and that, as brokers, they may be relatively unconstrained when it comes to leasing or contracting out community assets. Mechanisms of downward accountability are not necessarily guaranteed.

whether the new county powers should be used to restore land to members of the titular (or majority) ethnic group in each county.[35]

Does land rights registration and titling uphold the rights of those farming the land today, or those with neocustomary or ancestral claims? Painfully divisive debates over this question are very close to the surface in all three countries today. The cases underscore the point that the decision to register rights does not resolve the logically prior question of who the legitimate rights-holders actually *are*.

5 Conclusion

This paper has argued that very different visions of political and economic order may converge and blur in policy proposals that advocate legal empowerment of the poor through land titling and registration. Each generates tensions, trade-offs, and risks, although these cut in different ways. Framing the contrasts between them draws out some of their downsides, risks, and potential conflicts.

These dilemmas are inescapable when contemplating the transformation of the institutional context of African agriculture or landholding more generally. Any assignment and registration of rights will involve some redistribution of rights and transformation in the nature of the rights themselves. This helps to explain why land registration and titling proposals and policies have been divisive in many African countries.

The dilemmas and trade-offs are compounded by the limits of legalism itself.[36] A system of assigning and politically recognizing property claims or rights will be embedded in markets (national and global, be they formal or informal, competitive or rigged), a larger political system, and a legal order. Legal empowerment solutions cannot protect against any of these, and in some ways may heighten ordinary farmers' and pastoralists' exposure to political, economic, and legal risk.[37] Four points about these tensions, trade-offs, and risks can be summarized here.

The first is that registration and titling do not protect the poor against the market. To protect against market risks, safeguards such as homestead laws; zoning; and restrictions on eviction, credit, mortgaging, leasing, etc. need to be designed with this social purpose in mind. Policies and regulations that govern the ways in which smallholder agriculture and pastoralism are incorporated into regional, national, and international economies also need to be designed to achieve this social purpose.

Second is that empowerment solutions may not go very far in protecting the poor against the state in contexts of great power asymmetries and economic inequalities, and where legal systems are 'systematically biased against the poor'.[38] Legal systems, like markets, are not inherently benign or neutral. The implementation of legal empowerment rules and procedures, even if designed to be

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[35] See Boone et al. (2016) on the autochthony discourses around land in Kenya's new counties.

[36] See Colin (2013: 430); Joireman (2011); Manji (2012); and Kennedy (2006), who frames the problem as 'the risk of overestimating the ease with which social purposes can be achieved through law' (2006: 106).

[37] Stein and Cunningham (2015: 8): 'The idea that formalization is the best route to prevent land grabbing is a simple one which abstracts from the real power dynamics embedded in rural Africa.'

[38] Binswanger and Deininger (1997: 1964).

pro-poor, may not be in the hands of those who embrace this objective. Deininger et al. (2011) are correct when they point out that land registration does not dispose of the risk of exposure to the 'larger policy environment.' Experience in Africa and beyond shows that powerful actors will use both the market *and the law* for land-grabbing.[39]

Third is that, in most places, existing land tenure regimes embrace multiple, overlapping claims to land. These existing multiple and overlapping claims are embedded in *institutions*—lineage, familial, neocustomary, chieftaincy, patriarchal, age-sets, etc. Collective and many secondary claims, as well as the institutions in which they are embedded, are weakened by registration and titling, and likely to be extinguished by the full commodification of land.

Fourth and last, the land tenure status quo in many parts of contemporary Africa is a tenuous and contentious one: in many places, it is unstable and is built of *conflicting* claims around land. Land law reform is thus not neutral, not necessarily welfare-enhancing for all those affected, and not necessarily pareto optimal. Reform has *redistributive* effects. It thus cannot be separated from inherently political choices about whose property rights the states will enforce; the desired extent of bureaucratization, secularization, and democratization of political authority; the scope and content of local and national citizenship; or the scope and limits of the market. Basic questions of political order, and the social purposes of politics, law, and the market are at stake (Boone 2014). Open acknowledgement of these complexities means that advocacy for legal reform cannot be separated from much wider, but fundamentally national, political processes and debates.

This means that land registration as a one-size-fits-all strategy is not necessarily 'better than nothing'. As Jean-Philippe Colin (2013: 430) writes, there are still 'very large debates around registration and titling, with different views on many points, including the respective roles of the state and communities in the processes of formalisation and enforcement, the nature and content of rights to formalise, and their individual or collective character.' He adds that empirical evidence from Africa often casts doubt on the effectiveness of land registration as a strategy for reducing tenure insecurity and conflict, and for securing the land rights of the poor. Context matters: this includes the nature of the prevailing land tenure regimes, national and subnational political regimes, socioeconomic and legal environments, and existing distributions of power, resources, and market opportunity.[40]

Some land-rights activists and scholars seek to avoid a narrow focus on land registration and titling—what Ha-Joon Chang (2007: 21–23) characterized as 'property rights reductionism'—and advocate instead broader strategies aimed at enhancing rural communities' capacity for collective action in defence of shared interests in complex and often changing national contexts.[41] Such capacities may be enhanced by local conflict resolution, building institutional capacity at local level, and bridging local social and political cleavages. Economic empowerment via ecosystem revitalization and improved opportunities to participate in local, regional, and international markets on advantageous terms—that is, going beyond defensive strategies and toward economic rebuilding—is also necessary to the success of the empowerment agenda.

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[39] See Manji (2006, 2012). All three visions of land registration, as Platteau (1996: 42) suggested, entail the expansion and intensification of the role and presence of the state in land administration. State agents and agencies must not only supervise, enforce, and adjudicate contracts, etc., but also regulate land valuation, registration, demarcation, and presumably taxation.

[40] Domingo and O'Neil (2014: 4–5); Waldorf (2016).

[41] See for example Cotula and Mathieu (2008); Gauri and Maru (forthcoming); Waldorf (2016).

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