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Land Grabbing and Formalization in Africa: A Critical Inquiry

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Abstract

Two developments in Africa have generated an extensive literature. The first focuses on investment and land grabbing and the second on the formalization of rural property rights. Less has been written on the impact of formalization on land grabbing and of land grabbing on formalization. Recently, formalization has been put forward to protect the rights of pastoralists and farmers. Leaders in Tanzania have argued that it will free up land for investors that is unused by villages and generate new jobs and improved livelihoods through contract farming while minimizing land grabbing through greater transparency. Others argue that formalization is being promoted to facilitate land grabbing with state-imposed boundaries evicting villagers off land formerly under village control for sale to investors. Proponents assume that securing individual property rights will allow villagers to determine how to best use or dispose of their property. However, this implied notion of voluntarism can deny the hegemonic forces that can be embedded in markets. Unequal power dynamics in market transactions can transform formalization from a protective force into a means of dispossession. These power dynamics operate through various channels, such as juridical capture or influence, control of national and local discourse regarding land use and users, influence or control of land allocation and demarcation process, alienation of smallholders' control over rights of land use, and strategies that promote forced sales of land by the poor. Along these lines, dispossession may not simply be the physical loss of land but the loss of certain rights to land, or in other words, not to land grabbing but what some have termed "control grabbing" or "labor grabbing. Proponents of land titling therefore promote unproblematic visions of customary tenure systems, which ignore both unequal power dynamics due to unequal initial endowments (of power in the form of influence, access, and assets) and the result of such dynamics: formalization converted to an instrument for dispossession.

¹ A version of this chapter will appear in Amin George Forji and Imoro Razak Jaha *Land Grabs in Africa: Economic Imperialism? Critical Contributions to a New Paradigm* (forthcoming). An earlier version was presented at the European Conference on African Studies, 8-10 July, 2015, Paris, France. Howard Stein would like thank his colleagues Faustin Maganga, Kelly Askew and Rie Odgaard for the work they have done with him on rural property right formalization and poverty in Tanzania since 2008. Sam Cunningham also worked on this project as a research assistant and is also grateful to the team.

Introduction

In recent years there have been two parallel developments in Africa, each generating a separate literature. The first focuses on wide-scale land alienation deemed as the means for productivity-enhancing private investment by some and imperialistic land grabbing by others². The second literature focuses on the formalization of rural property rights and a host of purported benefits associated with different levels of formalization (see Feder and Nishio (1999), Firmen-Sellers and Sellers (1999), Atwood (1990), World Bank (2003), among others, for purported benefits of formalization).

What has been less studied is the impact that formalization has on land grabbing, and land grabbing on formalization. Land grabbing is seen by Oxfam (2015) as "land deals that happen without the free, prior, and informed consent of communities." Closely related to land grabbing is the concept of dispossession³ which refers to the loss of some or all of the rights to land held on individually or communally and can include rights to ownership, usufruct, inheritance, etc. Recently, formalization has been put forward as a mechanism to protect the rights of pastoralists and farmers from land grabbing and various forms of dispossession. In addition, leaders in places like Tanzania have argued that formalization will free up land for investors that is unused by nearby villages (IPP Media, via the Guardian, 2013). At the same time, people have argued that large scale investment can provide new livelihoods for the rural poor by providing employment on large scale farms and through contract farming with investors. Others have promoted formalization as a way to minimize land grabbing by generating transparency that will ensure the rights of farmers and pastoralists. Hence proponents of formalization assume that by granting individualized security, landowners will be in the best position to determine how to use or dispose of their property (FAO, IFAD, UNCTAD and The World Bank Group (2010); Jacoby and Minten (2007); Bruce and Migot-Adholla, 1997). This paper will critically assess these and other arguments while moving toward a more nuanced understanding of the dynamic interactive relationship between formalization and land grabbing. We will begin with a brief review of the concept of formalization and related constructs and then review some of the arguments in favor of formalization, including the idea that formalization is the best mechanism to protect rural populations from land grabbing. The final section will look more analytically at the relationship between formalization and land grabbing with examples that illustrate the arguments.

Formalization and Related Concepts

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² See for example Cotula et al, 2009 for arguments on how land acquisitions can be seen a as a potential path toward productivity-enhancing investment. For a sample of authors arguing that land acquisitions constitute imperial land grabbing, see, among many others, Borras and Franco (2010a), Toulmin (2008), Kenney-Lazar (2012), Hall, Hirsch and Li (2011), and Zoomers (2010).

³ We are using dispossession here in the sense of "The wrongful, nonconsensual ouster or removal of a person from his or her property [rights] by trick, compulsion, or misuse of the law…" (West's Encylopedia of American Law, 2008).

Formalization is generally viewed as state recognition of property rights that are protected through the legal system. Sometimes this is contrasted to informal rights which may lack recognition or protection and could in some cases be illegal (see Hall et al., 2011, Pacheco et al., 2008, Putzel et al., 2014, etc. for descriptions of formalization as the codification of informal rights or rules). Other such as De Soto (2000) refers to extra-legal property rights, for which there might be some implicit recognition under the law but these rights remain outside the legal system and hence do not have full protection. From a de Soto perspective they cannot participate in markets and hence cannot recognize the benefits of the ability to engage in formal land transaction (discussed later). Sometimes customary or traditional rights are considered to be extra–legal, though land held by these rights is guaranteed by local norms, social relations and some political entities (FAO, 2002). Sometimes national laws fully recognize customary rights and place them on an equal footing as statutory or granted rights. In Tanzania the 1999 Village Land Act recognized this equality and tried to move toward an equivalent registration system through the demarcation of individual property in villages and the issuing of Certificates of Customary Rights of Occupancy (URT, 1999).

Full property rights in the context of rural land do not simply focus on the claim to ownership but also on a host of potential rights that need to be distinguished from the right to ownership. FAO, 2002 categorizes more than a dozen examples of rights associated with land ownership under three general headings: use rights, control rights and transfer rights. Use rights or *ius utendi* refers to the right to use the land for cultivation, raise cattle on the land and forage or hunt on the land. Control rights refer to the right to decide the mix of crops to be planted, to access the land through rent and other means, and to claim the usufruct, or to enjoy the fruits of the land and decide to whom and how it is to be allocated. Finally transfer rights or *obutendi* refer to the right to sell, mortgage the land, pass land on to one's heirs or to others for intra-community obligations, to transfer control rights to others or to allocate temporary rights through rental markets or via other social obligations (Stein, 1994). As we will see, formalization in the wake of land grabbing can actually be intertwined with the loss of some of these rights, such as control rights.

The Case for Formalization

Formalization is seen by its proponents as bestowing many benefits on rural populations. As indicated previously, there has been an extensive literature pointing to many positive dimensions of formalizing property rights in land. Perhaps the most important of these is the increase of security and its purported effect on increasing the incentive to invest.

Following Brasselle, Gaspart, and Platteau (2002) and Besley and Ghatak (2009a, 2009b), Henley (2013) traces a number of channels in which secure property rights can affect agriculture-related investments and with it productivity. First, the assurance or security effect provides the incentive to undertake higher levels of investment since they will be more certain that they are protected from appropriation and hence will be able to receive a return on their investment. Second there will be a transaction facilitation since individuals can pass the benefits to the next generation. It also reduces the protection costs since there will be less need for spending on measures to protect property. This frees up resources with the potential to increase investment levels.

Land markets are also activated through an efficiency channel since farmers will have better access to input markets which in turn raises potential investment and productivity. Finally, there is also the collateralization impact where farmers are now able to use their land to access loans for investment purposes (an argument heavily promoted by de Soto, 2000 and his supporters and some World Bank writers like Feder et al, 1988).⁴

The formalization to investment linkage has been used to show the positive effects of titling in places like Ethiopia. For example, Deininger et al (2008) argue that there were higher levels of investment as measured by the number of hours put into terracing falls in the control villages compared to the treatment villages, which had been titled earlier. Titling has the purported added value of reversing the discrimination of against women (Deininger, 2003). Byamugisha, (2013) cites World Bank studies of Ethiopia and Rwanda to point to the empowering effect of titling which is inclusive of women.

In addition, there are claims that titling will reduce conflict (Deininger, 2003), particularly if there are improvements in the legal system (Byamugisha, 2013), and is the key to poverty alleviation since it recognizes the extra-legal property of the poor and wealth of the poor and allows them to more fully participate in the market system (De Soto, 2000, De Soto, 2006). To some writers like Feder, 2002 formalization of property rights is a key to socioeconomic development and explains "why the World Bank succeeds in economic reform through land registration and tenure security".⁷

Formalization, Foreign Investment and Land Grabbing

The literature on the importance of guaranteeing private property rights for investment on land has been around for many decades and generally inspired by neoclasscal economic thinking. Bemsetz (1967) emphasizes the centrality of exclusion embedded in private property rights in order to realize the returns on land investment and other activities:

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⁴ See Stein et al, 2015a, for a review of the literature on formalization and credit.

There are many problems with this study which is widely cited as evidence of the rise of investment following titling. Among other things the main difference between the treatment village and control village is that the treatment village undertook titling earlier. There is no differentiation at the household level since the comparison is only by village. In essence, one might be comparing households without the certificates in the "treatment" villages to ones with the certificates in the "control" villages hence titling leads to less not more investment. Also, control villages had already begun the process of registration and education (about formalization) when the survey took place, and therefore were expecting to receive a certificate in the near future, which would likely change behavior (results would have been much more compelling if the control village had not begun the formalization process). There are many other issues. For example there is more terracing in the control villages in both 2004 and 2007 the years of comparison. One might argue that the earlier period there was a much higher commitment to terracing and hence it was not needed in the latter period yet this is ignored because it is focusing only on investment which is the change in capital not the level of capital. See Stein et al, 2015b for a more extensive critique.

⁶ For a critique of the results obtained in the Rwanda case also See Stein et al, 2015b.

⁷ This was the title of the presentation which was on land administration and socioeconomic development. The presentation begins with a stylized representation of history to illustrate the centrality of formal land administrations with an emphasis on individual property rights since ancient Egypt. The process is explained with a simple flow diagram illustrating that higher that tenure security leads to better development of financial and land markets, higher investment and greater productivity and with it prosperity. Prosperity allows for higher tax collections and improved citizenship. He has four hypotheses that registering land leads to greater investment, credit, better land markets and improved revenue.

⁸ There are five main constructs at the heart of neo-classical economics that also underlie neoliberalism: *homo-economicus*, methodological individualism, the acceptance of equilibrium as a natural state, rational deductivity, and axiomatic reasoning. Private property right arguments presented here rely heavily on calculating individuals

Private ownership implies that the community recognizes the right of the owner to exclude others from exercising the owner's private rights...If a single person owns land, he will attempt to maximize its present value by taking into account alternative future time streams of benefits and costs and selecting that one which he believes will maximize

the present value of his privately-owned land rights...The resulting private ownership of land will internalize many of the external costs associated with communal ownership, for now an owner, by virtue of his power to exclude others, can generally count on realizing the rewards associated with husbanding the game and increasing the fertility of his land (Demsetz, 1967, p.356).

The cost of policing that exclusion is also an important consideration (Alchian and Demsetz, 1973). The importance of state guarantees to deal with the policing to attract investment including FDI has been well established in the development economics literature. Bronfenbrenner (1955) in his classic article on the appeal of confiscation pointed out that

The expectation of rewards for good behavior, in the form of future foreign loans and investments, seems already much more efficacious in forestalling expropriation than is the fear of punishment or the bolstering of "friendly" governments by military aid. When a country stands to lose more in future aid by confiscating private capital within its control than it stands to gain from the value of the capital at stake, it usually exercises a seemly caution and restraint in dealing with private interests affiliated with sources of potential largesse. (Bronfenbrenner, 1955, p. 255)

Hence countries that protect private property rights may be rewarded with higher investment flows.

While there has been considerable debate over the years of the value of large scale investment, and various forms of contract farming as part of investment schemes (Oya, 2012), the issue has taken on a new urgency in the wake of the G8s emphasis on attracting investment in agriculture to Africa as the mechanism for improving productivity, raising food production and reducing rural poverty. At the annual G8 meeting at Camp David in 2012 President Obama launched the New Alliance for Food Security and Nutrition with a heavy emphasis on attracting private investment into agriculture. This new push for private investment flows into agriculture was not in previous documents of international agreements like CAADP, African Union's Comprehensive Africa Agriculture Development Program (CAADP) which started in 2003. As part of the New Alliance G8 has signed six Cooperation Frameworks with Burkina Faso, Côte d'Ivoire, Ethiopia, Ghana, Mozambique and Tanzania. Each framework includes a commitment to ease conditions for private companies to access land in cultivating areas in these countries. The Frameworks are a product of negotiations between governments and the G8, though there appears to be a key role being played by the World Economic Forum's African Partnership which works closely with large agroprocessing companies (Maganga et al, 2015).

behaving in a manner that is deductively posited and largely disconnected from socially prescribed norms that create cooperation in communal settings.

In line with the literature cited above, the key issue attracting investment in the G8s view is inadequate land tenure law (G8, 2012)⁹. Following this the G8 placed the strengthening of property rights as a central focus of their 2013 agenda. The G8 launched new partnerships with Tanzania (UK), Burkina Faso (US), South Sudan (EU), Namibia (Germany), Nigeria (UK), Niger (EU), and Senegal (France). The aim of the partnerships was on "improving land governance and in particular transparency in land transactions by 2015" (G8, 2013).

The background work for the DFID-Tanzania project was undertaken by Anna Locke and a team out of the London based Overseas Development Institute. A key paper generated for the project examined the relationship between property rights and development (Locke, 2013). The review begins with the standard perspective presented, drawing on Everest-Phillips 2008; Besley and Ghatak 2009a; Acemoglu et al. 2004. She argues:

The economic case for secure property rights is that growth depends on investment; however, investors do not invest if there is a risk of government or private expropriation. In this context, property rights are equated with private property rights whereby property owners can legally exclude others from using a good or asset (Locke, 2013, p.8)

She also points to some mild challenges in the literature such as the view that perhaps other factors might be important in stimulating investment such as better competition in financial markets. However after mostly reviewing the standard mostly neoclassical economic empirical literature (Acemoglu et al 2001, 2002, 2005; Knack and Keefer 1995; Hall and Jones 1999; Kerekes and Williamson 2008) she concludes:

There appears to be a medium/large (> 10 studies) body of evidence showing that secure property rights are an important determinant of long-term economic growth (Locke, 2013, p.15).

Hence based on her review, at least on the issue of growth-related investment, the DFID project to expand titling to securing private property rights for development is justified. However, the growing outcry surrounding the G8 support of private investment which could be interpreted as land grabbing has led to yet another bold purpose for formalizing property rights through titling ¹⁰:

Weak land governance and property rights systems can lead to opaque land deals, which facilitate corruption and undercut responsible actors seeking access to land for productive investment. Weak governance in many developing countries allows unproductive land speculation and undermines agricultural productivity. Increasing security of land rights and transparency of land governance fosters participation of citizens, contributes to government accountability, reduces costs for businesses, and strengthens the climate for responsible investment (G8, 2013, p.10).

⁹ Inadequate land tenure law has been a fundamental impediment to development and agricultural investment by small- and large-scale producers in many countries (G8, 2012, p.29).

¹⁰ For a survey of some NGO literature critical of the G8 project see Maganga et al, 2015.

Hence the formalizing property rights is the best route to prevent land grabbing and encourage only "responsible investment". 11

The idea that formalization is the best route to prevent land grabbing is one that has appeared before in bilateral and multilateral circles. To quote Deininger of the World Bank:

If no previous records exist, or where these are seriously out of date, a strong case for systematic, first-time registration can be made on the grounds that a systematic approach, combined with wide publicity and legal assistance to ensure that everybody is informed, provides the best way to ensure social control and prevent land grabbing by powerful individuals, which would be not only inequitable, but also inefficient (Deininger, 2003, p. xxix).

The remainder of the paper will critically explore this assertion.

Formalization and Avenues of Dispossession

Power Dynamics

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. It assumes a juridical process in which rural participants are treated equally and unaffected by their initial endowment of land, financial resources and connections to the local and national polity. In this world the African state is acting autonomously in implementing a national land policy and is independent of the accumulation imperatives of domestic and international capital. It assumes that international donors have a singular interest in developing African countries and not embedded in the web of entrenched interests that generate ever shifting international policy paradigms and fashions.

When one moves from the ethereal and hypothetical theoretical world of deductively posited actors into the palpable and messy reality of land accumulation by embedded private and state interests, the purpose and outcomes of formalization are bound to diverge from their chimerical intentionality. The neoclassical vision of markets assumes a voluntarism that denies the hegemonic forces embedded in the real world of exchanges. It assumes away initial endowments which can dictate the terms and conditions of land transfers. Unequal power dynamics in market transactions can transform formalization from a protective force to a means of dispossession. If titling augments the ability to sell it also allows for a manifestation of the types of vulnerabilities, susceptibility and coercion that can lead to rapid landlessness and the exacerbation of the quotidian struggles of the rural poor.

The very act of formalization can become an instrument of the total or partial alienation of land rights or in some cases the bestowing of land rights to entrench the dispossession associated with land grabbing (see below). In addition, formalization is not only *shaped* by local, national, and international inequality, but also *shapes* inequality at all levels by continuing to increase the holdings of the elite, while limiting the ability of the poor to protect their livelihoods.

There are various channels through which unequal power dynamics can convert formalization into an instrument of dispossession: juridical capture or influence, especially in the presence

¹¹ The DFID G8 project in Tanzania which focused on sponsoring on new titling projects in two districts was undertaken for the dual purpose "The need for private investment…while safeguarding tenure rights" (Locke et al, 2014).

of overlapping claims to land and contradictory institutions of land ownership and management; control of discourse, both at the national level surrounding the development agenda and at the local level regarding the debate about systems of customary tenure, including what constitutes "traditional"; influence or control of the land allocation and demarcation processes; alienation of smallholders' control over rights of land use, in which landholders are not physically removed from their land but lose rights to cultivation, harvesting, consumption and marketing of crops; and strategies that explicitly promote forced sales of land due to accumulation of debt. These channels operate outside of the abstract, efficient idealization of property markets embedded in the neoliberal conceptualization of private property; indeed, the exclusion of initial and unequal endowments of power, access and assets and general failure to consider the social, political-economic and historical contexts in which these policies operate do not just result in the failure to realize the purported benefits of said policies but in fact directly facilitate accumulation and dispossession related to the degree of power or vulnerability experienced by different actors.

The effect of juridical capture or influence of local, regional, and even national legal systems is exacerbated by the realities of overlapping claims to land and contradictory land ownership and management institutions. In general, the high monetary and temporal costs of land registration and similarly high costs of resolving conflicts over land in legal courts favor elite who may wish to exert claims over land that was not originally theirs (Askew, Maganga and Odgaard 2013; Toulmin, 2008). When there exists legal pluralism of land management institutions (e.g. community councils, patrilineal hierarchy, local government, traditional leadership, irrigation authority, city council and land agency, and other national structures), complicated by new layers of formalization those with the time and money to spare may go "institution shopping" to determine what governance structure will best suit their needs (Toulmin, 2008; Meizen-Dick and Mwangi, 2007; Lund, 2001).

Overlapping claims to land occur when there are multiple layers of rights operating on the same plot of land, such as primary rights (typically to cultivation), secondary rights (e.g. rights to grazing after harvesting complete, to gather firewood or wild food, etc.) or seasonal rights to land (e.g. sharecropping arrangements). Formalization programs only recognize the primary rights, an especially worrisome trend given that secondary and seasonal rights likely constitute an important safety net for the poor (Chimhowu and Woodhouse, 2006). Other overlapping claims to land are based on identities (typically kin- or ethnic-based rights) or long occupation and use, with kin-based claims usually triumphing over rights of occupation or use, due to the relative power of traditional authority and the fact that those claiming long occupation are typically migrant workers.. An additional layer of rights to land are derived from informal land markets. Chimhowu and Woodhouse (2006) provide evidence for the existence of widespread informal land markets in Africa, driven by movements of migration based on changing labor conditions (People migrating to new areas seeking economic opportunity do not have local claims to land (via lineage or ethnicity), and thus can only access land through informal means (which are often illegal, as the state owns all land in many African countries, making it illegal to sell land). Land rented or purchased in these informal markets is particularly vulnerable to being overridden by customary claims, particularly when the purchaser is an immigrant, due to the relative power of traditional authority and long-standing lineages (Chimhowu and Woodhouse, 2006; Gray and Kevane, 2001).

Indeed, it has been illustrated that in these environments, the claims of those with the most capital, influence or assess (powers that are often highly correlated) will triumph, resulting in

the dispossession of those with overlapping claims. For example, Burnod et al. (2013) describes how following the implementation of the 2005 land laws in Madagascar, overlapping claims to land created a proliferation of administrative obstacles and produced an environment in which the claims of those with considerable capital were realized, to the detriment of small farmers. Similarly, Myers (1994) found that in Mozambique, in the presence of overlapping layers of land rights, powers of access determined which property rights took precedence.

Dispossession is also facilitated by the discourse surrounding formalization and land management, both at the national level surrounding the development agenda, and at the local level regarding the debate about systems of customary tenure. At the national level, governments and political elites use privileged access and power to label both territories and groups as "unused" or "lazy," respectively, to legitimize the narrative of formalization. Wily (2011) shows that the "commons" are labeled as "unproductive, unused, or idle" lands to justify their appropriation and sale to private investors, despite evidence that the commons are central to livelihoods of neighboring communities. This dialogue is often presented in parallel with narratives that marginalize certain groups, such as propaganda about pastoralists or hunter gatherers (i.e. groups that rely on uncultivated land for their livelihoods) being lazy or unproductive to justify, or even arguably necessitate, the stealing of their lands for largescale investment (Wolford et al., 2013). After studying large-scale land acquisitions in Brazil, Sullivan (2013) concluded that the construction of ethno-racial categories shapes the manner in which these land deals occur. These labels and narratives serve to not only legitimize the dispossession of land from certain groups with or without formalization but also delegitimize the claims of marginalized groups to land, an implication relevant at the local level, where conflicts over land use between farmers and pastoralists have arisen (Askew et al., 2013). Many authors have documented how "definitions of belonging," defined by those with the power to control discourse, determines which groups have legitimate claims to resources (Bassett 1993, for Northern Ivory Coast; Peters, 1994 for Botswana; Lastarria-Cornhiel, 1995 for Ethiopia; D. Moore, 1993 for Zimbabwe; Amanor, 1999, 2001 for Ghana; Peters, 2004).

A broad category of channels through which power operates are the ways in which local and national elite may influence or control the actual process of land allocation and demarcation including and especially with formalization. Many of these elite are in fact politicians and bureaucrats (in fact, the majority of new large land lessees are local nationals, either individuals or private companies, including politicians and senior officials Wily (2011)), often in partnership with foreign investors, so channels of power can and usually do operate through government institutions. The process of land allocation and its capacity for self-serving behavior is of course closely linked with judicial power over overlapping claims to land and control of the national formalization narrative: environments with overlapping claims and legal pluralism create an opportune chaos that enables the powerful to steal land to which they have no claim, while the creation of "lazy" stereotypes or narrative of the economic necessity to transform and cultivate "unused" land makes elite claims to certain parcels less likely to be challenged.

Unequal power dynamics can exert influence on land allocation and demarcation through: appropriation of land by the state, either in the name of "public interest," or because state-led demarcation processes of village boundaries which is part of formalization result in "extra land" that can be allocated to investors; use of privileged access to decision-making about land (e.g. through bureaucratic channels, authority to negotiate on behalf of a community, etc.)

as a trading tool for self-gain; and discriminatory practices of blocking certain groups from land registration.

Dispossession and the "Public Purpose"

In many African states, the government claims ownership of the land, and can appropriate land from users for the sake of "public purpose," including road building, industrial development, etc. In many countries, the dispossessed are only compensated for the improvements they made to the land (e.g. a house, crops, etc.), but not the loss of the land itself (Benjaminsen and Sjaastad, 2008); often, they are not compensated at all. Kasanga and Kotey (2001) report that the Ghanaian government owes dispossessed former landholders many billions of cedis owed to them for expropriated land. Wily (2011) reports that in many countries, consent is often not sought for large-scale leases, because it has been categorized as "so-called public or state lands, a classification which almost entirely overlaps the customary domain."

In addition, states have explicitly laid claim to "extra land" in villages left over after formalization of village boundaries, a label that is often inappropriate but politically necessary to continue promoting the "win-win" story of large-scale investments benefiting local communities. In the context of rural villages, formalization is not the singular act of defining a parcel of land with an individual title but is often a series of steps including the demarcation of the special limits of a rural entity including setting aside land for "conservation," which can end up being offered to investors. At times when formalized boundaries have been imposed from above by the state it can lead to the facilitation of land grabbing by evicting villagers off land formerly under village control. There is evidence of this in places like Ethiopia and Tanzania.

Ethiopia has been one of the largest recipients of land focused FDI in SSA. Landmatrix estimates that as of May, 2015, there are 58 active contracts covering more than 990,000 hectares (Landmatrix, 2015). Formalization has assisted in making land available to investors. Registration of plots in 2008 in the Bako Tibee woreda were registered under a formalization program. However, authorities refused to include the land cultivated by 500 villagers or any of the pastoral area used by village herders. Both areas were subsequently allocated to overseas investors. In many parts of the country, common pool resources like pastoral land, forests and corridors for wildlife have been excluded from village land when boundaries have been formalized but then allocated to foreign investors (Rahmato, 2011).

The idea of carving out land through formalization has been an underlying priority of the government of Tanzania. This was admitted in a speech by the Minister of Lands Anna Tibaijuka in 2013 in which she stated a major aim of formalization:

"This exercise should also identify villages with extra land in which big plantations can be established, so that there would be a clear list that will be made available to investors..." (IPP Media, via the Guardian, 2013, p.1)

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¹² The amount of land available seems to be much larger. The government's official guide to investing in agriculture states "The Ministry of Agriculture and Rural Development allocates farm land to foreign investors. In addition, it provides technical support for private investors investing in agriculture. The support ranges from providing information, technical support, and facilitation of other public services. Currently, there is nearly 11.55 million ha of land readily available for farming. The rental price of rural land is generally low. There is strong commitment from the government to avail the country's fertile land for investment." (Ethiopia Trade & Investment, 2015).

In Kigoma near the shores of Lake Tanganyika, a joint Belgian-Tanzanian company Felisa obtained land for the production of biofuels in the Uvinza district (formerly Kigoma rural) in Kigoma regions in 2007. Prior to that, as part of the formalization process the land was surveyed by the regional commissioner with nearly 7700 hectares carved out of a village and put into the general land category (available to investors). The "new" border was moved away from the river which is now outside the village. Felisa obtained a 99 year lease covering 4258 hectares.

The process has been contentious. Some have claimed that villagers might have taken bribes and allowed Sukuma agro-pastoralists to move on the company land. The Sukuma were violently evicted by the police in October, 2012 after the company got a court order in August, 2012. People were beaten and had their legs broken with some taken into custody. Unsurprisingly, there was a strong sense of injustice (Engstrom, 2013). To quote Engstrom:

As noted, the land upon which Felisa is now starting production was first converted to general land under state management. The land allocation process is clearly documented and we have a copy of Felisa's certificate. Despite this, the villagers still feel the land is theirs. The main reason for this is that they don't think the land bank process was fair and that they lost land without consent. (Engstrom, 2013: 1-2).

Tanzania has a history of approving land for biofuel projects which have not come to fruition, leading to land alienation without the any of the promised benefits (Locher, and Sulle, 2014). Worse, the situation can lead to land shortages and the renting back of property to local villagers (adding insult to injury). The Felisa project is no different. Felisa tried to open a factory in Kigoma to process oil palm biofuel but it never worked, leading to the departure of the Belgium investor. Much of their land remained unplanted. Interviews with local villagers indicated that there was now a land shortage and that Felisa is renting land out to farmers ¹³.

Moreover, as discussed above, there is a tendency for some government agencies to deliberately move into disputed areas with the effect of legally recognizing disputed boundaries and strengthening the rights of investors. The agency of formalization in Tanzania, MKURABITA, which has a deliberate policy of going to areas of conflict¹⁴, arrived in 2012 to implement formalization and issue CCROs in the village that lost its land to Felisa. This titling was done before Felisa was issued any land and arguably was done *because* of the interest of investors in the land, although MKURABITA utilized the excuse of formalizing boundaries to reduce conflict. The other village they selected in Uvinza district, Kigoma was also on the boundary of a former NARCO ranch, which was sold off to investors.

While the ability of African governments to appropriate land from their citizens is not new, the driving force behind the appropriation, namely, "the internationalized capitalism underwriting this surge and the grist this gives to sustaining the trend" is what is most concerning for the current wave of dispossession. The international aspect is problematic not only because of the absolute amount of capital backing prospective investors, but due to the

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¹³ Information comes from Engtrom (2013) and interviews in villages affected by Felisa, district offices and Local Investment Climate Office in Kigoma, March, 2015. The interviews are part of a larger project on property right formalization and poverty in Tanzania being undertaken by Howard Stein and Kelly Askew of the University of Michigan, Faustin Maganga, University of Dar es Salaam and Rid Odgaard, Danish Institute of International Studies (retired).

¹⁴ Interview with MKURABITA officials, MKURABITA headquarters, July, 2014.

bilateral agreements, which offer new levels of protection to investors and include provisions to resort to international arbitration courts in case of conflict (which will undoubtedly privilege the international companies over affected communities) (Wily, 2011).

Dispossession can also be facilitated by abuse of power by traditional authorities and those with the ability to manipulate or influence bureaucratic allocation of land (or the ability to manipulate or influence those with access to bureaucratic allocation of land). Of opportunistic behavior by those with traditional authority, Fairbairn (2013) writes, "There is considerable evidence of traditional authorities authorizing foreign projects and at times personally benefitting from the deal." She describes several cases in Mozambique from Hanlon (2011), Ribeiro and Matavel (2009), Borras et al. (2010b), FIAN (2010), Matavel et al. (2011), in which community authorities handed over land to foreign companies with little or community discussion. According to Amanor (1999), "the alienation of land by the state for agribusiness and large-scale capitalist agriculture cannot be separate from developments at the community level...the alienation of this land usually occurs with the collaboration of political leaders at the community level." The key here is that the ability of local authorities to sell or lease land to foreign companies is substantively increased when land held under customary tenure is formalized; foreign entities are much more interested in leasing land that is legally recognized and protected by the national government, a legal recognition that comes with almost no accompanying increased costs (indeed, Fairbairn (2013) reports that most international investors pay roughly 0.60 USD per hectare).

Marginalizing Groups

The blocking of women and marginalized groups from land registration is symptomatic of both the labeling and ingrained social understanding of certain groups of unfit or less fit to hold land (discussed above), and unequal access to the bureaucracy of land management. Bureaucrats and local leaders effectively control who is allowed to "participate" in the land market with those in power acting as gatekeepers to increased consistency of access to resources. This is indeed very similar to the actions of colonial leaders during the colonial period; they maintained, encouraged, and sometimes created systems of communal tenure (and often installed "tribal" leaders) in which Africans could only access land via their lineage and could not buy or sell land. The aim was to suppress African participation in formal land markets and prevent Africans from acquiring large estates (Chimhowu and Woodhouse, 2006). In this way, formal registration of property rights may exacerbate genderbased inequalities by allowing men to block women's ability to register land and therefore strengthen their ability to formalize their claims to land used by women, particularly widows, via lineage-based claims. Whitehead and Tsikata (2003) found that registration of land titles was implemented by male-dominated institutions to the disadvantage of women, through the "concerted efforts [of] male members of the patrilineage to protect the local kin-based social order."

Pastoralist groups have also consistently suffered under new tenure laws. Individualized property demarcation and rights can emasculate pastoralist collective rights and bargaining, easing the sale and leasing of land to investors and encouraging land grabbing. In Kenya, the Maasai have had a long history of land losses through the process of formalization. Prior to the colonial government, councils of elders negotiated grazing rights for their cattle. During the colonial period they were moved multiple times into fixed boundaries as land and water rights in their former grazing areas were set aside for parks and given to white settlers. Both during the colonial period and early post-colonial period there was a push for the privatization of property rights. In 1968, with the support of USAID and the World Bank,

Kenya formalized Maasai rights by creating group titles to ranches. The process was not entirely satisfactory with group ranch committees excising property from the ranch to allocate to themselves and individuals inside and outside of the Maasai community.

Since the mid-70s, with the support of donors, the Maasai took the privatization of property rights a step further by dividing up the ranch into individual plots with individual titles. This provided opportunities for land grabbing at every level. The Maasai elite allocated the most fertile portions of land to themselves or well-connected wealthy individuals at the expense of the less connected. Women and youth were almost completely denied any parcels of land though some children of the elite had property registered in their names. The subdivision led to a significant portion of the ranch falling into the control of the non-Maasai, both from the resale of plots or the corrupt practice of registering plots to people outside the village. Following the individualization of plots, private sector players moved in to create "conservatories" for tourist camps near Maasai Mara National Reserve with leases of 15 years. While income was generated from these leases, this altered the use rights of land as both owners and those who did not lease the land were no longer permitted to graze on the conservatory (Bedelian, 2012).

In its simplest form the formalization to dispossession linkage can be narrowly defined as the alienation of land by the legal eviction of rural dwellers that are frequently members of villages. However, there is also a broader notion of dispossession. The process of formalization alters the nature of the control over land that is still possessed by farmers and pastoralists in rural areas. In essence, this is the alienation of certain rights associated with the cultivation, harvesting, consumption and marketing of agricultural commodities. We saw this in the example of the Maasai in Kenya. Hence the conditions associated with the relationship between land and labor is altered to feed into the changing imperatives of state actors and donors and the accumulation strategies of domestic and foreign capital. Huggins, (2014) referred to it as "control grabbing." Closely related to that is "labor grabbing" in the countryside where the government has formalized coops and forced members to grow certain crops at poor terms, e.g. effectively grabbing labor for cash crops production.

Formalization and "Labor Grabbing"

Formalization has also been used for control and labor grabbing in Tanzania. In recent years, Tanzania has been promoting a 'Land for Equity' arrangement where the government provides land to investors in return for at least a 25% share of ownership of the project. One example has been the Eco Energy Sugar Project in Bagamoyo. The public-private partnership is between the Tanzanian government and a Swedish company and involves 20,374 hectares of land from a former state farm Razaba and over half a billion dollars in total investment costs including support from development agencies like SIDA. The company which officially received its 99 year lease in May, 2013 is planning a plantation farm of 7800 hectares and outgrower schemes of around 3000 hectares.

Village land use plans are a part of the process of formalization and needed prior to issuing individual titles. They are supposed to be done independently by the villagers. However, the VLUP in the village of Matipwili targeted for the outgrower scheme was undertaken by a hired consultant and paid for by Eco Energy: a clear violation of conflict of interest. The aim was to clearly demarcate the area for sugar cultivation. Each group of 50 farmers is supposed to take on debt of \$800,000 from a bank loan to purchase the inputs and to sell all sugar produced to the company. The official estimate is that it would take seven years to pay back the loan, though this is under the most optimistic conditions. Meanwhile with no income

from the sugar the only option given for earning livelihoods over that period will be for farmers to work the land of the plantation at low agricultural wages. This is *prima facie* evidence of both control and labor grabbing. Moreover, there are suspicions that land might be used for collateral rather than sugar receipts leading to the possibility of land grabbing and dispossession.

Meanwhile 1300 people currently farming the former Razaba farm, which has been vacant for years, will lose their land and be evicted. It also affects thousands of herders using the property for grazing. Moreover, there is likely to be other evictions associated with company's attempt to acquire 2000 more hectares (an area called Biga West) from the village of Fukayosi, which is in a boundary dispute with Mitipwili over the property. The land use plan is also an attempt to resolve this dispute, which would be in the benefit of the company. We will likely have another example of dispossession formalization (Action Aid, 2015)¹⁵.

Huggins (2014) raises a number of key points in Rwanda on the relationship between formalization and dispossession. First, between 1994 and 2012 the government set up a "land sharing" scheme, carving off land from individuals to returning refugees and others. Sometimes this was from competing claims to land and other times it was simply handed to individuals without any claims or historical linkages to this property. The national level of land registration formalizing titles was popular precisely because people felt they might at last be protected from these unpredictable seizures. In fact the opposite might be the case. Article 68 of the 2013 of Land Law retroactively guarantees the rights of all recipients of land sharing. However, there is nothing in the law that says that land sharing will be stopped (Huggins, 2014, footnote 9, p.149). Hence dispossession is guaranteed through the formalization of the land sharing arrangements guaranteed under the 2013 Land Law, *and* there is no guarantee that the registering of land will not impede future dispossession.

An additional dimension to the process by which formalization can lead to dispossession is through the forced sale of land due to the accumulation of debt. The Rwanda Government has an explicit strategy to transform agriculture by moving people off the land. In 2000, they published Revision 2010 which was aimed to reduce the numbers from 90 percent to 50 percent. The focus is to find ways to encourage farmers to intensify production and produce for the markets while at the same time ensuring that they are "pulled or pushed into debt and sell their land, turning to non-farm occupations or providing paid casual farm labour" (Huggins, 2014).

Generating Winners and Losers

We have provided a host of examples that illustrate the various means by which elite can use formalization as a tool to strengthen their political, economic, and social positions. Indeed, in all cases we have examined in and outside of this paper, dispossession through formalization is the result of either an individual or group of elites exploiting the power dynamic in which they are inherently advantageous. We cannot talk about dispossession without implicitly discussing the ways in which systems and institutions allow individuals or groups with social, political, or economic power (or more often, a combination of the three) to take land that rightly belongs to others. To speak only of the poor who were "dispossessed" of their land ignores the reality of those who have benefited from unequal local, national, and global power dynamics that enabled them to do the "dispossessing." We have examined various

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¹⁵ Some material here also comes from email correspondence with a Ph.D. student studying the project.

channels through which formalization may be used as a tool by elites to increase their control or holdings of land, including juridical capture or influence, control of discourse, influence or control of the land allocation or demarcation processes, alienation of smallholders' control over rights of land use, and use of strategies that promote sales of land due to debt accumulation. It is important to note that while there are examples of individuals explicitly using their status in society to their immediate benefit, there are other examples where individuals, in governments or large companies, passively benefit from the systems constructed and changed over time by similarly powerful people that distort the goals of formalization programs. In addition, there are many situations in which the economic doctrine of neoliberalism guides important decisions with disparate consequences; while some use this doctrine to their benefit, others blindly follow what it dictates, promoting a Western understanding of property rights and free markets with no understanding of the context in which it operates

While this perversion of formalization has hurt the livelihoods and security of many, it is worth emphasizing the disparate impact it has had on women. We discussed above how women suffer from both the social perspective of being less fit to hold land and unequal access to the bureaucracy of land management. There are many examples, some given above, of women being actively blocked from land registration. However, the plight of women in land management must be looked at from two angles: on one hand, women are often barred from land registration due to social discrimination and may therefore lose their land; on the other hand, even if women are not barred from land registration, prior social discrimination might mean that they never were able to hold land, in which case formalization only serves to legally solidify their inability to access land. This is a worrying weakness in the argument that formalization will increase women's unequal access to land (Chu, 2011). While there are various channels through which the rural poor have lost land through the process of formalization, women have undoubtedly suffered worse. Instead of benefiting women, formalization may instead exacerbate their social and economic oppression.

Platteau (2000) succinctly summarizes the issues of formalization of customary tenure: "Unproblematic visions [of customary tenure systems] ignore considerable social inequality in many customary systems as well as evidence of encroachment by some groups on others for livelihood and/or commercial benefits, of state appropriation, and illegal sales by "traditional" leaders" (via Peters, 2004). It is essential to understand what the main determinants of the issues he raises and its absence from mainstream models of private property: unequal power dynamics due to unequal initial endowments (of power in the form of influence, access, and assets). If the impact of these power dynamics is not acknowledged by governments, international donors and other promoters of land right formalization, then the disturbing trend of the poor being dispossessed of either their physical land or the use rights of their land will undoubtedly continue.

Conclusions

The paper has attempted to map out the relationship between formalization and dispossession. We began with an exploration of the meaning of formalization and the different types of property rights and discuss the arguments in the literature on the purported benefits from formalization, aimed at guaranteeing property rights and with it a host of related advantages including increasing women's rights, improving the efficiency of land markets, reducing poverty, curtailing conflict, strengthening security and increasing the incentive to invest in land.

The latter is particularly important in the context of attracting foreign investment in land and agriculture in SSA which has taken on a new urgency in the wake of the G8 push for investment in land in SSA. In this context, formalization now has a bold new purpose of protecting farmers in the face of land grabbing. The final section of the paper contests this by mapping out the avenues of dispossession generated by formalization.

Despite the neoliberal rhetoric of the increased tenure security and economic benefits of formalized property rights, evidence shows that the presence of unequal power dynamics converts formalization into an instrument for dispossession. Unequal initial endowments in the form of influence, access and assets may operate through various channels including juridical capture or influence, control of national and local discourse regarding land use and users, influence or control of land allocation and demarcation process, alienation of smallholders' control over rights of land use, and strategies that promote forced sales of land by the poor.

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