

NORWEGIAN UNIVERSITY OF LIFE SCIENCES



FOREWORD

This thesis marks the end of four years of studying Property and Land Law at the Norwegian University of Life Sciences in Ås. My background before I came to Ås is varied with both law studies and a Bachelor in European studies which I believe has had an impact on my choice of theme for this thesis.

I would like to thank Associate Professor Einar Hegstad at the Department of Landscape Architecture and Spatial Planning for excellent supervision and patience with me during the work with this thesis, even when most people enjoyed their summer holiday. In addition, I would like to thank Professor emeritus Hans Sevatdal for taking such an interest in my work and contributing with invaluable knowledge and insight into what from time to time seems like a very large and confusing field of research.

I would also like to thank my parents and the rest of my family for being unconditional supporters and motivators through the work with this thesis. Finally, I would like to thank Roger, who has stood by me through all the ups and downs, believed in me, and always been positive.

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EXECUTIVE SUMMARY

Urbanisation in developing countries today is explosive and the migrants mainly consist of poor people moving from the countryside in the search of employment. There are however few or no structures in the cities for accommodating the migrants, neither when it comes to provision of work, nor when it comes to adequate housing and property structures. The new city dwellers often settle in informal settlements where information about relations between people and land is difficult to access for people outside the settlement or immediate community. This also results in a limited market as the risks of entering are too great for outsiders. Formality of property is proposed as a catalyst of economic growth and poverty alleviation. But what does formality and formalisation of rights in land mean?

Formalisation of rights in land is an abstract concept which is used in many frames of concept by many different actors. Inadequate definition of the concept thus communicates different things to different people. Therefore, a clear definition is key. Formalisation implies a process of institutional change and hence faces problems related to path dependency and institutional rigidity. An incremental approach will contribute to reduce such problems. Important objectives of formalising land rights in informal settlements are to increase the security of tenure of the residents, and to make enforcement of the rights easier. These two concepts are linked together, as enforcement possibilities will exist where the security of tenure is high enough. Tenure security however to a large extent is a result of the perception of the rights holders. The perception of security often comes from recognition by the community rather than the possession of a title. It is therefore necessary when planning a formalisation scheme to make sure that it enjoys the legitimacy of the community and hence contributes to an increase in the security of tenure.

There are different types of formality which can be implemented, for example is there a fundamental difference between registering the actual rights and registering transactions of the rights. These two strategies generate two different systems; a title system, and a deeds system. It is however not necessarily the type of system which is essential when speaking of formalisation, but rather the *degree* to which each concrete system can be characterised as formal.

Another aspect of formalisation, which is even more important in the practical implementation situation, is whether or not it can be considered successful. The success of any project is decided by whether or not one is able to reach one's objectives for the implementation. To assess the success of a project, it is therefore necessary to have well-defined, explicit objectives. The distribution of rights in land is an important part of the power structure in any given country which makes the formulation of inclusive objectives with the common good in mind, even more important – and difficult.

Hernando de Soto and others have claimed formalisation of land rights to have great importance for the economic growth in developing countries, and to some extent this is correct. Having access to a formalised land register is a necessary, but not sufficient condition for growth; also other societal and economic structures must be present. Reports that I have studied from case studies from Senegal, South Africa, and Tanzania are quite negative to the significance of formalisation. The consequences of these programmes have however not had enough time to manifest themselves; formalisation is a long-term project.

The case studies from Senegal, South Africa, and Tanzania are used to find out if there are any common characteristics which may cause a formalisation programme to be successful. Studying the reports from these cases indicate that the most important aspects of a successful programme are comprehensive research and planning, inclusion of community-based and non-governmental organisations, subsidiarity in decision-making, economic preparedness, and focus on an incremental (and long-term perspective) approach.

SAMMENDRAG

Urbaniseringen i dagens utviklingsland har antatt eksplosive dimensjoner og ser ikke ut til å avta. Migrantene består primært av fattige mennesker som flytter fra landsbygden til byen på jakt etter arbeid. I byene er det imidlertid ikke noe apparat eller strukturer for å ivareta innflytternes interesser, hverken når det gjelder adgangen til arbeidsmarkedet eller når det kommer til tilgangen til eiendom og boliger. Ofte slår folk seg ned i slumstrøk uten formalisert eiendomsstruktur, hvilket innebærer at informasjon om eiendommer, eiere og andre rettigheter er svært vanskelig tilgjengelige for folk som ikke tilhører det umiddelbare lokalsamfunnet. Resultatet av dette er blant annet et svært begrenset marked for rettigheter i eiendom, da risikoen for utenforstående ved å entre markedet anses å være for høy. Formalisering av eiendomsforhold er derfor foreslått som en katalysator for økonomisk vekst og bekjempelse av fattigdom. Men hva menes egentlig med formelle eiendomsforhold og formalisering av rettigheter i land?

Formalisering av rettigheter i eiendom er et abstrakt begrep som brukes i mange ulike begrepssystemer av mange ulike aktører. En utilstrekkelig begrepsdefinisjon vil dermed kunne kommunisere flere ulike meninger til ulike mennesker. En klar og utvetydig definisjon av begrepet er derfor avgjørende. Formalisering innebærer en institusjonell endringsprosess og vil derfor møte problemer relatert til stivhengighet og institusjonell motstandsdyktighet. En trinnvis og inkrementalistisk tilnærming vil kunne være med på å omgå mange slike problemer. Viktige målsettinger med å formalisere rettigheter i land i slumstrøk, er å øke innbyggernes besittelsessikkerhet i forhold til eiendommen, og å sørge for muligheter for å håndheve rettighetene. Disse to begrepene hører tett sammen da muligheten for håndhevelse ofte vil foreligge der besittelsessikkerheten er høy. Denne sikkerheten imidlertid i stor grad bygger på den enkelte innbyggers personlige oppfatning. Oppfatningen av besittelsessikkerhet kommer ofte fra en anerkjennelse av rettigheten fra lokalsamfunnet, og i mindre grad fra formell eiendomsrett. Derfor er det nødvendig å sørge for at formaliseringsprosessen nyter legitimitet i lokalsamfunnet. Dette kan gjøres ved grundig og omfattende planlegging som videre kan bidra til en økning i besittelsessikkerheten.

Ulike typer formalitet kan implementeres, og et hovedskille går mellom registrering av selve rettigheten og registrering av transaksjoner som gjøres med rettigheten. Disse to strategiene munner ut i to ulike systemer som inneholder ulik informasjon om ulike registerenheter. Det er imidlertid ikke nødvendigvis hvilket system man velger som er avgjørende i formaliseringsøyemed, men snarere *i hvilken grad* systemet kan karakteriseres som formelt.

En annen side ved formalisering, som er desto viktigere under og etter implementeringen, er hvorvidt den kan karakteriseres som en suksess eller ikke. Hvorvidt et prosjekt er vellykket avhenger av i hvilken grad man har klart å nå de målsetningene man hadde satt. Vurderingen av et prosjekts suksess avhenger derfor av at det foreligger veldefinerte, eksplisitte målsettinger. Fordelingen av rettigheter i

eiendom er en viktig del av et samfunns grunnleggende maktstrukturer, hvilket ytterligere viktiggjør – og vanskeliggjør – formuleringen av gode, inkluderende målsettinger med fellesskapets beste som grunnlag.

Hernando de Soto og andre har hevdet at formalisering av eiendomsrett har en betydelig innvirkning på den økonomiske veksten i utviklingsland gjennom at fattige får adgang til å bruke husene sine som sikkerhet for formelle lån. Til en viss grad er dette riktig; tilgang til et formalisert eiendomsregister er en nødvendig, men ikke tilstrekkelig betingelse for økonomisk vekst. I tillegg fordres imidlertid også tilstedeværelsen av andre sosiale og samfunnsmessige strukturer. Rapporten jeg har studert fra Senegal, Sør-Afrika og Tanzania har hatt et nokså negativt syn på betydningen av formalisering. Konsekvensene av disse formaliseringsprogrammene har imidlertid ikke hatt nok tid til å vise seg fullstendig i samfunnet; formalisering er et langsiktig prosjekt.

Jeg bruker også studiene fra Senegal, Sør-Afrika og Tanzania for å se om det er noen egenskaper ved formaliseringsprosessene som kan ha innvirkning på hvorvidt et formaliseringsprosjekt er vellykket eller ikke. Studiene av rapportene indikerer at det viktigste for å lykkes med en formaliseringsprosess er omfattende undersøkelser og planlegging i forkant, inkludering av lokale interesseorganisasjoner, subsidiaritet (nærhetsprinsippet) når beslutninger skal tas, økonomisk beredskap og fokus på en trinnvis prosess som går over lengre tid.

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1 INTRODUCTION

1.1 THE CHALLENGE OF URBANISATION

The theme of this thesis is formalisation of land rights in informal settlements in urban and peri-urban¹ areas. I have chosen a mainly theoretical approach to the subject involving definitional problems and case studies based on literature studies.

A new type of urbanisation is happening around the world, particularly in developing countries. Poor people living in rural communities migrate to bigger cities in the search of work and new opportunities of escaping poverty; opportunities which are not available in rural areas. In itself this phenomenon is not new – the same thing happened during the industrial revolution in Europe. What is new is the scale in which it is happening and that there is little industrialisation which creates employment opportunities in today's developing countries. But where do these migrants live? Most are poor without the means to acquire adequate housing, and are therefore forced to settle in urban slums or informal settlements causing these to grow. The United Nations Human Settlements Programme (UN-Habitat) has reported that over 900 million of the urban poor live in informal settlements where the tenure is mostly insecure (UN-Habitat 2004).

Absent or insecure property rights have also been seen to have a close connection to poverty, which leads to the question of what came first; poverty or insecurity (UN Secretary General 2009; Wily 2006). According to UN-Habitat (2004, see also UN Secretary General 2009), if nothing is done to curb this explosive population growth, people living in urban slums are expected to reach 1.4 billion by the year 2020 and over 2 billion by 2030. This urbanisation cannot be stopped, but if handled appropriately, the process can be used to generate wealth and economic growth, both for the city dwellers and for the country as a whole.

Slum dwellers are however often seen by city authorities as living on the land illegally, and consequently there is rarely any planning for management of the slum and upgrading of benefits and infrastructure such as water access, roads, sewage management and sanitation in general (UN-Habitat 2004). As urbanisation is happening very rapidly and the slums are growing at equal speed, the need for formal structures is growing more and more apparent (Magigi & Drescher 2010). Along with this comes the need to acknowledge the situation among the authorities and plan accordingly.

But what problems arise concerning the use of land and property rights in a situation of this type of rapid urbanisation? As mentioned, there is a close link between property rights and financial status of the individual or household. This is interesting because it generates a growing need for looking at

¹ The term peri-urban refers to areas along the urban boundaries, in between countryside and city (Schage 2009).

rights in (urban) land through a multidisciplinary lens, including land law, social studies, anthropology, and economic behavioural studies.

Formalisation has been claimed to be the “medicine” which will fix problems of poverty, gender inequality, differences in economic potential, and several other problems typical for developing countries. But in response to all these claims regarding the effects of formalisation, the question of what formalisation is arises. What does the concept imply and what processes are involved? The answer to these questions will often define the goals, content and outcome of a given formalisation process, and it is therefore important to be aware of their existence, and for professionals to include the ambiguity of the term as a factor when developing schemes.

As I have experienced, it is however not an easy task to grasp the full content of such a many-faceted concept as formalisation of property rights. My first research question will therefore include an attempt to sort and systematise the different aspects which make up the concept of formalisation; *what is the meaning of the term formalisation, what is included, what is excluded and how is it used?* It may be difficult to find a definition which can be used generally, but this is not the objective either. The objective of chapter 2, where I will focus on this question, is rather to identify some of the meanings implied when the term formalisation is used. For example, can it be defended that a simple titling process where people are given formal, although limited, title to land falls under the term, whereas other more incremental processes where legal framework follows the actual practice are not considered formalisation? And what about the relationship between formalisation and the actual tenure structure? Does formalisation imply changes in this structure or should it be restricted to registration of the existing state of affairs?

Cheneval (2006) makes a convincing statement of property rights as human rights. The first section in article 17 in “The Universal Declaration of Human Rights” of 1948 states that “[e]veryone has the right to own property alone as well as in association with others”. In the second section the principle that “[n]o one shall be arbitrarily deprived of his property” is adopted (United Nations 1948). This implies that it lies upon the government of a country a responsibility to create and install a functioning property rights system which provides equal access to property and protection of ownership for all, regardless of gender, race, religious beliefs or other characteristics.

The right to adequate housing under international human rights law, is closely related to the right to land, and consists of seven components: (i) secure tenure; (ii) availability of services, materials, facilities and infrastructure; (iii) habitability; (iv) accessibility; (v) affordability; (vi) location; and (vii) cultural adequacy (UN-Habitat 2004). All of these components are also highly relevant in a discussion of formality and formalisation of property rights. In the following, I will touch upon all of the themes, but my focus will however be on tenure security, affordability, and access to basic infrastructure.

The fact that the scope of formality is included as a part of the international human rights law, gives an indication of the importance given to property rights and disposition over land. This puts land questions high up on the agenda when combating poverty and levelling out differences between people and countries.

The recognition of property rights as human rights does however not mean that all people have the right to a certain amount of property, but that “everybody has the right to the property they own according to lawful and legitimate acquisition” (Cheneval 2006, p. 14). In other words, without a legally founded and upheld system for protection of property rights, the protection of basic human rights must be defined as inadequate. But what does this imply? It is very drastic to claim that a full-scale formal system for adjudication, registration, surveying etc. is required in every country to avoid being in conflict with the human rights. And legitimate acquisition? Does this necessarily mean formal acquisition? If so, most property in the world would not be legitimately acquired in the first place.

As with other universal human rights, it is of the utmost importance to have a system based on good governance, accountability, and fair distribution. The view of property rights as human rights is very interesting as it in many ways legitimises an elevation of the protection of property rights to a moral and universally valid norm which is to be the basis of laws in all countries.

In the year 2000, world leaders assembled in the United Nations headquarter to adopt a declaration containing the so called Millennium Development Goals (MDGs). The MDGs consist of eight goals to be reached before 2015, all concerning economic, environmental and health issues which should be the primary focus of world leaders when formulating policies of aid and assistance to developing countries (United Nations 2000).

Effective use of and access to land is an essential condition to reach at least three of the MDGs – end poverty and hunger; gender equality; and environmental sustainability – by aiding in obtaining material security and creating a fundament for further economic growth (Rashid 2009). An example in relation to the goal of ending hunger can be found in Ethiopia; a country where the residual right to land lies with the government, while the people are given long-term usufruct rights based on use² (McCrummen 2009; Schage 2009). With growing population in the world, governments and private companies alike have started to plan for and the subsequent rise in the demand after food, by renting fertile land in, inter alia, Ethiopia on long-term contracts ranging up to 99 years. The Ethiopian government is in a deep economic crisis and has opened to foreign direct investments (FDI), hoping that this will generate employment and economic growth. For the investors however, it is the prospect of profit and food provision for their own population which motivates the investment, and the produce

² The Marxist government decided that the land should belong to the people using and cultivating it while the residual ownership of the ground still belonged solely to the state (McCrummen 2009)

is more than likely to be exported leaving the Ethiopians in a situation without neither land nor economic means to produce their own food (McCrummen 2009).

It is however a common misconception that all informal settlements are slums which are only inhabited by the poor. In Tanzania, research has shown that both low-, middle-, and high-income groups live in settlements without any legally recognised relations to the property (Kombe & Kreibich 2000). The question then is however whether all these people live in so called informal settlements. If yes, then the question of whether formality really is a goal worth pursuing arises, as it according to this is not a precondition for economic prosperity and wealth. It also raises the question of whether the non-provision of a viable formal property rights system is really a violation of the universal human rights. If no, the next step must be to identify which characteristics of a settlement are required to qualify to a status of formality.

The dichotomy formal – informal is widely used both in theory and practice to classify settlements based on their formal legal status. This status has two sides to it; firstly, whether or not the settlement complies with the prevailing planning and zoning regulations for the area, and secondly, whether the ownership or rights structure concerning the individual plots is registered, or otherwise entered into inventory, in a qualified way concurrent with the legal system. The dichotomy formal – informal can also be linked to the dichotomy legal – illegal as informality in many cases is considered to be illegal. Correspondingly, formalisation is compared to legality and legal registration. As I will show in this thesis, this comparison between the two dichotomies must be considered too inaccurate to be used uncritically.

My second research question draws on concrete formalisation processes which have taken place in urban slum areas; *why does formalisation succeed some places and fail others?* There are many ways of approaching such a question and there are methodical problems related to all the approaches. Common problems that are encountered are that conclusions are based on too few cases, biases when picking examples to fit certain conclusions, and miscommunications between respondents and researcher due to cultural, linguistic, or other differences. In this thesis, I have chosen to look at three case studies performed by different researchers in three different countries; Senegal, South Africa and Tanzania. Two of the studies – in Senegal and in South Africa – are however carried out as parts of the same project and are synthesised in a common report, which may be methodically problematic in relation to pre-defined goals set for the research. There is however a definite lack of studies thoroughly investigating the impacts of formalisation of informal settlements, and therefore I have chosen to use these two cases. The risk of biased conclusions will be taken into account when concluding. My purpose is however not to make generalisations based on my findings, but to throw light on some characteristics which may contribute to the success of a formalisation scheme.

In chapter 3, I will account for formalisation processes which have taken place in three different countries in Sub-Saharan Africa; Senegal, South Africa and Tanzania. The objective of this is to identify the impacts of the formalisation processes which have taken place and see if there are any common characteristics which may explain why a formalisation process succeeds. A challenge in doing this is of course making comparisons of different schemes carried out at different places at different times, and lay claim to make some sort of generalisation from it. There may however be certain characteristics to all the programmes which contribute more to a successful process than others. The challenge will therefore be to identify these characteristics and use them to generate a “formula for success” which can be seen as purely an idea guide with general propositions. As I have already mentioned, I will base this thesis on empirical data found in different reports from formalisation programmes in the three countries, and prepared by others. The data collection on my part is hence from theoretical studies of these reports and not from my own field work. Using this method will of course result in a certain loss of information from the actual survey to the final report, but it is an appropriate method for comparing processes in more than one place and seeing the development after some time has passed.

An important part when evaluating success is to clarify the conceptual meaning put into the term. I will therefore spend some time discussing *when* a project can be defined as successful and *who* sits with the power of definition in each situation. This power of definition is in the risk of falling in the hands of actors with clear political agendas, leaving the question of whether actual success can be observed in the dark.

My third research question is as follows; *what is the significance of having access to a formalised property rights system?* This discussion will be based on the discussion of formalisation and the three case studies. In chapter 3 and 4 I will discuss the relevance and validity of several statements made by theorists (particularly Hernando de Soto), trying to compare actual consequences to predictions and simplified statements regarding the significance of formality. I will then use the findings from the case studies in the previous chapter to substantiate possible conclusions.

Methodologically, this thesis may be characterised as a theoretical, literature based study. All my material is to be found in literature; some purely theoretical and some based on empirical case studies. Most of the literature is produced within the academic fields of law, economics, and social sciences, which of course carries with them the baggage of their respective methodologies. My professional background is rooted partly in social sciences, but also in professionally oriented studies of tenure systems etc. at the Norwegian University of Life Sciences (UMB). The latter studies comprise a large component of a more technical and practical approach; i.e. how registration and formalisation is actually done, how the land rights systems are composed etc. This adds a certain degree of practicality to my analyses, interpretations, and conclusions. Or said differently; elements of practical “do how” is

added to a dominant aspect of “know how”, hopefully contributing to creating a more complete and accurate picture.

There will be some overlap with the discussion of success under chapter 3, mainly because it is difficult to separate impacts and significance of a transformation which comprises so many primary social structures of a society. It is remarkable that when dealing with a subject which has been so central in the writings of theorists of developmental economics, there is still a substantial lack of post-formalisation studies analysing the significance and impacts of formalisation. There may be several reasons for this, and I will only mention two here.

Firstly, most of the comprehensive formalisation schemes which have taken place in newer history are still going on or recently finished. With such a short time frame, it is difficult to identify impacts of the scheme as most of the important impacts are expected to occur in a medium- or long-term perspective. The results which can be seen after a short period of time are hence not necessarily representative for the actual impact of formalisation. Secondly, there are sizeable methodical challenges linked to making comparisons of different schemes, carried out at different times in different places. Local characteristics may to a large extent have contributed both to the scope and content of the actual scheme, and to the degree of success and general impact. Different cultures, legal systems etc. makes generalisation impossible and studies may therefore be considered less important and interesting for other than revision purposes. Personally I believe this to be mistaken. By conducting comprehensive studies of the situation before and after formalisation, the probability of actually finding general characteristics that can be used when planning other projects, is much higher than through theory and models alone.

1.2 THESIS DISPOSITION

The rest of this thesis will have the following build-up. In chapter 2 I will describe, elucidate, and discuss several theoretical aspects of formalisation. Doing this properly means to use input and theory from several different academic fields, such as law, institutionalism, history, and philosophy. Towards the end of chapter 2, I will try to collect all the threads and hopefully be able to say something more concrete about formalisation as a concept.

Chapter 3 starts with an introduction to the concept of success, what is it and how can it be determined? This introduces the three cases of formalisation that I have based my following discussion on; Senegal, South Africa, and Tanzania. The cases will be thoroughly described both when it comes to the planned process and when it comes to the impacts which have been recorded. Chapter 3 is thus a beginning of the discussion of research questions 2 and 3.

In chapter 4, I will go deeper into the results of the case studies and use these to answer my two final research questions in full. First I will compare de writings of de Soto with what has been observed in the different cases to see whether the significance of formal property rights systems really is as great as predicted. After that, I will go on to see if it is possible to identify any common denominators when it comes to which projects fail and which succeed. The discussion of success in the beginning of chapter 3 will here be very relevant.

Finally, chapter 5 concludes this thesis. Here I will sum up the findings of the previous chapters and see if it is possible to conclude. I will also spend some time on some personal reflections around formalisation, impacts, and future projects, which I have made throughout the work with this thesis.

Structurally, the thesis is constructed in a manner where every chapter builds on and continues the preceding chapters, creating a natural build-up based on the relation between the research questions. The theoretical discussion in chapter 2 creates a fundament for the description of the case studies in chapter 3. The discussions in chapter 2 and 3 then lead up to and prepare the discussions of the final two research question. This structure combined with the close relations between the research questions, causes a certain degree of overlap between chapters to be inevitable.

2 FORMALISATION

2.1 INTRODUCTION

In this chapter I will try to identify and systematise different aspects, contents, and views on the concept and term formalisation in an attempt to find the essence of formalisation as a concept. The chapter is introduced with a philosophical and terminological discussion of what a concept is and the loss of information that occurs when abstracting the content of a comprehensive concept into a small term. It is important to have this in the back of one's mind when trying to define any concept. With formalisation, which can be understood differently by different actors, it is hence very important to be accurate and to explain what content is included in the term every time it is used.

Next, I spend some time on the subject of institutions which are the frameworks of rules, norms and the like which shape human interaction. The property right is the central institution here and formalisation of property rights is thus a formalisation of an institution which may be informal to begin with. To understand formalisation, it is important to understand the *object* of formalisation, which is land and rights in land. There are many different views on property and how it has come into existence. Some even claim that land needs to be registered to become an object of property in the first place. Property in this case however refers to a bundle of rights in land, registered or not, which combined make up the *property right*. The nature of these rights may vary from country to country and even from community to community, and make up the base of what should be registered in a formalisation process.

Security of tenure is very central when speaking of formalisation of property rights and is commonly part of the main objective of any formalisation scheme. In this thesis, both when defining formalisation and when relating the theory to the case studies, security of tenure will play a central role. Heightening of security of tenure is however more than the registration of ownership; perceptions play a very important role and in a settlement where the tenure security is high to begin with, formalisation does not necessarily have any impact on the security at all.

In the final part of the chapter, I will attempt to sort the different aspects of formalisation to find a way to summarise the content of the concept in an understandable and systematic way.

There are several challenges that come with not being able to accurately define the concept of formalisation either in theory or in practice. The most serious problem is not necessarily that the term formalisation is used in different meanings in different contexts. As I will illustrate under, formality of property rights is something that should always be assessed in the local context. The main problem is however the apparent lack of awareness concerning the ambiguity of the term. Formalisation is a term

used in different contexts; political, academic and others, without spending enough time on accurately defining the meaning in which the term is being used.

For many actors, perhaps especially the political ones there may even be a certain security in being opaque and imprecise when speaking of formalisation, to avoid being held responsible for unwanted outcomes of practical politics. Formalisation of land rights is something which directly intervenes in the basic power distribution in any society. Potentially enormous values can be released which makes it even more important within power politics to exercise a certain control over how the formalisation is carried out. In such situations there will always be actors with different agendas who will attempt to impact the content of the formalisation scheme in different directions.

In the existing literature within the field of land administration and systems for formalising rights in land, different terms are used to illustrate the same thing, and the same terms are used to illustrate different realities and phenomena. In my studies I have found different terms such as land representation, titling, regularisation and legalisation, all ostensibly describing the same thing; what I chose to name formalisation. Regularisation is also used to describe general upgrading of housing and basic infrastructure (see for example Kyessi & Kyessi 2007). This creates a quite confusing field to navigate through, both for those working within the field, and for people outside. What is common for all of these terms and concepts is however that they are all to some degree based on the dichotomy of formal – informal. The difference is often where the line between the concepts is drawn. As I will show below, this line is not a clear and straight one, but rather a blurry line which cannot necessarily be fixed permanently.

There are at least two main aspects of the concept of formalisation. Firstly there is the *legal* side, where the power of definition mainly lies. The legal aspect includes all formal institutions, regimes and definitions which are considered “legitimate” under a specific rule of law. Secondly, there is the *technical* aspect consisting of surveying methods and how to carry out formalisation processes on the ground – the actual implementation of a formal system. The legal aspect of formalisation is to a large extent determinant in the contents of the technical aspect.

Both these aspects are dependent on thorough planning and adaption to local conditions, but perhaps on different levels? The legal side to formalisation should maybe be linked to a regional or even national level to assure a certain degree of coherence in the national legal system. This would however require a great deal of lenience in the rules so that local adaptations can be made. A part of this lenience should probably regard the technical aspect inasmuch as the actual surveying will take place in the physical context and should be adapted to this. A major challenge will here be to assure national, legal convergence and at the same time protect the right to make technical adjustments to strictly local conditions. The risk is that the compromise between these two levels of jurisdiction

results in local rights holders, who are often the weakest parts in these situations, losing out because of inadequate local adjustment of the technical aspect. In the following, I will however mainly focus on the legal side of formalisation as this is the side governing the implementation of the technical side and therefore is somewhat superior.

2.2 CONCEPTS AND TERMS – A BRIEF OVERVIEW

Around 400 years B.C. the philosopher Plato developed a new theory of reality, known as Plato's Theory of Ideas. In short, this theory implied that all things around us (concrete and abstract) are only reflections of eternal and unchangeable ideas which exist in a metaphysical world (Svare 1997).

Where the ideas come from and how they have come into being is a philosophical discussion which I will not elaborate on here, suffice to say that ideas in the platonic sense can be related to theories of concepts and notions which we see still today and which are definitely relevant in the discussion of formalisation.

There are many way to explain the essence of concepts, and many philosophers have tried after Plato. Concepts can be seen as mental representations or psychological entities which come from world-like mental representations of the objects that surround us (Margolis & Stephen 2008). This view has been criticised because the existence of such mental representations presupposes a prior existence of concepts in people's minds, i.e. that the concept exists before it has been introduced to the person. The critics consider concepts to be abilities within people. The concept of "cat" will hence be the ability to discriminate cats from non-cats in addition to be able to conclude that the concept of cat implies certain characteristics (Margolis & Stephen 2008). There are many other views, theories and philosophies on concepts, but for the purpose of this thesis, it is sufficient to illustrate the philosophical debate with these examples.

The theories of concepts range from the field of terminology studies to larger philosophical theories on the nature of reality and human psychology as seen above. Common for most theories is however that concepts remain somewhat abstract and mental understandings of objects that surround us (Bjørneset 1995). Even though the concepts always are abstract, objects can be either concrete or abstract, where concrete objects can be seen and touched such as deeds, plots, and houses. Abstract objects on the other hand are more like the classical philosophical ideas or mental objects, for example property rights, legislation and formalisation. It is often more difficult to grasp concepts of abstract objects as mental understanding of abstract things is closely related to a subjective standpoint. The different understandings of formalisation is a good example of this. Main differences between the theories are often found in the understanding of the origin of the concepts, i.e. how they were established in our consciousness in the first place. The interesting point of view here is how concepts are perceived within the terminology and linguistic field.

To create a common base for communication, concepts are accompanied by definitions characterising and explaining the content or the scope of the concept (Bjørneset 1995). These definitions are a way to link the concept, which often has a subjective understanding, to the term, which is common and to a certain extent objective. The concepts are thus described by the use of terms, which are words relating to the same concepts for different people. To succeed however, communication is dependent upon the participating actors having (or at least having knowledge of) a common system or frame of concepts within the field in question. Without such a system, it will not be possible for the receiver to accurately relate to the meaning behind the terms used, or the concepts the terms are extracted from. A system of concepts be rooted in different academic fields, professions etc., but also from different cultural or ethnic groups and societies.

With formalisation as with other abstract objects, one of the problems when trying to define the concept is that one has to go from the purely mental level to the concrete and tangible level without losing any of the information or characteristics related to the concept. This is a very demanding task for abstract and many-faceted objects and may cause confusion within a communication situation, as opposed to concrete objects which can be depicted or shown to eliminate confusion. An example of this difficulty can be seen in the many different explanations of property rights. Such rights can be defined as (i) custody and ownership of movable property; (ii) relations between people in relation to land; (iii) relations between people and land; and several other definitions. Definition (i) does not even involve land, which in a discussion of formalisation of property rights such as here may cause considerable confusion.

Common for these definitions is the focus on relations, but apart from that, the meaning differs. How can one identify the “correct” definition in a concrete situation? None of the definitions are wrong, but inability to clarify which one is the correct one in the context may cause misunderstandings. The concept of property rights thus includes all the different definitions above, but none of the definitions are able to include all the relevant information, thus omitting certain aspects of the concept.

The term is on the highest level of abstraction as opposed to the concept which includes all pertinent characteristics. During the process of abstraction, many characteristics of the original concept or idea will be “lost” inasmuch as they are made implicit in the term. This necessitates a common theoretical and philosophical foundation where these implicit meanings of a term are known. Consequently, when communicating with actors outside one’s own system of concepts, the need to clarify and explicitly define the terms used becomes ever more important. Within the field of formalisation, it will be necessary to communicate with people in many frames of concepts, both when theorising and when carrying out actual schemes in practice. It is absolutely essential that the term formalisation contains the same characteristics for all involved actors such as policy makers, property owners, and technical staff. If this is not achieved, the risk of diverging expectations is greater, elevating the risk of failure.

When it comes to formalisation both the concept and the following definition are somewhat blurry and indefinite. This causes the term to mean different things to different people based on conceptual and definitional approaches. Reasons for this discrepancy may lie in cultural, religious, local traditions or other characteristics related to individuals, or the fact that a concept may change over time without showing changes of the term. Archaeological studies and findings may for example change the understanding of ancient religions and the like, resulting in a change in our frame of concepts and hence a change in the meaning of the term. Change in a concept may also manifest itself differently in different frames of concept, making the potential confusion even bigger.

The term can in other words remain unchanged, while the meaning of it has changed as a result of variations in the concept. It is especially when communicating with actors outside one's own conceptual framework that one needs to be aware of the importance of defining central concepts. Changes in concept definitions over time may be very obvious to actors belonging to the field – insiders – but not to outsiders. This discrepancy between the meanings of the same term at different stages of time creates space for subjectivity in relation to the concept.

A certain degree of objectivity and common ground is needed to be able to communicate clearly and make sure that as few misunderstandings as possible take place. As mentioned above, the individual meaning of a term in a certain frame of concept is affected by several variables, such as where one is born and raised, by whom, different cultural aspects (local, regional and national), personal experiences, education, the concrete situation etc. An example is the concept of property, which depending on frame of concepts may be defined as a plot, a house, a plot with a house, the vaguer real estate, or even as an abstract institution. Certain "truths" must however be agreed upon in defining a concept and the content of the appurtenant term in a given context. Some of the purpose here is trying to identify some of these truths by investigating what meaning is *generally* given to the term and to what degree this meaning is appropriate in illustrating the concept of formalisation.

For the purpose of this chapter, the most interesting is what formalisation, after being a well known term for a long time, *has come to* mean today. It is clear that formalisation has gone through phases when the meaning has varied and it is the modernity of a given time which has laid the ground for the meaning given to the concept.

But when communicating, semantics are often less interesting than the content of what one communicates. There are for example terms which have gotten a completely opposite meaning than the original, due to people's use of the word. The importance of clarifying the meaning given to a term thus grows more imminent.

2.3 INSTITUTIONS

The property right is an institution, and this and other institutions have a central place within most fields of society. When speaking of formalisation, it is therefore important to know something about institutions and institutional theory. Institutions can be seen as a part of the fundamental framework for human interaction, meant to motivate certain behaviour from actors and prevent other. Institutions can be formal or informal, where formal institutions are codified in laws or other regulations while informal institutions are embedded in for example culture, values, and norms. The accessibility of formal institutions is at times easier for all actors, particularly external, and may widen the base of actors within the operating field of the institution. In addition, it may be a question of enforcement. Informal institutions are however just as rigid in its framework, but often much less accessible for actors who do not belong to or are familiar with the local context. In the presence of known and recognised institutions, uncertainty in all kind of relations is reduced; both when it comes to how one self should act in different situations, and when it comes to action of those with whom the interaction takes place. Transaction costs are central in this framework, see below (Sevatdal & Sky 2003).

According to Douglass C. North (1990, p. 3), institutions can be defined as “the rules of the game in a society or [...] the humanly devised constraints that shape human interaction”. Institutions can also be seen as human-made rules and norms which define how actors behave within a given environment (Sevatdal & Sky 2003). In other words, institutions are established to create incentives for people to act differently than they probably would have done without constraints (in a “natural” state). This is a classical economic point of view which tries to outweigh the fact that people are not rational actors in a perfect market, and therefore need constraints and incentive-creating mechanisms to show desired “rational” behaviour. Carriers for passing on and communicating existing institutions are for example local cultures, routines, codes of laws etc. (Sevatdal & Sky 2003).

Transaction costs are all costs associated with a specific transaction, except the contractually binding sum; for example obtaining information about the object transacted and securing the rights obtained through the transaction (Sevatdal & Sky 2003). Institutional frameworks are established to help lower the transaction costs resulting from market imperfections. When a property sale is carried out in a country with a trustworthy, legitimate, formal and public register of properties and owners, the buyer’s cost of finding the true owner is limited to consulting the register. Rules and laws placing responsibility for possible mistakes in the register on either buyer, seller or public authority, creates predictability in the market and for the actors as to what risks they run going through with the transaction. In lowering the transaction costs, the value of property in a transaction situation is likely to rise as the risk is lowered. Formality is here a characteristic of the institution of property rights, lowering the transaction costs and creating the possibility for economic growth through the property

market. Institutions also depend on definition of concepts, cf. property rights. The definition of property rights in the given context, determines the scope of the institution.

In a situation where the total cost of a transaction (contractually binding sum and transaction costs) is higher than the benefit for one of the contracting parties, the transaction will usually not take place. This is the case in many developing countries today as a result of inadequate access to information (North 1990). If the lack of a formal register causes such high transaction costs, the land market will stagnate and economic growth will be harder to achieve. There are however structures ensuring a certain level of transactions, but these are considered informal and are not incorporated in the legal system. These institutions are not easily accessible for actors outside the immediate locality and the functionality of the market will therefore be limited because of sky-high transaction costs.

In a market dominated by informality and informal institutions, the “rules of the game” are much less available to people outside the specific context and the costs measured in time, effort and risk put into identifying these rules will be very high. Thus, the market will be de facto limited to the immediate circle of people who are familiar with the workings of the institutions in that particular area.

Formalisation of land tenure can be seen as an attempt to ease accessibility to the information for actors who are not familiar with the existing institutions. Closely linked to formal institutions is also publicity around the scope of the institution and access to information about the “rules of the game”.

Formalisation of land rights implies an institutional change where property rights as an institution is modified to comprise additional qualities compared to the informal right. Even though the informal institution is no less of an institution than the formal, the change lies, inter alia, in the enforcement possibilities. In establishing a formal system for property rights, it is implicitly said by the authorities that property rights not registered formally have a lower standing and are less “real” than the rights registered. This is very obvious from a juridical point of view when it comes to available means of enforcement (Sevatdal & Sky 2003). In Norway for example, if ownership is registered formally, there will be no question of who the legal owner is³. If the ownership is not formally registered, the question of who is the owner will have to be solved on the basis of contractual law and interpretation of contracts which may be agreed upon a long time ago and even by other actors than those involved today. In a court dispute in most countries today, enforcement of registered rights is significantly easier and more predictable than rights acquired under informal institutions.

The theory of institutional change is therefore highly relevant when discussing formalisation of property rights. According to Sevatdal & Sky (2003), there are two main varieties of institutional change. Firstly, there is the change in formal rules and laws. Normally this causes little controversy,

³ The negative side of this is that the registered owner will win right in a conflict even though he is not the real owner.

except in cases where there are no existing laws to build on, but rather a formal institutionalisation (formalisation) of existing informal institutions. Possible conflicts may arise from disagreement around the actual content of the formal institution and the application of the new rules of engagement.

Secondly, institutional change consists of attempts to exercise influence on the existing informal institutions, embedded in people's values, norms and general habits. This kind of change is in addition to the legal change highly relevant in a formalisation situation. In informal settlements in urban areas, people often come from very different parts of the country, or from abroad, often settling in the same area as others with the same cultural background. This may cause smaller, cultural enclaves within the settlement and many different rights structures (Professor emeritus Hans Sevatal, personal communication, 18 March 2011). With many different cultures and views on property, rights, collectivity, and land administration, the need to conform the understanding of property through more or less subtle exercising of influence becomes an important tool in creating formal institutions.

A major challenge when operating in the field of institutional change, is the problem of *path dependency*, meaning that when an institution is established – whether deliberately or incrementally – the founding framework restricts the further development of the institution which may cause the institution to function inefficiently. Path dependency is a consequence of market imperfections, as inefficient institutions in a perfect market would either be liquidated or modified to efficiency (North 1990). In most cases, institutions are not the result of an extensive planning process but have rather developed incrementally. When seeing the institution of property from the viewpoint of Oestereich (2000), cf. below **Feil! Fant ikke referansekinden.**, as a gradual individualisation of land, it might be that property started out as a rather limited set of rules. But as the scarcity of land became more evident and the individualisation came further, the institution also grew more comprehensive, including more features as the need arose.

This incremental (and unplanned) development does not open for sudden major changes in the structure of institutions, which will develop in the same direction as they started or as the framework allows. This path can be changed by for example unanticipated consequences of different choices made, externalities or in some cases exogenous forces (North 1990), but this is the exception rather than the norm. Path dependency is emphasised as something negative in most situations as it is a counterforce to *positive* changes as well as negative. I will however argue that within the field of formalisation, the commenced path needs to somehow be followed to a certain degree in order to achieve success. This is not to attribute positive or negative value to the concept of path dependency, but rather to acknowledge the consequences of its existence.

When establishing new and formal institutions for administration of land rights, a considerable economic potential in real property can be released, both in rental markets and in sales markets. An

institutional failure however (or otherwise ill-functioning institutions), may spur unwanted behaviour such as land grabbing, conflicts and as a result a lowering of economic potential and waste of resources (Deininger 2003). The consequences of an institutional failure can thus be devastating in a perspective of economic development. Building on existing structures when formalising property is a form of path dependency, or rather the act of following and modifying the path already staked out (“giving in” to path dependency). Following the path in this case means approaching formalisation of land rights with the intention of incrementally changing and registering certain features of holding property, based on the lowest common denominator between the different informal institutions. In this perspective, formalisation can be seen as the attempt to merge the entire existing informal institutional framework into one formal institution where the most important existing features of property rights are represented.

There is a significant difference between formalising existing rights and establishing new systems based on theoretical assessments. To use the examples of Norway and Sweden, countries which both have well functioning formal systems for registering property rights today. Whereas the Swedes have been attentive with regards to institutional needs regarding property rights and established a legal system where the law is always codified and guides the functioning of the formal property rights system, in Norway the laws within the field have tended to be codification of an already established practice, i.e. a formalisation of an informal institution (associate professor Einar Hegstad and professor emeritus Hans Sevattal, personal communication, 8 March 2011).

A consequence of this is that in Sweden, where new institutions have been established to introduce new practices, nearly all aspects of the property regime are formally codified. In Norway, there are however many informalities guiding the operation of a property rights system which all in all is considered to be formal.

The reasons for such differences in the Norwegian and Swedish systems are not the topic for this thesis, but an interesting observation is the differences between creating new institutions and formalising informal ones. In the first case, there is the possibility of establishing new practice according to the preferences of the authorities. It seems quite simple and alluring, but the risk of failing is more impending if the new institution is not rooted in society. A failed institution will lose any influence over people’s actions and the incentive-creating role. In the second case, one does not have the possibility to fully dictate the contents of the new institution (due to path dependency), but by building on the existing structures it is possible to influence the content of the institution in the wanted direction. Even though it will not be possible to start over with this strategy, the risk of failure is substantially lower.

2.4 WHAT IS PROPERTY?

2.4.1 DIFFERENT PERSPECTIVES ON PROPERTY

The primary reason for defining property rights and property is to generate a better understanding of the object of formalisation and what it comprises, to find an appropriate strategy for successful completion of a formalisation programme. In the general picture, the term property can among other things relate to personal belongings, thoughts, and ideas, characteristics of something or a piece of land as is the relevant view here. In the world of theory and theoretical schools, property is also seen in several different ways depending on theoretical point of view (based on Sevatdal & Sky 2003). In a *juridical perspective*, the focus is on the right in itself and the relationship between subject and object created by the existence of the right. The right also creates a relationship between the holder of the right and all others not holding the same right⁴. The rights in question are legal inasmuch as they are accepted by the rest of society and guaranteed by the state, i.e. formal.

Property in an *economic perspective* is primarily the result of a focus on efficiency (in production, transactions etc.) and relations between subjects (the economic man) and objects (production factors). The meaning of property in the economic perspective includes, contrary to the juridical perspective, rights or privileges given by the state based on regulations, for example rights to develop a plot stemming from zoning regulations etc, so called regulatory rights⁵. The inclusion of regulatory rights⁵ in the concept of property makes the content of the concept much more volatile as such rights are given for specific reasons and may well be taken away on the basis of another legally binding resolution. To assure efficiency in transactions, availability of information regarding property is central.

The last perspective on property I chose to include here is the *sociological*, where the focus in defining property and property rights lies on relationships. Relations are between individuals (subjects) and are power relations creating stronger and weaker actors. In this view, owning property is an indication of the distribution of strength in a society, and further that the act of owning property actually generates power. An example of this can be found in democracies after the American Revolution, where the right to vote often was linked to payment of taxes; in practice whether or not one possessed property. It is also relevant today where possession of property is an important part of the power-structure in any given society.

⁴ Or subjects holding the same or a parallel right.

⁵ Right to build a house, dispensation from existing rules, licence to buy a property subject to concession. Such rights are established and distributed by planning authorities and may be taken away by the same authorities, according to certain procedures under certain conditions.

2.4.2 THE CONCEPT OF PROPERTY

Property as a concept is closely related to ownership or possession, as the act of owning or occupying something can be seen as a main prerequisite of the existence of property. Different forms of possession can also be identified, for example if an object is held collectively or individually, or if the subject holds a complete ownership right or a limited right. Immanuel Kant (1797) described ownership as the mode of having something external as one's own, indicating that property is something which is separate from the owner (person) and can be kept in the owner's custody. It does however not immediately include the many different varieties and levels of possession. The question then arises, as ownership often and by many is seen as an individual affair, how do so many other and more collective forms of possession come into existence? Does land held under these forms of possession, not qualify as property?

According to Williamson et. al. (2010, p. 456), property can be defined as “[s]omething that is capable of being owned”. This definition does not say anything about how and by whom the ownership is held, and I think there are more suitable starting points for an attempt to identify property as a concept. Within the field of land law, property relates to rights in pieces of land, but even here, the concept is defined differently in different contexts, and the term can mean different things depending on system of concepts, cf. over. Cheneval (2006, p. 14) defines the concept of property as a “system of rules governing the allocation, i.e. the access and control of material and spiritual resources”. This definition can relate to most of the examples of property mentioned above, as property is considered to be a resource. It also highlights the importance of rules and institutions surrounding property.

Oestereich (2000) draws historical lines back to pre-proprietary societies of hunters and gatherers when he defines property as an individualisation of rights in land. He thus separates the concept of property from more collective land-holding regimes, meaning that the act of holding land in itself does not qualify to ownership of property; a certain individuality is also required.

A common understanding of property is of course the physical land unit or plot which can be seen, touched, developed and enclosed by fences, and this definition can be very useful when communicating with people in a practical context as an abstract concept is made concrete and observable. When analysing property as a concept and trying to grasp the different meanings when approaching property theoretically, it needs to be underlined that property also includes other aspects which may be important in the analysis. A defined space either below or above the ground, for example a parking garage, can be included in the concept.

Platteau (1995, p. 14) claims that “[...] if property has no social legitimacy, it is no property because it lacks the basic ingredient of property, recognition by others”. In this view, property is not an independent concept but its existence is conditioned by an external factor; recognition by others. He

does however not specify who these others are, if they are neighbours, authorities or other bodies. Even though I agree with the importance of recognition that he proposes here as it is at the base of legitimitact, I do not think it appropriate to include it in a definition of property as such. With formal property rights systems, the situation may however be quite different.

According to de Soto (2000, p. 48) “[p]roperty is not the house itself but an economic concept *about* the house, embodied in a legal representation”. First of all, he indicates that property only exists on a conceptual level, as the concept of property is defined by another concept. This may be philosophically interesting, but a concrete definition of the concept is still required. Second of all, he claims that property by definition is formal, i.e. that it is the formality which establishes the property. To this, I cannot agree.

The most agreed upon and common way of describing the characteristics of property is as a *bundle of rights* which can be possessed, transacted, or developed together or separately. This bundle can consist of different types of rights, both individual and common. Which rights that are included is often the result of tradition, history, legal system, and other incentive-creating mechanisms. An example of such mechanisms is the system of taxation. Tax-averse actors may choose to organise ownership and transact rights with the lowest tax burden. In Norway for example, a stamp duty applies to all transactions of freehold property which is registered formally and hence enjoy legal protection. To avoid this tax, some apartment buildings are organised as private limited companies. When transacting such apartments, the transaction involves a share in the company only, and as there is no tax on share transactions, the stamp duty is avoided even though the transaction is formally registered.

Property in other words consists of several components and an important feature of these components is on the one hand that they relate to people (or corporate bodies) through ownership or other rights of disposal, and on the other hand that they relate to land. Different rights from the bundle lay the ground for different relationships between the rights holder and the physical plot. A right of cultivation for example implies a hands-on relationship between person and land, while a right of letting generates a more distant relation based on monetary transactions⁶. I will elaborate on the relationship between people, property, and rights below.

2.4.3 PROPERTY RIGHTS

The primary reason for defining property rights and property at all is to generate a better understanding of the object of formalisation and what it consists of to better find an appropriate strategy for the successful completion of a formalisation scheme. An important aspect of property is, as mentioned, the concept of owning it. But what does it mean to own something, and what relations

⁶ In such a case, the tenant will have the direct relationship with the property by virtue of holding another of the use rights from the bundle.

can be identified? These are the relations found in the aforementioned bundle of rights. Different rights can be the rights to cultivate, to rent or to collect rent, but even though exemplifying, these rights say little concretely of what property rights really are. North (1990, p. 33) characterises property rights as “the rights individuals appropriate over their own labor [sic] and the goods and services they possess”. Furthermore this appropriation is a function of the institutional framework, built on legal rules, forms of organisation, enforcement and behavioural norms (North 1990).

This is an economic approach, which is pursued further in Williamson et. al. (2010), defining property rights as the engine of land markets, and the foundation for economic growth and prosperity. Property rights also contribute to establishing networks between people in a society through establishing rights and obligations. This system can be lifted outside the actual community and can contribute to establishing a legal identity (UN Secretary General 2009). There are however other ways of perceiving property rights in land than from the purely economic perspective. In a sociological perspective, land rights can be seen as “social conventions that regulate the distribution of the benefits that accrue from specific uses of a certain piece of land” (Deininger 2003, p. xxii). In this definition property rights are understood as relations between people inasmuch as the rights regulate how people are entitled to act towards each other concerning land⁷ (see also Sevatal & Sky 2003).

Property rights must however also be seen as premises for the relationships between people and land given that the right defines what kind of use is opened for (Williamson et al. 2010). As several actors can have different (or common) rights to the same parcel of land, the rights do not only regulate how these actors are to relate towards each other, but also how they, given the rights, are to relate to the land and other rights that may exist upon it. But as mentioned, rights can also regulate other areas of influence in society, like political influence. As mentioned earlier, in young democracies before universal suffrage was introduced, the right to vote was often linked to owning property (Cheneval 2006). Under the constitution of Norway from 1814, only taxpaying men with certain relations towards property were allowed to vote, thus possession of property by rental or ownership was made a criterion for inclusion in and influence on political and social processes. Landholding and taxpaying women were however not given the right to vote.

Rights of managing property have both positive and negative sides. The positive side is represented by the fact that the rights holder is entitled to exercise the actual right. The negative side on the other hand, implies that the rights holder is also entitled to prevent other people from exercising the same or colliding rights on the same plot (Falkanger & Falkanger 2007). For example, where person A has the positive right to let his sheep graze on a field and person B has a positive rental right for a plot with a house on the same field, the negative side of A’s right will among other things be to hinder B from

⁷ Or other things subject to property rights.

ploughing the field to and plant carrots. The negative side of B's right will correspondingly be to hinder both A and all others from exercising rights in conflict with his rental agreement.

Formality and informality is seemingly not an aspect when defining the content of the concept of rights and property. In some definitions, like de Soto's, legality is however emphasised. Even though legality can be an aspect of formality, it is not necessarily an aspect of property as such. This claim can be interpreted as an effort to include a consideration of formality when identifying property and rights in property. If this is the case, it would mean that the subject of formality already will be determined when defining something as a property or property right, and the question of whether the discussion of formality and formalisation is even relevant must be addressed.

First of all, I do not agree that legal registration or legality is a requirement for characterising something as a right or property in general. That would mean that a complete disregard of the contractual freedom which exists in most democracies today⁸, and demote rights coming from private contracts and traditional ways of holding land into something not worthy of legal protection. Secondly, I believe that this kind of definition risks a favouring of stronger actors at the expense of the poor and less resourceful. This is especially a risk in developing countries going through a formalisation process. The risk of land grabbing and disfavouring the less resourceful is imminent where legality is a prerequisite for ownership of a property.

2.4.4 PROPERTY REGIMES

When speaking of regimes, it is habitually in the meaning of states and countries and how they are run and governed, including level of democracy, individual freedom, freedom of speech and economic order. In this thesis however, the regimes revolve around certain actors and a number of institutions which gives the actor both the power and the right to act in relation to something, in this case property (Sevatdal & Sky 2003). When speaking of the property regime, this includes the institution of property right, all formal and informal institutions surrounding the rights to property, and all actors who derive power and right to act from the property right. Several different actors and groups of actors are also included in the property regime. A person, organisation, or corporate body will normally also act within other regimes parallel to the property regime. The different rule systems constituting the institution in the different regimes will however create incentives to act differently within the different regimes (as the rules of the game are different).

In close relation to the property regime are two other regimes which the actor must take into consideration when dealing with property; the regulatory regime and the land politics regime. The main institution in the regulatory regime is the law or set of rules governing *use* of land within a

⁸ There may be certain fields which are exempt from the contractual freedom in the public interest or for other superior reasons such as the protection of children and other weaker groups.

jurisdiction (Sevatdal & Sky 2003). The actors include many of the same who are acting within the property regime, but officials, government and particularly planning authorities play an important role in addition. In interaction with the authorities actors will have to act differently than versus private actors to achieve their goals. In the regulatory regime, rules deciding the use of property, rights to expropriate land to ensure a certain use etc. are administered, which may again affect rights holders and their rights.

The land politics regime is very different in different countries based on national needs, topography, settlement patterns and political orientation. In Norway for example, the land politics regime is quite extensive including required concessions to acquire property (with considerable exceptions) and laws of eminent domain which are often in favour of the collective and the state (Sevatdal & Sky 2003). Among other countries with less extensive land politics regimes, The United States can be mentioned. The extent of the land politics regime is closely linked to the general opinion of state intervention in a given country.

2.5 UNDERSTANDING FORMALISATION THROUGH TRANSACTIONS

One of the main objectives governments have for initiating formalisation programmes is the establishment of viable, well-functioning land markets. These land markets will then contribute to and generate economic growth for the city, region, or country as a whole. In a model with perfect market conditions, there are no costs associated with carrying out transactions as all actors are rational and there is perfect competition. This does however not apply to reality, as “the perfect market model” is just that; a mode, i.e. an intellectual tool to study the reality. In reality, all markets are subject to inefficiencies, and transaction costs are an example of such inefficiency.

According to North (1990, p. 27) transaction costs “consist of the costs of measuring the valuable attributes of what is being exchanged and the costs of protecting rights and policing and enforcing agreements”; measuring costs and enforcement costs. In a society with completely efficient institutions, i.e. in a model of perfect competition, transaction costs will not exist. The focal point of institutional and economic theory is transactions and the costs of transactions resulting from inefficiency (North 1990; Sevatdal & Sky 2003).

The transaction costs which tend to be the highest ones, especially in countries with informal or inadequate formal systems for land registration, are the measuring costs (North 1990). As mentioned, informal institutions are often difficult to access outside the immediate local, traditional, or cultural context and may hence restrict the availability of fresh capital from external actors.

Transaction costs are thus highly relevant when speaking of formalisation as a process of stimulating the establishment of land markets which is often emphasised as one of the more important objectives

of formalisation. In a situation where the measuring and enforcement costs exceed the benefit of the transaction for one of the actors, the transaction will not take place (North 1990). If this is the general situation, the land market (the *formal* land market that is) will stagnate, hindering economic growth. If one manages to formalise the property right institution, giving better access to information and better possibilities of enforcement, the transaction costs will presumably sink, and if the formalisation is successful, the benefit of the transaction will exceed the costs, hopefully generating economic growth (North 1990).

Deininger (2003) emphasises that transactions in an open land market, enables actors who have little or no land but still are productive, to acquire land and create personal economic growth. After having acquired land, the possibility of achieving credit will make further growth possible and probable. Productivity, even on the micro level, will hence cause growth. The growth is however prevented by capital market imperfections and policy distortions, making the formalisation a less effective catalyst for transactions. In a situation of high transaction costs in the land market, a stratification of the land market can be seen, where certain groups trade with only each other or where all sales remain informal between actors who know each other or in other ways have access to a certain information and enforcement possibilities (Deininger 2003).

When moving from an informal to a formal system of land rights, the groups of actors participating in transactions may change. In informal settings, personal ties and relationships often link the transaction parties to each other, alternatively cultural or regional belonging. In a formal system, the market may open up to external actors, potentially increasing the demand for land and creating a possibility for economic growth. This “opening up” of the land markets is not due to lifted constraints or new market regulations, but simply a result of lower costs associated with easier access to trustworthy information.

2.6 SECURITY OF TENURE

There are however other sides to property and formalisation than the economic ones. Improvement of tenure security is the primary objective of all formalisation programmes (Augustinus & Benschop 2003). It is therefore necessary to take a closer look at this concept and try to understand the meaning of it. At first sight, tenure security may appear relatively clear; a situation where people’s tenure is based on legal regulations which protect from arbitrary eviction or other deprivation of the property, i.e. that legal tenure is secure tenure (Payne et al. 2008).

This is however not accurate, as security of tenure is so much more than just receiving a title or other form of formal documentation. It is a perception among people holding property of the risk of eviction from their plot. In many informal settlements for example, the perceived security of tenure is very high due to acknowledgement in the community of the ownership and generally a low risk of forced eviction by public authorities. But this perception cannot be the only thing defining the tenure security.

Do the rights holders have tenure security if the perception of security is high, but the risk of eviction without compensation is imminent? Personally, I would answer no to this. At the same time, I would claim that in a situation where one has actual legal security and no eviction risk, there is still a tenure security problem⁹ if the residents fear eviction and do not feel secure.

Tenure security must thus include something more than only perceptions; something concrete. Palmer (1998) divides tenure security into two “levels”. First there are the *basic* demands for security, which are centred on a concrete piece of land. These demands include an assurance against eviction without any form of compensation, and the right to pass on the land to the next generation through inheritance. This basic security can be assured through neighbourhood acceptance of ownership, assistance of neighbourhood organisations, and a general acceptance from the authorities of the settlement. No legal formality is hence needed to achieve a basic level of security of tenure.

The second level of security is generated by *expanded* demands for security which occur when the market for land expands beyond the immediate locality (Palmer 1998). This is something which is predicted to happen as a result of formalisation. External actors will demand better and maybe more juridical guarantees of transactions and protection against arbitrary eviction; second level security.

But what does this security include? Is it a guarantee of continued access to the *exact* piece of land one holds today or to an *equivalent* piece of land somewhere else? To many households the exact piece of land is the desired object, and if continued occupancy of the plot is not guaranteed, then the security of tenure is not perceived high enough. There are however many reasons why the authorities should have the right to eminent domain, for example for the provision of basic infrastructure. Objectively, the tenure security must be considered to be high as long as just compensation is given and the owner is enabled to procure an equivalent piece of land somewhere else. It is the *tenure* which is the secured object, not necessarily the concrete plot (Payne et al. 2008).

The degree of tenure security does however have an impact on how people act in relation to the land. People who are not afraid of arbitrary eviction or encroachment, are able to work more as they do not have to guard the property from intruders, which again will generate economic growth for the household (Deininger 2003). Maybe the determinant of the tenure security should be based on a combination of an analysis of the behaviour of the rights holders and the legal system for protection of property rights?

Another question which must be answered is then what it is that creates security of the tenure. According to Palmer (1998), security can be achieved through recognition of the ownership. In informal settlements, it is often recognition by neighbours and the community which generates

⁹ Although not necessarily low tenure security.

security, while in developed countries with formal systems it is recognition both by neighbours, and by the authorities which is important for the security of tenure. Recognition by the authorities does however have an impact on security also in developing countries, but it is a recognition of the settlement as a whole and not the plots and boundaries within the settlement which is provided. In developed countries however, the authorities tend to recognise the property right of the individual, guaranteeing just compensation in the case of expropriation (Palmer 1998). Also the legal system and non-governmental and community-based organisations contribute to a feeling of tenure security for rights holders.

Typical of informal settlements is that they have high community-based security and often quite low political and legal security of tenure (Palmer 1998). In countries with high political and community security, the legal security may still be low, as corruption and clientelism may cause problems. Tenure security is thus determined by three factors: community security; political security; and legal security (Palmer 1998). The political and legal security is often important in situations where the need to involve people from outside the community in property matters arises. As long as all transactions are kept strictly local, it can often be enough to have the community security in day-to-day matters.

Security of tenure is hence a rather complex concept including both concrete and abstract characteristics. This makes it a very difficult concept to define, some may say impossible. I agree with Palmer (1998) that it is not possible to accurately define security of tenure outside the specific context. It is possible to give certain generalisations, such as is it the perception of security which is key, and that legality often, but definitely not always can contribute to security, but other than that, it is a task which must be performed in the concrete context after combining the perceived and the factual tenure security.

Another important aspect of tenure security is that it is more often than not part of the main objectives for initiating formalisation projects in informal settlements. The existing level of security is hence important when preparing a formalisation scheme. According to Holden et al. (2011), the perceived security in an informal settlement can be compared to the perceived need for formality and hence contribute to the effect and success of the formalisation programme. In other words, a programme which offers no improvements of tenure security is more likely to fail as it lacks incentives for the residents to participate in and uphold the system.

2.7 LEGITIMACY

In Africa, about 90 per cent of all land remains unregistered and – in this sense – outside the legal system. According to Klaus Deininger (2003) this is caused by a gap between legality and legitimacy, i.e. that the legitimacy of governments and authorities is so low that even in places where there is access to formal systems, the residents are not interested in taking advantage of it. Even though I

believe that also high tenure security plays an important role in lessening the interest in formal systems, there is little doubt that a government which is considered legitimate will have more success in introducing formality than a government without foundation in the people.

Legitimacy is a kind of trust which exists between a government on any level and its subjects (Moen & Sundstøl 2010). The trust includes that the people believe in that the government will act in their best interest and according to promises and guarantees given in for example election campaigns. This trust is established through the practical politics the government exercises and is influenced in either direction by follow-up policies. Legitimacy is thus a kind of fresh produce which must be maintained unless it “goes bad”. Interestingly, legitimacy is a one-way street. By this I mean that it is always the government which has to prove itself to the population to maintain its legitimacy. How individuals in the population act does not at all influence the legitimacy of the state as long as the government takes adequate steps to deal with rogue members of society.

There are at least two sides to legitimacy when it comes to formalisation: (i) to succeed with a formalisation scheme, the government needs to enjoy legitimacy from its subjects; and (ii) the established system of land rights must be developed in such a way that the system itself is considered legitimate. These two sides are linked together inasmuch as an illegitimate government is unlikely to establish a formal land rights system which is considered legitimate by the population. This does however *not* mean that a government enjoying legitimacy, automatically achieves legitimacy also for the established system. There are also inherent characteristics in the actual system which will contribute to the perceived legitimacy such as how rights are adjudicated and which rights are registered.

I will not go very deeply into legitimacy questions and what causes legitimacy for a government as it is another, though very interesting, discussion. Suffice to say that good governance in the meaning that the government enjoys support in the population, is accountable for its actions and is transparent and open, is very a important starting point if one wants to establish a successful formal land rights system.

When it comes to the legitimacy of the actual system, it is a more technical matter and is based on whether the rights holders experience that the actual rights which already exist on the ground are included as rights in the formal system. If the formal rights are not considered to reflect the actual rights situation, the system’s main function of providing information about existing rights will have failed. The legitimacy of the system will thus depend upon the scheme’s ability to accurately incorporate the existing informal system into the formalised system (see Oestereich 2000).

2.8 WHAT IS FORMALISATION?

2.8.1 THE PROBLEM

Until now, this chapter has concentrated on discussions of certain central concepts in formalisation theory and raise awareness with the reader regarding the ambiguity and difficulties related to reaching precise definitions, within the field of property- and formalisation-related themes. Now, I will try to explore the core question of the current chapter; namely the nature of formalisation.

The lack of a clear definition of the term formalisation is the result of both a lack of agreement among scholars and others on what processes which should be included in the definition of the term, and the still ongoing evolution of the concept to include other and different aspects. I think most would agree that formalisation is a process of achieving a kind of recognition of tenure. This leaves the main problem, which is defining formality. What does it mean that ownership is to be considered formal?

In its simplest form, formalisation can be seen as a purely legal and technical matter where owners of plots are identified and titles issued. In such a view, relevant institutions to be established would be technical frameworks for identifying and surveying plots and units of registration, without detailed legal rules for other things than the mere identification of the title holder. In a perfect market in the classical economic sense, this rather simple approach might be all that is required. Without rational actors and perfect competition etc., more comprehensive institutions for handling a formalised system and prevent inequalities is needed.

To create a viable and sustainable system, the technical part of formalisation needs to be accompanied by a legal system with rules defining how owners are identified, how conflicts are to be handled and what kinds of rights should be formalised, i.e. a framework for human interaction. In addition, a framework for protecting weaker rights holders and avoiding discrimination and land grabbing needs to be established for a formalised system to be accepted as legitimate. This requires a more holistic approach to the field of formalisation than just registering objects and ownership.

In the institutional approach to formalisation, there are several ways to initiate a scheme, and almost all can be placed on a continuum ranging from pure ex post institutionalisation of an incrementally (and extra-legally?) developed system, to a planned, well-elucidated and comprehensive system implemented by the proper authorities of a government.

Although formalisation may be a difficult term to define accurately, it should also be noted that the meaning has broadened from the initial definition. As formalisation historically has been used as a term including only titling of land, it is now common to have a more holistic approach to the concept of formalisation creating a system of land administration which takes up several aspects of property use and regulation (Williamson et al. 2010).

2.8.2 HISTORICAL OVERVIEW

To gain a better understanding of how the behaviour of households is affected by property rights, it is important to have some sort of idea of the possible origins of the rights and how they may have evolved over time. This also underlines the importance of the governmental policy regulating tenure; as the design of the policy will possibly affect the behaviour of households (Deininger 2003). A formalisation scheme should hence be accompanied by other projects accommodating the new needs of the population. An example of this can be upgrading of basic infrastructure, housing etc.

The activity of recording ownership and other rights in land has roots a long way back. According to Williamson et. al. (2010, p. 44), “[t]he need for administration starts with a degree of stability in the people-to-land relationship, associated with a basic form of territoriality”. This relation-building between man and land is likely to have become evident as man abandoned the nomadic hunter and gatherer lifestyle to settle down on one plot and cultivate the land (Oestereich 2000). The community and a collective way of living was however ever present and all members of the group were seen as having more or less equal rights in the common land.

As people started settling down in communities, individualising ownership of land and production factors, the authorities’ wish to levy taxes on land and produce resulted in a need for recording of land arrangements. These records were used also for other purposes, such as organisation of feudal tenure systems (Williamson et al. 2010), but generally as a way of protecting the powerful and exploiting the less fortunate. In other words, as soon as people start to establish bonds with a piece of land in the form of a home, hunting ground, farm land, or commercial land, the need for organisation and protection of these bonds against others may have become apparent. In classical economic theory, it is scarcity which generates the need for division of land into separate properties and organisation of property rights, meaning that the individualisation is spurred by scarcity of the wanted land.

There is however not necessarily any contradiction between the “bond-” and “scarcity” theories inasmuch as the degree of stability of people-to-land relations is likely to increase as scarcity grows and the need to protect ones land grows more imminent. As long as land is available, free and abundant, not having property rights is not a problem as there is no need to assure free transferability and exclusivity through legal measures (Platteau 1995). Where land is ownerless the supply exceeds the demand, making occupation the rational option when acquiring land. Scarcity is what gives the land value.

Disputes over land rights generates transaction costs in the form of time, money and other resources, and in a situation where land is in abundance these costs often will exceed the expected benefit of pursuing the conflict. The occurrence of disputes is therefore less likely and limits itself to situations where feelings are involved. The ‘economic man’ would however not experience such problems.

When land prices rise as a result of scarcity, the costs of disputing ownership will at a certain point be relatively lower than the expected profit of winning the dispute (Platteau 1995). When having certain knowledge of the origin of the customary rights, it will be possible to plan ahead and incorporate locally rooted mechanisms to avoid the majority of conflicts. This is also discussed in Deininger (2003) where the origin and evolution of property rights are considered very important as people and households are affected, and therefore government policy can be formulated so as to generate the desired behaviour.

2.8.3 TITLE AND DEEDS SYSTEMS

The scarcity and individualisation of land required structures for registering the information about owners and other rights holders. The design of different registration systems is to a large extent a result of the dominant legal tradition which according to Glenn (2004, referred in Williamson et al. 2010) can be divided into six main types; Islamic, traditional, Talmudic, civil law, common law and Asian. I will not go deeper into any of the legal traditions here, but restrict myself to mentioning their existence. For further reading I recommend “Legal Traditions of the World” by H. Patrick Glenn (2004).

During the modern imperialistic era, the European legal systems spread to different degrees around the world, and with them the different views on property, land rights, and land formalisation (Williamson et al. 2010). Two main types of registration systems developed in countries based on Roman law and German or Anglo common law respectively. In the *deeds system* which draws on Roman Law and is found in European Latin countries (and states colonised by these), only transactions are recorded and a deed for the specific transaction is issued. This generates a register of *owners*, where the unit of registration are the persons – legal or physical – holding property.

In the *title system* however, the title is registered in its own right. Therefore, what is generated is a register of *properties*, where the owner only becomes one of several characteristics linked to the property¹⁰. This system of registering property evolved in Germany and spread to the United Kingdom and its colonies (Williamson et al. 2010). Today, the German and British systems are somewhat diverging even though they have their roots in the same title system (see table 1). A main difference between the title and deeds systems is that the title system will sustain itself with regard to the unit of registration because land, as opposed to people/owners, does not cease to exist. By this I mean that once the unit is registered, it will continue to be so throughout the existence of the register. Whether the register is updated and correct is however another story.

The systems in different countries may be inspired by, or otherwise related to, one of these two main categories of systems, but are then adapted to local conditions and become unique and tailored for the

¹⁰ The owner is considered an episode or chapter in the life of the property.

exact local context in which they operate. The title and deeds approaches are both very specific in what creates the basis of the systems, and in the purest, initial state, no other aspect than the owner or the title is registered. Ideology of government concerning state intervention is an important factor in application and development of systems of registration (Williamson et al. 2010). For example, the infrastructure of land administration in the USA, is grounded on a mercantilist ideology where the government has a very limited role in the administration of private property (Williamson et al. 2010, see also de Soto 2000).

In postcolonial countries today, the imposed formalised system from the old colonist countries still often exists parallel to one or more traditional tenure systems which often date back to pre-colonial times (Williamson et al. 2010), not meaning that the formal systems have any legitimacy or reliability as information carriers. Traditional customary tenure systems are often considered less or non-formal by actors outside the community. Efforts to formalise the administration of land in these countries face big challenges because of this inasmuch as all the existing customary systems need to be recognised and to a certain degree incorporated into the administration system (Williamson et al. 2010).

The cadastre is a register containing selected information about properties in a jurisdiction. It is an important component in a comprehensive property registration system, but is in theory separated from the register of titles or owners. Even though different cadastres contain different kinds of information and are more or less detailed and updated, the main objective of a cadastre is to provide information about the property structure concerning a parcel of land (Williamson et al. 2010). Often the cadastre is a product of its purpose, especially in countries where land has been registered over a longer period of time. By this, I mean that the information found has evolved in response to changes in the relations between land and people (Williamson et al. 2010). There is a close relation between the land register and the cadastre in a country even though the two unities serve quite different purposes; providing information on owners and rights structure, and providing information about the physical plot or property unit¹¹. The contents of a specific cadastre has often evolved from the needs and purposes of the land register and difference between registers based on different legal traditions can therefore be seen. This is illustrated in the following table from Williamson et. al. (2010, p. 66):

¹¹ The unit of registration can be a parcel, a property unit, or both

Style of system	Land registration	Cadastré
French/Latin/U.S. style	<p>Deeds system.</p> <p>Registration of the transaction</p> <p>Titles are not guaranteed.</p> <p>Notaries, registrars, lawyers, and insurance companies (U.S.) hold central positions.</p> <p>Ministry of justice.</p> <p>Interest in deed is described on a description of metes and bounds and sometimes a sketch, which is not necessarily the same as in the cadastre.</p>	<p>Land taxation purposes.</p> <p>Spatial reference or map is used for taxation purposes only. It does not necessarily involve surveyors.</p> <p>Cadastral registration is (normally) a follow-up process after land registration (if at all).</p> <p>Ministry of finance or a tax authority.</p>
German style	<p>Title system.</p> <p>Land book maintained at local district courts.</p> <p>Titles based on the cadastral identification.</p> <p>Registered titles guaranteed by the state.</p> <p>Neither boundaries nor areas guaranteed.</p>	<p>Land and property identification.</p> <p>Fixed boundaries determined by cadastral surveys carried out by licensed surveyors or government officers.</p> <p>Cadastral registration is prior to land registration.</p> <p>Ministry of environment or similar.</p>
Torrens/English style	<p>Title system.</p> <p>Land records maintained at the land registration office.</p> <p>Registered titles usually guaranteed as to ownership.</p> <p>Neither boundaries nor areas guaranteed.</p>	<p>Property identification is an annex to the title</p> <ul style="list-style-type: none"> • Fixed boundaries determined by cadastral surveys carried out by licensed surveyors (Torrens). • General boundaries identified in large-scale topographic maps (English). <p>Cadastral registration integrated in the land registration process.</p>

Table 1 General relationships between land registers and cadastres (from Williamson et al. 2010)

In table 1 land registration systems and the cadastres belonging to them, are categorised based on how they developed and which purpose they were meant to serve; the German approach, the Torrens/English approach, and the French/Latin/U.S. approach. Depending on the nature of the formal land registration system, the cadastral information also differs. I will now briefly go through some of the main characteristics of these three systems as they appear in the table above. It is however important to remember that these characteristics are purely general and each national system will be unique.

The *French or Latin* style system is based on registration of deeds, where the transactions taking place are registered as opposed to actual plots. Titles are not guaranteed and it is the deed which provides

proof of ownership. In such a system notaries, registrars and lawyers are central actors. In the U.S. also insurance companies are important actors as it is possible to get insurance against third persons who claim ownership after a transaction. The deed contains a description of metes and bounds and sometimes a sketch of the property. The map or sketch in the deed is not necessarily the same as in the cadastre, which may cause confusion.

In charge of the registration system is the Ministry of Justice. The responsibility for the cadastre falls under the Ministry of Finance or a tax authority, revealing that the main purpose of the cadastre is taxation of land. The maps and spatial descriptions are simple and are only used for taxation purposes. Depending on what is the basis for taxation, the maps do not need to be very accurate and are not always based on the work of surveyors. Normally, the registration in the cadastre follows the registration in the deeds register.

The *German* style registration system is a title system and has its origins from Germany and the Hanseatic city-state system (Williamson et al. 2010). Ownership is registered in a land book under the administration of local districts courts. A transfer of ownership is thus validated by a judge or district recorder. The units of registration are defined and identified in the cadastre before titles are distributed. Titles registered are guaranteed by the state. This generates a considerable heightening of information reliability and a corresponding lowering of the transaction costs. To defend this guarantee, a considerable effort is put into validating the authenticity of the information which is registered. It is however only the actual rights situation which is guaranteed, not the area or the boundaries of the physical plot.

When it comes to the cadastre corresponding to this formal system, it is established for the purpose of identification of land and property. The registration in the cadastre thus takes place before the issuing of titles and the property is given an identification which separates it from other plots. The German style system uses fixed boundaries, meaning that the boundaries are surveyed and marked in the terrain based on maps and other descriptions. Surveys are carried out by either licensed surveyors or by government officials.

In charge of the cadastre is the Ministry of Environment or other similar department.

The *Torrens* style system and the *English* system both come from the German system, and have much in common. These styles of registration systems are claimed to be based on the title system, although the English was basically a deeds system. The records of registered titles and deeds are kept in local land registration offices. The ownership is normally guaranteed by the state. I do not have any examples of such systems without state guarantees, but I can only assume that this difference from the German style system is the result of a less strict validation process and hence less security around the records. Like in the German style system, boundaries or areas are not guaranteed.

In the Torrens and English systems the identification of the property is an annex to the title. The English however claim they have no real cadastre. The Torrens system uses fixed boundaries which are determined by licensed surveyors, whilst the English system is based on a registration of general boundaries, meaning that the boundaries are not located according to a map, but rather in relation to natural boundaries in the terrain. The general boundaries are identified in large-scale topographic maps.

When registering land and ownership, cadastral registration is made part of the same process. This eases the job of keeping cadastres up to date.

Today, the field of formalisation includes so many more aspects than only registering of title or deeds and certain characteristics of a piece of land. Williamson et. al. (2010) defines a fully formalised system as a *Land Administration System* (LAS), which is a more holistic approach to the relationship between people and land. In an LAS, all aspects of the administration of land and resources are included such as registration of properties' characteristics (rights structure, owner structure etc.), maps and planning information (zoning), restrictions and environmental considerations. This comprehensive system which is still developing today is a part of the so called *land management paradigm* (LMP). LMP is a way of looking at real property which gives land tenure, value, use and development equal importance as functions in a developed society (Williamson et al. 2010).

However interesting this approach to land matters is, it is somewhat premature to discuss it here. An LAS is often a final goal of a formalisation process, but at the same time it needs to grow from an already established and well-functioning land registration system. In the discussion of formalisation of land in informal settlements and slum areas, I will thus leave this subject as a presumed long-term objective of any formalisation process.

2.8.4 MORE OR LESS FORMAL?

Depending on how the concept of formalisation is defined, different systems of registration can be seen as having different degrees of formality depending on what is registered, the amount of information, the accessibility, and reliability of the system and so on. Before evaluating the degree, one must however have a clear idea of which characteristics are required to achieve formal status.

In a deeds system, which is basically a register of people owning property, the lack of inherent sustainability creates a risk that the information is outdated or incorrect regardless of how much information is registered on each unit. The possibility to track a parcel of land after the death of the owner is for example quite difficult as the unit of registration is the owner. From a creditor's point of view, the deeds system is however a very useful tool in finding the debtor's real assets or the assets registered on him. Depending on the state guarantees concerning the contents of the register, the possibility of collection of debt also varies. Combined with the general absence of governmental

guarantees for the information, I would claim that generic deeds systems without proper instruments for securing the information of the register generally must be considered less formal than a generic title system.

When it comes to different degrees of formality, some of the main determining factors are the degree to which the information is reliable, updated and complete. How much information the register contains is not the defining quality of formality, but rather *to what extent the information can be trusted to be exhaustive and correct by third parties, and the ease with which rights can be enforced*. This means that a comprehensive register containing information on all aspects of plots but without state guarantees for the information, must be considered less formal than a register containing only certain, limited information which in return is guaranteed by some kind of authority. The degree to which information is guaranteed is a vital factor also in the tenure security of the rights holders and also a main objective for proponents of formality as the guarantee protects market actors from loss and spurs growth and activity in land markets.

Commonly, as also shown in table 1, some of the information in a register is guaranteed (generally the identity of owners and other rights holders), while other information is not. There can also be different degrees of security related to such authoritative guarantees depending on what is guaranteed. On the one hand, the guarantee can be related to the written information concerning a plot. This will be a positive guarantee of the validity of the actual registered information. On the other hand, guarantees can also be related to the non-existence of rights which are not registered; a negative guarantee. Negative guarantees are in many cases even more important for transacting parties than the positive guarantees and should be prioritised when establishing a new system.

A system where both positive and negative authoritative guarantees are given must be considered more formal than a system which only guarantees for the positively registered information. However, the reliability of such guarantees must also be linked to the transparency of the authorities administering the register; to what degree good governance has been obtained in the local community, region and country as a whole.

So far, the focus has been on systems built on formal legal structures, often imposed from the top down by state or regional authorities. It is however too simple to claim the formality of a system is based on the legal rules guiding the system. Systems which are considered informal based on the legal definitions will often lack transparency to people outside the concrete context. This is however not to say that the system is not formal in practice *within* the local context, where the system may be considered both formal and transparent. The question will therefore be to what degree formality outside the concrete context is a criterion to claim formality in general. Property as defined here is immovable. This means that the most important context for talking about property must be the local

one. When external actors want to participate in a local market, it must be expected that they adjust to the local setting. Whether this is easily accessible or not is not necessarily relevant for the formality assessment. What is perhaps more important to the degree of formality is the access to enforcement mechanisms. Even non-registered property rights can be enforced depending on the type of rights and the ability to prove ownership. Maybe the key to formality is possibility of enforcement?

An interesting question is also whether comprehensiveness of the formalisation scheme is linked to the success or failure of the introduction of a formal system. From an immediate, theoretical point of view, succeeding with a comprehensive system has the presumption against it compared to a more basic scheme. Existing structures are however not necessarily easy and simple, and a system which is able to incorporate existing rights structures is presumed to be more likely to succeed. A simple formal system is however easier to establish, monitor and maintain. It takes less administrative capacity and is much cheaper than an all-encompassing system for property rights.

A model called the Social Tenure Domain Model (STDM) has been proposed to avoid depriving people holding land under customary and communal institutions from losing rights as a result of formalisation. This model is a framework for broadening the scope of land management and integrate formal, informal and customary systems of land ownership with spatial and administrative components (Lemmen et al. 2009). A central part of an STDM is to register all kind of rights in land regardless of source of formality and use personal identifiers (e.g. fingerprints) to relate rights directly to people. As all rights holders are included, the risk of loss is smaller than in a standard titling programme. Standard titling programmes are however easier to implement, both because it has been done before, and because the scope of such a programme is narrower. An STDM can be compared to a large-scale LAS, but the details of such a programme should be investigated more closely before implementing it.

2.9 CONCLUDING REMARKS

So have I come any closer to the goal of defining the contents of formalisation? The subject is very complex and difficult and to claim to have “the answer” is going too far. I have however found out that with such a wide, volatile and subjective concept of formalisation, it is necessary for all actors to be aware of the vagueness of the term and make sure to clarify what content is implied in that concrete context. To be able to communicate clearly, one must thus define the concept of formalisation in the context it is used – every time.

In spite of the complexity and difficulties which may be experienced, I believe it possible to abstract some aspects of formalisation which seems to me to be the most important ones:

- the main question of formalisation concerns the *degree* of formality rather than the kind of formality;
- the level where the formalisation takes place is central, i.e. formality in the local community or nationwide;
- how and when the information is made public is important both for the degree of formality and with regards to enforcement of the rights;
- accessibility; both for insiders and for outsiders;
- trustworthiness and the degree to which the information is guaranteed by some kind of authority;
- and
- the possibility of protecting rights and to enforce transactions and contracts.

In the next chapter I will present three cases of formalisation which have taken place in Sub-Saharan Africa. All these projects have been titling programmes, but with local differences in means and method. While I present the cases, I will also relate some of the findings to this chapter, in attempt to see how formalisation and formality works in practice.

3 THREE CASE STUDIES OF FORMALISING PREVIOUSLY INFORMAL SETTLEMENTS

3.1 INTRODUCTION

After having studied formalisation from a conceptual and somewhat elevated level in chapter 2, I will now try to see how formalisation may be experienced in practice. This chapter will constitute the fundament for my discussion of research questions 2 and 3, while also building on the theoretical discussion in the previous chapter.

Many schemes of formalisation have been carried out in different cities and countries, with varying success and impact. It is therefore interesting to take a closer look at the details of some different programmes and see how they differ in planning, implementation, and success. It would of course be very nice to be able to identify a set of fixed rules which could create a base for how successful schemes should be formulated, but based on the discussion in chapter 2, I suspect that this will be a near impossible task; certainly for this thesis, but also in general.

While working with this thesis, it has become quite clear for me that the empirical evidence of what impacts can be seen from formalisation of informal settlements, is highly inadequate in spite of massive support from economists and politicians. This was a topic at the World Bank Urban Research Symposium in 2005, mainly because it can be considered problematic to uncritically implement a strategy for economic development, when hardly any independent studies of the consequences have been carried out (Payne et al. 2009). That a system of property registration based on widening people's access to credit, suddenly met a critical eye in the beginning of a worldwide financial crisis based on sub-prime loans, is perhaps understandable. It is however still somewhat worrying that so little effort has been put into investigating the consequences of formalisation efforts.

Some studies have however been carried out, e.g. in Peru, which was an early attempt on formalising property rights. This project has been very successful both in increasing the efficiency and the equity in the land market (Payne 2001). It has however been claimed that the reason why this project was so successful is because people were relocated to vast areas of governmentally owned land in the immediate vicinity of the informal settlements. As this cannot be expected to be available in other countries or cities, the formalisation programme in Peru must, according to Payne (2001), be considered of less value as a key to the impacts of formalisation in general.

In this chapter I am going to present studies from three cities in sub-Saharan Africa where formalisation has been undertaken. The cases will be presented with focus on the observable impacts of the formalisation programmes. I will describe the situation prior to the formalisation, including the rights structure, and the actual process. Then I will account for the results which have been seen from the process when it comes to social and economic impacts and further use these in the next chapter to

see if there is more to the findings than is explicitly said in the reports. When discussing the impacts I will try to relate this to what has been said in chapter 2, especially when it comes to tenure security and access to credit.

Formalisation of property rights might have considerable implications for individuals. It is not possible to accommodate absolutely all the different rights there is, which will necessarily create both winners and losers (Oestereich 2000). The expected outcome of a process is however considered to justify the policy as the potential gains are so big.

First of all, I will however focus on success and how this concept can be operationalised. It is very important to have a clear idea of what it means that something is a success, as success is something which is very contextual by nature. I also believe that can be useful to have thought through some theoretical aspects of success when reading the rest of this chapter.

3.2 WHAT IS SUCCESS?

Before I start describing the cases of formalisation in Senegal, South Africa, and Tanzania, I will hence spend some time discussing some aspects of success. This is in preparation for the discussion of research questions 2 and 3 in the following chapter. The reason for elaborating on success already at this stage is that as I have come to understand, success is not necessarily only the end result; success can be related to the process, partial goals, and even unexpected consequences of a project. In addition, success for one actor can mean failure for other actors. These considerations are important to have in the back of one's head when reading about how the formalisation programmes have been carried out in different countries.

Success is at first glance a fairly simple and clear term, with a clear and understandable definition of an unproblematic and unambiguous concept. Put quite simply, success is easily related to winning something or being better at something than someone else or oneself.

When analysing the concept more closely, I have however found that it is highly subjective and abstract. The scope of the concept will in practice have very different meanings to different actors in society. It is a *dependent* concept which must be related to another concept or situation to have any meaning in a given context. It can for example be related to failure. Failure is also abstract but when linked to success, the two concepts can be anchored within the context. When operating within the same frame of concepts, a series of predefined criteria will be known to the actors defining both the concepts and implicating that situations not meeting all the criteria will be placed somewhere on the axis between success and failure. The predefined weighting of the criteria will help to distinguish exactly where on the axis one is situated.

It is however not enough to relate the two concepts success and failure to each other. Both these concepts are abstract, and to render the meaning of these concepts concrete, it will also be necessary to

relate them to an achievement, a development, or other results. But success for one actor is not necessarily success for other actors. In a competitive situation, one's success will in fact often be others' failure or loss (a zero-sum game). It is thus necessary to find a situation, goal, or objective to anchor the success in which can create integrative results and Pareto improvements (see e.g. Rognes 2008). Success can be related to the degree to which one reaches one's objectives (Payne et al. 2009). Objectives should therefore be defined to assure that as many as possible can take part in the improvements.

Objectives are goals defining the scope of a process, i.e. what one is meant to achieve through the process. There are different ways of defining objectives. It is for example a possibility to define a main, overarching goal for the project. This objective can be very ambitious and unlikely to reach, for example "ending poverty", and will often be common for different projects. But even though the project does not end poverty as such, any move towards this objective must be considered a success, only to different degrees. If ten families out of twenty are lifted from poverty as the result of a formalisation project, the success rate based on the main objective must be considered high¹². But what if all twenty families have their life situation improved, but still are living in absolute or relative poverty? Even though the main objective is not reached, a small move towards it is achieved. However, if ten families out of a hundred are lifted out of poverty, there is still a certain degree of success, although not as high as in the first example. To the individual family, the success is however no less in the latter example than in the former. The point here is to illustrate how very different outcomes still may be considered a success, both because of the different impacts they have on the implicated actors and because the main objective is often to be reached through different strategies as they span over many areas of a community.

In addition, a number of concrete objectives are often formulated. These are often a result of circumstances in the concrete area where the project is to be implemented, for example a need for upgrading of basic infrastructure and ending of spontaneous settlement in unplanned areas. An implicit objective in any project is of course to complete it, either within a certain time, period of time, or within other criteria. Even though this objective is reached, it does however not mean that the consequences of the project itself indicate a success. Reaching these objectives is often easier than reaching the main objectives as they are physical in nature. If the basic infrastructure has been upgraded, this can be observed, touched, and in other ways sensed. Poverty on the other hand is a more abstract concept and can mainly be observed through other physical manifestations, such as inadequate housing, inability to pay for food or services etc. There are many ways of measuring poverty, but none of these take all the aspects of being poor into consideration.

¹² It is of course possible to say that the success rate is 50 per cent, but I do not find it practical to express success in numbers and will not focus on this here.

It is thus easier to assess the degree of success when it comes to the concrete objectives which can be directly observed. But it is not always possible to identify the objectives of a given process as not all processes are planned in detail, in addition to the problems coming from actors fronting hidden agendas. The latter can especially be a problem in relation to processes handling property rights. There might be much power in owning property, and the politics surrounding distribution of property rights and the like are at best difficult to follow and at worst made up of several hidden agendas and personal objectives.

As there are levels of objectives, success can be achieved on several levels. In short and apt wording, is it possible to say that a certain degree of failure also can be seen as a kind of success? Failure to implement a registration system for property rights may still be a success because the process itself has revealed characteristics of the existing system which may be incorporated in a new attempt of formalisation. Also, to succeed with a formalisation scheme incrementalism is essential; small steps at a time, giving people and institutions the time to adjust to new features of the property system. The main objective may be to eliminate poverty or to generate economic growth through a formal property rights system, but inertia in the institutional system will more than likely put a stop to any major changes. And if a formalisation process can be a small step on the way to institutional change, it must be seen as a success inasmuch as it is a necessary step on the road towards economic growth.

When speaking of success, as in discussion of formalisation schemes, it is important to clarify whether one speaks of changes in the short, middle, or long perspective. Objectives of formalisation programmes are often ambitious and not something which can be expected to be reached in short perspective. It is therefore important to communicate well the time perspective. For people living under poor conditions, the need to see immediate changes is imminent. If a formalisation programme reaches poorly communicated objectives, it may be a success for the planning- and implementation actors, but it will still be perceived as a failure among people who do not experience much change in their situation. The time perspective is also important in another aspect of the concept of success. The positive consequences of a project should not be tied to its creators, meaning that they should last regardless of who is in charge. If the success of a project is dependent on one specific person controlling the project, it is not sustainable, and a certain degree of sustainability must be implied to call something a success.

A project can however contribute to creating awareness among the population, spurring incremental changes in the longer perspective. If this is achieved, it is difficult to claim that a project has not been successful in the long perspective, even though one might have hoped on better results right away.

Distinguishing between short-, medium-, and long term objectives can be practical when trying to measure success. For example, the overall, general objectives like ending all poverty must be seen as a

long term objective. This does not make it less important, but it makes it even more important to clarify for all inhabitants that the objective is not something that will be reached overnight. It also means that it is difficult to say anything about whether or not the programme has reached the objective before quite some time has passed. Short-term objectives are for example delivery of titles to all eligible inhabitants, adjudicating conflicts, and establishing basic infrastructure to all plots of a settlement. Whether these objectives have been reached or not is much easier measurable. Medium-term objectives can typically be the establishment of well-functioning land markets, formalisation of the employment sector, and access to formal credit followed by a bettering of the life situation of the inhabitants.

I think it is very important to clearly communicate the time frame relating to the different objectives, both to make sure that the expectations do not get too high with regards to immediate results, and to be more likely to achieve the success one is after. Reaching secondary goals, creates enthusiasm and momentum to drive a project forward, exactly what is needed to reach medium- and long-term objectives.

So is there anything concrete which can be said about success? I believe so. To be able to characterise something as more or less successful it is important to anchor the process in something concrete, i.e. to spend some time defining the objectives to be reached. These objectives should be followed by fixed *strategies* for reaching the objectives, making it difficult for actors to pursue other and more personal agendas. Success related to biased objectives will necessarily be at the expense of other objectives, making the latter less successful. The maximal success must thus be if one is able to reach all objectives to a satisfying degree and without it being on the expense of other actors or objectives; a Pareto improvement. Another prerequisite is that the authorities in charge have the common good in mind and also that all objectives are formulated with this goal.

Success can thus be seen as creating something which has positive consequences and the ability to last beyond the life span of its creators.

In the following, I will present three countries which have undergone processes of formalisation. It was important to first say something about success, as the cases will be used to find out if there are any common characteristics which may contribute to a “formula for success”.

3.3 SENEGAL

3.3.1 INTRODUCTION

From 1987 to 2007 a programme for systematic and incremental tenure formalisation was implemented in Senegal, making the country a pioneer among the West African countries in formalisation of urban property rights. Formalisation in other West African cities had been more fragmentary, not including all residents in the settlements (Payne et al. 2008). Alain Durand-Lasserre and Selle Ndiaye have conducted a case study of the impacts of the formalisation programme which is included in its entirety in Payne et. al. (2008) as Appendix A.

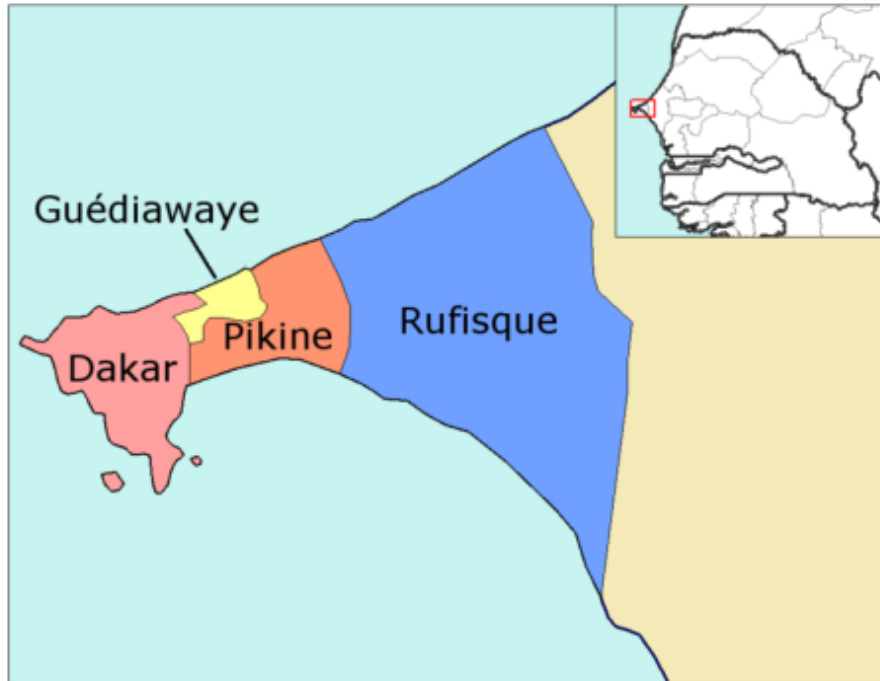


Map 1 Senegal in Africa (from Central Intelligence Agency 2011a)



Map 2 Key map of Senegal (from Central Intelligence Agency 2011a)

This report has focused on several informal settlements in Departement de Pikine which is in the greater Dakar area; four of them undergoing processes of formalisation and one control group without the right to formalise ownership. The four areas given the right to formality are Dalifort, Aïnoumady, Sam Sam 1 and Wakhinane 1. Wakhinane 2 was used as the control group as it did not fall in under the programme.



Map 3 The Pikine Department in the greater Dakar area (from Wikipedia 2009)

3.3.2 SITUATION PRIOR TO FORMALISATION

In 1995, approximately 8 million people lived in Senegal of whom 52 per cent lived in urban areas. Out of the urban population, approximately 32 per cent lived in informal settlements also called spontaneous settlements. Even though this only amounted to 16.5 per cent of Senegal’s total population, the informal settlements were expected to grow rapidly and formalisation was considered to be an adequate remedy for further slumification.

3.3.2.1 TENURE STRUCTURE

To get an understanding of the contextual situation in Dakar, it is necessary to explain the existing structure of rights making up the Senegalese urban tenure system. I found the description of the rights structure in the report somewhat difficult to understand, but after spending a lot of time trying to grasp the nature of the tenure structure, I have found the following:

Primary rights		State land National Domain Land Private land	
Secondary rights	Tenure rights	Property title	Lease Surface Rights (SR) Land title
	Occupancy rights	Administrative certificates (AC)	

Table 2 Rights structure in urban and peri-urban areas of Senegal (from Payne et al. 2008, Appendix A)

There is a definite distinction between primary and secondary rights. Furthermore, secondary rights are separated into tenure rights and occupancy rights. Both primary and secondary rights do often overlap with claims for customary rights potentially causing controversy and conflict.

Primary rights are rights which lie on all land in the country, irrespective of the secondary rights. They can be considered to be on a higher level of abstraction than the tenure and occupancy rights and as seen in Table 2, the primary rights can be divided into three different groups; State land, National Domain Land and private land. *State land* consists of both the *public domain of the state* which cannot be transferred; and of the *private domain of the State (and local authorities)* which may be transferred in certain situations. Common for the two types of domain is that they are registered under the name of the state. When it comes to *National Domain land*, this is a type of tenure which is specific to Senegal and covers all land which was untitled and not registered as State land in 1964 when the Law on National Domain was passed. National Domain land can be registered as State land if this is in the public interest. *Private land* is titled land which is owned by a physical or legal person.

The secondary rights consist of both tenure and occupancy rights which are clearly hierarchically organised. Tenure rights are also referred to as property title, including leases, Surface Rights (SRs) and (freehold) land title¹³. The *leases* are paid to the state and run for 30 years with the possibility of renewal. The plots are situated on the Private Domain of the State or other land registered in the name of the State. *SRs* are extended leases which run over 50 years and may be renewed once. Even though the contractual sum is to be paid upon receiving the right, it is possible to get a down payment plan over five or more years. The SR can also be converted into a land title if certain conditions are met. The third tenure type in urban areas is *land title or freehold title*.

The occupancy rights have the form of *Administrative certificates (ACs)* and have replaced the permit to occupy (PTO) the last 10-15 years. The PTO was an important part of former public land development programmes, where those who were allotted plots were offered a PTO for a small sum limited to the administrative costs with the programme. PTOs were the first step on the road towards receiving an SR or a freehold title. The allocation of ACs has much of the same objective, but they are given *without cost* to residents of areas which are covered by a general plan, where the detail development plans have not yet been adopted or developed. To qualify for an AC, the resident must send an application including a description of the development on the plot and a draft location plan. ACs are by definition temporary and may be revoked. When a more detailed plan is developed, the AC can be changed from an occupancy right into a lease (tenure right) if the development of the plot complies with the subsequent detail plans. If a resident cannot provide documentation of either of the rights explained over, the household is considered as irregular.

¹³ I do not agree with this labelling of all formal tenure rights as title. This further confuses the already problematic and ambiguous pool of terms and definitions.

3.3.2.2 *CUSTOMARY RIGHTS*

When distinguishing the “regular” owners from the “irregular”, the determinant is whether the household is in possession of a land title, an SR, a lease or an AC. When distributing these land rights, the existence of customary claims which may be conflicting are not taken into consideration. Since there is no tenure or occupation form designated to customary rights¹⁴, such rights are effectively excluded from the formalisation process. Irregulars will thus be people basing their ownership on claims of customary rights or private land sales agreements.

In general, customary rights in urban and peri-urban areas have not been recognised by law in Senegal since the National Domain law in 1964, when customary land was incorporated with the National Domain Land. Private contracts of land acquisition based on customary rights are however still generally acknowledged by the courts in case of a conflict between the contracting parties. Even though customary rights are not recognised by law, they still enjoy a high degree of de facto formality as holders of such rights may very well influence the outcome of a development process considerably as the rights holders are consulted in any planning process involving their rights.

A private sales contract based on customary rights can also be considered by the authorities as adequate proof of ownership and may qualify the holder for formalisation giving a somewhat better standing to customary rights holders. There is however no automatic acknowledgement of customary rights in Senegal.

3.3.2.3 *CHALLENGES*

Before initiating the tenure formalisation project in 1987, the Senegalese government identified some of the main problems relating to having such a large proportion of irregular owners in urban areas. The three main implications were (i) inadequate access to urban services, (ii) tenure insecurity and evictions, and (iii) difficulty of establishing a formal land market.

Another challenge with the informality of tenure is the difficulty related to enforcement of the rights (for individuals) and laws (for public authorities). Even though the legal framework is unambiguous, enforcement is hampered by the coexistence of statutory and customary law, clientelism¹⁵, and a widespread fear among public authorities of making unpopular decisions which might cause problems with social order and disruption of the fragile societal balance.

The enforcement problems can for example be seen in the case where a squatter settles on already titled land belonging to a private owner. Eviction is nearly impossible and it will at worst take up to five years to get a court ruling. Even with a ruling in favour of the owner, eviction will almost

¹⁴ In urban and peri-urban areas

¹⁵ Clientelism and other network affinities may be based on many different social, political, economic and cultural criteria which stand very strong in certain circles.

certainly never take place due to the enforcement problems arising from the authorities' fear of conflict and social unrest, in addition to a lack of relocation sites. The government has established a fund for compensating owners with squatters on their land, but there is not enough money in the fund to compensate the owners who will thus experience a de facto expropriation without compensation.

3.3.3 FORMALISATION PROCESS

The formalisation process in Senegal was nationwide, even though only certain types of areas were included. These were urban and peri-urban areas which were suitable for further development and urban settlement. The formalisation started in 1987 with a pilot project in the Dalifort settlement and was to be based on a mass provision of SRs. They would be allocated systematically to make sure that all entitled households received their formal property rights. In some cases also tenants were entitled to SRs. The rest of the settlements followed suite through the 1990s.

Four different options were discussed regarding the type of tenure which should be provided through the programme. Communal titles at settlement level, individual renewable leases and land titles were all rejected in favour of allocation of SRs.

3.3.3.1 SURFACE RIGHTS

As mentioned over, SRs are real rights and can therefore be mortgaged and transferred. They are temporary by nature and are part of the authorities' plan for an incremental formalisation process where SRs are the first step towards freehold title. SRs are granted for a 50 year period with the possibility of renewal once. After all fees, taxes, and cost of formalisation in addition to the administered price of the land had been paid and the land has been developed, SRs can be converted into a freehold title, completing the formalisation process. This completion is however not expected to be reached immediately as the SRs are given a life span of minimum 50 years. This time span underlines the importance put on incrementalism to assure a viable and sustainable end result of the formalisation process. 50 years must also be seen as a rather long time perspective, indicating for the eligible residents that all effects cannot be expected to be seen immediately.

Before choosing SRs as the basic formal rights to property, there was a discussion of also more collective titles and ownership models. The choice of individual titles instead of communal was made to come as close as possible to freehold title without all the administration and cost, and therefore having a larger probability to spur economic growth.

Even though SRs bear a lot of resemblance to the land title, it must still be considered a limited right over the plot. Land administration agencies argued that giving out freehold titles to all the entitled would be a massive project, which would take too long time and be unreasonably expensive both for the government and for the people acquiring the title. The perspective of being able to carry through

with the project and achieve some kind of success, weighed heavier than the wish to provide the benefits of full property title immediately.

The explicit reasons why the authorities settled on giving out SRs instead of other types of tenure rights were primarily the fact that SRs are real property rights which enjoy many of the same characteristics as for example a freehold title without being as expensive or administratively demanding as a pure title. First of all there are no permanent fundamental restrictions on transactions with SRs, either through sale, inheritance or mortgaging. Therefore, the registered plot can be used to finance further upgrading and development to a modern day standard. The fee for the SR is also payable in one sum, contrary to long-time leases with yearly payments. A plan for spreading the payment over several years is however offered through a community organisation called *Groupeement d'Intérêt Économique*¹⁶ (GIE). This as opposed to freehold title where the transfer is expected to be paid immediately upon delivery.

Even though the SR has no inherent restrictions on transfer, there are put temporary restrictions on transactions the first five years after allocation. In this time an authorisation from public authorities is required before the transaction takes place. The background for these restrictions is first of all to limit speculations in formalised land and subsequent market-driven displacements. Another important reason for the limitation on transaction is to protect the state's long-term interests as it will be easier to expropriate in the public interest. Such limitations in transfer would not be possible with ordinary land titles. The temporal limitation of the SR to 50 years is also to avoid an eventual expropriation of the land in case it is needed in the interest of the public.

3.3.3.2 OBJECTIVES OF THE FORMALISATION PROGRAMME

The three major challenges referred earlier laid the fundament for working out the concrete objectives of the formalisation programme. First of all, there was a great difficulty for the residents of the settlements of gaining access to basic urban services and infrastructure. Through formalisation, the informal settlements would be integrated in the rest of the city and identification of owners and rights holders would make it easier to plan for further development of public services.

Secondly, the risk of arbitrary eviction tends to be higher in informal areas without access to the legal system to enforce the rights. This is especially risky in areas suffering from tenure insecurity in the first place. Through formalisation, the security is to be heightened as the risk evictions is reduced.

The third main problem related to the informality of tenure was the difficulty of establishing formal and self-upholding land markets in a situation where investments cannot be secured formally. Functioning land markets are considered an important step towards generating economic growth for individuals and for the society as a whole.

¹⁶ The Economic Interest Group

The official objectives of the formalisation programme stated by the Senegalese government between 1987 and 1991 are the following:

- (i) Improvement of living conditions in informal areas including social inclusion, poverty alleviation, and integration of the urban poor.
- (ii) Integration of informal settlements with the urban framework through providing basic infrastructure and basic services at community level. Here formalisation is combined with physical restructuring and upgrading of informal settlements.
- (iii) Tenure security heightened through delivery of SR.
- (iv) Improving land management and administration.
- (v) Increasing revenue from land taxation.

In each settlement to be formalised, a GIE was created to ensure that the residents were able to participate in the formalisation process and that their interests were taken care of in dealing with the authorities. This organisation helped the residents achieve their SRs in addition to other assisting and organising purposes. Also in the Tanzanian case referred below, organisations played an important role in the formalisation process.

3.3.3.3 FURTHER

Before initiating the actual formalisation process, studies of technical feasibility and legal and regulatory framework were carried out. This shows that both the technical and the juridical sides of formality were taken into account when carrying out the project. A census was also held in each settlement in combination with the preparation of a layout plan to determine boundaries between plots *prior* to formalisation and physical upgrading. The mere prospect and definitely the announcement of a formalisation scheme tend to bring conflicts which earlier have been dormant or uninteresting, to the surface. This can be conflicts over ownership, boundaries, or crossing rights. By solving the conflicts in advance of the formalisation, an important hinder of success is dealt with at an early stage. These conflicts were solved collectively at the community level.

3.3.4 FORMALISATION IN THEORY AND PRACTICE

As I have now roughly outlined the contents and objectives of the formalisation programme as they were perceived by the authorities between 1987 and 1991, in the following I will focus on the different impacts of the programme, also found by Durand-Lasserve and Ndiaye (Payne et al. 2008, Appendix A). The focus of their investigation was the social and economic impacts resulting from the formalisation programme.

3.3.4.1 SOCIAL IMPACTS

As discussed in chapter 2, tenure security is to a large extent dependent on the dominant perception in the settlement. According to the case study there are two roads to tenure security in Senegal. The most

important process is to achieve recognition of one's right within the community. It is therefore probable that such recognition mainly will occur in groups with the same or similar culture or background or other characteristics holding them together cf. chapter 2. People without social or cultural affiliation in the local community are likely to feel that their tenure is less secure.

This recognition is generally unspoken, and based on the resident's perception of their relation with each other and the community. What generates the recognition of the rights is generally customary ownership and private sales agreements, i.e. not SRs or freehold title. The fact that private sales contracts signed in front of witnesses generally are recognised by courts as proof of ownership, is a sign that this informal ownership is also recognised by authoritative bodies outside the community itself, manifesting the de facto owner structure as something enjoying a semi-formality even without registration. This view of tenure security should indicate that receiving a title or an SR will do little or nothing to raise the tenure security inside the settlement if the tenure security is already perceived as high.

The second process contributing to tenure security in Dakar is a formal recognition of the ownership by the state. This stands in contrast to the first process indicating that formality is irrelevant as long as the ownership or other right is recognised by the members of the community. Formality is however perceived as a long-term objective for the rights holders, suggesting that the community is perceived as giving the immediate, physical protection of the resident's property, but to gain absolute security from eviction and relocation, it is necessary to achieve a certain degree of formality around the ownership.

According to the case study, tenure security *is* heightened as a consequence of tenure formalisation even though the security in the settlements is already quite high, both due to the existing recognition experienced from the community, and to the guarantees of de facto security given by the government upon the initialisation of the formalisation programme. In the long term, the tenure security is however considerably heightened as a formal right will last beyond the current composition of the community.

The changes in tenure security were however very different depending on where in a settlement a resident was located. As mentioned, the formalisation programme only applied to residents living on land which was suitable for urban development and covered by a general plan for urban development. Residents of land unsuitable for urban development because of soil mechanics or vulnerability to natural variations such as flooding did however experience a dramatic reduction in tenure security. The same applied to residents on land needed for infrastructure. These households were by definition not eligible for formalisation and were evicted and relocated.

Up until now, I have only focused on residents having or claiming to have ownership rights over a plot in the settlement. The case study shows that 71 per cent of the households in the Dalifort settlement

were tenants in 1987. The Dalifort settlement was picked for a pilot project for the formalisation programme. Due to the large share of tenants, the pilot project included a possibility for tenants either to gain an SR over the plot they rented or to a plot in a relocation site in the outskirts of the settlement. Even though an eventual relocation must be considered somewhat dramatic, the provision of replacement land in the same or an equivalent area secures the actual tenure, but not tenure of a specific piece of land. This may very well be perceived as a reduction in the tenure security as discussed in chapter 2, but must still be considered a rise in the de facto security, and definitely in the de jure tenure security. The provision of SRs to tenants did however prove too complicated and was thus not included in any of the formalisation projects following the pilot project.

The tenants not included in the Dalifort settlement and the tenants residing in the other areas did not experience a rise in the tenure security, on the contrary their security was weakened due to a sharp rise in rents as the property prices increased. An easy way for the landlords to achieve a formal tenure right without paying for it was also to include the formalisation costs in the rent, increasing it even further.

To counter shack owners' profiting from formalisation at the expense of the renters, by for example registering several plots on the same owner, registration of the second plot on the same owner was made more difficult and twice as expensive. These measures were however not enough to fight speculation as the price of formalisation, even when doubled, was still well below the market price of the plot.

Interestingly, the case study shows that women in Senegal were generally more willing to pay for formalisation than men. This can be related to the fact that their social status is much more vulnerable than that of men. Formal ownership was considered a form of protection, significantly rising both tenure security and security against infringement of property rights. In the table below, we can see the proportion of women eligible for formalisation who actually took advantage of their right.

Settlement	Per cent of women eligible for formalisation	Per cent of eligible women who used their right to formalisation	Per cent of all eligible residents who used their right to formalisation
Dalifort (pilot)	16,2	83	56
Wakhinane 1	18,4	100	38
Ainoumady	20,3	100	47
Sam Sam 1	13,6	100	-

Table 3 Eligible women utilising their right to formalisation according to settlement. Per cent (from Payne et al. 2008, Appendix A).

Even though these four settlements may be seen as a rather small population to base a conclusion on, it is striking to see that except in the pilot project, 100 per cent of all women who were eligible for formalisation of property rights, chose to pay the necessary fees, thus gaining the formal ownership of their plot. I cannot find any corresponding figures when it comes to male rights holders, but the case study shows that in 2008 only 56 per cent of eligible residents in Dalifort had paid for the formality they were entitled to, as opposed to 83 per cent of the entitled women. The figures for Wakhinane 1 and Aïnoumady are even more striking, indicating that women see the access to a formal property system as a strengthening of their status and ability to participate in the society.

According to the case study there are several reasons for the lack of participation in the formalisation process. The process has been somewhat delayed on the part of the administration of the project, presumably as a result of insufficient planning and preparation in addition to unexpected complication.

A more important reason is however connected to the economic perspective. Firstly, the economy of each resident is determinant of whether the cost of formalisation can be paid or not. Secondly, an unwillingness to pay for formalisation among the residents as long as they feel that their tenure security is strengthened because of the entitlement to receive formality, or if they are not interested in selling their right and thus do not need to take the market value into account.

Even though these reasons may be valid for certain eligible residents, it does not seem to hinder the entitled women from getting their right delivered. Women thus appear to gain significantly from formalising when it comes to tenure security.

3.3.4.2 ECONOMIC IMPACTS

According to the case study, it may be difficult to say something definite about the relation between formalisation and housing improvements, as physical upgrading of the plots were generally included in the formalisation scheme. Some observations have however been made.

Dalifort, the pilot settlement for the formalisation project, has seen the biggest improvement of the settlements studied. In 1987, when the formalisation project was initiated, 10 per cent of the houses and shacks were built of permanent or semi-permanent building materials. This had increased to 68 per cent in 2007. It is difficult to isolate the reasons for this development, whether it is the formalisation, the economic development or the relatively long time which has passed since the initiation of the formalisation scheme. Another possibility is that informal occupants try to legitimise their claim over the land by developing it as much as possible. It is however also probable that the achievement of formal title has made such investments more attractive are also the long-term tenure security is perceived as higher.

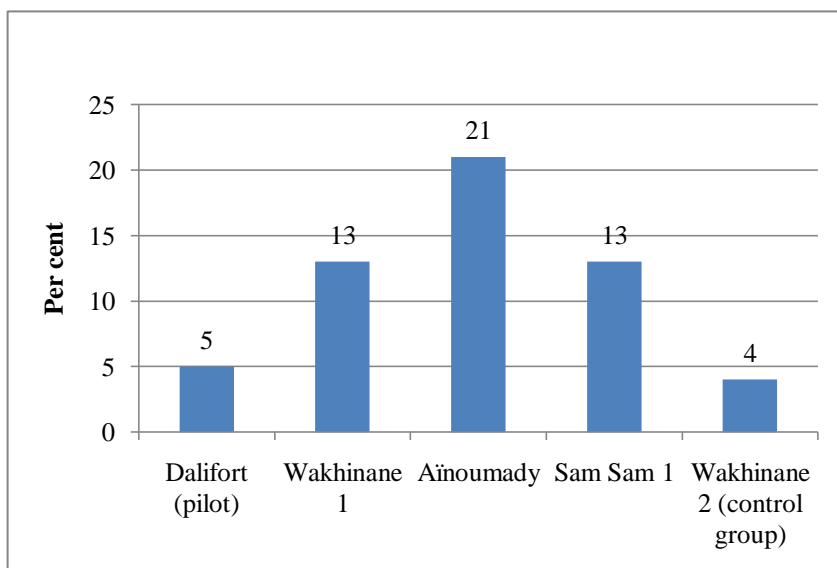


Figure 1 Percentage of residents who have gained access to bank loans following formalisation (from Payne et al. 2008, Appendix A)

According to the survey, formalisation is not the great catalyst of poor people’s access to formal credit given by commercial banks¹⁷ as has been predicted. Even though an SR is formal enough to be used as collateral, banks often look at other characteristics of the loaner such as the ability to produce a bank guarantee from another person, and maybe most importantly, the income situation of the loaner.

Figure 1 shows the change in credit given by commercial banks to residents of the four formalised settlements and the control group. There is however no information on what is used as collateral in the different cases and it will therefore be difficult to link the changes to the provision of formality.

There is a considerable difference between the settlements when it comes to changes in access to credit. What is especially interesting is that the access to credit is much lower in Dalifort than in the other settlements, in spite of it being the first settlement going through the formalisation programme. Dalifort is also subject to a steady gentrification process, which should mean that residents would be more interested in achieving credit from commercial banks. Ainoumady also stands out with a comparatively big change in the credit access rate. There are apparently no major differences between these two settlements except the gap in credit access. This indicates that formalisation does not necessarily have a big impact on the access to formal credit; there are other properties deciding whether residents of informal settlements are interested in obtaining credit.

A reason for the ambiguous change in credit access can be that there is no interest in mortgaging one’s property. This can be due to many factors, and the most important of these is poverty, low rate of economic activity, the risk of losing the property in case of default and the fact that the credit system does not accommodate the needs of low-income households. There are several other ways for newly

¹⁷ Small loans granted by micro-credit institutions are not based on the ability to raise collateral in the form of real property.

formalised households to obtain the credit needed, both through local moneylenders, micro-credit, and other alternative credit systems. In addition, many families are more comfortable spending savings than loaned money and credit is thus not interested regardless of property rights status. In a longer time perspective, it is however possible that the interest in obtaining formal credit by the use of property will reach the same levels that we see in developed countries today.

When assessing the impacts of tenure formalisation on economic development and poverty reduction, it is important to be aware of the methodological difficulties encountered trying to isolate the effect of formalisation in a society that is dynamic and always changing. This will be elaborated on in chapter 4. The fact that the formalisation project in Senegal was coupled with a programme for significant physical upgrading makes it even harder to distinguish which effects come from the formalisation of tenure and which come from the physical upgrading and provision of basic services.

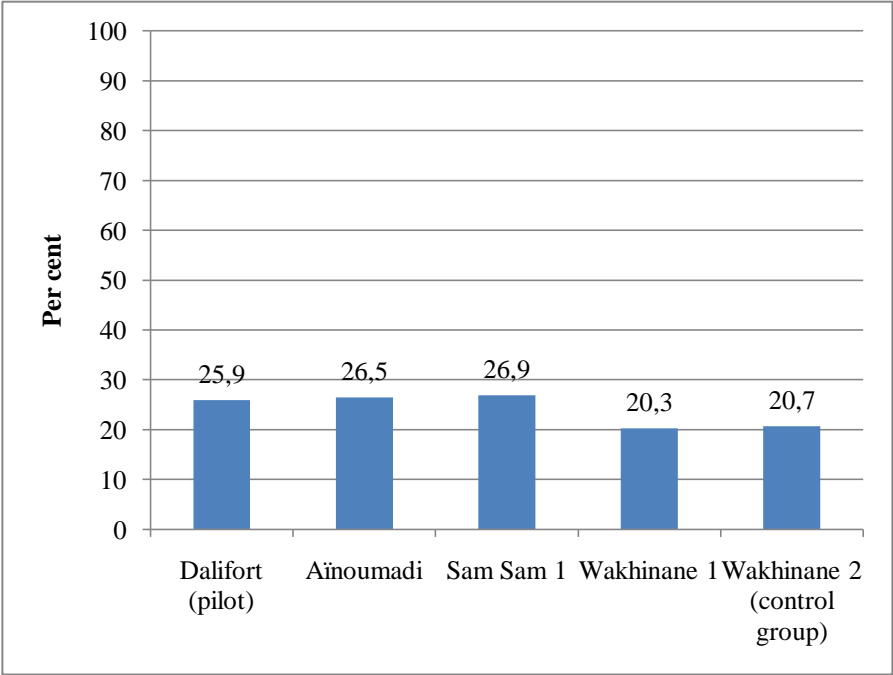


Figure 2 Employment rates for people over 15 years, regardless of sector (from Payne et al. 2008, Appendix A)

When it comes to employment, there is a possibility that the formalisation of tenure may have had an impact on the employment situation in the settlements, but the evidence here is rather weak. As we see in figure 2 above, Wakhinane 2, which has been neither formalised nor upgraded, has an employment rate of 20.7 per cent of all people over 15 years old. This is actually marginally higher than in the formalised settlement of Wakhinane 1. There is not a big difference between the formalised settlements and the control group indicating that there is no impact from formalisation on unemployment in the short- to medium time perspective. The numbers in figure 2 however include

employment in both the formal and the informal sector, which make them less interesting for the purpose of investigating the impact of formalisation.

When looking at how many of the employed people who are employed in the formal sector, the numbers appear somewhat different. Only 31 per cent of the employed in Wakhinane 2 work in the formal sector. In Wakhinane 1, 37 per cent of the employed work in the formal sector and in Dalifort the percentage is 50. This indicates that even though formalisation of tenure does not necessarily have an impact on the overall employment rate, it *may* have a certain impact on the proportion of the employed who work in the formal sector and thus contribute to GDP and the economic growth of the country as a whole.

After achieving formality of tenure, there has also been a rise in the population of the settlements due to new settlers. These newcomers are inspired to move by the guarantees against arbitrary eviction and the possibility of setting up small-scale businesses a place where the client and customer pool is large and divergent. This is positive for the new settlers, but may have a negative impact on the poor already living in the settlement. The settlers' financial strength is often greater than that of the poor already living in the settlement, causing a social and economic divide.

As wealthier households move to the settlement, rents tend to rise, pushing the poor to move where the rents are lower, generally in the outskirts of the settlements or even to a new and possible informal settlement nearby. The case study shows that most property sales in Dalifort are not voluntary, but rather the consequence of market driven evictions.

Before initiating the formalisation process, several mechanisms were incorporated in the programme to counter speculation in the formalised land. Restrictions on sales and restrictions on formalisation of multiple plots were both implemented, but the effects were not according to plan. Formalisation of more than the one plot that the resident was initially entitled to was subject to a cost that was the double of the ordinary formalisation cost. Even when doubling this cost, the amount was still much smaller than the market value of the formalised plot, creating incentive for speculators to invest in formalisation, driving the land prices further up.

The restrictions put on sale of newly formalised plots resulted in the development of a new informal market for land. As the land values increased, the incentive to sell grew equivalently and the restrictions on sale of SRs made the transaction costs of selling in the formal market too high. This informal market contributed to reducing the total impact of the formalisation process, indicating that the counter speculation mechanisms were inadequate. The programme thus had two opposite impacts on the land market; it contributed to an acceleration of the formalisation of informal settlements, but at the same time, the programme caused a move towards informality as formal owners sold their property in the informal market.

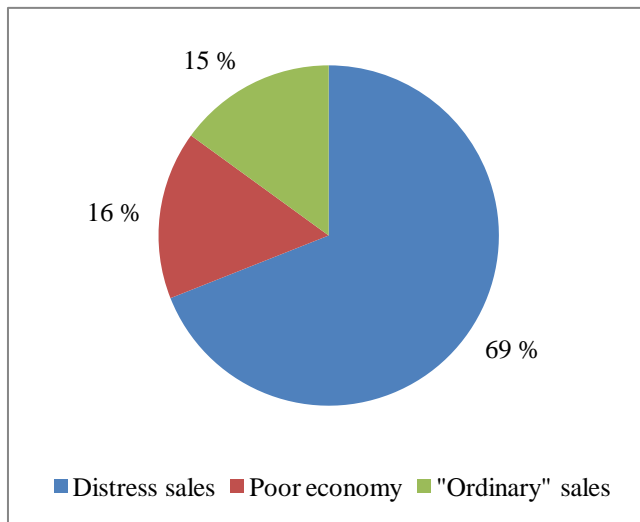


Figure 3 Property sales in Dalifort 1991-1995 sorted by reason for sale (from Payne et al. 2008, Appendix A).

A survey made by M'baye (1996) and referred in Appendix A of Payne et al. (2008) documenting land sales in the first six years after the formalisation in Dalifort, concludes that over 11 per cent of the plots had been sold since the formalisation process was initiated. Figure 3 depicts the findings of M'baye regarding the reason why people sold their plots the first six years after formalisation. Based on the survey he estimates that a whole 69 per cent of all the sales were so called distress sales by

residents who did not have any other choice than to sell. Such distress sales are the result of market-driven displacements, which are in direct confrontation with the objectives of any formalisation process.

16 per cent of the sales are a result of residents who do not have the financial strength to pay for the formalisation costs and choose to sell to earn some of the increase in value and to avoid losing their right to formalisation. The last 15 per cent are what I choose to call "ordinary" sales, i.e. sales by residents who are moving voluntarily or as a result of death of the landlord or the like. Most of the residents who sell their plots did however stay in the settlement and became tenants instead, often with significantly higher rents than before formalisation. The survey also showed that 25 per cent of those who moved from their plot settled in other informal settlements in the outskirts of the city.

The short-term impact on the land market thus seems to be that the poorest of the residents tend to not be able to take advantage of the formality, leaving land free for investors and private land developers to profit from the formalisation.

The steep rise in land prices is the main cause of displacement of low-income households who move to new informal settlements. As the middle class takes over their old properties, gentrification of the settlements is a very apparent but unintended consequence of formalisation.

3.3.4.3 OTHER IMPACTS

Other expected impact of formalisation is an increase in the revenue to the municipality and the government. The projects in this study are however too small to give any significant differences in these revenues and the costs of the programme are not covered by the revenues. A reluctance to pay taxes for a piece of land that is already bought on the informal market, contributes to hampering the formalisation process and lessen the revenues to the municipal government.

3.4 SOUTH AFRICA

3.4.1 INTRODUCTION

From Senegal, I will now continue with a case study from South Africa. It is not possible to assess the tenure situation in South Africa without drawing focus to the era from 1912 to 1994 where apartheid was the ruling philosophy. Apartheid was built on two main features; racial identity and access to land. Even though apartheid was not formally introduced until 1948, the segregation based on race and skin colour dates back to colonial times¹⁸. In 1912, the Land Act was passed allotting 13 per cent of the land resources to Black and Coloured people who were in great majority, while the remaining 87 per cent of all land was reserved for the White people who made up the smallest group of the three. The Land Act was the start of over 80 years of land and tenure legislation in favour of White people and in corresponding disfavour of the Black and Coloured people.



Map 4 South Africa in Africa (from Central Intelligence Agency 2011b)



Map 5 Key map of South Africa (from Central Intelligence Agency 2011b)

During apartheid, one of the most important objectives of the White government was to reduce the size of the urban Black and Coloured population. The strategy for reaching this objective was a massive resettlement of urban residents to so-called *homelands*. These homelands were segregated based on ethnicity (Royston 2002). Even settlements with freehold tenure were torn down and the inhabitants were moved to townships peripherally located in relation to White cities. This policy has been the cause of the development of large slum-like areas inhabited mainly by Black people. In

¹⁸ In the following I will use the terms Black, Coloured and White people in a value-free and descriptive context, only to make sure that the history is accurately depicted.

combination with the resettlements, a programme for construction of public housing was implemented, constructing nearly 500 000 dwellings in the townships. As the population growth in the townships was great, this was however not sufficient to accommodate the resettled people.

All allocated tenure rights in the new townships were by definition temporary and permanent tenure rights for Black people was not introduced until the 1980s (Royston 2002). Only Black people with so-called *Section 10 rights*¹⁹ were allowed to live in urban areas. These rights were given to people who had lived a certain period of time in urban areas and permitted them to stay.

In South Africa, one of the strategies to combat poverty and inequalities the last twenty years has been to provide titles to people who were not allowed to own anything under apartheid. Few questions have however been asked to find out whether this titling strategy has had any impact on the economic and social status of the people who received the formal ownership. One case study is however conducted by Colin Marx and Margot Rubin and summarised in a report included in Payne et al. (2008) as Appendix B. This study looked at the impacts of formalisation registered in three different settlements in the Ekurhuleni Metropolitan area outside Johannesburg in the Gauteng province. Gauteng is a province consisting of nine municipalities including Ekurhuleni Metropolitan area where the study has been conducted. The following presentation and evaluation of the titling process is based on the findings in this report.

The case study includes three settlements in the municipality of Ekurhuleni; Tokyo Sexwale, Ramaphosa and Egoli Village. *Tokyo Sexwale* is still an informal settlement and the control group in this study, *Ramaphosa* is an in-situ upgrading project where the residents have been given title and physical upgrading, and *Egoli Village* is a relocation project where people have received titles after being relocated to a greenfield area.

¹⁹ Section 10 has become an established term, illustrating the fundamental injustice committed by the South African government during apartheid. Interestingly, in South Africa's new Constitution from 1996, Section 10 is about the respect for and protection of all human's inherent dignity (South African Government Information 1996)



Map 6 Map over the Gauteng province and its municipalities (from Wikipedia 2011)

Ekurhuleni Metropolitan area has around 2.4 million inhabitants and covers an area of 1 900 km². It is an important junction for South African industries and contributes significantly to South Africa's gross domestic product (City of Ekurhuleni 2011). In 2005, it was estimated that there were 112 informal settlements in Ekurhuleni, consisting of around 134 000 households, not including the people living in backyard shacks which augments the figure to about 170 000 household units.

3.4.2 SITUATION PRIOR TO FORMALISATION

After the fall of apartheid in 1994, the legislation concerning tenure and property rights has been completely renewed, giving all South Africans equal rights to property. Before 1994 Black people were meant to live in rural areas except when their work force was needed in urban areas. The substantial majority of Black people however changed the structure of rural areas, creating townships where population density is remarkably higher than in traditional urban areas. In the 1970s the growth of informal settlements was extensive, in spite of the government's attempts on the opposite. The public housing programmes could not keep up with the population, spurring the building of informal backyard shacks (Royston 2002).

The informal settlement of *Tokyo Sexwale* was established as a result of the political fighting in the early 1990s and is thus a quite new settlement. Almost 2 000 households live in the settlement and it is

acknowledged as an informal settlement by the local authorities. No government programmes for infrastructure or housing have been implemented in the settlement. The infrastructure is therefore self-grown and there are no water, road or sewage systems.

The official name of *Ramaphosa* is Reiger Park Extension 5, indicating that the settlement is a part of the older and much larger settlement of Reiger Park, which was a Coloured township under apartheid. In the early 1990s, people moved to Ramaphosa to get away from political instability and settled illegally on occupied land. In 2008 around 4 400 people were registered as inhabitants in the settlement. Ramaphosa is an upgraded settlement.

The settlement has experienced several organised forced evictions followed by tearing down of the shacks. After 1994, the residents' rights to the land were recognised and the settlement has been proclaimed a residential township and a master plan for further development has been drawn up. This master plan laid the ground for parcelling of land according to rights claims and provision of titles.

Egoli Village is by far the youngest of the studied settlements as it was established in 2000 as a greenfield and housing project for low-income people, and houses less than 950 residents (in 2008). Complete provision of electricity has yet to be completed, but other infrastructural services are already in place.

There were no White people among the households in the three studied settlements, and the majority of Black people was significant²⁰. This is not representative of Ekurhuleni Metropolitan area, but is a result of the fact that the majority of poor and low-income households in South Africa are either Black or Coloured; a result of apartheid.

3.4.2.1 *TENURE STRUCTURE*

To understand today's situation it is necessary to know something of the rights structure under apartheid. The rights structure resulting from almost a century of organised segregation and discrimination is diverging and consists of several different ways of holding land. In urban settlements as the ones we are discussing here, I have not found any significant claims for customary rights and ownership. A probable reason for this are the extensive land reforms, relocations and housing programmes which have been carried out, both under and after apartheid, and may have "buried" customary claims. Laws which were passed under apartheid still have an impact on tenure and land rights today even though the laws may be repealed due to institutional inertia and incrementalism in institutional change.

²⁰ 91.6 per cent of the studied households were Black and 9.4 per cent were Coloured (Payne et al. 2008)

Examples of this are the five forms of tenancy which were established by regulations in 1968. These regulations were specific for urban Black townships and the remnants are still found in many informal settlements today. The five tenure forms are site permits, certificates of occupation, residential permits, lodger's permits and hostel permits.

Form of tenure	Description of the right
Site permits	The right to supervise the building of a house and rent both the land and the house
Certificates of occupation	The right to rent houses belonging to the local authorities
Residential permits	The right to rent houses previously belonging to White municipalities, but transferred to the authorities of the townships
Lodger's permits	The right to rent dwellings not included in the permits above
Hostel permits	The right to rent beds in hostels

Table 4 Content of the different forms of tenure (from Payne et al. 2008, Appendix B)

The difference between the tenure forms is at times marginal, but was still very important for the residents of informal settlements, and especially women. In general, only men over a certain age qualified for the permits, except for the lodger's permit which could also be given to women. A common characteristic of all these forms of tenure is that they are temporary and can be revoked at any time. Not until 1978 were Black people allowed to hold urban land on a lease with a specified time frame (Royston 2002).

Along with the permits came also a system of strict control from the township superintendent who had the authority to cancel permits if the resident no longer qualified to live in the township or have a specific right²¹. The controls also included making sure that certificates of occupation, site, and residential permits only were held over land allocated to a specific ethnic group.

This system of tenure was based on rigid demands of documentation and written permits which can be seen as a form of formality. This is thus contributing to underline the importance of formal ownership, especially to the Black and Coloured people, irrespective of the legitimacy of the democratic system as such.

²¹ Among other things, the residents of a township should be "free from infectious diseases" and "fit and proper" to qualify for a permit.

The structure today (and for the purpose of the case study in question) illustrated in table 5. This structure is very different after the fall of apartheid and several attempts to establish a non-discriminatory societal system.

Form of tenure	Definition	Manifested by
Formal ownership	In registered and surveyed areas where the land is registered in the Deeds Registry and the residents have the original title deed to the parcel.	Original title deed
Intermediate ownership	In registered and surveyed areas where the land is registered in the Deeds Registry and the residents have documentation that they will receive a title deed in the future	“Happy letter” – a letter where the resident confirms that he is satisfied with the parcel and his allocation of it.
Expectation of ownership	Residents have documentation that they in the future will get a title deed to an yet unidentified plot.	B-form or C-form indicating that the resident has applied for land ownership.
Informal ownership	Residents living in informal or registered township without any documentation of their claim	Title deeds transferred informally, application forms or other documentation or receipts of sale.
Occupying	Residents living informally or illegally on the land.	Physical presence
Formal rental	In registered and surveyed area where the land is registered in the Deeds Registry and the landlord has the original title to the parcel.	Physical presence in the rental unit in formalised, usually based on verbal agreement.
Informal rental	Residents who rent from landlords who do not have original documentation for their claim	Physical presence in rental unit in informal area, usually based on verbal agreement.
Looking after	Temporary occupation of a piece of land on behalf of someone else that retains the primary claim to the parcel of land	Physical presence and verbal agreements with owner and neighbours.

Table 5 Definition and documentation of different tenure types (from Payne et al. 2008, Appendix A pp. 66-7)

Table 5 lists the different tenure forms that are acknowledged in South Africa today. Common for the five types of “ownership” is that they are all individual forms of tenure, which do not acknowledge the existence and importance of more collective tenure forms.

Included in the structure table are also the different types of limited ownership or rental. These tenure forms are however directly derived from the types of ownership listed above, as the factor deciding the formality of the rental is not the status of the rental agreement, but the formality of the landlord’s relationship with the plot. Even though rental is a form of tenure its formality is here subsidiary as it has already been established vis à vis the landlord. I thus believe that the listing of different types of rental is superfluous in this context.

3.4.3 FORMALISATION PROCESS

The case of South Africa is somewhat special due to the extreme recent history of the country. The focus on registration, permits and formality around ownership and occupancy of property indicates that formality is not new to residents of informal settlements. As an outsider, I wonder whether all this focus on registration, formality, and documentation under apartheid may have caused an inherent reluctance towards formalisation today based on memories of discrimination and intolerance. My studies have not given any answer to this, but it is an interesting point to keep in mind when evaluating the success of the scheme.

The main focus of South African authorities when developing a formalisation programme has been provision of adequate housing, and in Ekurhuleni many different programmes have been implemented to meet challenges amongst the residents. Formalisation of tenure in South Africa started with the passing of several laws to ameliorate tenure security and the housing situation in informal settlements. In leaving the system of temporary permits, a whole new structure of rights had to be established, illustrated in table 5. The Prevention of Illegal Eviction from Unlawful Occupation Act of 1998 increased the tenure security of all residents of informal settlements and decriminalised the illegal occupation of land.

The other law which has laid the ground for formalisation in South Africa is the Interim Protection of Informal Land Rights Act of 1996, which was meant to give holders of informal land rights a temporary protection during the period of land reform. This was to avoid eviction by landowners who wanted to profit from the reform. This law has however been extended every year, most recently until 31 December 2011 (Department of Rural Development and Land Reform 2010).

In addition, decisions and approvals from many different levels of government are needed, creating a distance between the applicant and the decision-maker. This distance can be dangerous in terms of subsidiarity and may create suspicions of clientelism and corruption, undermining the formal system. As far as I have seen, there is no evidence of this distance causing such distrust towards the authorities in the report from South Africa, but this is absolutely interesting with regards to an eventual later survey.

The Housing Subsidy Act was passed to make sure that all inhabitants who do not own property, were provided with a so called “starter home”²² or Reconstruction and Development Project unit (RDP). There are however many bureaucratic steps before receiving an RDP today, which takes up very much time. After applying for an RDP, each claimant is matched with a specific housing project in a settlement. There are two kinds of settlements which provide such housing; firstly, there are the *greenfield projects* where a new settlement is built on previously empty land. Upon moving in, the

²² Also called top-structure

residents sign “happy letters” where they confirm that they have received the key and that they find the house in an acceptable condition. Egoli Village is an example of such a greenfield settlement. Normally, title or formal ownership follows after some, often a considerable amount of, time.

Secondly, there are the informal settlement *upgrading projects* where formalisation takes place in an already existing settlement and must thus be somewhat different. Normally the inhabitants get a notification of ownership and title followed by basic service provision and the construction of a top-structure (RDP). This is often also very time-consuming and in over 80 per cent of the cases, the title holder moves out before the construction is completed, effectively hampering the completion of the building process.

3.4.3.1 OBJECTIVES OF THE FORMALISATION PROGRAMME

The main objective of the different programmes which have been implemented has been to fulfil the obligations from section 26 in the new Constitution, which makes access to adequate housing a constitutional right. The Housing Subsidy Act has been the main response to this and lays the groundwork for most of the formalisation programmes which have been initiated. This scheme replaced all other subsidies and constituted the basis for the national titling programme in South Africa.

Security of tenure has of course also been an important objective, but it has not been reached through titling, but through temporary acknowledgement of informal land rights through statute which has been prolonged every year.

3.4.4 FORMALISATION IN THEORY AND PRACTICE

The South African formalisation process is not as coherent and systematic as the process in Senegal. This is mainly due to the special newer history of the country with a revolution and complete transformation of the societal and proprietary structures. The need to radically transform the tenure system and also the distribution of land rights resulted in a series of central laws which were to guide the implementation of the new system. This however created little room for adjustment to local conditions as the government programmes were to be followed (Royston 2002).

Another problem for the creation of a coherent formalisation strategy is according to Royston (2002) the underlying argument for implementing a formal system. She claims that it is not the fundamental respect for property rights as such which make up the basis, but rather an attempt to provide housing for the many who were wronged during apartheid and to accommodate the exceeding urban growth. It may be difficult to develop a strategy which will establish a sustainable formal system based on those grounds.

3.4.4.1 SOCIAL IMPACTS

According to the housing white paper preceding the Housing Subsidy Scheme, one of the the main objectives of the scheme was also to ensure and ameliorate tenure security (Royston 2002). The case study from Payne et al. (2008) shows that the perception of tenure security generally is quite high regardless of formality of tenure. Even the respondents in Tokyo Sexwale, which has not been formalised, claim ownership to their plots even though they have never had the opportunity to receive formal title to the land. The protection of informal rights in the Interim Protection of Informal Land Rights Act is a likely reason for this. Another aspect of tenure security which was investigated was whether the residents ever had experienced forced eviction from their homes. Very few had experienced such direct tenure insecurity, in spite of recent land reforms, which could have contributed to the perception of security.

When confronted with the risk of future eviction from their homes, the fear of this was generally very low, and virtually non-existent among households with ownership claims. The perception of tenure security was however considerably lower among tenants and specifically formal tenants. This might seem contradicting, but when considering how formal rental is defined in table 4, where it is not the rental agreement as such which is formal but the landlord's tenure, the perception may very well be rooted in reality. It is likely that the relationship between informal land lords and informal tenants is a closer one, heightening the perception of tenure security.

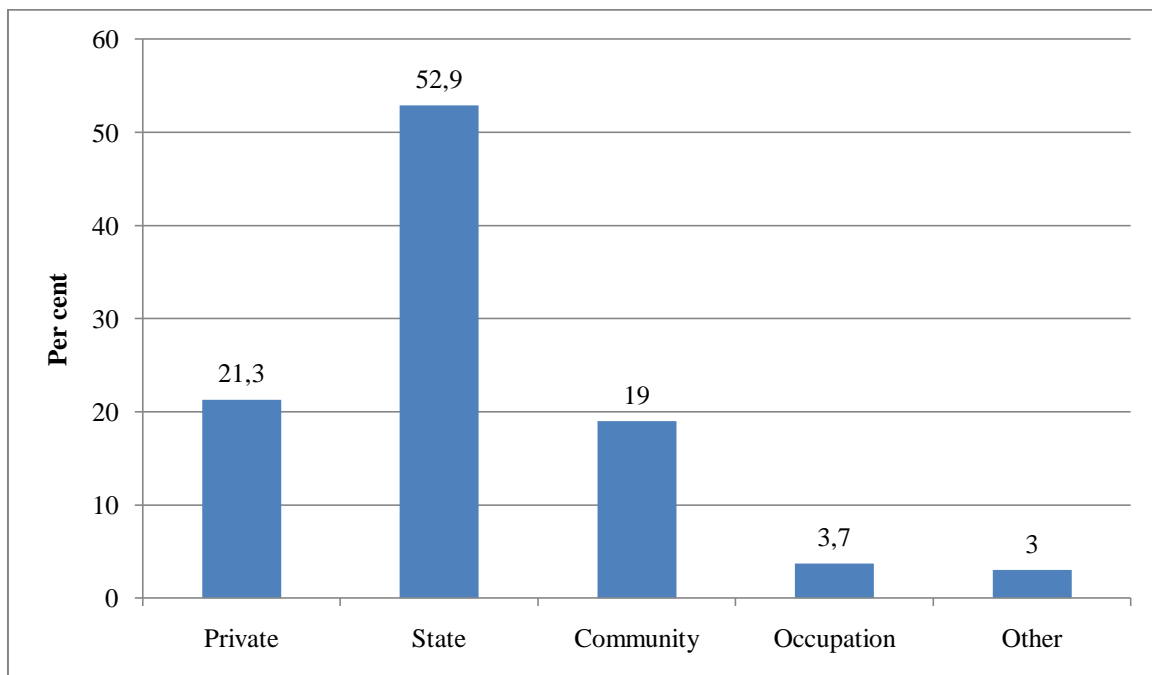


Figure 4 Allocation method in per cent for plots regardless of tenure (Payne et al. 2008, Appendix B p. 76)

An explanation for the high levels of perceived tenure security can be a result of the origin of the right. As shown in figure 4, over 50 per cent of the residents have obtained their right from the state, indicating that there is a high level of institutional support for the allocation and thus a low risk of

eviction. Allocation by the community refers to the situation where local development committees are in charge of the allocation. Even though the institutional framework of the community in many cases may be perceived as slightly weaker than the state's, there is reason to believe that tenure security is considered high also for these plots. Private allocation refers to agreements between two private parties to buy, rent, or otherwise occupy a plot for a period of time.

The study also shows that apart from households renting formally, there is little mobility in the settlement. When people live for a longer period of time in the same place, the tenure security has a tendency to rise, regardless of the tenure status. In combination with the conscious policy of the state when it comes to making sure that all inhabitants of South Africa has adequate housing, there is little reason to fear forced eviction.

3.4.4.2 ECONOMIC IMPACTS

When it comes to the economic impacts of formalisation, it is quite clear that it is the tenure security which is the fundament for any economic changes. Tenure security must therefore be the main focus of a government planning a formalisation programme.

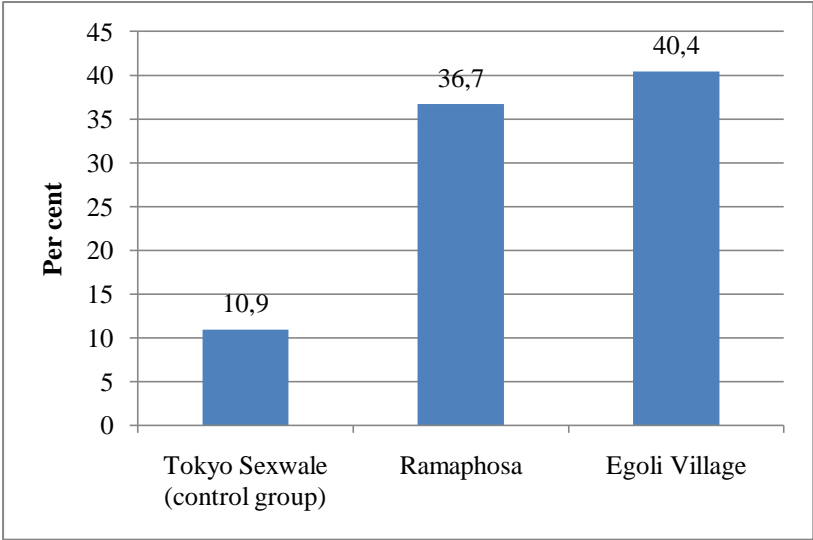


Figure 5 Percentage of households investing in housing by settlement regardless of tenure (Payne et al. 2008, Appendix B p. 84)

In Ekurhuleni, the impacts on the households' will to invest in upgrading of their houses are not major, but still significant, see figure 5. In Tokyo Sexwale which is the informal settlement, there is however significantly less investment in upgrading of houses than in the two formalised settlements which may indicate that the formalisation has had an impact. When broken down according to tenure type, households with formal ownership has invested more than informal owners, see figure 6.

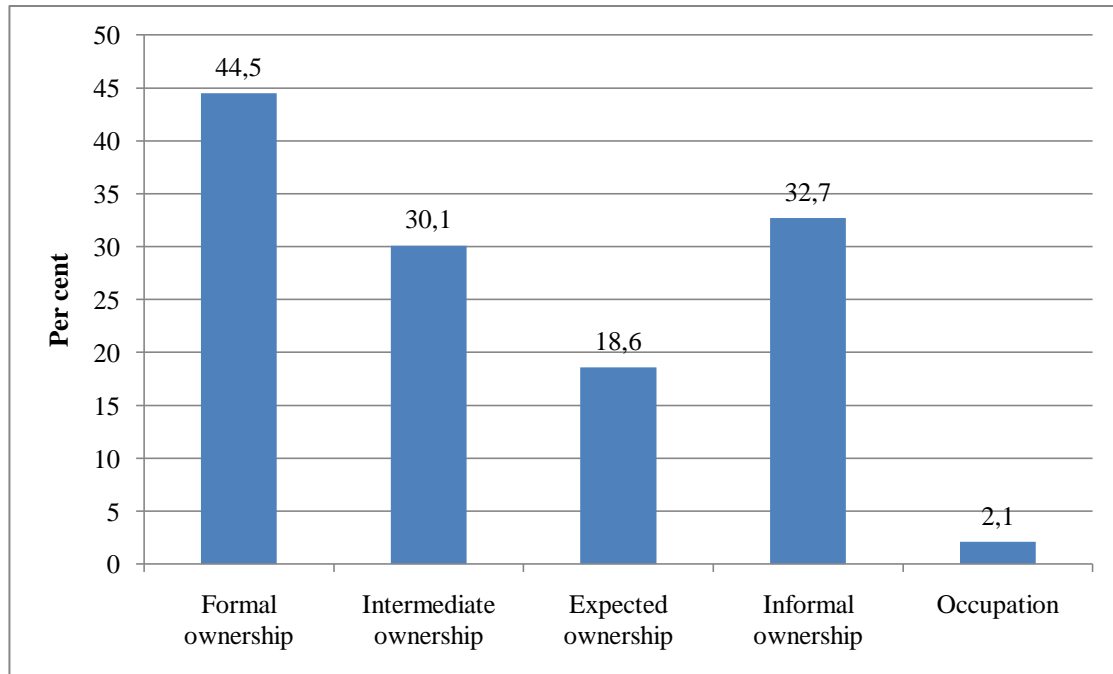


Figure 6 Percentage of households in all settlements improving their housing according to tenure (from Payne et al. 2008, Appendix B p. 84)

According to figure 6, households with formal ownership are most eager to make improvements on their houses; however the difference from households with informal ownership is not more than 11.8 per cent. This can be explained by the generally high security of tenure discussed above. There is even a higher proportion of the informal owners than the intermediate owners who have made improvements in their housing. Even though the “happy letter” is a guarantee from the authorities that the owner will receive formal title at a given point, it does not seem like this is considered as secure as the actual title. The high proportion of informal owners making improvements however indicates that whether a household upgrades its house or not does not have a very strong correlation with the actual title, but rather with the security of tenure.

It is still interesting that people occupying a plot do rarely make physical improvements to their house in spite of claiming rather high degree of tenure security. A reason for this may be that they consider the house a temporary home and therefore neither invest in housing nor apply for formal ownership.

When it comes to formalisation’s impact on households’ access to formal credit, it seems to have been very restricted in South Africa (as in Senegal). Only 13.7 per cent of the total respondents in the case study had borrowed money after formalisation. None of the respondents in either settlement had used their title deed to secure the loan, but had rather found other ways to provide collateral.

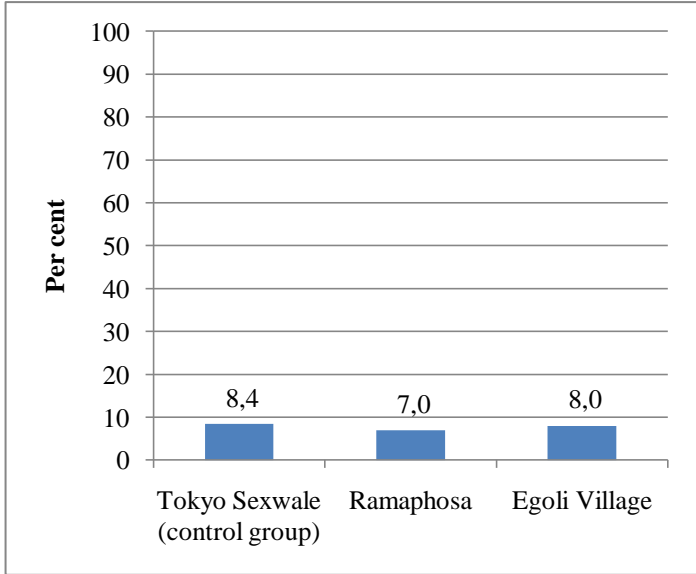


Figure 7 Percentage of households who have gotten bank loans (from Payne et al. 2008, p. 90)

In addition, when broken down to settlement level, Tokyo Sexwale which is the informal control group, also has the highest rate of bank loans, see figure 7. This distribution of loans in addition to the initially low loaning rate indicates that formalisation has had little or no impact on the households’ access to formal credit in Ekurhuleni.

A genuine scepticism towards loaning money, especially from banks or loan sharks, was apparent among the respondents. The fear of the

consequences of not being able to pay back the loans is larger than the perceived benefit of getting credit from a bank.

The case in South Africa is thus quite similar to the findings regarding access to formal credit from Senegal. Both when it comes to a dependence on savings and as the banks are sceptical of loaning money to households, and research has shown that having a permanent job is considered more important for the banks than being able to provide collateral for the loan.

Registration and formalisation of property rights is a way of making the ownership public and thus visible to for example the government. This generates a possibility for the government to get substantial revenues from the households, while it at the same time is an incentive for poor household to abstain from the possibility of formalising ownership.

In South Africa, the central government has opened for so called *Indigency Policies* which may be developed by the municipalities. Ekurhuleni Metropolitan Municipality Indigent Support Policy is an example of this, and it provides the poor households with free electricity, water, sewage and refuse removal to a certain limit. This model of subsidising poor households can be seen in relation to the housing policy and provision of RDP as a political statement from the national government that is has the population’s best in mind. The indigency policy is financed by revenues from taxation of wealthier citizens and their property and commercial activities.

This subsidising of the poorer households diminishes the prospective of municipal revenue from the formalisation programmes, but possibly contributes to stimulating more households to participate in the schemes, generating revenues in a longer time perspective.

When it comes to the impact of formalisation on economic development and poverty reduction, the results of the study are highly uncertain. This is due to the difficulty of separating the single effect of receiving a title from the effect of physical upgrading and access to basic infrastructure which is especially apparent in the case of South Africa as it was one of the constitutional obligations.

The most important impact on economic development according to the respondents was the improved possibility of enforcing the property right. Instead of relying on social networks and relationships, it was now possible to appeal to external agents to enforce rights, diminishing the risk of arbitrary eviction. 91.1 per cent had however never used the title deed in such a way.

The most important impact from a more general societal point of view is the formalisation process' contribution to empowerment of women; an impact which was also seen in Senegal. The titling process distributes titles indiscriminately which helps alleviating systemic inequalities in the South African system. It is also evident that female household heads are much more likely to go through with the formalisation process. I was not able to find figures describing how many of the eligible women who used their right to formalisation, but even so, women make up the largest proportion of the total applicants for formal tenure in Ekurhuleni, see figure 8.

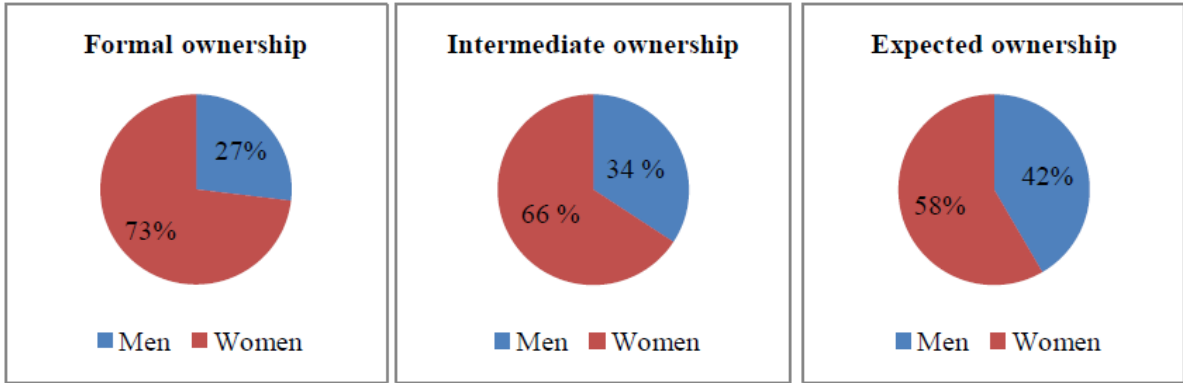


Figure 8 Distribution of claims of formality in Ekurhuleni by tenure form and gender (from Payne et al. 2008, Appendix B p. 114)

The impact on land and housing markets as a result of formalisation is predicted many times in literature and elsewhere, but the evidence of such an impact in South Africa is rather weak. As the formalisation process was accompanied by a housing subsidy project, the expected price rise did not occur as planned. Knowing that a starter home was available at a low cost, waiting for a chance to receive an RDP unit was more rational than buying a house in the market. The unwillingness to sell also stems from the fact that poor households will not be able to upgrade to a larger or better house, but will have to buy something equal. This makes selling the land superfluous.

There are also restrictions on selling newly titled land the first five years after receiving the formal title. This makes people who want or need to sell their property go to the informal market, undermining the new formal system, as in Dakar.

Very few of the residents in the formalised settlements had bought the land they lived on, only 3.6 per cent of the respondents in Ramaphosa and none of the respondents in Egoli Village. To compare, 15 per cent of the households in the informal Tokyo Sexwale reported to have bought their current houses. The study shows that the use of the informal land market correlates positively with the level of informality. The informal market is however not replaced by a formal one once residents of a settlement have received formal title to their plots.

According to the case study, it may seem like the households who have actually received some kind of formal documentation of ownership in total are much more conscious of the power that follows formality than households without formal documentation. From this may come an inclination towards holding stronger onto their claims and property than informal owners, thus counteracting any activity in the land market.

Evidence of the informal market thriving was found when looking at the documentation to see whether changes had been made. The results were very telling, see figure 9.

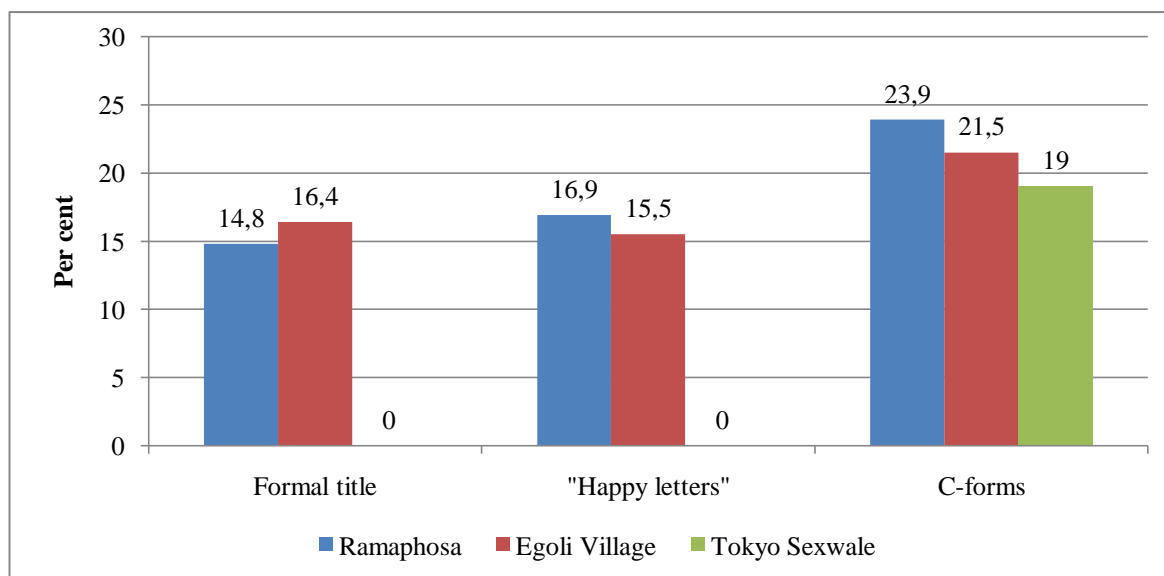


Figure 9 Percentage of respondents who had changed the names on the formal documents after form of tenure and settlement (based on figures from Payne et al. 2008, Appendix B p. 124).

In the two settlements subject to formalisation, a significant share of the respondents held formal documents where the name on the document had been changed after a sale in the informal market. There was a slight overweight of men who had documents with changed names. Also when it comes to the holders of “happy letters” or intermediate owners, there was a similar share of the respondents who held documentation with changed names. In the case of intermediate ownership however, the percentage of men who had such documents were far higher than the share of women. This could be a result of the somewhat “female-friendly” system for formalisation, where to avoid this men tried to achieve formality through informal measures.

Also among holders of C-forms for expected ownership there was a significant percentage holding documents with changed names, but according to the report the sample of responders was very small and therefore not suitable for generalisation.

3.4.4.3 OTHER IMPACTS

There is no evidence of any increase in municipal revenues following formalisation. This can be a result of the formalisation process being partly about titling and partly a social housing project to combat poverty and provide poor people with adequate homes. The expenses from formalisation and tax rebates for indigent households are therefore high and the whole formalisation programme is in a short-term perspective a negative economic project for the municipalities.

Interestingly, of the people interviewed in the survey, over 90 per cent claimed that they had not had any direct use for the title deed (Payne et al. 2008). This indicates that there has not been enough focus on creating awareness among rights holders about the formalisation process and possibilities it creates.

3.5 TANZANIA

3.5.1 INTRODUCTION

The third case of formalisation that I will include here is from Tanzania, with focus on the capital of Dar es Salaam. I have not found any comprehensive case studies looking at the impacts of formalisation like the ones from Senegal and South Africa, and will thus take a more general approach, compiling results from different formalisation programmes. I also find it important to include results from other studies than the ones carried out by Payne et al. to reduce the risk of systemic biases coming from the premises of the study and the people carrying them out.



Map 7 Tanzania in Africa
(from Central Intelligence Agency 2011c)



Map 8 Key map of Tanzania with Dar es Salaam
(from Central Intelligence Agency 2011c)

The last 20 years, formalisation as a strategy to reduce poverty, establish secure tenure and develop good systems for basic infrastructure has been an important part of Tanzanian planning for “de-slumification” (Kyessi 2008). Formalisation is perceived as an important contribution to reaching targets set in the National Strategy for Growth and Reduction of Poverty and of course the MDGs.

3.5.2 SITUATION PRIOR TO FORMALISATION

A remnant of colonial times when all land was declared crown land to the Emperor of Germany and subsequently the Queen of England, is still found in Tanzania today where all land is considered public land belonging to the President. This was also reinforced by the socialist government taking over after decolonisation. This means that there is no such thing as private ownership and all rights over land are temporary as they either will expire or can be revoked (UN-Habitat 2010; Wanjohi

2007). In practice, however, leaseholds and other rights are so lengthy that they are not much different from perpetual rights. The pre-existent customary tenure forms still exist parallel to this system.

In Tanzania, the population experiences a cultural pressure to own and live in their private house built on their plot. This is of course not possible for all, and there is an enormous backlog when it comes to housing provision, but has anyway resulted in that very few Tanzanians live on the streets, even in the slums and informal settlements. They live in houses (and shacks) they own, rent or borrow (UN-Habitat 2010).

The urban population in Tanzania is relatively very large. To illustrate, in 2007 almost 30 per cent of the population were living in urban areas, and of the urban population more than 50 per cent lived in informal settlements (Kyessi 2008). In Dar es Salaam the percentage of the population living in informal settlements was a staggering 70 per cent. This percentage amounts to almost 1.7 million people²³ who occupy an area of 5 655 hectares (Kyessi 2008; UN-Habitat 2010).

The growth of the urban population has also been substantial²⁴ as a result of people moving to urban areas in the search of employment. People settle on land they do not own, building more or less temporary housing which is not serviced by any basic infrastructure. Due to the government's failure to handle the rapid urbanisation appropriately, most of the people moving to the cities, establish themselves in informal settlements (Kyessi 2008). A reason for this rather unsuccessful handling of urban growth is according to Kyessi (2008) that the institutional framework for urban management has relied too much on central authorities which in turn has led to conflicts between local and central authorities. Such conflicts and other miscommunications have led to a poorly enforced land management policy.

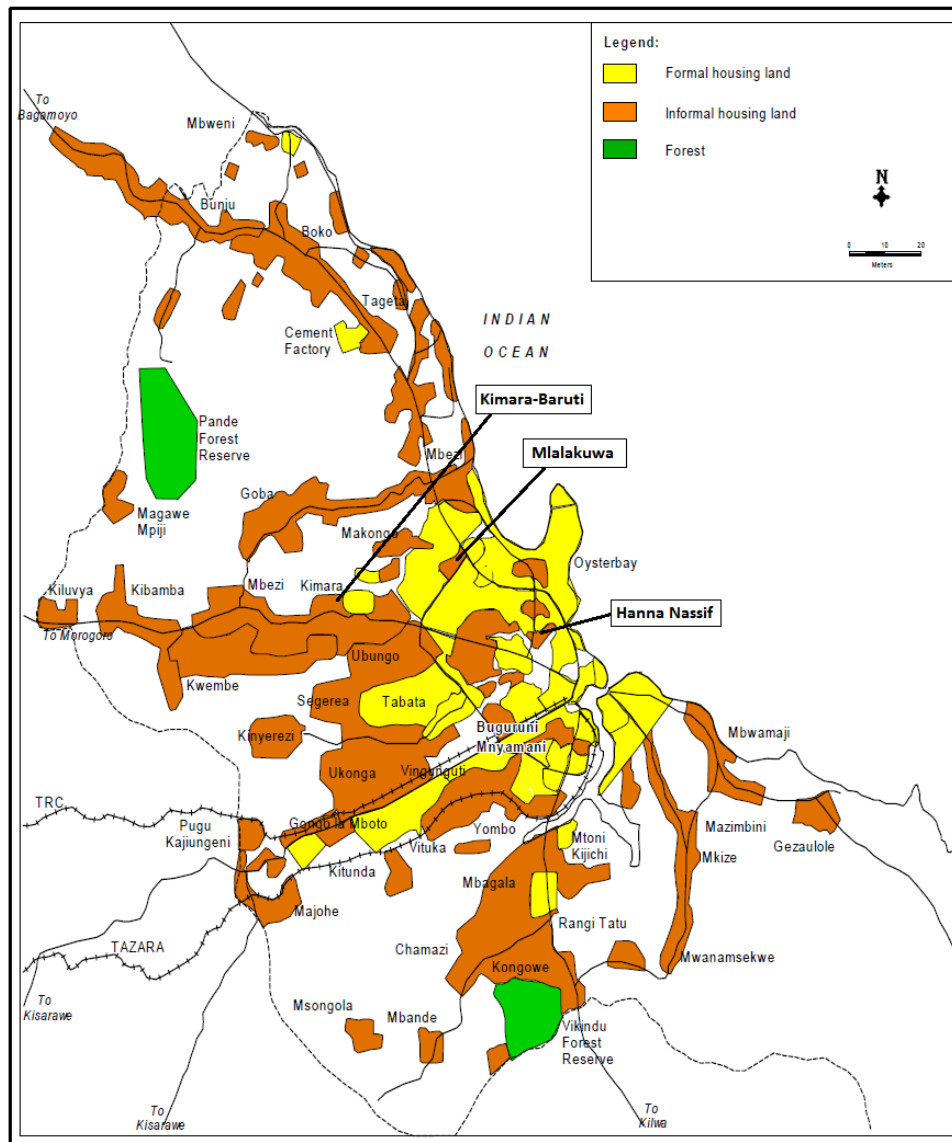
The failure of the urban planning authorities to guide the urban development has led to a situation where people have settled informally on marginal land without access to water and sanitation and which can be exposed to flooding (Kyessi 2008). This results in unsustainable patterns of urban growth which again hampers economic growth and puts the residents in a great risk of loss and further poverty.

But as mentioned in chapter 1, all inhabitants of informal settlements in Tanzania are not poor. There is a remarkable spread of people from nearly all social layers causing informal settlements to be more varied in population than informal settlements in other countries (Kombe & Kreibich 2000; UN-Habitat 2010). This diversity of population is explained by the well-functioning informal system compared to the complex and slow-working formal system of land and transactions, in addition to a high degree of tenure security in the informal settlements (UN-Habitat 2010). The fact that also

²³ In 2002.

²⁴ 8 per cent p.a. (Kyessi 2008)

middle- and high-income groups live in informal settlements makes the visual difference between formality and informality of settlements appear quite small. Houses on informally held plots are built in more permanent materials, which is not common in informal settlements.



Map 9 Informal settlements in Dar es Salaam (map from Kyessi & Kyessi 2007, modifications by author)

In the informal settlement of Hanna Nassif, see map 9, a rights structure based on informal and quasi-customary tenure was evident before the formalisation took place. This system was very complex, without any papers or other evidence; the basis for transactions was generally mutual trust (Kyessi 2010). The security of tenure was achieved either by recognition of ownership by the local administrative structures, recognition by neighbours, possession of a written sales agreements signed by the local leaders, or – the formal option – possession of a letter of offer and Certificate of Rights of Occupancy (Kyessi 2010).

3.5.2.1 TENURE STRUCTURE

Property in Tanzania is held in several different types of tenure. The main division is between the statutory system and the customary system where different types of customary rights are the most widespread. There is a certain recognition of customary and quasi-customary rights in formalisation processes, and customary sales contracts overseen by a customary leader are admissible in courts as evidence of ownership (Wanjohi 2007).

Tenure system	Type of right	Content of right
Statutory system	Granted rights of occupancy	Renewable rights of up to 99 years on surveyed land. Premium and annual rent must be paid.
	Occupancy under letter of offer	Valid document which creates a notice of ownership to a piece of land.
	Derivative right	Residential licence which permits occupation of a piece of land for 6 months up to 2 years. Can be renewed.
Customary system	Customary	Rights acquired through belonging to a traditional community. No documentation and transactions must be overseen by the clan.
	Quasi-customary	Rights acquired through belonging to a traditional community. Transaction rights lie to the individual.
	Informal	Transactions take place independently of other than the transacting parties.

Table 6 Content of different tenure types in Tanzania after tenure system (from UN-Habitat 2010)

The tenure structure shown in table 7 is the situation after the Land Act of 1999. The derivative rights in the statutory system are renewable residential licences which are used in formalisation of informal settlements. These rights are distributed by the local authorities and demand much less administration and time (Kyessi 2008). Given the extent of informal settlements, this is a way of incrementally formalising property rights. Residential licenses are not given over customary, hazardous, or public land. They cannot be transacted, as all holders need to apply personally, but they can however be used as collateral for credit (Kyessi 2008). It is also possible, when meeting certain conditions, to upgrade the residential license to a granted right of occupancy (Wanjohi 2007).

3.5.3 FORMALISATION PROCESS

Already in the 1970s, there was a recognition in the Tanzanian government that the only way to deal properly with the informal settlements, was to assist in upgrading of the settlement, followed by formalisation of the tenure. There have been several subsequent initiatives to formalise informal settlements, financed by inter alia the World Bank, which have not had the intended consequences. An important reason for this is the economic and administrative limitation of the municipalities which were to implement the programmes. Since 1995, the government however passed legislation to make all formalisation tasks the direct responsibility of the local authorities, thus allowing them to plan

according to means (Kyessi 2008). This has resulted in a more participatory approach involving the community in both Dar es Salaam and other cities.

Many plans of different concepts for formalisation and upgrading have been proposed, and most of them has had in common that they were too ambitious in relation to what was possible to implement. The proposed schemes were based on very rigid standards of housing and new infrastructure, where many of the structures in informal settlements has to be demolished and rebuilt (Kyessi 2008). Demands for compensation could not be met by already strained budgets and the standards were gradually lowered or programmes were drastically reduced (Kyessi 2008).

The lack of coordinated planning has lead to a situation where single developers pay very high costs to build roads, water and sanitation going to their plot only. This happens without the preparation of any general plans, making the costs much higher than they would have to be if the work was coordinated properly (Kyessi 2008).

The growing informality is also a result of prices in the formal housing market. Poor people do not have the economic means to enter the formal market, and the tenure security in the informal market is thus an equally good alternative (Kyessi 2008). The Land Act of 1999 lays out formalisation as the main strategy for improvement of life and living conditions in informal settlements, given that the settlement meets certain requirements (UN-Habitat 2010). As it has been the choice of the local authorities how to execute formalisation schemes, both upgrading of existing settlements and provision of plots in a resettlement location have been used.

This law has laid the ground for the implementation of the Comprehensive Urban Land Property Register for Economic Empowerment of Residents of Unplanned Settlements in Dar es Salaam Project, or simply the Residential Licenses Project. This was a pilot project for formalisation which was based on the provision of residential licenses to prepare the settlement for upgrading of the infrastructure (Kyessi 2008). The owner is to apply for a residential permit and will receive one given that he has paid for the preparation of the permit. Even though the issuing of permits is a very simple matter, it often takes around 30 days to receive it (Kyessi 2008). This is still quite effective compared to other developing countries.

The Land Act of 1999 acknowledged the rights held by residents in informal settlements, thus making informality even more secure in relation to tenure. After the passing of this law, there has been very little actual squatting in Tanzania, as informal rights have been given a certain status and are the basis of application for either residential permits or other statutory tenure types (Kyessi 2010).

Hanna Nassif (see map 9) is one of the informal settlements in Dar es Salaam where most of the people with low incomes live (Kyessi 2010). The community-based organisation (CBO) Wat-Human

Settlements Trust was a central actor in the formalisation process here, initiated in 2004. It participated in all the stages of the project formulation, content and implementation (Kyessi 2010).

There were five aspects which were central in the planning of the process; community participation, creation of awareness, organisational set-up, mobilisation of resources and technical support (Kyessi 2010). The community participation was spearheaded by the Wat-Human Settlements Trust, which made sure that the needs of the residents were taken care of in the project design. To make sure that all residents voiced their needs, an awareness campaign was initiated to make residents aware of the advantages which come from participating in a formalisation programme and consequences of having secure tenure.

The organisational set-up was based on division of the settlement into smaller zones to ease the work with plot demarcation and the creation of a planning process based on participation. This was done already in 1999, but was stopped because of inadequate funding (Kyessi 2010). When the formalisation process was initiated again in 2004, Wat-Human Settlements Trust based the new process on the existing division, distributing different tasks and roles to all the actors in the programme²⁵.

Resource mobilisation came to a large extent from the initiative of Wat-Human Settlements Trust, which paid for several of the five aspects or steps from its own budget (Kyessi 2010). In addition, the land owners had to pay for the surveying of their plot, and the President's Office granted a loan secured by the organisation. The technical support to implement the programme came from both the Ardhi University and a private surveying company.

The next case study includes the two settlements Mlalakuwa and Kimara-Baruti (see map X). Both settlements fall in under the Tanzanian Urban Land Management and Reform Project resulting from the Land Act of 1999, but only in Mlalakuwa had the formalisation been carried out (Parsa et al. 2011). The study undertaken on these two settlements is rather less comprehensive than the previous studies and focuses primarily on market impacts. It is however important to broaden the information base in trying to get a more balanced picture.

²⁵ There were many actors participating in the formalisation programme: the Hanna Nassif community; property owners; sub-ward leaders; Hanna Nassif Community Development Association; Wat-Human Settlements Trust; ward leadership; Kinondini Municipal Council; Geomatics Integration Company (private firm); Ardhi University; the President's Office (MKURABITA); and The Ministry of Lands, Housing and Human Settlements Development (Kyessi 2010).

3.5.3.1 OBJECTIVES OF THE FORMALISATION PROGRAMMES

The primary and general objective of formalisation processes is according to the 1999 Land Act improvement of living conditions and life of the residents. Any formalisation programme should also have as a main objective to settle land disputes, record, classify and register the occupation of land (UN-Habitat 2010).

In addition, each project had their own concrete objectives related to the needs and premises of the respective settlement. An upgrading project in Hanna Nassif, started in 1994 and was a community-based pilot programme of upgrading and the concrete objectives were (i) to better the implementation of urban infrastructure and micro-enterprise development, (ii) to make the City council and the private sector better equipped to dealing with community-based urban settlement upgrading, and (iii) to generate employment through the upgrading work which was to be done (UN-Habitat 2010). The project received funding from both UNDP and the Ford Foundation. These objectives were carried through into the Residential Licenses Project.

The Residential Licenses Project was a pure formalisation project initiated in Dar es Salaam focusing on clarifying the ownership status of the properties and giving legal status to the land owners through issuing Residential Licenses. Another objective of this project was to increase the government revenues by opening for the collection of land rent and taxes. The project was to include all informal settlements in Dar es Salaam and all the three settlements will hence fall in under the project.

3.5.4 FORMALISATION IN THEORY AND PRACTICE

In the case of Hanna Nassif, there was close collaboration between the authorities and the CBO Wat-Human Settlements Trust (Kyessi 2010). Wat-Human Settlements Trust helped facilitate the provision of long-term title deeds in Hanna Nassif, as opposed to the Residential Licence which had a shorter life-span (UN-Habitat 2010). The short time which has passed since the implementation of the titling programme which was begun in 2004, makes it difficult to identify any consequences of the formality, but some impacts may still be observed.

3.5.4.1 SOCIAL IMPACTS

In the examples of formalisation that I have found from Dar es Salaam, there has been little focus on social impacts of formalisation. There has been an almost implicit premise that heightened security follows the Residential License and I have not found any discussion of the concept in the articles. After my discussion in chapter 2 on tenure security, I do not agree with this premise. Depending on the existing level of security prior to the formalisation, the change in tenure security will vary.

The insecurity in the informal settlements mainly comes from non-payment of rent, encroachment, blocking of access roads, double allocation and sales agreements. These conflicts are normally solved by local leaders and depend for the most part on testimonies from witnesses, neighbours, elders and

religious leaders (Parsa et al. 2011). Differences in security will thus often come from standing in the local community and relationships with important people. By providing residential licenses, the procedure of achieving ownership is made more bureaucratic and less dependent on personal relations in the case of conflict, opening up the possibility of secure ownership to a larger group of people.

The involvement of CBOs in the process of formalisation is likely to produce a better result with regards to tenure security. Firstly, it is easier for the residents of the settlement to be heard, thus ensuring that their situation is the starting point for the process. The existing insecurities of tenure are thus likely to be taken into consideration when planning the process. Such participatory processes, are also likely to benefit the very weakest groups with the least security of tenure; namely the women (Durand-Lasserve & Royston 2002). In Hanna Nassif, Wat-Human Settlements Trust assisted in creating a collaborative process including planning, surveying and property rights formalisation. This contributed to bettering the tenure security as a result of formalisation (Kyessi 2010).

3.5.4.2 ECONOMIC IMPACTS

Parsa et al. (2011) claims that the possible access to credit was one of the main reasons given by the residents of informal settlements to go through with formalisation. In Mlalakuwa, almost 22 per cent of the property owners had tried to get formal loans using the property as collateral compared to 4 per cent in the still informal Kimara-Baruti, see figure 10.

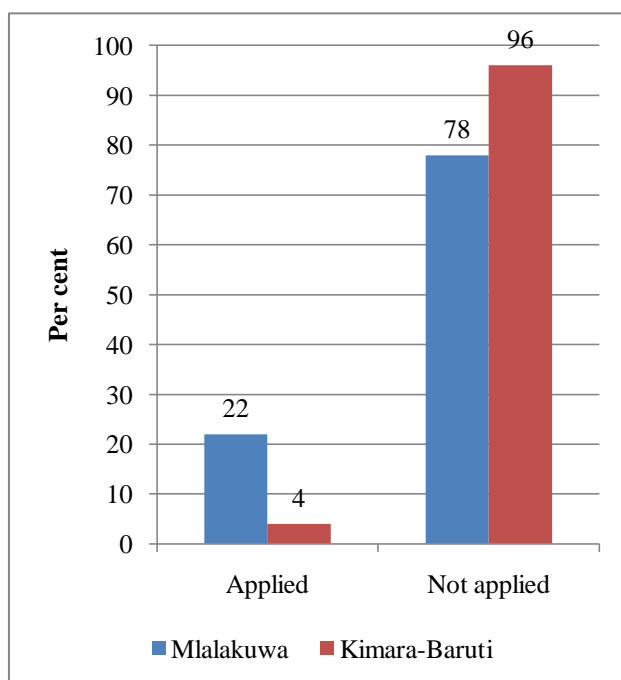


Figure 10 Percentage of property owners who applied for loans using the property as collateral in Mlalakuwa and Kimara-Baruti (from Parsa et al. 2011)

From figure 10, one can see a significant difference in how many owners who apply for loans in the two settlements. Only 4 per cent of the owners in Kimara-Baruti which has not yet been formalised have applied for loans as opposed to 22 per cent in the formalised Mlalakuwa. Even though the difference between the two settlements is big, there are still 78 per cent of the property owners in Mlalakuwa who have *not* applied for any kind of credit. This is a quite high share of the population, indicating that even though credit may be within reach, the risk of losing the newly won property is not considered worth taking. In addition, almost 95 per cent of those who actually applied for a loan were denied

credit. This means that credit was only obtained by around 1 per cent of the property owning population in Mlalakuwa (Parsa et al. 2011).

A reason for this high share of rejections was found in the inherent characteristics of the Residential Licences. The rights are inherently temporary with a maximum life span of five years. Five years is not a long time when it comes to paying down a mortgage, and giving out loans to people with only residential permits appears quite insecure to the financial institutions (Parsa et al. 2011).

In this study, commercial banks and micro-credit institutions were both included in the loaning institutions. This can in my opinion give a somewhat misleading result. According to Kyessi (2008), microfinance is considered easier and safer than lending from commercial banks. It is the fear of default followed by foreclosure which puts people off applying for commercial loans. Because of this perceived²⁶ difference between microfinance and bank loans, I find that the different credits should be separated also in the study to provide a clearer result. The results are blurred by the fact that one cannot separate the micro-credit from the commercial credit and hence it is difficult to say anything concrete about the impacts of formalisation on the access to credit. The high share of rejected loan applications however indicate that the main share of the applications were for formal loans in commercial banks. This can be based on the relatively easier process of achieving microfinance. This is however pure speculation and I will leave it at that.

When that is said, all the formalisation projects in Dar es Salaam are very young, only seven years as this is written, and generally more time is needed to truly see the consequences of formalisation processes. Therefore, it is difficult to say anything about the impacts on the economic development of the settlement or city as a whole.

The effect of formalisation on the land markets is somewhat similar to what has been found in the other studies. Even though a formal market exists, and property owners are equipped with the formality of ownership to enter and participate, the informal market still thrives (Wanjohi 2007). This is due to the difficulties of competing on the formal markets against professional actors who are interested in property to develop and thus press the prices. A consequence of this is that ordinary people are not able to buy property in the formal market, and resort to the informal instead.

3.5.4.3 OTHER IMPACTS

Municipal revenues have increased significantly both from the rent paid on residential licenses and from tax payments from the new formal owners (Kyessi 2008; Parsa et al. 2011). In addition, the new plots in Hanna Nassif are registered in a GIS database which makes planning and other informed decision making much easier. For example will it be easier to control the settlement pattern to avoid further densification of the settlements (Kyessi 2008). The new tax and rent revenues increase the fiscal strength of the municipality which again enables the authorities to improve the local services, infrastructure and the like (Parsa et al. 2011).

²⁶ And de facto.

3.6 CONCLUDING REMARKS

In this chapter I have presented three cases of formalisation in different sub-Saharan countries. It is difficult to find comprehensive studies on the effects of formalisation processes in spite of the focus put on formalisation as a part of an economic growth-process. This lack of control with processes which have such impact on the managing of fundamental human rights is at best worrying, and more independent surveys should be carried out.

The formalisation process in Senegal started out as a rather comprehensive scheme, where several hundred thousand titles were to be distributed all across the country, even to tenants. This scheme was implemented in the pilot settlement of Dalifort in 1987, but had yet to be completed in 2007. In the meantime, the formalisation had begun also in other settlements even though the scope of the programme was gradually shrinking. The focus of the authorities was on distributing surface rights which with time could be upgraded to a freehold title.

In South Africa, the distribution of formal property rights became important part of national policy after the fall of apartheid. The new Constitution entitled all South Africans to adequate housing, and the provision of this was also the most important objective of the formalisation of informal settlements. The titling thus came second. Also here, an incremental approach was taken, with several “levels” of formality, but all were individual in their nature, and more collective ways of holding property were not accommodated in the formal system.

The formalisation in Tanzania has taken place in several smaller initiatives, rather than big, national programmes. By law, the responsibility for formalisation projects is laid to the municipalities. This can be practical when it comes to subsidiarity, community contributions, and transparency of tenure structures, but also risks the development of a gap between formalised and informal settlements in different municipalities. In Hanna Nassif, there was also a successful inclusion of CBOs in the planning- and implementation process, creating a link between authorities and the people.

In Senegal and South Africa, the formalisation programmes were started around twenty years ago, which in the perspective of changing structures of a society is not a considerable amount of time. Through looking at these two formalisation processes however, it will be possible to see consequences which appear in a medium-range perspective. The impacts of formalisation in a long-term perspective are however yet to be seen. The formalisation projects in Tanzania are even younger, not implemented until 2004. The effects seen here are thus very uncertain and one does not know how the situation will develop in a longer time perspective.

This difference in time can explain why bigger effects seemingly have been recorded in Dar es Salaam than in any of the other settlements. It is difficult to know where the effects stem from in a rather chaotic situation which is experienced during and after period of formalisation. Before true impacts can be seen, the situation needs to settle and normalise. This only underlines the importance of continuing to carry out studies of settlements which have undergone formalisation; the more we find out, the better we can plan future formalisation programmes.

4 SUCCESSFUL FORMALISATION AND THE SIGNIFICANCE OF HAVING ACCESS TO A FORMALISED SYSTEM

4.1 INTRODUCTION

The focus in this chapter will be on research question 2 and 3. The findings from the case studies in chapter 3 combined with the theoretical discussion in chapter 2, will be combined in an attempt to find the significance of formalisation and if there can be said anything about why a formalisation project succeeds or not.

As we have seen in former chapters, many formalisation projects have been planned, carried out, and concluded in developing countries in an effort to reach different objectives involving economic growth and reduction of poverty. Especially in urban settlements, which are growing at a high speed, establishing formal systems is regarded as crucial in the fight against further “slumification” of major cities. Implicitly this means that formalisation is considered a tool which will create economic growth and minimise extreme poverty. Paradoxically, there is however little empirical evidence of the significance of having access to a formal system (Payne et al. 2009). This stands in sharp contrast to the amount of predictions regarding the consequences of a formalisation process, some of which I will elaborate on in this chapter.

A possible reason as to why there is a seeming lack of empirical studies and evidence is the risk of concluding with what turns out to be a spurious effect. This risk is very imminent within the field due to the difficulty of isolating the effect of formalisation from effects of all other variables which may affect the access to land and tenure security (Payne et al. 2009). Controlling for spurious effects requires the inclusion of a control group with similar socio-economic characteristics *without* access to a formalised system, in addition to the group *with* access to the formal system. Finding a comparable group is often impossible because of cultural, economic, and other endogenous factors which are only found locally and may very well contribute to the outcome and consequences of a formalisation process.

For the study of formalisation and processes related to this, it is also important to be aware of personal biases linked to culture and expectations coming from personal and national experiences. This point of view is an inherent bias in all people and needs to be taken into account when studying these processes. As I am Norwegian, this thesis will necessarily be written from a point of view based on my national experience and knowledge of societal relations. Efforts to see things from an objective point of view will probably have some effect, but is unlikely to erase a person’s experience.

A way of overcoming this problem and overcome national and personal biases is to use experiences and research methods from other fields of study which take into consideration some of the spurious effects one might see in groups influenced by different cultures; for example methods from the field of

anthropology (Williamson & Fourie 1998). The results of studies undertaken with this methodological approach relate to the exact local social context and are thus un-suitable for making generalisations. This means that even though the use of anthropological methodology can give better answers as to the significance of the studied system in the studied context, it will not give any answers to the question of the significance of formalised systems in general.

A question which needs to be asked is also if it is at all possible and meaningful to identify a general significance. As mentioned in chapter 1, my goal is not to make generalisations, both because I do not believe that it is possible and because I find it less fruitful within such a context-oriented field. The question posed here is therefore mainly interesting in theory when discussing different methodological approaches and their strengths and weaknesses. I therefore choose to only briefly pose the question here.

In spite of this, many general consequences have been predicted. The perhaps most frequently occurring consequences relate to economic growth and poverty reduction. Hernando de Soto (2000) claims that formalising property in urban slums will bring dead capital in the form of already existing buildings and plots, to life by allowing the formal owner to use the property as collateral for credit and thereby increasing his economic vigour. This point of view has been both applauded and criticised as I will come back to.

Another question, also mentioned in the discussion of success in chapter 3, is whether the formalisation process itself can be a part of building a well-functioning society, creating legitimacy through cooperation with and contribution from the population? In such a case, short-term consequences are less interesting, and a main goal is to create a transparent and “good” formalisation process

In this chapter, I will first look at some of the things that have been said about the significance of formal systems of land rights, which is my third research question. Thereafter, I will come back to the discussion of success to answer my second research question. I will as mentioned draw on previous chapters, especially to attempt to find out why formalisation is successful in some cases but not in others.

4.2 PREDICTED CONSEQUENCES

4.2.1 DE SOTO'S SIX EFFECTS OF FORMALISATION

“The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else” by Hernando de Soto (2000) has been claimed to be one of the most influential books written in the last decades. I will therefore spend some time exploring and explaining his claims. De Soto looks at urban and peri-urban areas in Lima, Peru, and notes that the people living there are in possession of relatively large amounts land and buildings; what he calls dead capital. By this he means that the

values and capital are physically present, but the people holding them do not have the possibility to make them profitable because there is no formality or registration linked to the ownership. By formalising the ownership, the assets will get an abstract life and can be put to work for the owner, thus generating profit and resulting in economic growth and reduction of poverty.

De Soto claims that there are *six effects* which can be identified after a formalisation process. The first is that the economic potential which lies within the assets will be fixed and can be transformed into active capital. “Capital is born by representing in writing” (de Soto 2000, p. 48), meaning that by describing and registering different qualities about the asset, it will be represented immaterially as capital and may thus be put to work for the owner and create surplus value. This can be linked to de Soto’s definition of property as something abstract which is represented in writing (cf. chapter 2). Instead of viewing a house as a home which is a physical thing which can be touched and lived in, the house can be seen as an economic and social concept which by definition is abstract and therefore is more flexible and can be used as live capital (de Soto 2000). This definition is in my view very inaccurate. The claim that property equals *something written* opposes the whole fundament of this thesis, and more importantly it neglects the relationship between property holders and their land in informal settlements. With his definition, de Soto equals property with capital, which can be true in many situations, but hardly complies with the realities in informal slum areas.

The second effect of formalisation is the integration of dispersed information about a piece of land into one comprehensive system of property data. This gives people the possibility to gather a wide range of information without actually seeing the property, again giving the property a “life” outside the immediate local context and increasing efficiency in economic transactions. It also opens up for a standardisation of what information is available for all property, making comparisons between objects easier.

The third effect of formalisation according to de Soto is that people are made accountable through identification of owners and an assurance that all actors will have to abide by the same laws. Because of this, local institutions and norms cannot hamper a transaction or create problems for interaction with actors outside the local context. Also *within* the local context, the need to protect one’s property physically through neighbourhood organisations, personal relationships, and staying at home will lessen and time and effort can be put into making their assets generate surplus value. In slum areas and other informal settlements, a consequence may be that people get the time to work more and are able to better sustain their family.

The fourth effect according to de Soto is that assets are made fungible when integrated into a formal system. By this he means that the immaterial aspects of property are much more flexible than the physical plot and can be divided, combined etc. to suit most transactions, without going through the process of physically changing the plot. By allowing more actors to take part in owning a property, the

risks related to developing it will be dispersed, making it more attractive for ordinary people to invest and get the opportunity to gain the surplus value.

The fifth and sixth effects of having a formal system is according to de Soto that it creates a networking system of individual economic agents who are identifiable, and it protects transactions through making them public and easily accessible. This protection creates a trust between transacting parties and makes it less of a risk to engage in transactions and helps the assets have the abstract life as capital. The network of economic agents makes rights holders visible, both to other economic actors and to the government; ownership is made public.

These six effects predicted by de Soto together sums up to a situation of economic and societal growth, where poor people are given an incentive to make their property “work for them” and generate surplus value. He does however not take into consideration the fact that it may be difficult to achieve this trust in transactions in a situation where the legitimacy of the state and government is not recognised by the population, which is often the case in developing countries. As I have described in chapter 2, it is important that the government implementing a formalisation scheme enjoys the legitimacy of the population. This legitimacy, given the planning process is transparent and somehow “democratic”, will then rub off on the actual programme. A formalisation programme which is considered legitimate and believed to be firmly rooted in the best interest of the population is much more likely to succeed than the opposite.

4.2.2 PAYNE ET AL.’S CRITIQUE OF DE SOTO

Payne et al. (2009) are among those who are quite critical of the conclusions drawn by de Soto, claiming that inasmuch as formal titling may be an important contribution to the “un-locking” of capital, other measures will also need to be implemented to generate the desired growth and increase in living standards; it is a *necessary*, but *not sufficient* condition for economic growth. After carrying out a study combining literature review and fieldwork in Senegal and South Africa (referred in chapter 3), they claim to have found a range of impacts of medium- and short-term which can be divided into social; economic; building and environmental; and administrative, institutional, legal and political impacts. These impacts are described in detail in chapter 3, and are systematised in table 8 below.

	Social	Economic	Building and environmental	Administrative, institutional, legal and political
Fields of impact	Tenure security Urban land and housing markets	Housing investment Property values Access to credit Household incomes Employment Labour mobility	Provision of and access to urban infrastructure and services	Capacity of administration Level of jurisdiction Political transparency and fairness

Table 7 Areas of impact from titling programmes in urban and peri-urban areas (from Payne et al. 2009).

To lessen systematic biases and other problems, I have also included a case of formalisation in Dar es Salaam, Tanzania, in chapter 3. I could however not find any comprehensive surveys undertaken in Tanzania and the reports are therefore less extensive than the information gathered from Senegal and South Africa. As far as possible, I have still tried to use the same framework from table 8 to illustrate consequences in Tanzania.

Before I begin my discussion of the findings, it is important to be aware of the following. The projects studied in Senegal, South Africa and Tanzania were *titling* projects, i.e. giving titles to people occupying land they do not own. Titling falls under the umbrella of the term of formalisation as a type of tenure. Even though formality and formalisation includes much more, it is highly relevant to include pure titling projects in the analysis of consequences. This is both because titling in reality *is* a form of formalisation, and because it is a relatively easy and inexpensive program which has been one of the more common formalisation strategies applied.

The choice to divide the findings of the study into smaller categories both makes them easier to understand, and shows the diversity of effects that may be experienced (or have been predicted) as a consequence of a formalisation process. Formalisation is however not the only plausible source of the effects which is important to keep in mind when working with the material.

4.2.2.1 RESERVATIONS REGARDING THE FINDINGS

First of all, in addition to any national or personal biases manifested in the case reports²⁷, there is also a considerable bias on my part in the actual selection of countries. Even though there is a certain geographical spread – western, southern and south-eastern Africa – a religious-cultural spread – French/Latin, British/Dutch, and German/British – and a combination of both western and Islamic

²⁷ All reports and articles are written by different people, also in the larger study of Senegal and South Africa. These two countries are still part of the same project with the same restrictions and delimitations which may in itself cause a bias.

legal traditions, all three countries are former colonies situated in sub-Saharan Africa. De Soto bases his findings and conclusions primarily on studies in Latin America, without controlling for cultural differences when generalising these findings. It is not unlikely that historical baggage contributes to different possibilities in different places, based on a theoretical platform of path dependency.

Before I begin to examine the findings of Payne et al. I must however carry out a certain “weighting” of the impacts found that I think can be important to distinguish “more” and “less” important consequences. The social and economic impacts of formalisation must be seen as the main consequences of such a programme, both with regards to traditional theories of formalisation, to the importance to households in the settlement and with regards to the “size” of the impact, i.e. how important it is in relation to changes seen on the ground. These consequences are often also included in the main objectives forming the basis of formalisation programmes.

The impacts on building and environment, and administrative, institutional, legal and political impacts are in my opinion definitely interesting and may have major influence on the households and the functioning of a settlement and a whole society. They are at the same time more endogenous in nature, both as they are very dependent on pressures from inhabitants and as they may be more of a consequence of social and economic circumstances than of the formalisation programme as such. This weighting will also be reflected in the focus of the following chapter.

4.2.2.2 SOCIAL IMPACTS

When it comes to the social impacts of formalisation, this includes both the consequences for the degree of tenure security and the extent to which it promotes activity in urban land and housing markets. According to Payne et al. (2009) and as also seen in chapter 3, increasement of tenure security is the primary argument used by proponents of formalisations programmes. It is also used as a general objective of all the three processes studied. As discussed under chapter 2, security is not an absolute concept, but rather a matter of perception in addition to juridical status in the legal system. In many informal settlements the de facto degree of tenure security is already quite high. Formalisation programmes are often implemented in settlements with high degrees of security to generate also de jure security of tenure.

Some places titling programmes have however caused a *reduced tenure security* as forced evictions of tenants may take place regardless of ownership status. Tenants may thus stand to lose as ownership is formalised, as also rents are likely to increase parallel with the rise in property values. In countries with little or low legal protection of tenants, eviction is often the result for people not able to pay the increased rents (Payne et al. 2009). Market-driven displacements as a result of formal titling can reduce the tenure security for the poor as the value of their land suddenly rises, making them vulnerable to pressures from potential buyers from higher income groups. Gentrification of the settlement risks insecurity for the poor who often have to move to a new, less central and in all

likelihood informal, settlement. This was especially visible in Senegal (Payne et al. 2009). This finding disentangles the degree of tenure security from the degree of formality, especially in settlements where the degree of security is relatively high to begin with.

In areas with generally low tenure security before the implementation of a formal system, the evidence of changes in tenure security may be more illustrating regarding the actual impact of the formalisation, but such evidence is more fragmented and not suitable to build something definite upon. As customary rights can be difficult to integrate into a pure titling system, there is an imminent risk that the tenure security in such areas will remain low for the people living there and holding such rights, and that they will be forced to move as rents and prices of land rise (Payne et al. 2009).

The absolute greatest benefit in terms of increased tenure security is according to all the cases that of women (Payne et al. 2009). From a situation where the husband was considered the rights holder, now also women are registered in the ownership records giving them a formal and legitimate claim for co-ownership in the property. Studies in South America have also shown that especially customary law and second wives may experience a rise in de facto security as their initial situation often is one with few or no rights in co-owned land (Gilbert 2002). In fact, in Lima, Peru, women have turned out to make up 50 per cent of the beneficiaries of formalisation (Cantuarias & Delgado 2004). This is an important step in making sure women get the same rights as men and in many cases an overruling of traditional cultural norms where women are considered weaker in a rights holding structure than men.

The study in Senegal showed that close to 100 per cent of all women eligible for formality, used their right, see table 3. In Senegal as in the other countries, community-based organisations (CBOs) were involved, which gave the residents a common voice. From the cases I have described, it is especially the formalisation in Hanna Nassif in Dar es Salaam which stands out with regards to CBO-participation in the planning- and implementation processes. An important part of Wat-Human Settlements Trust's work circled around creating awareness of the formalisation programme and the rights the residents were entitled to (Kyessi 2010). The channels of information tend to work differently in informal settlements than in formal societies, and the information work done by such neighbourhood organisations is essential to spread the information to as many people as possible.

Another discovery in the Senegal study which has also been seen in other formalised settlements is that inhabitants of settlements where the security of tenure is considered high, fail to complete the process of formalisation when given the possibility. This indicates that some households consider *the offer* of formal title to generate enough security and that actual formality is not necessary. It has also been shown in other studies that this perception rises so much when government or administration invests in services such as water and electricity, that a subsequent possibility to gain formal title of the property turns out to be less tempting (Gilbert 2002). The risk of increased expenses in the form of registrations fees, property taxes or the like is also likely to play a role in the decision to stay informal

(Payne et al. 2009). As claimed by Augustinus and Benschop (2003) and discussed under chapter 2, there is a very strong indication that security of tenure weighs much heavier than the position of having formal title. This is however in the relatively short-term perspective, as formality of tenure provides tenure security also in the long-term perspective. Community recognition is much more volatile in a security perspective than formal tenure.

Hernando de Soto does not focus much on the area of tenure security, maybe because this is more difficultly measured than investment rates and increases in number of mortgages? In many ways the tenure security of a settlement is one of the determinants to whether the formalisation process will succeed; both inasmuch as the existing security is an important determinant of the incentive structure, and because people with little or low tenure security will probably wish to see it increased, cf.

Augustinus and Benschop (2003). The Senegal study is a good example of this; at the beginning of the formalisation programme the level of tenure security was quite high, resulting in few titles distributed compared to the original plan. To truly gain the knowledge of what impact a formalisation process has on security, it is as mentioned in the introduction a need to implement titling programmes in settlements with generally low degree of tenure security and see whether it improves.

The second major social impact relates to changes in the activity in urban land and housing markets; improvement of the access to the markets for the poor. A formal system will offer a totally different degree of publicity concerning the owners and rights holders than in an informal system, thus lowering the transaction costs for external actors, encouraging them to enter the market, and widening the possibilities for the existing actors.

The claim is as mentioned that by widening the market, the poor will be able to sell, mortgage or develop their property and gain the surplus value of the property as capital. Studies in South America have however shown that this development is inhibited by the relationship between people and land, which does not change by receiving title to the plot. The households relate to their land as “home” rather than objects of investment, and the sales that take place are primarily in attractive areas experiencing gentrification after formalisation (Payne et al. 2009).

Interestingly, two opposite effects were experienced in Dakar, Senegal; both an acceleration of formalisation of the informal land markets, and an “informalisation” of transactions in land in general (Payne et al. 2009). The acceleration in the formalisation of the land markets is likely to be the result of a successful design of the titling programme which spurs an increased interest both from external actors and from within, in gaining from transactions in a new and potentially profitable market.

However the opposite effect takes place mainly as a result of households trying to avoid taxation of property transactions or other restrictions – temporary or permanent – which are put on transactions and transfer of rights. A possible explanation for this avoidance of formality and reluctance towards taxation and other fees may of course come from the fact that the households are poor and do not have

the money to carry out the transactions formally. It can also be a result of the fact that formality is not so important in the settlement as the perceived security of tenure already is very high without paying taxes or fees, or, as Payne et al. (2009) suggest; a result of poor governance.

As mentioned under chapter 2, good governance is an important feature to achieve legitimacy for a formal system. In addition to enjoying a certain degree of trust in the population, a government or administration must be perceived as it is working with the people's best interest in mind. This is often achieved in constitutional democracies dominated by transparency, with regular elections and a solid legal system perceived as working for the people. If the administration is not considered as working for the people, it creates counter-incentives to pay taxes and fees, as a knowledge that the money will disappear into a presumably corrupt system prevails.

The findings in Senegal and South Africa indicate that the negative consequences found are not a result of failed governance, but rather a result of "the inherent limitations of titling as a policy instrument" (Payne et al. 2009, p. 450). It is very clear that the authors harbour considerable scepticism towards titling as a tool to create economic growth. This is a bias which may have affected the interpretation of the results found in the studies. Titling alone is however not a sufficient condition for growth, but it is definitely a necessary condition. It is also the long-term consequences which must be focused on when evaluating titling as a strategy, leaving immediate poverty alleviation to be handled by other measures. These consequences have still not been given the time to occur. When that is said, there *are* inherent limitations to titling as a policy and these cannot be, but are often, ignored.

The field studies clearly reveal that the formalisation has had certain social consequences *in the medium- and short-term* perspective which may be undesirable, such as market-driven displacements, and "informalisation" of formal land markets. The consequences in the *long term* are however not evaluated, simply because enough time has not passed since the titling programmes were implemented²⁸. In addition, the effect on the land market of having the opportunity to appeal to external authorities in the case of disputes of contradicted property claims should not be underestimated, neither for professional actors nor for households. The knowledge of this opportunity can be enough to reduce the risk of arbitrary eviction, which is a great (maybe even the greatest) benefit related to the titling of property (Payne et al. 2009).

4.2.2.3 ECONOMIC IMPACTS

The expected economic impacts of titling are diverse and include economics on both the micro and the macro level. For the individual or household, titling is expected to influence on investment in housing, incomes, employment, and access to credit. Several of these tendencies will also have consequences

²⁸ In Dar es Salaam the project started as late as 2004; the programme in Dakar, Senegal was implemented incrementally from 1987 to 2007; while the South African case actually consists of studies from three different settlements in the Ekurhuleni metropolitan area outside Johannesburg with different degrees of formality. All three studies were undertaken after 1994 to study effects of new policies after the fall of apartheid (Payne et al. 2009).

for the national economy, which will presumably experience increased economic growth as property values rise, unemployment sinks, and there is a general upgrading of settlements and cities.

In Peru, there is a significant difference between titled and untitled property when it comes to improvement of homes. Studies show that 79 per cent of the population *with* formal title has invested in home improvement, while only 39 per cent of the population *without* formal title has done the same (Cantuarias & Delgado 2004, see also Payne et al. 2009). Following the titling, also a rise in property values of as much as 20 to 30 per cent has been seen according to COFOPRI (Payne et al. 2009).

Payne et al. are however quite sceptical of these numbers as COFOPRI is the implementing agency of the titling programme and is thus a biased party. When it comes to the differences in housing investment between formal and informal settlements, questions have been asked about the survey methodology and there is considerable scepticism towards the numbers on the part of Payne and his co-authors.

As I have already discussed several times, it seems like the security of tenure is the crux of the matter when assessing results of formalisation. Increasing investments in property after titling is seen primarily where the formalisation causes an increase in the perceived security which again spurs investment incentives (Payne et al. 2009). It will then be a matter of opinion whether the titling itself or the resulting heightened security can be said to be the cause of the increase in investments. In the case of the latter, there are many ways of heightening the tenure security which are easier and less costly than initiating a formalisation scheme. To find out whether it is the cause or the effect which drives investments, a comparative study of settlements which had heightened their security of tenure in different ways, one through formalisation and one or more through other measures, should be carried out. There are however so many practical problems associated with such a study, that I cannot see how this can pass the theoretical stage.

When taking into consideration the fact that improvements of home and property are likely to take place in a situation without titles, but with high tenure security, and *unlikely* in a situation with titles but without security of tenure, the most likely conclusion is that investments result from a certain degree of tenure security.

This has also been indicated in surveys undertaken among the new title holders, where 70 per cent of households who had made improvements after receiving title, claimed that they would have done so even if they had not received the title deed (Payne et al. 2009). The perceived security was hence enough to instigate the restorations. In both Senegal, South Africa, and Tanzania, the formalisation programmes were accompanied by upgrading projects, relating both to infrastructure and to houses and shacks. The improvements made from these upgrading projects can hardly be claimed to be a result of formalisation in general. I have not found any discussions in the reports of the problems related to separating the upgrading resulting from the programme and the upgrading included in the

programme. This needs to be taken into consideration when analysing the impacts on housing improvements.

Property values are also said to rise as a consequence of formalisation, which also is well documented in the literature. The prices rise considerably, with an average of 25 per cent and sometimes even higher. There are of course social sides to this, as Payne et al. (2009, on p. 453) underlines in the claim that “the lack of formal title is a price that the urban poor pay to gain access to a residential plot that they could otherwise not afford”. There is undeniably an increase in value of a plot when it is registered and made public through titling, and this gain will accrue to the person or household holding the title. This will also put the title holders in a financially better position than holders of untitled land, and this – will some claim – without having done very much. It will also possibly create problems for the next generation, who will meet a property market with higher prices.

This perspective is however at best stagnant, but in reality somewhat reactionary and displays a certain aversion against progress and development. It is also very short-sighted. In a longer perspective, growth in one market is likely to also generate growth for the rest of the society, and instead of criticising the instruments and strategy which are actually creating growth, it is more fruitful to find strategies for creating growth for groups in the risk of lagging behind.

The main argument for formalisation in Hernando de Soto’s (2000) opinion is the “awakening” of dead capital to form the basis for people’s access to credit and participation in the credit markets. Property and land is definitely one of the most common assets used to secure loans; the uncertainty lies in whether the poor will get to enter the credit market once they receive titles. When approving loans, credit institutions are however not only interested in the ability to raise collateral, but also the solvency and employment status of the loaner²⁹, which can be a problem for many urban poor (Payne et al. 2009). For most credit institutions solvency and employment status is in fact even more important than collateral, making it even more difficult to obtain credit. In Lima for example, only 1 per cent of households holding titled land have been granted formal loans (Calderón 2004). Even though there may be some connection between loan rates and formality of property, it is probably a big mistake to assume that this connection is linear. There is also reason to believe that the impact on access to formal credit will change over time, and the reason why so little improvement is seen is because not enough time has passed.

The studies also show that there is an inherent reluctance among the poor to take on mortgages as the risk of failing is perceived to be too great (Payne et al. 2009). There seems to be awareness around the fact that monthly expenditures will rise, and without a corresponding rise in income, it will be very difficult for an urban poor to sustain a mortgage over a longer period of time (Payne et al. 2008). In Senegal, there is instead a thriving market for micro-credit and local loaning institutions (normally

²⁹ Exceptions do occur, for example the situation leading up to the sub-prime crisis in the USA which caused the worldwide financial crisis in 2007.

informal) where people loan small amounts without collateral; at what interest rates I do not know. The smaller amounts correspond with a shorter down-payment time and less strain on the household economy.. There is also a great reliance on personal savings and a philosophy of not spending more than one can afford. Failing a mortgage involves foreclosure and the loss of a more than a capital object; a home. Studies have shown that the relationship between land and people in many settlements is more emotional and creates a sense of home and security. From this point of view it may seem pretty foolish to risk losing this because of a failed loan.

When it comes to income, employment and labour mobility, there is not much written about the linkage to formalisation, but the Commission on Legal Empowerment of the Poor (CLEP) bases its work on the assumption that in addition to equality of law, property rights and business rights, inclusion in the formal employment sector can contribute to alleviation of poverty (CLEP 2008; Payne et al. 2009). Whether the employment market is affected by the property rights situation is however more unclear. Studies from the favelas in Brazil have shown that inhabitants are still discriminated against in the labour market even *after* having received titles to their properties. Even though titling may imply the possibility of getting to live close to where employment is available and thus getting the opportunity to work more, many slum dwellers are so poor that the only option is to sell the property and move further away to another informal settlement (Payne et al. 2009).

4.2.2.4 OTHER IMPACTS

I have now discussed what I consider to be the most important impacts expected from a titling process. The evidence from the Senegal and South Africa-studies has been both supportive of former literature, and contradicting. To what degree the contradictions are due to the short time perspective since the implementation of the formalisation programmes is yet to be seen. The formalisation in Tanzania is still too young to see any conclusive supportive or contradictive evidence. The main theme in the findings is however that the expected impacts have taken place, but often to a lesser extent than predicted by theorists. The studies can hardly be used as counter-arguments of titling, but rather as important information for adjusting future titling schemes. In the following I will discuss the last two types of impacts from table 8 more cursory, as a consequence of the weighting outlined above.

Building and environmental impacts relate primarily to planning and urban infrastructure. It remains unclear whether titling has an impact on the provision of such services even though upgrading has been a part of the programmes studied. Depending on national legislation, different governments will have different provisional duties when it comes to this infrastructure, and it will therefore be nearly impossible to say something general about such impacts . Some places, title is not a requirement to get access to public services as for example in Colombia where access to public services is a constitutional right provided one is able to pay for it (Payne et al. 2009). A titling programme would in this case have no influence on the access to services other than the possible enrichment of the owner.

A titling programme consists of several administrative procedures and can easily put a strain on an administration not prepared for the extra work, both in the initial titling period and when it comes to updating the information after transactions. This impact goes two ways as the titling programme may cork up the administration as well as a non-functioning administration will delay the completion of a titling programme. Such a delay can come from both an ill-capacitated administration or from weaknesses due to a too complex titling programme (Payne et al. 2009). By supporting organisations with local knowledge and more capacity to carry through a programme, the central government is much more likely to succeed with the formalisation. It is however important at the same time to be perceptive to prospective abuse of local power and corruption among civil servants and others (Toulmin 2008).

A titling programme and its consequences can have significant political impacts, as with other projects which release great values. Attempts to manipulate the distribution of profit require a strong government to resist, which is not always the case in developing countries. As a titling programme is a long term project, the need for long term governmental support and security from corruption and personal enrichment, is needed for success (Payne et al. 2009).

It is also important to remember when analysing Payne et al.'s (2009) findings, that these consequences are registered after a short- to medium time span. The findings in Tanzania are registered after a very short time, even before the completion of the programme. The project of issuing titles to inhabitants of urban informal settlements may seem relatively simple, but is in fact a revolution within the field of ownership and holding property, meaning that one cannot expect to see the actual consequences – intended or unintended – until quite some time has passed. This is to a large extent a result of that both the title holders and the actors in all affected markets need time to adjust to the changes. As I have discussed under chapter 2, institutional change is often a rather tenacious and time-consuming affair which does not always end up where initially planned. It is therefore difficult to accurately assess the changes before quite some time has passed. This is also due to the incremental nature of such changes; often they can be quite impossible to see while they are going on.

4.3 SUCCESS OR FAILURE?

4.3.1 INTRODUCTION

After having studied the history of some formalisation programmes and the impacts they have made, I will now return to my second research question, namely *why does formalisation succeed some places and fail others?* In the beginning of chapter 3, I discussed the concept of success and how it can be operationalised when speaking of formalisation projects. When trying to find out which factors that contribute to success it is first necessary to evaluate the success of the three cases from chapter 3. As saying something about the long-term consequences in any of the cases will be premature, I will limit

the discussions to mainly short- and medium term consequences and success, only indicating the possible long term outcome.

4.3.2 SENEGAL

As seen in chapter 3, the formalisation project in Senegal started in the Dalifort settlement in 1987 and the other settlements followed suit. The five objectives stated by the government included bettering of living conditions, provision of basic infrastructure, heightening of tenure security, improving land management, and increasing revenue from taxation. These objectives were deduced from three problems experienced in informal settlements in Senegal. The problems included difficulty of accessing basic infrastructure, high risk of arbitrary eviction, and difficulty of accessing formal credit to achieve functioning land markets and subsequent economic growth.

The overall, long term goal is most likely achievement of economic growth and eradication of poverty, a fairly common general objective for a formalisation programme. Even though the Senegalese programme is the one of my three cases which has had the most time to manifest its consequences, the survey by Durand-Lasserve and Ndiaye claims to have found limited impact on the total poverty reduction, but that the implementation itself has created formal employment for several of the inhabitants (Payne et al. 2008). As this is a long term goal, suffice to say that the development is slow, but moving.

When it comes to the actual implementation of the programme, there have been many obstacles, especially because of weak governance in land issues and power politics regarding the access to urban land (Payne et al. 2008). A lack of funding has also hampered the completion and scale of the programme. The project was to begin with supposed to include the whole city and distribute over 400 000 surface rights, but has gradually been reduced to around 1 600 in total, 618 of these in Dalifort. Figure 11 indicates how many of these 618 who have used the right to formalise their property right.

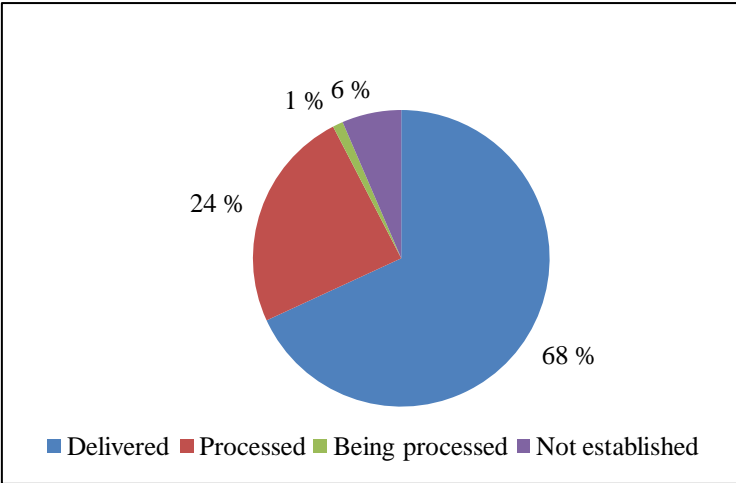


Figure 11 Status of formalisation process in Dalifort in 2007 (from Payne et al. 2008, Appendix A)

As shown in figure 11, the majority of the inhabitants of Dalifort have chosen to formalise their property rights. This indicates a certain level of success when it comes to completion as only 6 per cent of the SRs have not been established yet. However, a process which started in 1987 and with a limited amount of plots to formalise, it is not very impressive that some 27 per cent of the applications have still not been transformed into delivered formal property rights. I have not found results for the other settlements, but there is no reason to believe that the statistics are different there. The implicit objective of completion is thus not reached.

The reasons why the process is still not complete are several, and maybe the most significant is the problem with delays in the administrative process. These delays were caused mainly by the communication problems listed above in addition to a lack of institutional preparedness for the increased burden a formalisation process would be. In addition there were many potential beneficiaries who did not have the resources or the will to pay the cost of formalisation. The lack of will came from the perception that just being eligible for formalisation was sufficient protection against eviction because of a high degree of tenure security in the first place. Also, residents who did not have any intention of selling the plot did not see the need to pay for formalisation. This indicates that the information flow to the residents has been inadequate. A solution could have been to involve community-based and other non-governmental organisations to contribute with awareness campaigns communicating all the sides of formal ownership both in the short-term and the long-term perspective.

When it comes to the security of tenure which has been a central objective for the programme there is not much difference in the perceived de facto security after the formalisation, mainly because the tenure is already guaranteed by the government (Payne et al. 2008). There has however been a significant increase in the legal security of tenure, but this will probably be more visible in the long perspective as new actors and generations take over the land rights.

By linking the formalisation programme to a general upgrading programme for housing and infrastructure, one of the objectives is directly operationalised to be included in the programme. This can make it more interesting to pay for formalisation as concrete and immediate services are delivered as a direct consequence.

4.3.3 SOUTH AFRICA

In the South African case study the main objective has been the provision of adequate housing to the inhabitants of informal settlements. The right to adequate housing is included in the South African Constitution, signalling that it is an overall objective for all policies. The background for the formalisation programme is thus to neutralise the differences in living standard which were caused by

the apartheid regime. The formalisation programme is one among several programmes to counter differences based solely on race.

With the special historical background of South Africa, it is understandable that the objectives take a somewhat different form than in other developing countries. Implicit in this housing provision objective is also an objective of economic growth and equalisation of resources. To lay the ground for such growth it is important that the basic needs of the population are met, such as the need for adequate housing.

To assure that the people living in shacks were provided with adequate housing, the formalisation project was coupled with an upgrading project, not only of the infrastructure, but also of the actual housing.

Royston (2002) claims that the project in South Africa was hampered in the completion by the fact that the only focus was on individual ownership. If the programme had opened for registration of more collective forms of ownership, which was closed to the actual tenure structure, it would be easier to complete the programme successfully. By individualising the tenure in a more incremental manner, and letting people gradually get used to new forms of relating to land, formalisation would naturally take longer time, but would also be more likely to succeed in the long run.

4.3.4 TANZANIA

As we have seen in chapter 3, the overarching long term objective of all formalisation in Tanzania is provided by statute in the 1999 Land Act as the improvement of living conditions and life of the population. A secondary objective which also is determined in the law and with a medium term perspective is to organise ownership through adjudication, recording and registering of property (UN-Habitat 2010). The main medium term objectives of formalisation processes have been poverty reduction, security of tenure and establishment of good basic infrastructure to all inhabitants. Formalisation has been used as one of several strategies for reaching both national goals and the MDGs (Kyessi 2008). These objectives are common for all formalisation projects implemented in Tanzania.

Even though the Land Act is over ten years old, the studies I have found are still too fresh to give any information about the medium- or long term consequences. In Hanna Nassif, the titling programme was initiated in 2004 following an upgrading project which started in 1994. It can therefore be difficult to isolate the new effects of the actual titling, from the effects of the upgrading which has had longer time to manifest. For the purpose of identifying factors contributing to success of formalisation schemes, the Tanzania example is thus less suitable.

4.3.5 FORMULA OF SUCCESS

What can then be deduced from these examples? Is it possible to see the beginning of a formula for success? It sounds oversimplified, and I believe that it is. What *can* be identified is however some main points which I think can be important.

First of all, a main obstacle to the processes in both Senegal and South Africa was collaboration problems and bad communication both internally in the central government, and between the central and local authorities. These problems cause delays and generally slow processes resulting in inability to act. To counter this, the Tanzanian government passed legislation delegating the responsibility of land management to local authorities already in 1995 (Payne et al. 2008). It may seem that a principle of subsidiarity, where decisions are made on the closest possible level to the people, can be a good starting point for a successful process. This can only be achieved where the communication is clear and areas of responsibility are divided among levels of government in the most rational manner.

Second of all, communication is also important between the authorities and the population. In Senegal, but especially in Hanna Nassif, Tanzania, community-based organisations organised awareness campaigns with the goal of informing the residents of the settlements about the formalisation programme, how to go about to achieve formal ownership, and also what could be gained through obtaining formality. A formalisation project is dependent on all actors cooperating to reach the common goal; free information is thus a key factor in succeeding. The inclusion of CBOs early on in the process and making them an equal partner in the implementation will both ease the flow of information, and be a useful link between authorities and people, to reach the common goal of a successful formalisation process.

Third of all, it is important to have a thorough and realistic approach when planning the project. According to Payne (2004) politicians tend to prefer single, dramatic initiatives which assure further popular support. With formalisation this is not a fortunate situation as single, dramatic initiatives tend to fail in the long run due to inadequate planning and inability to foresee all consequences. This brings us to the democratic dilemma; on the one hand, democracy is a wanted system of government as it is generally seen as the best there is; on the other hand however, it causes irrational behaviour and unsustainable initiatives among politicians to ensure re-election. To succeed with land management, it might therefore be a good idea to de-politicise the strategies and leave the detail planning and implementation to technocrats. Of course, distribution of land, as I also have mentioned earlier, is one of the most important determinants of the power structure in a society, and it will probably be politically impossible to move the responsibility for land management from the political to the technocratic sphere. It is however an interesting discussion and I believe that much better results could be seen if there was more awareness around the possibility to use technocrats to a larger extent in the implementation of formalisation schemes.

Fourth of all, what has been highlighted as a main reason in all the cases for why people do not choose to achieve formal ownership when given the opportunity, is the cost. Economy is also listed as a main reason of property sales in Senegal, see figure 3, and as a main objective of the authorities; to increase municipal revenues. The situation is thus that the residents find the costs of formalisation and living in a formal neighbourhood too high, and the authorities want to increase their revenues. These two points of view are not concurrent and reveal a big problem for the success of a programme. In Senegal, it is possible to get plans of down payment for the surface rights, relieving some of the immediate economic burden; this is a good idea to build further on in future programmes.

This however implies that the local authorities will not receive their revenues immediately, and also presupposes a certain liquidity on the part of the municipality. Even though this is often not the case with the municipalities in developing countries, I believe that this delay of payment is a part of a formula for success. To ensure that there is a certain liquidity in the municipality before initiating a formalisation project, it is possible to base this on earmarked grants from the central government or financial aid from organisations or foreign governments. If the municipalities both are able to offer plans for down payment over time for titles, *and* have patience with the receiving of municipal revenues, it can make more people economically able to realise their formal property right.

When I say patience, I mean that new formal owners may be relieved of their tax duties the first years of formal ownership, then beginning with a low tax rate which gradually increases with time. This will give the owners time to adjust to the new situation, and also will allow them to maybe experience some of the expected economic consequences of the formalisation. The problem with this strategy is of course the initial lack of funding which is apparent in developing countries.

So is there, based on this, a formula of success?

I would like to be able to answer yes or no to that question, but it stands quite clear to me that the answer lies somewhere in between. There is no fixed strategy which can be applied to succeed with formalisation, but there are certain factors which will increase the possibility of succeeding with such a programme:

- a thorough, comprehensive planning process based on research and knowledge about the settlement in question, the needs of the residents and a mapping of the actual rights which exist;
- cooperation with community-based and non-governmental organisations in reaching the residents, creating awareness and implementing the programme;
- clear delegation of responsibilities between levels of government, and subsidiarity in decision-making;

- economic preparedness with the municipalities and programmes for down payment and postponement of payment for the rights holders;
- and
- incrementalism.

All the cases have shown that making radical changes is not the road to success. By setting up a process where the rights holders start by receiving a limited title which with time can be expanded to whatever title is desirable, the changes will not be too dramatic, and also the costs will be spread over a longer period of time. Incrementalism as such will hence be a way of accommodating to the realities of path dependency; big changes will not succeed, but smaller changes which follow the already staked out path, will have a much bigger chance of success. Incremental changes also demand something of the actors involved. By expecting to experience immediate changes, one will soon feel that the whole project has failed. This is why the awareness campaigns and general access to information is so important; all actors must be well informed of what will happen and the time schedule of the changes.

4.4 CONCLUDING REMARKS

In this chapter I have tried to use the findings from the case studies in chapter 3 to shed some light on my two final research questions; (i) why does formalisation succeed some places and fail others, and (ii) what is the significance of having access to a formalised property rights system. As these two questions touch many of the same areas and are closely linked to each other, I have chosen to discuss them together.

When it comes to the significance of having access to a formalised system, there are many meanings about this. Hernando de Soto is perhaps the most profiled theorist within the field, both hailed and scolded for his books. His main claim is that formalisation in general and titling specifically, of informal settlements in developing countries will have an immediate positive effect on the economic situation of individuals and the country as a whole. This is because capital which is in the poor people's possession in the form of houses and properties, will be brought to life when registered formally and can be used as collateral for loans. If this is correct, the significance of gaining access to a formal system of property rights has to be enormous for developing countries with high degrees of unregistered property.

The evidence de Soto bases his conclusions on is however not representative for the situation in most developing countries today and research has shown that the effect of formalisation is not automatically as positive as he claims. When comparing the results of the formalisation processes in Senegal and South Africa to the impact predicted by de Soto, Payne et al. (Payne et al. 2008) has found that the only significant impact from the formalisation projects has been a rise in the tenure security of women

which has been considerable. The establishment of well-functioning formal property markets and the general access to formal credit have however not – yet – been observed to any greater extent.

By the looks of these cases, it may seem that there is not any specific significance of having access to a formal property rights system, but I believe that this conclusion is premature. First of all, it cannot be expected that such changes will happen overnight or even happen according to plan. Second of all, the analyses are based on consequences observed in a short to medium time perspective after the formalisation project was implemented; maybe this is not enough time to give the significance the possibility to establish itself.

If one looks at developed countries with thriving property markets today, for the most part they have access to more or less well-functioning formal land registration and management systems. It is however too simple to assume that it is the formality alone which causes the success of the market; formality is a necessary, but not sufficient condition of economic growth. Also other structures need to have a certain degree of stability and reliability for investors to be interested in accessing the market. The time aspect is essential here. Economic growth needs time to manifest and so do the consequences of formalisation (and all other major institutional changes).

In the beginning of chapter 3, I spent some time discussing the meaning of success. At the end of this chapter, I have tried to use the three cases to see if it is possible to derive some qualities of the projects which can be used to decide what makes one formalisation programme successful and another unsuccessful. This is of course very difficult, and related to what has been said about formalisation in chapter 2, it should be nearly impossible. But I do still believe that some guidelines for success can be mapped out, and the most important ones are to have a comprehensive, inclusive planning process where actors are able to participate in the formulation of the programme, and, maybe most importantly, incrementalism in implementation. Formalisation takes time; successful formalisation takes even longer.

5 FINAL REFLECTIONS

In the very first chapter, I started by describing the situation which is seen in much of the developing world today. The massive population growth and migration to larger cities is not something that will stop, but rather accelerate. To accommodate all these migrants it is necessary to have a system for registering and storing information and data about properties and living conditions in general to be able to plan for the accommodation of the new city dwellers. Among this information is the availability of places to live and the access to common goods and infrastructure. Formalisation of property rights seems to be a relatively simple and seemingly effective strategy to systematise the information required to give people access to adequately services land to settle down on.

I would now like to return to the beginning and to my three research questions; (i) what is the meaning of the term formalisation, what is included and what does it mean?; (ii) why does formalisation succeed some places and fail others?; and (iii) what is the significance of having access to a formalised property rights system? By working with this thesis, I have learned very much about the ambiguities which exist within the field that I have chosen. This was apparent not only when it comes to the difficulties I experienced when trying to define the concept of formalisation, but also how different objectives, approaches and meanings of different actors contribute to misunderstandings, miscommunications and finally the inability to reach the goals one has set for a project. A poorly defined and planned project may thus cause more problems than it solves.

When it comes to my first research question regarding the definition and content of formalisation, this may come across as very theoretical and purely of academic interest. Even though there are many aspects of discussion which definitely are theoretical, there is also a considerable power of definition in the practical politics of formalisation. In Tanzania, the 1999 Land Act gave informal rights a pseudo-formal standing, thus removing virtually all squatters with the stroke of a pen. Nothing had changed physically in the settlements, the residents had not received any documentation of their rights, but the settlements were no longer considered to be informal by the authorities. This was a step in the process towards opening for application for residential permits, but was it formalisation? Juridically, it must be considered a kind of formalisation inasmuch as informal rights to property were given a legally recognised status. But in reality, nothing changed physically for the rights holders, and there is reason to ask how much of this was politics and how much was a true search of formality. As mentioned above, titling costs money, both in planning, and in execution and maintenance of the system. In addition, there is a certain status for a government in not having informality of tenure, which definitely might seem as an incentive in the case of Tanzania; eliminating informality and avoiding the cost of actual formalisation by moving the responsibility from the authorities over to the residents who have the responsibility of applying for residential permits.

Formalisation is thus something which can be abused by powerful actors to secure their positions or to avoid uprising among the population, but it can also be used to neutralise differences and bring people out of poverty. The main reason for this is that the act of formalising property cuts deeply into primary structures within a society; distribution of and control over resources. Land resources have always been a source of wealth and power making the distribution of them important to many actors. As this creates incentives for un-social behaviour, the mechanisms for controlled distribution of the resources should have countermeasures. The 20th century's land politics in South Africa is as we have seen a very good example of how distribution of rights in land can be a part of the general power distribution. Under apartheid, the access to land was used as a tool to help segregation of people with different skin colour, reserving the majority of land for the minority of the people. Correspondingly, distribution of land rights and housing was used after apartheid to lift people of informal settlements from poverty and neutralise the divide between people which was created by apartheid.

There are always processes of change going on in a society which is something that needs to be taken into consideration when implementing any kind of programme. It is important to have a holistic approach to all societal changes and to be able to link the change in tenure formality to the other processes going on at the same time.

I have also discussed whether so called informal settlements really are informal or if they just lack transparency to people outside the community. In Senegal for example, we have seen that private land sales contracts where the transaction is not registered, are considered to be informal in spite of being entered into with witnesses present and overseeing by a local community leader. In a pure titling view, this is informal. These private land sales contracts are however accepted as proof of ownership in courts and tribunals, and may thus be enforced with legal backing – in spite of being considered informal. Even though enforcement tends to be the biggest problem with informality of ownership, also rights that are considered informal can be enforced. This raises the question of the motive behind formalisation projects. Is it a purely mercantile interest guiding formalisation? If so, this would be in the long-term interest of external actors more than the people living in the settlement, and may cause speculations and rises in prices at the expense of the residents. I do however not think that this is the case in most formalisation projects, but I believe that it is important to have the residents' interests in the front seat, not solely focusing on economic growth for the benefit of the few.

When it comes to my second research question regarding success and failure, my research has shown me primarily two things; first of all that success is not static, and does not imply the same things for different people; second of all, I have learned the importance of giving a formalisation project time to manifest itself in the society. When studying the effects of formalisation it is also important to remember that such societal effects are very difficult to isolate the source of. Often the effects are caused by a cocktail of different processes going on parallel to each other and which cannot be

controlled for in a study. This is also one of the main reasons why the same strategies not necessarily produce the same consequences when applied in different countries and situations.

When it comes to the nature of success, I have tried to clarify some ambiguities which may be associated with the concept, and this has made me understand how many meanings that actually may be attributed to success all depending on one's objectives. The most inclusive and integrative definition is of course the act of reaching objectives, but without well-defined objectives and solution-seeking actors this loses some of its meaning too. Success also implies a certain degree of positivity; success is a good thing. It does however not say anything about to whom the fruits of success will fall. It is thus impossible to define success without an element of subjectivity or link to the concrete context. In my discussion of success, I also found that success can be achieved on several levels in time, and it is plausible that success in the long-term perspective must be the most desirable. Success must therefore imply reaching well-defined objectives with positive consequences which will last beyond the life span of its creators. Even though also this is a rather vague formulation as the content will differ from different points of view, it is the closest to a precise definition I have been able to come.

With these deliberations on success, I have investigated whether there are certain attributes of formalisation programmes which make the programme more or less likely to succeed and have found some points focusing on good and thorough planning and incrementalism and time in the execution. I have also found that the process itself is part of the success. A good process creates legitimacy for the project itself and for its executors, which can be a part of a nation-building process, overcoming barriers of ethnicity and culture through signalling transparency of the government to the population. If this is achieved, the probability of long-lasting positive consequences is much higher.

My third research question is closely linked to my second and involves the *significance* of having access to a formalised system for the population of a city or country. Based on the case studies from chapter 3, the significance might seem to be quite limited. The biggest positive impact is on the tenure security of women, an impact which I think the authors of the studies have not emphasised enough. By including women in the formal societal life, the amount of actors who may contribute to economic growth, will double. Giving women formal tenure is definitely an important step towards such inclusion and empowerment of women, which also increases the possibility of economic growth and development.

A negative impact of formalisation which has been seen is the impact on tenants which have experienced rises in rents without corresponding rises in wages due to the general rise in property values resulting from formality. All three cases that I have looked at are however still fairly young, resulting in an inadequate time frame for analysing long-term consequences. And as seen in my

discussion of institutional change and path dependency, expectations of seeing big results in short time will most likely remain unfulfilled. This is closely linked to the need for incrementalism in implementing formality. The changes that actually have been seen are considered too small to make any real difference with regards to tenure security and economic development, but significant changes within these areas cannot be expected to be seen after only 20 years. What however *has* been seen is a small move towards a legalisation of tenure, which can be expected to generate economic growth if given more time.

Hernando de Soto predicts that economic development automatically will follow a formalisation of land rights in informal settlements. As we have seen, this is not the case – at least not within a short- to medium-term perspective. To see significant effects manifest it is very important to have a time perspective which exceeds 10 to 20 years. Big changes in the basic structures of a society do not happen overnight and must be given time before any final verdict or evaluation. So what time perspective does de Soto imply when speaking of formalisation? If he means that the effects can be seen after a short time period, I am inclined to disagree; both because of the inertia of institutional change, and because of the results seen in the case study reports discussed here. If he, on the other hand, is talking about long-term consequences of formalisation, it is more likely that his predictions can contain elements of truth. But even though there definitely must be a connection between economic growth and formalisation of property rights, this connection is not as direct and linear as de Soto claims. Formality of tenure is a *necessary but not sufficient* condition for development. There are a lot of other factors which must be present for a formalisation programme to have such impacts as he claims, such as for example economic ability and administrative capacity. If de Soto presupposes the existence of these factors, he ignores many of the structural challenges and the lack of formal institutional framework which today inhibit development as a direct consequence of formalisation alone.

It is also an oversimplification that one kind of system is applicable in all informal settlements; to succeed, it is necessary to be aware that there is an existing system and try to create a system which builds on this and includes indigenous characteristics of the existing system. This can be linked to the importance of incrementalism and to build on existing structures instead of creating something brand new with no local foundation. As I have called it in an earlier chapter, it is necessary to give in to path dependence and use it to incrementally create formality in an informal settlement.

Finally, it is important to remember that all major changes in societal structures will imply that there will be both winners and losers. A redistribution of costs and benefits, either as a conscious strategy to even out differences between rich and poor, or as an unwanted consequence of a wanted project, *will* take place. It is however expected that a process of formalisation will generate benefits which exceed the costs for both rights holders and for the society as a whole. Whether or not this will happen, depends to a large extent on the formalisation programme and how it is implemented in the settlement.

Another thing which is important to remember, is that a formalisation process is just that; a process. It is not an end result, but rather a means towards reaching a greater objective, which can be development and economic growth in poor countries. Successful implementation of a formalisation programme can be seen as a shift in the course of development, guiding the development in a different, and hopefully more fruitful, direction than it otherwise would have taken.

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