



## Property rights and development:

Property rights and social, political and economic empowerment

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# Executive summary

This paper examines the evidence on the causal relationship between the legal security of property rights and social and political empowerment. The focus for this paper is on the claim that the legal security of property rights (as individual rights) advances the prospects of property holders to engage more effectively with their social and political environment, and to access decision-making better. Research questions addressed whether the evidence holds that the legal security of property rights are more important than other rights in advancing social and economic outcomes, including where they may conflict with communal property rights. The evidence regarding the impact of property rights for women's social and political empowerment was also considered.

**Overall, the findings for the research questions present ambivalent evidence regarding the nature of the relationship between legally secure individual property rights (including through improved access to justice and rule of law) and improved social and political voice.** It was also found that theories of change on this causal relationship between legal security of property rights and social and political empowerment are mostly not explicitly developed as such in the literature, nor is there much empirical work that sets out to demonstrate the validity or otherwise of this causal connection.

The evidence base therefore does not constitute a clear body of research that confirms or rejects the validity of the underlying assumptions posited in theory of change in question. This reflects first that much of the empirical research is not directed at answering the research questions as posed in this exercise, namely the primacy of property rights over other rights, and that legal security and formalisation of these enables political and social empowerment.

This arises partly because of the nature of the evidence base that featured in the literature as well as the complexity of the issues surrounding the underlying premise of the research question. A consideration of the relationship between improved legal security of, and access to, individual property rights and social and political empowerment needs to take account of the political and social relations in which property regimes are embedded.

It was also noted that there is good reason not to ignore the more theoretical literature that engages with both the analytical and normative components of the causal chain that is presumed in the theory of change linking legal security of property rights with social and political empowerment. The review found that much of the empirical literature engages with these analytical questions in such a way that findings are less about proving or disproving the causal chain but rather present more nuanced analyses about the causal relationships that are being studied.

Given the gaps in the literature, more research could usefully be undertaken on the following:

- The impact of improved legal security of individual property rights on social and political voice

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- Testing how, and if, legal mobilisation trends and litigation strategies for the poor see other rights (such as rights to health and education) as equally, or more, important than securing individual property rights or indeed communal property rights in terms of social and political voice.
  - The direct consequences of legal security and access/control of property for women on political voice. The research has tended to focus on local governance dynamics but there is insufficient empirical research, from a governance perspective, of the particular impact of enhanced access to property and political empowerment of women at different levels of the political system.

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# 1 Background and objectives

This Briefing Paper aims to look at the state of evidence on the link between legal security of property rights and social and political empowerment and identify where there are significant gaps that need to be plugged by further research. In line with DfID's definition of a Literature Review, this is designed to be a "review of main literature in the field including all major research studies".<sup>1</sup>

This Briefing Paper forms part of a wider study commissioned by DfID to contribute to debates on the link between property rights and development in two principal arenas:

- The Golden Thread narrative of the UK government, which emphasises secure property rights as a key element of promoting economic growth and development: "A genuine golden thread would tie together economic, social and political progress in countries the world over... Only then will people escape the fear of seeing their homes bulldozed just because they don't have property rights." Such rights would be underpinned by mapping and formal cadastre systems "...using satellite photos to map plots of land that will facilitate the creation of property rights" (Cameron 2012).
- DfID country programmes on property rights, which have ranged from support to land administration systems to funding individual and community titling in different countries.

Underpinning this is a broad agreement that secure property rights are necessary for development, expressed in terms of equitable growth, household welfare, and social and political engagement. Implicit in such discussions is the view that private, individual tenure is the most appropriate form for guaranteeing security of property rights. However, others argue for promoting tenure security under different mechanisms rather than private land ownership. This is particularly the case in sub-Saharan Africa where forms of customary tenure emphasise membership of communities as the basis for access to land and therefore prioritise territorial control by collective units over private conceptions of property rights.

In parallel, there is a discussion on how the link between property rights and development is influenced by a range of other factors that may be equally, or more, important than property rights *per se*.

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<sup>1</sup> Summary table of evidence products – DfID 2012.

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## 2 Approach and methodology

A team of five researchers carried out the overall literature review, with the support of a research assistant. A senior review team, comprising mainly external academics specialising in the themes covered in this study, provided input into the conceptualisation of the research questions and search strategy, suggested additional literature and reviewed the draft and final reports.

The general study looks at the role of property rights in promoting development in five areas agreed between DfID and ODI:

- Property rights and economic growth at a macro level
- Land property rights and rural household welfare
- Water rights and rural household welfare
- Property rights and urban household welfare
- Property rights and social, political and economic empowerment

The evidence assessed by the review team is presented for each theme in the form of a Briefing Paper, comprising:<sup>2</sup>

- Discussion of the conceptual framework, context and theory of change;
- Assessment of evidence for each research question; and
- Identification of research gaps.

Using DfID's theory of change framework (Vogel 2012), we look at the links for each component between property rights and development to: identify endpoint outcomes and how they would be measured; key determinants of such outcomes; and the central transmission mechanisms between secure property rights and each outcome.

In each theme, we define a set of research questions that help us to test the hypothesis presented in the theory of change. Identifying and assessing such evidence inevitably involves a discussion on the *form* that such property rights need to take and the influence of *other factors* on the link.

An important point of orientation for the study was DfID's Rapid Review on the "Golden Thread of International Development",<sup>3</sup> which explores the evidence on different pathways to the triple objectives of growth, poverty reduction and civil liberties, and DfID's rapid review of the literature on property rights (Selvetti 2012).

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<sup>2</sup> In the case of the rural and urban household papers and the growth paper, an overview is provided drawing out common and contrasting findings.

<sup>3</sup> DFID Research and Evidence Division: The research evidence relating to a "golden thread of international development": a rapid review (undated)

## 2.1 Search strategy

The literature review combined three tracks of literature searches:

1. Bibliographic database search of academic databases and journals, using consistent search strings that have been tested beforehand and a set of inclusion criteria, and conducting forward and backward searches on key references. Three main databases were used for the search: Scopus, Google Scholar and Web of Science. These were complemented by searches of key institutional databases, particularly World Bank, FAO Agris and DfID's R4D website.
2. Snowball technique of contacting experts in the field to ask them recommendations for important studies on the research question as well as insights into the key propositions.
3. Hand-searching specific websites for relevant studies using similar search terms as for the bibliographic databases.

The strategy focused on literature on Africa produced from 2000, using literature produced between 1990 and 2000 where recommended by the senior review team or where such references were frequently cited in the more recent literature. The search strategy focused on literature published mainly in peer review journals and principally in the English language, partly because of the way that the databases operate and partly due to the criteria in DfID's draft guidelines for assessing evidence quality.

Table 1 presents an example of the results of the search conducted through Scopus for the five themes covered. To these were added other references picked up in the search process. The review team then screened all references to identify the most relevant material.

**Table 1: Studies downloaded from Scopus**

| Searches                                  | Rural     | Growth    | Urban     | Water     | Social and Political Empowerment |
|---|-----------|-----------|-----------|-----------|----------------------------------|
| Number of variations searched             | 16        | 12        | 5         | 12        | 8                                |
| Abstracts downloaded                      | 86        | 50*       | 19        | 39        | 44                               |
| Titles forward/backwards searched         | 9         | 7         | 2         | 4         | 0                                |
| <b>Full titles downloaded from Scopus</b> | <b>47</b> | <b>43</b> | <b>21</b> | <b>40</b> | <b>39</b>                        |

## 2.2 Derivation of the evidence base

In this section, we discuss the potential impact of the search strategy and evidence quality assessment criteria in deriving the evidence base that underpins the key finding of the Briefing Papers.

### 2.2.1 Issues raised by the search strategy

Although the strategy was designed to do a wide-ranging search and include as many relevant studies as possible, the results of the search process highlighted some potential bias towards particular types of studies and evidence, namely:

**Literature published in journals.** Whilst efforts were made to include other types of papers, including working papers, conference papers and other reports, most of the papers selected and analysed were journal articles or working papers intended for publication, and



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excluded books (including edited volumes and monographs). This is due mainly to the greater visibility and accessibility of journal articles through database searches as they generally include full metadata which is picked up by search engines. Such articles are also more likely to be cited and referenced in other studies.

**Explicitly empirical and economic-based papers.** The explicit focus on ‘evidence’ in the review process is likely to have led to bias towards papers which emphasise their methodology or use of data. On the whole, papers from the economics discipline were more likely to include more details on their use of ‘data’ and ‘evidence’, although a loose application of search terms (i.e. relaxing use of ‘data’ or ‘evidence’ was consciously used in order to include other terms. As a result, perspectives from some disciplines are not fully represented, notably history, politics, anthropology, cultural studies and sociology.

### 2.2.2 Impact of the methodology to assess quality of evidence

The exclusion of particular types of evidence by the search strategy is compounded by the criteria for assessing the quality of the evidence that could be considered, provided in DfID’s draft Guidelines (*Assessing the Quality of Social Science Research Evidence: Summary*)<sup>4</sup> a revised version of which was subsequently published online. This emphasises measurement aspects of evidence, in the principles of validity and reliability, implying a preference for quantitative studies over qualitative studies using inductive methods.

#### Focus on particular types of evidence

In the context of research on property rights, the implicit preference for quantitative studies runs the risk of excluding a significant body of work relevant to the issue and providing only for a partial review of the evidence. The different standards of emphasis on, and transparency of, research design and methods in different disciplines may also mean that research produced by those disciplines that bring design and methodology to the fore are likely to be given higher quality scores.

An additional concern is that the inclusion of the number of studies as a factor in assessing the strength of the evidence may mean that the numbers can be influenced by concentrated research efforts in particular places run by particular research groups (for example, in the land case, highland Ethiopia by the World Bank/IFPRI). The contextual factors of the location and the wider issues of knowledge building that are associated with particular research efforts (which may have disciplinary or policy biases) are, as a result, downplayed.

#### Resource implications

The criteria provided in the summary guidelines could be seen as a first hurdle for most peer-reviewed articles to be accepted into a journal without distinguishing further between the quality of different articles. Publication in a peer-reviewed journal would normally be taken as a minimum threshold for quality assurance and has been used as such in this study.

If the peer review process is not seen to be adequate and further verification is deemed necessary, this implies that a much greater volume of resources would be needed as it can take a lot of time to delve deeply into the methodology of individual studies to assess how well they fulfil the different assessment criteria. For example, in the literature looking at the link between secure property rights and economic growth, there are articles published (and used in the literature review) that discuss in great depth a single parameter used in one model compared to another (e.g., the instrumental variable), an exercise that could not be reproduced with the scope of work and budget provided for the literature review. Indeed, a thorough assessment would imply verifying primary data, which is not always available, and again, would be extremely resource intensive for a wide-ranging literature review which uses broad inclusion criteria.

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<sup>4</sup> The review team were provided with draft guidelines by DfID, which are similar but not entirely equal to the recent guidelines published on DfID’s webpage. The guidelines served as a filter for including only evidence that was of reasonably good quality and comparing contrasting evidence on different points.

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The guidelines appear to privilege experimental design but it can be difficult to work out, for example, whether a study was really quasi-experimental or whether it was intended to be an experimental design but was not done strictly according to criteria for this. There may also be academic disputes about whether conditions in the area of study created a natural experiment or not. Requiring the reviewer to make a judgement on the debates is time-consuming, and the reviewer may not be equipped to do this in the context of a broad literature review. This means that a very brief summary of the state of evidence is risky to apply; even classifying studies according to whether they are really experimental or quasi-experimental is challenging — without going back into the primary data, it is not really possible to make a robust assessment.

### **Issues of aggregation**

Not all the principles of quality laid out in the guidelines establish an equal threshold for assessment (e.g., the criterion of acknowledging the existing body of research is much less rigorous and easier to meet than, for example, that of demonstrating measurement validity). This makes it difficult to aggregate all the principles into a single arrow or indicator of strength and quality of evidence.

### **2.2.3 The challenges of property rights as a research focus**

In the case of property rights, the different dimensions and interpretations of property rights in the literature and the greater complexity relative to specific interventions, such as cash transfers, have made it difficult to tease out causality from statistical econometric analysis. Forms of property rights influence but do not necessarily determine real or perceived security of property, the effects of which may affect investment and innovation through perhaps four main paths, but which may equally engender all manner of other linkages within systems, some of which we may not appreciate, and which depend heavily on context (and it can be hard to define what elements of context matter most). Cross-country regression cannot deal fully with this, even if it can produce some indicative results. Qualitative analysis can provide additional insight into understanding the contexts that create the variegated patterns.

As such, it can be difficult to come to a firm conclusion about the overall strength of the evidence although we do make some comments on this during our analysis of the evidence. In the Briefing Papers, we have strived to make this as transparent as possible, highlighting and discussing the nature of the evidence, and trying to provide an informed sense of the broader pattern.

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# 3 Property rights and empowerment – theoretical and conceptual issues

## 3.1 Titling, security and empowerment

The connection between the formalisation of titling and secure property rights and empowerment is an emerging field of research. It reflects different – although not always clearly articulated – narratives about how property rights, and their legal security, impact on political and social voice. For this Briefing Paper, the focus is on the claim that the legal security of property rights (as individual rights) advances the prospects of property holders to engage more effectively with their social and political environment, and to access decision-making better. In brief, it examines the evidence on the causal relationship between the legal security of property rights and social and political empowerment.

Overall, it was found in the review of the literature that theories of change on this causal relationship between legal security of property rights and social and political empowerment are mostly not explicitly developed as such, nor is there much empirical work that sets out to demonstrate the validity or otherwise of this causal connection. However, in some of the literature, it is a causal relationship that is assumed to be true. To the extent that this causal connection is implicit, it is premised on the assumption that achieving legally secure individual property rights (through access to and control of property) enables economic autonomy which, in turn, enables political and social agency.

## 3.2 Legal empowerment and women's economic empowerment

To explore this underlying assumption about the causal connection between legally secure property rights and social and political empowerment, we focus the review on two principal bodies of literature and policy debates with contemporary policy relevance:

1. The work produced under the narrative of 'Legal Empowerment', and research that is associated with this, drawing on the Report of the Commission on the Legal Empowerment of the Poor (CLEP-UN 2008).
2. The work on women's economic empowerment, which focuses on access to property for women as a pathway to improved agency for women in social and political life. (Agarwal 1994; Kabeer 1999; WDR, 2012; UN Women 2011).

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### 3.2.1 Property rights and legal empowerment

The Report of the Commission on the Legal Empowerment of the Poor (CLEP-UN 2008) reflects the UN's initial presentation of a legal empowerment agenda which placed property rights, as one of four pillars, at the centre of how citizenship and legal identity are recognised and enabled:

*“Property rights help to establish clear ties of rights, obligations, responsibilities and recognition in a community. They are often the basis on which people establish their legal identity, exercise voting rights or access basic services like electricity. These basic opportunities can be a powerful means to climb out of poverty” (CLEP-UN 2008).*

The other three pillars of rights are:

- Access to justice and rule of law;
- Labour rights; and
- Business rights.

This reflects a particular selection of what constitutes a potentially much wider list of rights (political, civil, health, education, community rights, etc.).

The view that formalisation of, and legally secured, property rights result in enhanced empowerment is most explicitly posited in the CLEP report (CLEP-UN 2008). De Soto was a member of the Commission in charge of drafting the CLEP-UN report and the initial importance of property rights has been subsequently attributed to his particular contributions to the report. Banik (2009) makes the point that the full report rebalanced the relationship between rights somewhat by including the other three sets of rights with equal importance.

The key premise of the CLEP report is that the weakness of the rule of law and of equitable access to justice systems is at the root of poverty. People are excluded from benefiting from the protection of the law where disputes are resolved in a predictable and impartial manner. Through this exclusion, people's assets, livelihoods, business and work are unprotected and insecure. Thus, their legal identity is weak, making them vulnerable to abuse and limiting the possibility of social and political voice.

Those that critique this position do so from different analytical and evidence-based perspectives. This includes works that test the underlying logic of how the merits of legally secure property rights are argued. For instance, Assies (2009a) notes de Soto's inconsistent use of the security of property rights – which is that it is not their legal security that is empowering but rather whether the property is tradable or marketable; or Nyamu-Musembi (2007a) who interrogates the evolutionist assumptions about development. The same author reviews the literature on whether formalisation of individual properties actually translates into owners using it effectively to access credit (which is where part of its empowering value lies) but feels that the evidence is weak.

### 3.2.2 Property rights and gender equity

At a general level, the underlying premise in the discussion of property rights and gender equity is that ownership and control of property is potentially a contributing factor in altering the balance of power in gender relations. Insofar as legal change and implementation result in improved affirmation of women's rights to property and to effective access to ownership, it contributes to economic autonomy for women that, in turn, enhances agency in different social and political spaces. In the household, in the community or in wider political society, ownership of property enhances the bargaining power of women which alters voice and access to decision-making. However, a range of intervening factors and qualifying conditions shape the impact of different property and land tenure systems, and titling policies on women's effective access and control of property, and the

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particular features of such access (including whether it is equity enhancing for women and generally). Kabeer (1999) reflects on the complex process by which (access to and control of) resources translates into agency, and then into concrete achievements, conveying that such causal connections are deeply complex and subject to multiple levels of change and empowerment. The distinction between (the weaker impact of) individual agency and collective empowerment is an important one in terms of considering wider processes of transformation that can be gender-equality enhancing.

### 3.3 Theory of change

How underlying assumptions about the impact of secure property rights on social and economic empowerment are constructed in the literature varies depending on different perspectives of empowerment, on assumptions about, and features of, different property regimes, and on how enhanced legal security of property rights is perceived to advance social and political voice. For instance, some of the work on rule of law and legal empowerment, in line with de Soto's work on the role of property rights in development, privileges the *intrinsic* value of property rights as key to the development of successful capitalist economies (Cousins 2009 and Nyamu-Musembi 2007). By contrast, the research on women and property tends to privilege the *instrumental* value of access to property for women as a pathway to the economic autonomy that is an enabling condition for social and political agency (Agarwal 1994).

Taking note of this difference, the review looks at the underlying – if not always explicitly established – assumption regarding the causal connection between achieving legal security of individual property rights (including through improved access to justice and rule of law) and this resulting in improved prospects for political and social agency.

Figure 1 traces the theory of change for this causal connection, identifying the outcomes that could result from interventions to improve the security of property rights. Typical interventions would include:

- Passing legislation to secure and/or formalise individual property rights including through titling programmes.
- Supporting rule of law reform to improve legal security and dispute resolution mechanisms over property rights and to improve access to justice for the poor in order that they can make (property) rights claims.
- Interventions aimed at eliminating gender barriers to ownership of property for instance in family law or inheritance law.

These interventions can result in the following intermediate consequences:

- Creating the enabling conditions for legal voice (legal empowerment) through which individuals can make strategic use of the law and justice mechanisms to claim their property (rights).
- The affirmation of the legal identity of an individual - by virtue of holding a property title - which in turn facilitates access to other capabilities/resources (CLEP 2008).
- In securing access to and control of property, this becomes an asset that is tradable for access to social and political capital in decision-making by effectively enhancing the bargaining power of the individual with property, at the household, community or wider society level (for instance, Agarwal 1994).
- Finally, access to property that is tradable enables economic autonomy, e.g., through access to credit, that can enhance the capacity to participate

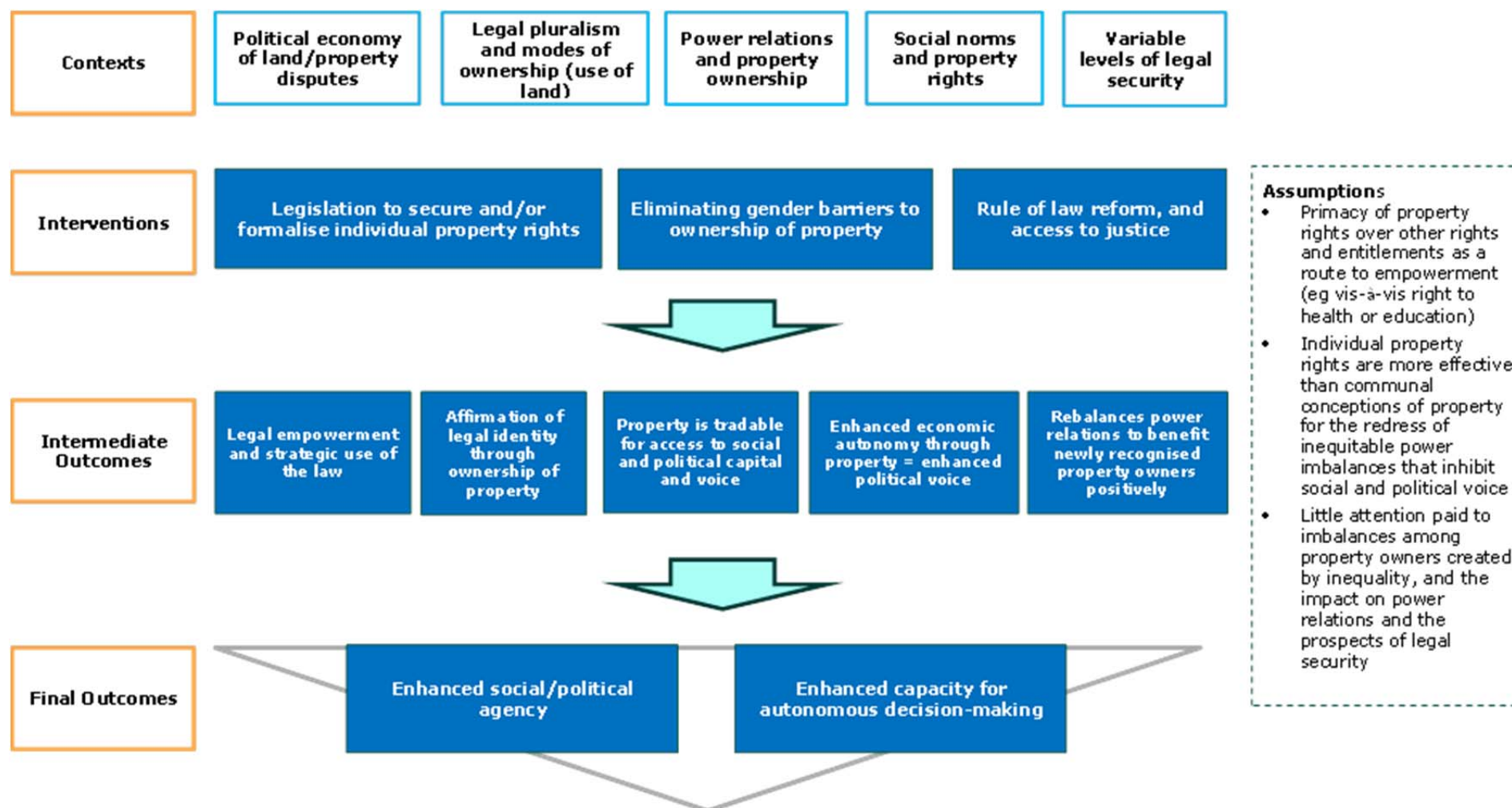
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in/compete for positions of political power and decision-making. Political participation to have access to political decision-making is dependent on resources.

In different ways, these intermediate outcomes contribute to creating the enabling conditions for better social and political voice.

Several assumptions underlie this position: first, that property rights are more important than other rights or factors to achieve social and political voice; second, that they are more important than other rights and entitlements (such as the right to health or education); third, that individual property rights are more effective than communal rights to property in redressing power imbalances that impede access to social and political voice.

Figure 1: Theory of Change – Property Rights and Social and Political Empowerment



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### 3.4 Research questions

Overall, this Briefing Paper seeks to weigh up the evidence to test the assumptions underpinning the view that access to, and control over, individual property rights (which are legally secured through effective rule of law and equitable access to justice) contribute particularly to enabling the achievement of social and political agency.

To do this, it assesses the evidence for the following four research questions:

1. Do legally secure, individual property rights contribute to/enable social and political voice?
2. How do property rights compare with other rights in enhancing social and political voice, and where rights conflict, which should prevail?
3. How do different patterns of intersection between individual property rights and communal property rights affect social and political empowerment?
4. How do changes in property rights regimes (and effective implementation) that target eliminating gender inequality in access to property affect women's empowerment on social and political participation?

Thus, the analysis will assess what the evidence shows regarding the implicit assumption of the primacy of property rights over other rights in facilitating social and political empowerment. However, it is important to note that rights are never absolute and cannot be seen in isolation from one another. Different sets of rights (for instance, property rights or the right to health) are bounded by how they intersect with other rights and the ranking that societies choose to attribute to them. It is therefore not possible to assess the empowering potential of property rights on their own unless they are compared to the different forms of social contract within which they are embedded, and thus, in relation to other rights. The relative weighting of rights varies enormously from country to country and is a reflection of the terms of the underlying political settlement.



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## 4 Evidence on each research question

This section examines the four research questions considered in this Briefing Paper, presenting and discussing the findings of evidence-based research for each question as well as the general characteristics of the evidence.

### 4.1 General characteristics of the evidence

For the first three of the four questions, this Briefing Paper drew especially on literature which addresses issues of legal empowerment and access to justice. For the fourth question, the review was not only limited to this literature, mainly because, beyond the work of Nyamu-Musembi (2006) and the UN Women report (2012), there is very limited research on the gender component of rule of law and access to justice literature in connection to social and political voice.

There is no single or unified body of research on the key research question, namely that access to legally secure individual property rights contributes to social and political empowerment. Rather, multi-disciplinarity characterises the academic literature, which only loosely constitutes a body of knowledge that addresses, to varying degrees and in different ways, the connection between legal security and formalisation of individual property rights, and social and political empowerment.

The review exercise drew on a number of papers which review the state of the knowledge – less on the legal security of property rights and its specific social and political empowerment impact, and more on the knowledge regarding property rights regimes, distributional implications and impact on empowerment more generally (for instance, Deere and Leone 2001; Nyamu-Musembi 2007; Assies 2009a; Singh 2009; Grabe 2010; Borrás and Franco 2010).

The literature reviewed includes mostly predominantly analytical pieces that draw on secondary sources to consider different theoretical and analytical questions regarding the interrelationship between property rights regimes, issues of legal security and consequences for empowerment (Assies 2009a; Nyamu-Musembi 2007; Borrás and Franco 2010; Banik 2009). More empirical pieces tend to focus on qualitative analysis, and are, to varying degrees, focused on national level or community level analyses. This includes more legal anthropology and legal sociology literature that considers contexts of legal pluralism and the implications of wider understandings of security of property, and where ownership and access may take different forms (for instance the collection of essays in Santos and Rodríguez Garavito, 2005) or Assies 2009b). It also includes more socio-political and institutional analysis of rule of law and access to justice work, (Cousins 2007; or Nyamu-Musembi 2007). One study takes a comparative approach to looking at how women have been excluded from property rights, the struggles to transform institutions and practice of exclusion, and the impact of institutional change (Deere and Leone 2001).

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The definition of empowerment was considered in more detail in the literature on women and access to property. Overall, the literature that was reviewed outside the gender component did not engage in measuring or defining social and political empowerment in any robust way. For this Briefing Paper, it was not possible to review the wider theoretical literature on empowerment, its definition and measurement – which remains a contested term. Kabeer (1999) examines the complexities of definition and measurement of empowerment, and takes empowerment to be a process by which “those who have been denied the ability to make choices acquire such an ability”. For this, she makes a case for the indivisible relationship between *resources* (access to material, human and social resources), *agency* (the ability to define one’s goals and act upon them) and *achievements* (outcomes which affect well-being) (ibid). From a perspective of social and political empowerment, we are concerned with the extent to which access to legally secure individual property rights enhances the bargaining power and position of an individual vis-à-vis others in the household, community or wider society, and/or has improved prospects of political voice through access to political participation and political decision-making.

The literature that was reviewed, therefore, overall represents a far from unified analytical, theoretical or methodological approach. Moreover, the emphasis on qualitative country level analysis (with some exceptions) means that transferability and generalizability of empirical findings is limited by the nature of the literature reviewed. This in part reflects the way in which the research question has been posed for this review exercise, which is not the same in much of the literature examined here. Moreover, the most relevant literature that was identified for the research questions is mostly based on qualitative research and much of it is inductive in nature, in some cases drawing on small survey analysis at country level.

## 4.2 Evidence for research question 1: primacy of property rights

1. Do legally secure, individual property rights contribute to/enable social and political voice?

### 4.2.1 Nature of the evidence

The empirical literature reviewed here is based largely – with some exceptions – on qualitative methods, drawing either on case study analyses based on country analysis, or on more conceptually based papers which draw on secondary data either to confirm or interrogate the proposition – although this is not in most cases the only focus of their analysis.

### 4.2.2 Findings

Different literature focusses on different aspects of the relationship between legal security of property rights, access to justice, and enhanced social and political voice.

#### **Governance, rule of law and property rights**

Rather than analysing the impact of rule of law and legally secure property rights on different features of governance, such as political voice, relevant research that predates de Soto’s version of the importance of legal empowerment for property rights examines the impact of the type and quality of governance regimes on the security of property rights (Keefer 2004; Przeworski and Limongi 1993). In this line of reasoning, one of the conclusions drawn by Keefer (2004) is that enhanced political voice and political accountability (for instance through democratisation) has an impact on improving the prospects for secure property rights, (rather than secure property rights resulting in enhanced political voice)

This perspective draws on the assumption that the rule of law is necessary to secure property rights. As such, it focuses on understanding the enabling governance conditions needed for the rule of law to be strengthened as a precondition for stabilising property

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rights. In large measure, this was expressed in the rule of law work of the 1990s (Messick 1999, Upham 2006). The writing of Douglas North (1990) is influential here and supports the notion that rule of law, in providing legal security for property rights, is an enabling condition for economic growth. However, while there has been an increasing volume of empirical studies establishing a positive correlation between secure property rights and economic growth (Haggard et al 2008; see Briefing Paper on property rights and economic growth) there is limited evidence or discussion on implications for social and political empowerment.

### **Property rights and legal empowerment and the CLEP report**

During the 2000s, the literature (if not the policy) on rule of law and governance has tended to move away from a property focused understanding of rule of law, to embrace a wider conception of rights and rights-based citizenship conception, where securing property rights is not necessarily the main or only focus of rule of law and justice sector reform. Increasingly, the focus is on access to justice and more bottom-up perspectives in the use of the law and legal mobilisation strategies – this has begun to permeate the policy world (Golub 2006; Piron 2006).

In this context, the CLEP report was drafted as the UN's initial guiding document on law and development. It focused on four components of legal empowerment as being particularly pertinent to advancing voice and well-being, namely:

- Improving access to justice to the poor;
- Promoting fully functioning property systems and giving legal protection to property and increasing access to property rights;
- Enhancing labour rights, including improving social protection and regulation of the labour market; and
- Facilitating – through the legal security of property rights – the business rights of the poor.

The literature that directly examines the assumptions of the CLEP report has two features. First, to the extent that the impact of secure property rights (secured through legal means and better access to justice to enforce those rights) on political and social voice is addressed, this is mostly from a theoretical perspective and with very little concrete evidence or examples provided. Second, much of the literature (whether it supports or critiques the underlying premise) doesn't focus directly on the link between property rights and social and political empowerment, or only in a very general manner. Rather the focus tends to be on other issues, such as understanding the distributional features and consequences of different property rights regimes; the contested nature of property rights regimes; the particular features of how dispute resolution mechanisms address property rights, and conflicts over property; and how access to justice occurs in practice for different sectors of the population. For example, Kerekes and Williams (2010) undertook a qualitative analysis of land titling in Peru, which highlighted the complexity of implementation constraints and assumptions about access to credit resulting from land titling rather than implications for social and political voice.

A common theme across the critiques of the emphasis on property rights implicit in the CLEP report is that there are real difficulties in tracking the kind of impact that formalisation of individual property rights has on enhancing empowerment without engaging in a more nuanced analysis of issues such as the relevant power relations, histories of contestation over land and property, and the distributional outcomes of different property rights regimes (Assies 2009(a); Assies 2009(b); Borro and Franco 2008; Nyambu-Musembi 2007; Banik 2009). Assies (2009a), for instance, comments on the failure to consider power asymmetries that dictate access to, and distribution of, property, and the contested nature of property regimes. He also interrogates the logic of the underlying theory of change that the CLEP report posits as regards individual property rights. De Soto's concern with property is

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in fact less based on the merits of its legal security but on the degree to whether it is transferable and marketable.

The criticisms are mostly analytical and theoretical, but to varying degrees draw on primary or secondary findings of mostly qualitative research to interrogate the assumptions of the CLEP report reasoning. However, the empirical base here is also underdeveloped.

The review exercise found that, to the extent that the literature addressed the research question, the evidence was ambivalent. And in many cases, authors noted the importance of considering other factors which also have a bearing on what affects how formal property rights rebalance power relations.

A number of papers underscored the importance of understanding the politics of implementation of titling programmes, and the wider socio-cultural setting and power relations against which they are set. Titling programmes are not implemented in a political, social or cultural vacuum, and these contextually defined factors will have a bearing on the impact of titling programmes and with what effect. Moreover, titling programmes are not inevitably win-win processes – there are winners and losers, and thus can generate conflict and resistance. Thus, the particular forms that titling takes, the distributional impact that titling has (who gains, who loses) and the legitimacy with which it is considered by different stakeholders needs also to be considered (Assies 2009 a and b); Cousins (2009); Borras and Franco (2010; Nyambu Musembi 2007; Kereski).

Nyambu-Musembi (2007) engages with the issue of property rights security and empowerment drawing on her research in Eastern Kenya (based on survey and qualitative analysis at village level) and on secondary literature of Sub-saharan Africa. She notes that when formal title ‘is introduced it does not drop into a regulatory vacuum: it finds itself in a dynamic social setting where local practices are continually adapting to accommodate competing and changing relations around property’ (2007a: 1461). The paper highlights that formalisation does not necessary amount to individualisation of property rights, and signals recent titling programmes (Ethiopia, Ghana, Mozambique and Tanzania) that use adaptation models to build on existing interest structures and locally legitimate norm systems. Her work on Kenya shows that titling has not really resulted in the outcomes of access to credit (which is an enabling factor for social and political voice) that is assumed. From a gender perspective, gains are limited by the wider social and cultural norm systems that often remain discriminatory. Thus, she claims, there is a need for a more complex consideration of the following questions: the need to go beyond a narrowly formal construction of legality to incorporate the wider context of informal and customary norms that shape access to property; the need to move beyond an oversimplified dichotomy of capitalist and pre-capitalist understandings of property and tenure systems which are more complex in reality; the need for more empirical evidence to better test the assertion that land titling results in better access to credit (and related benefits of empowerment); the recognition that titling does not necessarily reduce the space for informal norms and transactions around property; a better understanding of how formalisation may entrench rather than diminish inequalities.

It is also important to have an understanding of the nature of different contexts of legal pluralism, and how different norm systems that coexist (whether officially recognised or not) affect the course and consequences of titling programmes programmes (for instance, Chimwohu and Woodhouse 2006; Assies 2009b). This is discussed further under research question 3.

Understanding better the particularities of land titling programmes, in terms of implications for access to and control over property is relevant to assessing how this can contribute to empowerment. This includes such issues as the type of ownership, attitudes towards property, credit and debt, or issues of fungibility, transferability and marketability of land rights is especially important to the theory of change. For example, legalisation of

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communal rights to property may presuppose restrictions on the use and marketability of property (Assies 2009b).

Some of the literature underscored the importance of assessing land titling programmes against longer-term histories of land reform and distribution, including understanding how empowerment is associated with conflict and distributional disputes over land (Boone 2012; Wily 2011).

Finally, there is a need for more analysis on the specificities of how processes of legal empowerment, including through justice reform, evolve in practice to test more closely how the law and access to dispute resolution mechanisms can create space for contesting property relations (Singh 2010; Cousins 2009). This requires that land reform and laws which address property rights be considered in light of their distributional and empowering impact, as they will not be politically neutral. Legal empowerment per se (as access to justice) is only part of the story (see Box below).

### The experience of land titling in South Africa

Cousins (2009) through a qualitative analysis and review of secondary literature on legal empowerment and land policy in South Africa, explicitly engages with the theory of change that underpins the CLEP report. The paper finds that in South Africa, the government implemented a land policy aimed at improving the security of tenure for owners and tenants in favour of the poor in the post-apartheid period, and in a context in which legal empowerment for the poor was sought through improved access to justice and judicial review mechanisms. However, results have been disappointing for several reasons, including: poor implementation of tenure security laws (which are not only about property rights formalisation); the nature of prevailing power relations and vested interests, and of the wider socio-economic and political setting; and the particular characteristics of informal and/or customary norm systems against which legal change takes place in South Africa. At most, legal empowerment through the strategic use of the law and available justice mechanisms, as in the case of South Africa, provides a platform for contestation – but not just in relation to property rights. South Africa has seen legal empowerment occur in interesting ways in relation to other rights (health, water). Cousins (ibid) concludes that legal empowerment is likely to be most effective when it occurs against a broader strategy that addresses the root causes of poverty arising from the structure of society and that engages with the distribution and contestation over power and resources more generally.

#### 4.2.3 Conclusions

The empirical evidence base supporting the claim that legally secured property rights through improved legal empowerment (access to justice, improved rule of law and strategic use of the law and judicial mechanisms) results in enhanced and political voice is **weak** (see below on gender for focus on implications for women's empowerment). The body of evidence is **small**. The literature that disputes the claim is also ambivalent on whether the claim holds or not but tends to recommend that any analysis of the empowering potential of property rights takes into account the socio-political history and context.

### 4.3 Evidence for research question 2: property rights and other rights

2. How do property rights compare with other rights in enhancing social and political voice, and where rights conflict, which should prevail?

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#### 4.3.1 Nature of the Evidence

The review found only limited research that focused on how legal empowerment processes deal with the conflict between property rights and other rights (although this is implicit in some of the analytical critiques about a position which privileges property rights). However, access to justice reform and constitutional reforms of the 1990s and 2000s that rebalanced the relationship between rights in Bills of Rights, or new rules of judicial review of rights in some cases, has led to new patterns in legal mobilisation as in Colombia, South Africa and Costa Rica. This has led to qualitative empirical research on how legal mobilisation strategies (as expressions of legal empowerment) in the south have evolved around other types of social and economic rights, with varying degrees of consideration on the impact for social and political voice.

#### 4.3.2 Findings

This research question connects the review to the current trend in constitution writing where rights-based citizenship has moved away from more liberal notions of rights that privileged property, political and civil liberties to more socially inclusive forms of social contracts where other ‘positive’ rights, such as the right to health, education now feature more prominently.

Assies 2009b summarises an example of the potential conflict between rights in a conflict in Brazil between the *Movimento sem terra (MST)*, the Landless Movement, and landowners whose private property was invaded by the MST. This put to the test the conflict between the right to property and other rights. A series of judicial rulings established, in favour of the landless movement, that the right to life (expressed through their action which was legitimate in the face of the social injustice of how property is distributed) is more important and socially just than the ‘right to private property’ (drawing on Houtzager 2005; and Durston 2008).

A second set of findings points to the socially and politically empowering potential of legal empowerment and associated access to justice and legal mobilisation strategies – but not necessarily in relation to claims about property rights.

Looking at legal empowerment beyond property rights, there is a body of research that looks at the empowering potential of other rights. This literature looks at how new litigation strategies and legal mobilisation (as forms of legal empowerment) in some countries, such as Colombia, Costa Rica and South Africa, have focussed on other rights (such as health and education) in the name of pro-poor development. Improved conditions of legal empowerment, through better access to justice for the poor, new Bills of Rights that raised the standing of other social and economic rights, and in some cases new judicial review competencies, have resulted in narratives of social justice where property rights may not be perceived by citizens to be the primary or most empowering of entitlements that feature in the social contract.

The edited volume of Santos and Rodriguez-Garavito (2005) includes a number of studies of legal mobilisation strategies used by/for vulnerable groups. To varying degrees, they demonstrate the potential ‘empowering’ value added of legal mobilisation strategies around different rights (not just, or even primarily, property rights) by vulnerable groups. For instance, the U’wa indigenous community use the law – and recognition of their rights to a territory in Colombia – to protect themselves from encroachment by extractive industries; or Rajogopal’s chapter on national and international legal mobilisation to protect the rights of families in India affected by government plans to build dams along the Narmada River. This is further noted in chapters in Gargarella et al (2006) which look at different experiences of access to justice and legal mobilisation around different rights regimes and in different judicial contexts, (Colombia, South Africa, India, Brazil, Bolivia, Angola). Gauri and Brinks (2008) develop a comparative study of litigation on health and education rights, and track the impact of court decisions to see how social and economic resources are redistributed following litigation. Yamin and Gloppen (2011) focus specifically on health

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rights and health outcomes, and less on empowerment. Ghai and Cottrell (2011) present a review of recent constitutional trends, further signalling the potential for new forms of legal mobilisation around a fuller array of rights that feature in new political settlements worldwide.

The conflict between rights is a drama that is recently playing out in countries with relatively new and expansive bills of rights. The legal mobilisation strategies to make claims against these rights in developing countries therefore constitute a relatively new field of enquiry. In Kenya, by way of example, there is currently a case in the courts in which slum dwellers are making the case of the right to housing to contest the rights of private developers with property titles to seek their eviction, claiming rights are established in the new constitution of 2010, and using new legal standing provided in the new constitution.<sup>5</sup> The outcome in this case is not decided. At stake is also that the legality and legitimacy of the title deeds seem to be in question. The case raises the question as to whether a positive outcome for the formal property owner – that is, achieving the legal security of the title holder – is empowering in social and political terms for slum dwellers.

#### **4.3.3 Conclusions**

Given the nature of the evidence and body of knowledge, the evidence on the specific research question is **small** and **weak**.

### **4.4 Evidence for research question 3: individual and communal property rights**

3. How do different patterns of intersection between individual property rights and communal property rights affect social and political empowerment?

#### **4.4.1 Nature of the evidence**

The literature on legal pluralism (the parallel existence of formal and customary, individual and collective tenure and dispute resolution systems) is especially relevant to the question of how conceptions of property and titling feature in societies, the nature of competing normative frameworks regarding how claims to property are articulated, and how disputes over property are resolved. One source on legal pluralism establishes that only 5% of disputes in Africa are resolved in formal justice systems (Chirayath et al 2005). The fact that legal pluralism is a reality in many countries in Africa and Latin America means that formal legal change has a limited impact on altering the mechanisms that people have, in practice, to resolve property disputes in accordance with new legislation.

#### **4.4.2 Findings**

Two underlying questions are relevant to understanding the intersection between individual property rights and communal rights regimes. First, in so far as they conflict, which regime is most conducive to enabling social and political voice? Second, in the degree to which this conflict is about how disputes over land and property ownership are resolved, are customary forms of justice or formal justice more appropriate and/or legitimate channels for resolving such disputes?

Wily (2012) discusses the historic trend in Sub-Saharan Africa where formal land titling has tended towards a dispossession of communal lands. The lack of legal security of communal lands has historically led to the vulnerability of (communal) entitlement to these. Recent legislative and constitutional change in the south, such as in Colombia, Bolivia, Ecuador, South Africa, in Sub-Saharan Africa, Ghana, Tanzania, Mozambique and Ethiopia in different ways has moved in the direction of new forms of formalisation of communal property rights.

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<sup>5</sup> <http://www.nation.co.ke/News/Battle-lines-drawn/-/1056/1500610/-/2fp863/-/index.html>;



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This is in line with international trends, as through ILO Convention 169, which gives protection to communal rights over property. Assies (2009b) raises the question that legal security of communal land, endorsed through varying experiences of constitutional and legislative reform in Africa and Latin America, may give security of tenure to communal land rights. He asks therefore the question whether what matters is the *legal security* of property rights – however tenure is defined, including whether it is collectively shared or individual – that is empowering, or whether it is the potential use of the property that matters. From the perspective of de Soto's version of empowerment, the non-transferability of communal property can diminish its empowering potential. Therefore, the issue is less of legal security leading directly to empowerment, but transferability and marketability of property, within the theory of change examined here.

By contrast, the empowering potential for social and political purposes of the legal security of communal rights can be observed in the legal mobilisation strategies in Latin America of indigenous communities who have new constitutional frameworks that recognise communal property rights, to protect customary forms of livelihoods from encroachment by, in case mentioned here, oil extraction. Rodriguez-Garavito and Arenas (2005) track the case of the U'wa indigenous community to claim their territorial right to the land against Oxy plans for drilling. The law and the particular legal claims mechanisms established in Colombia through the 1991 Constitution altered the balance of power between different property regimes to recognise the fact of legal pluralism and to empower indigenous communities to defend their right through law and associated dispute resolution mechanisms. Thus, the constitutional recognition of communal rights to property can 'empower' communities to protect their livelihoods. In this case, it is the legal security component of formalisation (and access to justice) of communal, and *not* individual, rights that has empowering potential. Nyamu-Musembi (2007) takes note of the problems of labelling all tenure systems that are not formalised as extra-legal. This has the problem that it disregards the range and variety of tenure systems that exist in practice, even if not codified, but that shape relations of power and ownership, in some contexts much more so than formal land tenure laws. The simple dichotomy of legal/extra-legal does not capture more complex social, cultural and political realities. This is further echoed in Assies (2009b) and somewhat in Deininger (2003)

#### 4.4.3 Conclusions

The literature on legal empowerment and communal property rights is overall **small**, and evidence of whether legal security of individual or communal rights is more socially or politically empowering is also **weak**. This is in large measure because research questions are often not posed in this way in the existing literature.

### 4.5 Evidence for research question 4: property rights regimes and women's empowerment

4. How do changes in property rights regimes (and effective implementation) that target eliminating gender inequality in access to property affect women's empowerment on social and political participation?

#### 4.5.1 Nature of the evidence

There is considerable literature on women and their access to and control of property, but less on how improved access to property by women results in improved social and political voice. The connection is often established but the analysis on the concrete consequences of social and political voice is not always so clearly demonstrated. The literature includes two main types of studies:

- Qualitative research based on country case studies, drawing on different methods ranging from small survey analyses to more social, legal-institutional and legal-anthropological approaches to capture change;



- Comparative analyses that draw on multiple sources of information, including review of legal change, land and titling policies and legislation, and the interaction with mobilisation politics.

Conclusive evidence (either qualitative or quantitative) on causal connections between access to and control of property for women and social and political empowerment remains underdeveloped but the body of knowledge is by now also more than anecdotal or purely normative and prescriptive. The literature also varies in analytical focus on how – and what component of – empowerment is captured.

The key issues, from different perspective, are discussed in Whitehead and Tsitkati (2001); Ravazi (2006); Kabeer (1999) and Nyuma-Musembi (2006) and Varley (2007). They represent key review pieces that address relevant issues from different property and empowerment perspectives drawing on a wealth of secondary empirical and analytical research. Within the constraints of the study, this Briefing Paper also provides a selection of the empirical body of knowledge to illustrate the kinds of findings that are reflected in the literature on how different forms of access to (and control of) property for women contributes to social and political empowerment.

#### **4.5.2 Findings**

In much of the literature on property rights and gender reviewed, a potentially positive correlation with social and political empowerment is implicit, with an emerging if still under-developed body of empirical evidence on what this looks like.

However, in much of the work that was reviewed, there are important qualifications that derive from the empirical work and are relevant to the theory of change about women's access to property and implications for empowerment.

Some key themes emerged in the literature as relevant to explaining causal pathways between access to formal property rights and women's empowerment:

##### **Property and women's bargaining power**

Agarwal (1994) represents an important empirical study of the impact of women's access to property and the particularities of property rights regimes in a number of Asian countries, on empowerment. Looking at the cases of Bangladesh, India, Pakistan, Nepal, and Sri Lanka, Agarwal makes the case of the direct connection between non-access to property rights and gender inequalities. Notably, Agarwal examines the bargaining power potential of improved access to property for women at different levels of social and political life. The study does not presume property rights to derive only from legally formalised individual rights. There is recognition that customary norms which have traditionally included access to property for women, as in the case of more matrilineal states in parts of India and Sri Lanka, have exhibited better forms of gender equality as a result of the better bargaining power for women that this implied. Importantly, the study also takes note of the multiple factors (beyond normative recognition of women's right to property – whether formalised or customary) that affect women's ability to effectively own property. These include: prevailing practices in marriage; the observation of purdah; participation in the labour force; female literacy; inequality in land ownership; the nature of gender relations more broadly; and scarcity of land.

Deere and Leone (2001) develop an in-depth analysis of 12 countries in Latin America, tracking the interaction between process of legal and legislative change – such as through agrarian reform, and subsequently the more individualist land titling programmes of the 1990s – in property regimes (including in relation to the particular forms of marriage institutions, and implications for patterns of ownership in marriage), how they shape patterns of women's ownership of property, and the nature of strategic action by different women's movements. The study takes account of factors such as class, ethnicity and political systems in an endeavour to explain variance in access to property for women, and

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how this is related to empowerment somewhat positioning the discussion in relation to how these changes altering the bargaining power of women in the household and in society. It concludes that with the more neo-liberal policies of titling, while they are not a panacea, overall women have fared better than under earlier state-led agrarian reform programmes.

Datta (2006) explores the impact of joint titling on women's empowerment in urban informal settlements in Chandigarh, India. The article finds that joint titling improved women's voice in decision-making in the household, enhances women's knowledge about and access to decisions about property related affairs in the home and related transactions, and results in a redefined bargaining position at household level.

Panda and Agarwal (2005), based on household survey analysis in Kerala, find that women owning immovable property (in the form of land or housing) face a lower risk of domestic violence than women who do not own property. This is in keeping with Grabe (2010) who finds, through surveys conducted in rural Nicaragua that property ownership among women increases their bargaining power in the household and results in diminished levels of domestic violence. Fafchamps and Quisumbing (2002) find that improved property ownership makes a difference, for instance, when the marriage or partnership reaches an end following abandonment, divorce or death of a spouse.

### **De jure versus de facto gap in law and implementation of property rights policies**

The importance of legal change both on norms regarding gender equality in access to ownership of property, and on improving access to justice for women to use the law for dispute resolution purposes more equitably remains an important thrust in the current gender literature, and is echoed in UN Women's Progress of the World's Women Report: In pursuit of Justice (UN Women 2012). However, the gap between legal norms and women's real access to justice and recognition of their property rights remains high, so that persistently high levels of gender inequality in ownership patterns remain problematic.

Whitehead and Tsikata (2001) note two types of findings in relation to the de jure/de facto disjuncture. While there is agreement of the empowering potential of legal change that seeks to eliminate discriminatory norms and practices in property ownership, the reality is more complex. First, some studies show findings that titling and individualisation of land have affirmed gender inequalities to land to the detriment of women, citing Karanja (1991) on Kenya as an example of this. Cultural bias, social norms and structures/strategies of discrimination contribute to titling programmes reproducing gender inequalities. Second, other studies show that land reform and legal change in property regimes in principle may be aimed at addressing gender inequalities but effectiveness for women can be constrained by several factors, including: limited legal awareness by women; structural power imbalances between men and women; active resistance to implementation – including through recourse to the argument of custom; and poor commitment to implementation by state and government officials (here they cite Butegwa (1991).

Nyamu-Musembi (2006) traces the gender-blind nature of justice sector reform and rule of law policies of the 1990s which remained, in her analysis, unaltered in its focus into the 2000s. Integrating gender in rule of law reform remains both underdeveloped and understudied (Varley 2007). This further reflects that equality before the law may exist de jure, but justice systems – whether formal or customary – reproduce gendered power imbalances in the application of the law, so that effective implementation of the spirit of the law does not occur in practice (Varley 2007). This is exacerbated by women's limited awareness of formal legal mechanisms for redress, and difficulties of access to justice. Gender-sensitive transformation of judicial institutions that can play a determining role in deciding property-ownership outcomes remains underdeveloped. Friedeman-Sanchez (2012) find that legal rights are not important but not sufficient. Effective property rights for women depend also on the interaction between legal knowledge, titling procedures and social norms that enable equitable laws to be bypassed. Thus, legal empowerment as a process is relevant to create the enabling conditions for implementation of the law.

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## Legal pluralism

The weight of customary law in practice is a contributing factor to the poor implementation of legal change that, in principle, aims to improve access for women to property. However, the relationship between customary and statutory law is much more complex in how it shapes women's access to property, and how this affects their bargaining power in the household and in the wider community.

There are different findings in the literature on whether formalisation of property titles (intended over time to displace customary and informal modes of property holdings) is beneficial or not to women's access and control of property use and ownership. One body of work finds that replacing customary tenure systems with individual titling has disadvantaged women, and sedimented male ownership and control of formal property, thus formalising gender inequality (Lastarria-Cornhiel 1997). This is documented in a number of African countries (Kenya, the Gambia) (cited in Whitehead and Tsikata (2003)). In their study of Kenya and Uganda, Daley and Englert (2010) further confirm that land reform has resulted in an affirmation of male ownership of property to the disadvantage of women who were better served under customary norms.

However, this does not mean that customary norms necessarily protect gender equality better, and mostly it may not (Razavi 2007). Asfaw and Satterfield (2010) for instance find in Ethiopia, that women's access to both customary and formal mechanisms of dispute resolution mechanisms is hampered by entrenched patterns of discrimination.

In practice, women navigate different property rights regimes and modes of tenure to assert access to, and control over, property that coexist with varying levels of tension/complementarity. In contexts of legal pluralism, women navigate among different norm systems in what is described as 'forum shopping', where individuals use different dispute resolution mechanisms (formal or customary) depending on which is most likely to serve their interests (Ravazi (2007) and Whitehead and Tsikata (2001)).

Both Ravazi (2007) and Whitehead and Tsikata (2001) in their review of the empirical research on how women access property through different norm systems (and associated dispute resolution mechanisms) draw attention to the importance of taking account of specific configurations of power relations at the local and/or customary level in both determining access to justice, and how this can then translate into social voice for women.

## Types of property regimes

Deere and Leon 2003 and 2001 signal the importance of distinguishing between different types of property ownership (e.g. urban housing versus rural land) and how women's access to property is especially nested in family law and practice, marital and inheritance law and practice. A number of studies weigh the pros and cons of joint titling in marriage as a means of securing women's names on the deeds – and in doing so, purchasing bargaining power. Deere and Leon 2001 find in Latin America that joint titling benefits rural women more than any other access to property measure. By contrast, for South Asia Agarwal (1994) made the case for independent land titling for women.

The nature of property transmission systems through inheritance has important consequences for women's access to property (Cooper and Bird 2012).

## Intersection with other inequalities

How access to land and property intersects with other inequalities (such as class or ethnicity) is important and has a bearing on the empowering potential of formal legal security of, and access to, property for women.

## 4.5.3 Conclusions

The evidence base on property rights regimes and women's empowerment is **medium** in size– and uneven. There are regionally focussed studies (notably South Asia and South

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America, Agarwal 1994; Deere and Leone 2001). It is **weak** in the degree to which research questions are not posed in the precise way that we have suggested here.

However, the qualitative and context-specific literature on how property rights shape empowerment for women amounts by now to an identifiable body of research with varying degrees of robustness. Much of the literature that is ambivalent about which side of the question it falls on, is so because of the qualifying issues that authors identify as relevant factors that need to be taken into consideration. Moreover, context specificity is critical.

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# 5 Evidence gaps and research needs

## 5.1 Evidence gaps

The findings in relation to all of the research questions present ambivalent evidence regarding the nature of the relationship between legally secure individual property rights (including through improved access to justice and rule of law) and improved social and political voice.

Thus, the evidence base does not in the main constitute a clear body of research that confirms or rejects the validity of the underlying assumptions posited in theory of change in question. This reflects first that much of the empirical research is not directed at answering the research questions as posed in this exercise, namely the primacy of property rights over other rights, and that legal security and formalisation of these enables political and social empowerment.

This arises partly because of the nature of the evidence base that featured in the literature as well as the complexity of the issues surrounding the underlying premise of the research question. A consideration of the relationship between improved legal security of, and access to, individual property rights and social and political empowerment needs to take account of the political and social relations in which property regimes are embedded (for instance Borras and Franco 2010; Nyamu-Musembi 2007; and Assies 2009a). The literature reviewed which explored the empowering potential of property rights in many cases concluded that this relationship needs to be qualified with a deeper consideration of a range of other intervening variables that condition the plausibility of the underlying theory of change under review.

While the premise regarding the primacy of property rights is an analytical construct (and is therefore potentially subject to empirical observation) it is also a normative claim based on an 'idealised version of liberal democratic capitalism, in which a dynamic market economy assures win-win' solutions for all' (Cousins, 2009:893). Therefore, there is good reason not to ignore the more theoretical literature that engages with the analytical and normative components of the causal chain that is presumed in the theory of change linking legal security of property rights with social and political empowerment. The review found that much of empirical literature engages with these analytical questions in such a way that findings are less about proving or disproving the causal chain but rather present more nuanced analyses about the causal relationships that are being studied.

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## 5.2 Implications for further research

Given the discussion of the nature of the evidence and key gaps in the literature, more research could usefully be undertaken on:

- The connections improved access to justice, legal mobilisation and improved outcomes on access to property
- The impact of improved legal security of individual property rights on social and political voice. What are the particular features of individual property rights that might be relevant to understanding how they can contribute to enhancing social and political voice?
- Testing how, and if, legal mobilisation trends and litigation strategies for the poor see other rights (such as rights to health and education) as equally, or more, important than securing individual property rights or indeed communal property rights in terms of social and political voice. The particular manifestations of political and social voice and empowerment as a result of improved access for women. The assumption is explicit but the empowerment and agency component of the equation tends to remain understudied.
- The direct consequences of legal security and access/control of property for women on political voice. The research has tended to focus on local governance dynamics but there is insufficient empirical research, from a governance perspective, of the particular impact of enhanced access to property and political empowerment of women at different levels of the political system.

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# References

- Agarwal, B (1994) *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge: Cambridge University Press
- Arraiza, J.-M. Squaring indigenous circles: The making of Nicaragua's indigenous communal property regime (2012) *International Journal on Minority and Group Rights*, 19 (1), pp. 69-103
- Asfaw, T., Satterfield, T. Gender Relations in Local-Level Dispute Settlement in Ethiopia's Zeghie Peninsula (2010) *Human Ecology Review*, 17 (2), pp. 160-174
- Assies, W. Land tenure, land law and development: Some thoughts on recent debates (2009b) *Journal of Peasant Studies*, 36 (3), pp. 573-589
- Assies, W. Legal empowerment of the poor: With a little help from their friends? (2009a) *Journal of Peasant Studies*, 36 (4), pp. 909-924
- Banik, D. (2009) Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication *Hague Journal on the Rule of Law*, 1, pp.117–131
- Baruah, B. Gendered Realities: Exploring Property Ownership and Tenancy Relationships in Urban India (2007) *World Development*, 35 (12), pp. 2096-2109
- Borras JR, S.M., Franco, J.C. (2010) Contemporary discourses and contestations around pro-poor land policies and land governance, *Journal of Agrarian Change*, 10 (1), pp. 1-32
- Cameron, D. (2012) *Combating Poverty at Its Roots: Economic development requires aid, but also sound institutions. Britain can lead on both fronts*. Wall Street Journal, November 1, 2012. Available at: [http://online.wsj.com/article/SB10001424052970204712904578090571423009066.html?mod=googlenews\\_wsj&buffer\\_share=5f47c&utm\\_source=buffer#articleTabs%3Darticle](http://online.wsj.com/article/SB10001424052970204712904578090571423009066.html?mod=googlenews_wsj&buffer_share=5f47c&utm_source=buffer#articleTabs%3Darticle)
- Casolo, J. (2009) Gender levees: Rethinking women's land rights in Northeastern Honduras, *Journal of Agrarian Change*, 9 (3), pp. 392-420
- Chirayath, L., Sage, C. and Woolcock, M. (2005) *Engaging with the Plurality of Justice Systems*. Background Paper for the World Development Report 2006
- CLEP (2008) *Making the law work for everyone, vol. I, Report on the Commission on the Legal Empowerment of the Poor*. New York: CLEP, UNDP
- Cooper, E. (2012) *Women and Inheritance in Sub-Saharan Africa: What Can Change?* *Development Policy Review*, 30 (5), pp. 641-657

- 
- Cooper, E., Bird, K. (2012) Inheritance: A Gendered and Intergenerational Dimension of Poverty. *Development Policy Review*, 30 (5), pp. 527-541
- Cousins, B. (2009) Capitalism obscured: The limits of law and rights-based approaches to poverty reduction and development, *Journal of Peasant Studies*, 36 (4), pp. 893-908
- Datta, N. (2006) Joint titling - A win-win policy? Gender and property rights in urban informal settlements in Chandigarh, India, *Feminist Economics*, 12 (1-2), pp. 271-298
- Deere, C. D., & Leon, M. (2001). Who owns the land? Gender and land-titling programmes in Latin America. *Journal of Agrarian Change*, 1, 440-467
- Deininger, K., Feder, G. (2009) Land registration, governance, and development: Evidence and implications for policy *World Bank Research Observer*, 24 (2), pp. 233-266
- DFID (undated) Research and Evidence Division: *The research evidence relating to a "golden thread of international development": a rapid review*
- Friedemann-Sánchez, G. (2012) Legal Literacy and Immovable Property: Laws, Norms and Practices in Colombia, *Development and Change*, 43 (6), pp. 1361-1384
- Galiani, S., Schargrodsky, E. (2010) Property rights for the poor: Effects of land titling, *Journal of Public Economics*, 94 (9-10), pp. 700-729
- Gargarella, R., Domingo, P. and Roux, T. (eds) (2006) *Courts and Social Transformation: An Institutional Voice for the Poor?* London: Ashgate
- Gauri, V. and Brinks, D. (2008) (eds) *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge: Cambridge University Press
- Ghai, Y. and Cottrell, J. (2011) *The Millennium Declaration, Rights, and Constitutions*, Oxford: Oxford University Press
- Kabeer, N. (1999) Resources, agency, achievements: Reflections on the measurement of women's empowerment. *Development and Change*, 30, 435-464
- Kerekes, C.B., Williamson, C.R. (2010) Propertyless in Peru, Even with a Government Land Title, *American Journal of Economics and Sociology*, 69 (3), pp. 1011-1033
- Kimani, E.N., Maina, L.W. (2010) Older women's rights to property and inheritance in Kenya: Culture, policy, and disenfranchisement, *Journal of Ethnic and Cultural Diversity in Social Work*, 19 (4), pp. 256-271
- Kumar, N., Quisumbing, A. (2012) Inheritance Practices and Gender Differences in Poverty and Well-Being in Rural Ethiopia, *Development Policy Review*, 30 (5), pp. 573-595
- Lastarria-Cornhiel, Susana (1997) Impact of Privatisation on Gender and Property Rights in Africa. *World Development*, 25 (8): 1317-1333
- Meinzen-Dick, R.S., Brown, L.R., Feldstein, H.S., Quisumbing, A.R. (1997) Gender, Property Rights, and Natural Resources, *World Development*, 25 (8), pp. 1303-1315
- Moor, G.M., Nieuwoudt, W.L. (1996) The prospects for improving institutional arrangements and land use in Southern Africa, *Development Southern Africa*, 13 (1), pp. 67-77
- North, D.C. (1990) *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press



- 
- Nyamu-Musembi, C. (2006) Ruling out gender equality? The post-cold war rule of law agenda in sub-Saharan Africa, *Third World Quarterly*, 27 (7), pp. 1193-1207
- Nyamu-Musembi, C.N. (2007) De Soto and land relations in rural Africa: Breathing life into dead theories about property rights, *Third World Quarterly*, 28 (8), pp. 1457-1478
- Pandey, S. (2010) Rising property ownership among women in Kathmandu, Nepal: An exploration of causes and consequences, *International Journal of Social Welfare*, 19 (3), pp. 281-292
- Parveen, S. (2007) Gender awareness of rural women in Bangladesh, *Journal of International Women's Studies*, 9 (1), pp. 253-269
- Patel, R. (2006) Hindu women's property rights in India: A critical appraisal, *Third World Quarterly*, 27 (7), pp. 1255-1268
- Peterman, A. (2011) Women's property rights and gendered policies: Implications for women's long-term welfare in rural Tanzania, *Journal of Development Studies*, 47 (1), pp. 1-30
- Piron, Laure-Helene (2006) 'Time to learn, time to act in Africa', in Carothers, Thomas (ed) *Promoting the rule of law abroad*, Washington DC, Carnegie Endowment for International Peace
- Rajogopal, Balakrishnan, "Limits of the law in counter-hegemonic legal globalisation: the Indian Supreme Court and the Narmada Valley struggle" in **Santos, Boaventura de Sousa**, and **César Rodríguez-Garavito**, eds. (2005) *Law and Globalization from Below: Towards a Cosmopolitan Legality*. New York and Cambridge: Cambridge University Press
- Roy, K.C., Tisdell, C.A. (2002) Property rights in women's empowerment in rural India: A review, *International Journal of Social Economics*, 29 (4), pp. 315-334
- Santos, Boaventura de Sousa**, and **César Rodríguez-Garavito**, eds. 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. New York and Cambridge: Cambridge University Press
- Selvetti, C. (2012) *Rapid review of the literature on Property Rights* - 31 October 2012. DfID
- Upham, Frank (2006) 'Mythmaking in the rule of law orthodoxy', in Carothers, Thomas (ed) *Promoting the rule of law abroad*, Washington DC, Carnegie Endowment for International Peace
- Varley, A. (2007) Gender and Property Formalization: Conventional and Alternative Approaches, *World Development*, 35 (10), pp. 1739-1753
- Vogel, I. (2012) Review of the use of 'Theory of Change' in international development Review Report. August 2012. Available at: [http://www.dfid.gov.uk/r4d/pdf/outputs/mis\\_spc/DFID\\_ToC\\_Review\\_VogelV7.pdf](http://www.dfid.gov.uk/r4d/pdf/outputs/mis_spc/DFID_ToC_Review_VogelV7.pdf)
- Whitehead, A. and D. Tsikata (2003) 'Policy Implications for Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary', in S. Razavi (ed.) *Agrarian Change, Gender and Land Rights*, pp. 67-112. Oxford: Blackwell
- Wily, L.A. (2011) 'The Law is to Blame': The Vulnerable Status of Common Property Rights in Sub-Saharan Africa, *Development and Change*, 42 (3), pp. 733-757

---

Yamin, A.E. and Gloppen, S. (2011) *Litigating Health Rights. Can Courts Bring More Justice to Health?* Cambridge, MA: Harvard University Press



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