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Land Access and Titling in Nicaragua

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ABSTRACT

Despite the overreaching importance that the international donor community places on formal land titles as part of the process for securing property rights, improving the functioning of the land market and ensuring pro-poor development, little attention is given to the specific ways in which factors such as inequality and abuses of public office mediate or even negate the expected effect of land titles. Based on empirical data from Nicaragua, this article shows that the state system is costly and does not provide a level playing field. In addition to land titles, different actions are used to secure property rights, drawing on other authorities which represent plural sources of recognition of land rights. Furthermore, the study shows that land transactions are often not followed up with titling and inscription in the name of the new owner, especially not among the poorest landowners. This has implications for future land titling policies.

INTRODUCTION

Property rights to land are once again on the development agenda. In recent years important actors within the development assistance arena, such as the World Bank and US-financed Millennium Challenge Corporation (MCC) have promoted large-scale land administration programmes encompassing legal reforms, cadastral surveys and titling activities¹. Further, the World Bank has recently developed new policy guidelines (Deininger, 2003). The legalization and titling of land rights are considered essential to obtaining land tenure security and stimulating investments in land, as well as to improving the functioning of the land market. The latter is increasingly being proposed as a way to build a more dynamic agricultural and rural sector in developing countries (Carter, 2006; Deininger, 2003).

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1. Millennium Challenge Corporation for Nicaragua; see www.cuentadelmilenio.org.ni (accessed 2 June 08).

The argument for promoting the titling of property rights is that titles increase tenure security for the land owner, as well as for potential credit institutions. This is expected to increase the value of the land itself, as well as improving access to credit (see, for example, Carter and Chamorro, 2000, on findings from Nicaragua). Furthermore, it is anticipated that increased tenure security and improved access to credit will raise the level of investment in land, as well as further increasing land value (Feder et al., 1988). In response to the improved level of information on property rights (through titles and cadastral and registry systems), land market transaction costs are said to be reduced. Finally, legal reforms associated with land administration projects often remove any restrictions related to the alienability of land, in order to make the land market more dynamic and fluid.

This article analyses the titling of rural land in the north-western part of Nicaragua.² It aims to provide insights for an improved understanding of inequality in the land registration process and of how differently-positioned actors are able/unable to turn land claims into property rights recognized by the state. It also illustrates how this process is conditioned by the nature of power and authority relations. Following decades of state-led land reform up to the mid-1990s, the land market in Nicaragua is increasingly becoming an important arena for accessing land. This article examines the importance of formal titles in land transactions, as well as the impact of land transactions on the titling status of the land (including the cadastral and registral information). Finally, it explores the different combinations of authorities that are used to endorse land rights and to settle conflicts related to land. Conceptually, the article contributes to the discussion about property rights to land by arguing that tenure security and the role of land titling in many developing countries cannot be understood without an understanding of legal pluralism, which ultimately allows strong actors to influence in which forum a dispute is handled.

The following section discusses the assumptions and critiques regarding land titling and tenure security from different scholarly approaches, including legal pluralism. The article then goes on to present the combination of qualitative and quantitative research methods used, before introducing the Nicaraguan post-war and post-land reform context. Through several land transaction histories, in which the vendor has been has pressured in different ways into selling, the article analyses the multiple possible providers of rights and rights recognition, as well as the ‘forum shopping’ that strong actors are able to perform within the system. On this basis, the article concludes that real-world phenomena such as inequality, power abuse, illegality and competing institutions must be taken into account in any effort to understand

2. Property rights on the Atlantic Coast of Nicaragua are profoundly different from those in the rest of Nicaragua, due to extensive indigenous and ethnic territories that are *de jure* recognized by the government through Law 445 (see Rivas and Broegaard, 2006). The enforcement of this law, however, is another story.

the dynamic setting in which land titling and land market transactions take place.

THEORY ON LAND TITLING, MARKETS AND INEQUALITY

The promotion of land titling and land administration projects is motivated by the expectation of a positive impact on the level of investment in agriculture, both through increased levels of tenure security and through improved access to credit, as well as through an increase in the value of titled land and a revitalization of the land market (Deininger, 2003; Feder et al., 1988; de Soto, 2000). The current focus on the land market as a way to redistribute land is — among other things — a reaction to past decades of state-led land reforms which have had varied results in numerous developing countries, but have almost never met expectations (Childress and Deininger, 2006). It is therefore understandable that there is a widespread call for new policy tools for influencing land distribution in order to reduce poverty and create growth in the agricultural sector, which remains important in many developing countries, both in economic and cultural terms as well as for food security.

De Soto (2004: 10) proposes that the protection of property rights expressed in property titles ‘will allow a modern nation to grow and will bring peace, stability and prosperity to the world’, through the revitalization of the land and credit market. The argument that property rights and titles create growth and prosperity for the poor in developing countries has also gained wide support. In a more balanced form, the proposal to use the market for resource allocation is not in itself anti-state, although it is sometimes interpreted as such by critics. Thus, a more balanced position treats the land market (including market-assisted land reform) as one of several tools to redistribute land (for example Carter, 2006), leaving an important regulative and distributive role for the state as well (see also Kay, 2006; World Bank, 2005).

Bromley (2009: 26) reminds us that: ‘All legal arrangements . . . are the evolved — and evolving — manifestations of a complex pattern of scarcities, priorities, power relations, and local circumstances’, and he calls for caution about the universal prescription of land titling for tenure security and pro-poor growth.³ Concerns about the ‘levelness’ of the playing field, inequity and power relations, and their effects on titling and the functioning of the land market, have gained widespread acceptance. For example, more than a decade ago, prominent land tenure economists like Binswanger et al. (1995)

3. De Soto has been criticized for ignoring the fact that the alienability of property rights has historically led to distress sales and increased inequality (see Bromley, 2009; Mitchell, 2007).

observed that land transfers in the market can reduce equity and efficiency if economic and institutional distortions encourage the accumulation of land among large landowners. Despite this, the implications of an uneven playing field are still often not taken fully into account in economic analysis and policy recommendations, even in settings with high degrees of inequity and obvious problems related to the use and abuse of power and office (Carter and Barham, 1996; Kay, 2006; Roquas, 2002; see also Li, 2001). A World Development Report (World Bank, 2005) on inequality discusses how inequality and power abuses are often mentioned in development projects and policies, but that these are still implemented as if such projects and policies operated in an ideal world, and corruption and uneven playing fields are treated as ‘system failures’ or ‘imperfections’. It is argued that these ‘system failures’ (whether market or state) should not be considered as malfunctions but rather as the very way that the system is designed to work, in favour of some, at the expense of others. To ignore this reality would either be naïve, or would give tacit approval to the status-quo operation of markets and legal systems. ‘Government policies are what they are . . . because someone is making them. . . . Observed policies that fail to address inefficient inequalities are the result of political choices, implicitly or explicitly’ (*ibid.*: 228).

Titling and land administration projects often focus narrowly on the state system for recognizing rights. Unquestionably, there is an important role for the state as a provider of law and order, and at least in theory as a provider of a juridical system to ensure that agreements are kept and land transfers take place according to established rules. However, many findings from legal anthropological research stress the fact that plural authorities can be involved in the recognition of property rights (see below). Long (2001) and Nuijten (2003a, 2003b), among others, have pointed out that while rules say one thing, real life practice often differs. Bending the rules under which the land market ought to operate and challenging different practices are not uncommon, as Roquas (2002) and Coles-Coghi (1993) show in their research on land titling and land conflicts in Honduras. Furthermore, formal rules are often ambiguous, overlapping or even contradictory, thereby leaving considerable space for their interpretation, as von Benda-Beckmann (1995, 2001) and Berry (1989, 1993) show.

For property rights to be ‘rights in practice’ they must be recognized by someone other than the owner, that is, a group of people often represented by a leader or an authority. Without this recognition, the property rights expressed in a land title (or in some other way), have no practical meaning.⁴

4. In Nicaragua there are plenty of examples of people possessing a land title, but not having possession over the land. There seems to be no current authority that is able or willing to enforce these ‘paper rights’. In these cases, it is the people in possession of the land — although without legal documents — that have been successful in establishing their land claims and having them recognized and respected, convincing the ‘authorities’ of their

This ‘recognition in practice’ can come from a large number of groups or authorities. It can be the neighbours, the co-operative leadership, the village leader, the local police officer, lawyers, the mayor, the local or departmental judge, the state office for rural land titling, trade unions, civil servants at departmental or national level, or politicians. If accompanied by local-level enforcement, a higher-ranking authority may be able to override the decision of a lower-level authority. Often, a number of recognitions from different authorities are collected, reasoning that proof of recognition from plural sources yields stronger rights.

Property rights are produced in close connection with the production of political authority (see also Lund, 2001; Nuijten, 1998). The potential for rights’ recognition to come from numerous different sources within a context of multiple political bodies competing for authority, creates a plurality of fora which could possibly recognize rights. This situation allows certain actors to ‘shop around’ and choose the forum or the legal framework that is most favourable for them. This has been termed ‘forum shopping’ (von Benda-Beckmann, 1991; Lund, 2001). Another way to describe the same mechanism is that multiple possible playing fields exist for a given land conflict or land claims, depending on which rights-recognizing fora are called upon by the parties. If one party is able to call upon a political forum that is favourable to him or her, the playing field becomes uneven, giving an advantage to the party closest to the political forum with highest authority.

Inevitably, people are in different positions when it comes to forum-shopping and seeking endorsements for their land claims. To quote Peters (2004: 270): ‘processes of exclusion, deepening social divisions and class formation’ are at play in competition and conflict over land, in which land reform and titling programmes are elements. She continues: ‘Widespread appropriation by elites must be situated within broader processes of social inequality and class formation as well as within what commentators call new forms of governing’, including corruption and local–national–global linkages (*ibid.*: 271). This is why it is so important to ask ‘more precise questions about the type of social and political relations in which land is situated, particularly with reference to relations of inequality’ (*ibid.*: 278).

In sum, the mainstream discourse on land titling assumes that once the poor are given the ticket (title) to the market they will take part in the game, and that it is better to be in than outside the game. The anthropological research on claims to land indicates that a wide variety of resources — not just titles — are in play during the game, and that poorer people remain disadvantaged even if invited to participate through titling. It is against this background that we now examine whether land titling in Nicaragua benefits people equitably.

needs and rights (or of the likelihood that they will make more trouble if not granted possession of the land).

Table 1. Overview of the Different Samples

Case study area Fieldwork municipality in department	Rural sample		Urban sample		
	Villages	Households	Plots	Households	Plots
Estelí	21	365	429	32	47
Chinandega	21	384	466	31	42
Madriz	8	273	317	27	45
Total	50	1022	1212	90	134

LAND TITLING IN NICARAGUA

Methods

The empirical data for this article are drawn from fieldwork carried out between 2003 and 2006, using a combination of qualitative methods such as in-depth interviews and focus group discussions and quantitative methods such as questionnaire surveys, assisted by archival studies. Geographically, the research covers one municipality in each of three departments in the northern and western parts of Nicaragua, where a World Bank-funded land administration project (PRODEP) was started in 2003.

The questionnaire survey consisted of three individually-drawn samples of rural households, one for each of the three municipalities, carried out as a two-stage sampling. The size of the rural sample in each municipality was calculated on the estimated size of the rural population, in order to permit a desired confidence interval of 5 per cent (Krejcie and Morgan, 1970, cited in Bernard, 1994: 77). Households were selected randomly from a complete list of households in each community (sampling frame), obtained from the community leaders or the mayor's office, or elaborated with the help of community leaders.⁵ Another sample was drawn from farmers living in each of the three municipal capitals, in order to also include larger-scale landowners in the data. These urban-based farming households were selected randomly from a list of farmers elaborated with the help of the mayor's office, rural community leaders and NGOs. Both samples focus entirely on rural land ownership. Details of the samples are presented in Table 1.

The data from the questionnaire have been analysed using SPSS. In this article, analysis is performed on the three samples treated as one, as the sampling process was identical and all are from small, rural, agricultural-based municipalities. In order to test the hypothesis regarding the relationships, cross-tabulations between sets of two nominal (categorical) variables were

5. The questionnaire was carried out with a total of 70 per cent of the pre-selected persons, and with 30 per cent of replacement households (also pre-selected with random numbers). Each questionnaire took an average of twenty-eight minutes, and only 10 per cent of the interviews with questionnaire formats lasted for more than forty-five minutes.

used.⁶ For the in-depth interviews during the rural fieldwork, matrices with the specific research questions were prepared for each institution and/or person, based on the information obtained during the pilot visits during the preparation of the questionnaire survey. Furthermore, an interview guide for in-depth interviews was prepared. The interviews were transcribed, coded according to theme and analysed using N-vivo. All names of villages have been changed.

Land Tenure Situation in Post-War and Post-Land Reform Nicaragua

Land tenure has been especially turbulent in Nicaragua over the past three decades due to political turmoil. Land ownership in Nicaragua has traditionally been highly concentrated (de Janvry et al., 2001; Prosterman and Riedinger, 1987). Patron-client relations are still an important characteristic of Nicaraguan agriculture, and are also reflected in the hierarchical organization of almost all other parts of society. The Sandinista revolution in 1979 aimed to disrupt this hierarchy, and proclaimed a land reform to redistribute land much more equally. Idle land, indebted farms and the land holdings of the former dictator, Somoza, and his close associates, were confiscated (CIERA, 1984; Dorner, 1992; Stanfield et al., 1994), and vast amounts of land were converted into agricultural co-operatives and given collectively to the beneficiaries of the land reform (Maldidier and Marchetti, 1996).

After the Sandinista government was defeated in the elections of 1990, a new era of land reform was launched as part of the peace treaty signed to end the Contra war. Former soldiers and counter-revolutionary forces were promised land. This land reform often involved land that was already allocated to — and maybe even titled in the name of — beneficiaries of the Sandinista land reform. The legitimacy and legality of the property rights of those benefiting from the Sandinista land reform were challenged after the change of government. The new government also tried to accommodate thousands of land claims by former owners whose lands had been confiscated or expropriated by the former Sandinista government. This led to overlapping land claims, tenure insecurity and conflicts. Many of these conflicts became violent. Both eras of state-led land reform were highly politicized and produced neither the expected nor the desired redistribution of land in the long run. Some land was redistributed to politicians and other powerful persons, while much of the land given to agricultural co-operatives was subsequently sold. According to recent agricultural statistics in Nicaragua (CENAGRO, 2001), land is (once again) highly concentrated, with just 9 per cent of the farms controlling 56 per cent of the existing farmland. At the

6. Three levels of significance are used: 99.9 per cent (***)⁶, 99 per cent (**) and 95 per cent (*).

other extreme, 61 per cent of the (smallest) farms command only 9 per cent of the land area.⁷

The complex legal framework for the formal regulation of property rights that resulted from the changes of government has introduced both real (legal) and perceived tenure insecurity (described in detail in Broegaard, 2005a). Recently, it has been estimated that more than half of the households in Nicaragua have untitled or unregistered land, and overlapping titles are still a problem (Lavadenz, personal communication; see also Baumeister and Fernandez, 2005). More than a decade ago, Stanfield (1995) estimated that about 40 per cent of all households in Nicaragua were in a situation of property conflict or potential conflict. Many landholdings are still under contradictory laws and regulations due to inherent ambiguities and overlaps in the existing legislation. Conflicts and competing land claims are only settled slowly in the overburdened court system (Merlet and Pommier, 2000). Thus, as of mid-2001, 83 per cent of the cases of rural farms under court review after the 1990 change of government were still pending or on appeal (EIU, 2001).

The present land tenure situation in Nicaragua is characterized by farms that lack formal land tenure documents. Ironically, there is at the same time a problem with land that has multiple documents, such as land that has been titled by the land reform more than once in the name of different owners, or titled land inscribed in the property registry, but for overlapping areas.⁸

The poorest producers have historically been most affected by insecurity of land tenure (Deininger et al., 2003). As a result, land titling and updating of the property registry and cadastral system are often recommended as the cure for land tenure insecurity, land conflicts and lack of investments, which could benefit the poor (see for example de Janvry and Sadoulet, 2000). The importance that some donors have placed on titles as a way to improve land investment and land markets can be appreciated by the following quote: ‘The

7. While the analysis of the agricultural censuses by Baumeister and Fernandez (2005) does not reflect the process of concentration of land, due to large time gaps (from 1971 to 2001), it does show a process of redistribution and growth in the farms owning between 50 and 500 *manzanas* (1 *manzana* = 0.7 hectare). The recent growth of cattle and milk production in Nicaragua is also partly a reflection of the ongoing reconcentration of land (see for example EIU, 2005: 25).
8. The Nicaraguan property register and cadastre have only been vaguely connected until a recent legal reform. This has allowed for inscription of more *manzanas* in the property registry than physically exist, due to transposed (overlapping) titles. It is estimated that roughly 20 per cent of the territory has updated cadastral information (Broegaard and Mendoza, 2004: 10). While cadastral maps were produced in the 1970s for most of the so-called ‘Pacific’ region of Nicaragua, virtually no updates were undertaken at the national level until PRODEP started to pay for the update. Cadastral searches require something close to detective work. Fortunately, the personnel at the departmental cadastral office have often worked there for a long time and can — if they want to — contribute a lot of information. However, this renders the system quite untransparent and also biases access to information, as good contacts with (and bribing of) staff may be needed.

extreme low coverage of property titles in Nicaragua limits the ability of the poor to use one of their largest assets, and to improve land and housing markets. Lack of titling also reduces incentives to invest' (World Bank, 2003: 40, with reference to both rural and urban households).

Given the prevalence of this approach, it is not surprising that the World Bank has set the legalization of property rights as a top priority in Nicaragua. It has funded a five-year US\$ 38 million (loan-financed) pilot land administration project, PRODEP (after its Spanish abbreviation). The aim of PRODEP is to secure property rights, activate the land market and stimulate investments as a way to integrate Nicaragua's agriculture into the world market (World Bank, 2002). The project focuses on cadastral surveys, titling and legal reforms in three prioritized departments in the northern and western parts of the country, where the fieldwork for this article was also carried out. The MCC is investing a further US\$ 26 million in strengthening property rights in neighbouring departments.⁹

Nicaragua is ranked as the poorest country in Central America,¹⁰ with almost half of the population (46 per cent) estimated to live below the poverty line (World Bank, 2003). This widespread poverty is further aggravated by the fact that the country's economic resources are unevenly distributed.¹¹ About a third of the rural population above ten years of age is illiterate (World Bank, 2003: 10). A recent corruption perception index gives Nicaragua a score of 2.6 on a scale from zero (highly corrupt) to ten (no corruption) (Transparency International, 2005).

FINDINGS AND ANALYSIS

The titling status of land in Nicaragua depends greatly on the way the land was acquired, as well as the economic wealth of the current owner, as discussed below. Land can basically be acquired through land market purchase, inheritance (or pre-inheritance), and land reform.¹² There are several broad categories of titles, which include individual titles (whether privately requested public deeds or individual land reform titles), collective land reform titles, informal titles (here defined as a wide variety of different pieces of paper that attempt to document recognized property rights, as well as more formal documents issued in the name of someone different — and not even related — to the current owner). Finally, there are some pieces of land that have no title at all.

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9. See the website: www.cuentadelmilenio.org.ni
 10. The gross national income was calculated to be US\$ 810 per capita in 2004 (EIU, 2005).
 11. The top 10 per cent of income-earners account for 35 per cent of total consumption, while the lowest 10 per cent account for under 2.5 per cent (World Bank, 2003).
 12. Only on the expanding agricultural frontier can farmers still obtain rights through clearing and first occupancy; however, this often happens at the expense of indigenous groups.

Table 2. Percentage of Farms in Reformed/Non-reformed Areas according to Land Conflict, Rural Sample

Land tenure history	Reformed areas (directly obtained through land reform, inherited or bought from beneficiary)	Land not affected by land reform	All plots
Rural sample***	393	434	827
Number of farms			
Have experienced land conflict during the past ten years	20	9	14
Have not experienced land conflict during the past ten years	80	91	86

Note:

***Correlation between land reform affectation and land conflict significant at 0.001 level (Pearson's chi-square test).

Benefits of Titling in Reformed Areas

Land rights given by the Nicaraguan state are frequently challenged, especially when the government that gave those rights is no longer in power, as was the case with plots that had been involved in the land reform at the time of the fieldwork.¹³ A statistically significant relationship is found between the mode of land acquisition and the frequency of land conflicts (see Table 2). The data show that lands that were never affected by the land reform experience fewer conflicts, whereas the reformed areas experience conflicts much more frequently, despite land reform areas being titled and registered (often as collective titles) more often than non-reformed areas. Thus, the land transaction history must be taken into account when analysing how titles influence land tenure security, conflicts and land sales.

That said, for the landholdings that have been affected by land reform, the data show that inscription in the property registry tends to lead to reduced land conflicts, although this tendency is not statistically significant. However, when turning to the private farms that have never been affected by land reform, the statistical analysis shows that inscribing a private farm in the property register alone does not reduce land conflicts, even though land titling theory would predict otherwise (for example, Feder et al., 1988). This is also in line with findings by Alston et al. (1999) and Jansen and Roquas (1998), who report frequent and violent conflicts exist from their case study areas, even when land is titled.¹⁴

The *collective* character of the land-reform property right produces insecurity of tenure in the Nicaraguan setting. The fact of having obtained the land through an administrative procedure from a nation state, which is often

13. This was before Daniel Ortega and the Sandinista party won the presidency again, in November 2006.

14. See also Benjaminsen and Sjaastad (2003) on titling and conflicts in Africa.

not considered to be a legitimate authority, partly due to Nicaragua's recent past of dictatorship and revolution, and partly due to the general perception in the poorer parts of the population that the government does not protect their rights, further aggravates the insecure tenure situation as it is perceived by these beneficiaries of the land reform. The state is not the sole provider of legitimate rights and tenure security, and furthermore it often fails to provide such rights to the poorer parts of the population. Therefore it is not surprising that many land reform beneficiaries perceive their land tenure situation as being insecure because they depend on a collective land title, even when that title is legally sound and inscribed in the property registry (Broegaard, 2005b: 65ff).

Inequity in Land Market Transactions, Titling and Registration

Although it is repeatedly argued that land titles and the formalization of land rights are important for improving the way that the land market functions, the sustainability of such titling activities is rarely discussed, nor are the effects of inequality. Interestingly, the data from the study show that a large percentage of cases of land transactions taking place via the land market are *not* followed up, either by updating formal land titles, or by inscribing such documents in the property registry (chi-square, rural sample ***, urban sample **, table not shown). For farmland obtained through the market, less than half is inscribed in the public registry in the name of the current owner, and a similar proportion is inscribed in the name of somebody else, frequently the previous owner.¹⁵ These findings show that land market transactions actually undermine the land titling and registration activities promoted by donors and the state through projects such as PRODEP.

There are several reasons why many land market transactions are not followed up with titling and inscription in the property registry. One explanation is that the process of inscribing land is too expensive and cumbersome for many people (Broegaard, 2005b; MAGFOR, 2002). Those who are most affected by this situation are those who are least familiar with the legal system. This is especially true for poorer farmers with the smallest land areas, because many of the costs related to inscription are fixed costs, irrespective of the size of the land. The fact that the existing setup is unfavourable to small-scale farmers is also reflected in the statistically significant relationship between size of farm and its inscription in the property registry, especially in the rural sample. Not surprisingly, the largest farms are those that are most frequently inscribed (see Table 3). Nevertheless, it is remarkable that less than two-thirds of the biggest farms are inscribed in the property registry in the name of the current owner.

15. Other cases are inscribed in the name of a relative.

Table 3. Percentage of Farms Inscribed in the Property Registry by Size of Farm (ranges)

Inscription status in the property registry	Range of area of farms, mzs					
	≤1	1.01–5	5.01–10	10.01–50	>50	All ranges
<i>Rural sample***</i>						
Number of farms	161	186	234	190	54	825
Document registered in name of current owner	28	45	54	55	63	48
Document registered, but not in name of current owner	50	39	32	32	33	37
Document not inscribed	22	17	14	13	4	15
<i>Urban sample**</i>		35	16	44	29	124
Number of farms						
Document registered in name of current owner	49		56	59	83	61
Document not registered, or registered in name of other than the current owner ^a	51		44	41	29	39

Notes:

***Correlation between size of farm and inscription status significant at 0.001 level (Pearson's chi-square test), rural sample.

**Correlation between size of farm and inscription status significant at 0.05 level (Pearson's chi-square test), urban sample.

^aCategories of not inscribed and inscribed in name of other are merged here, as there are only nine observations of inscriptions in the name of somebody other than the current owner in the entire urban sample. Likewise for categories of area, where there were only four observations of farms at or below one *manzana* in the entire sample.

Another explanation is that experience tells (poor) farmers that the formal, legal system does not work to their advantage, and as such, does not necessarily provide them with a higher degree of tenure security (even if they manage economically to enter it in the first place). This is related to the different resources (both economical and in terms of connections and 'favours') that are needed to manoeuvre within the legal system. Thus, while many small-scale farmers dream of having a title for their land, they frequently have to look beyond the state for alternative sources of recognition of their land rights. In the fieldwork data, this was most frequently encountered among the poorest small farmers who had never been involved in the land reform.¹⁶

Plural Sources of Recognition of Property Rights

There is a third explanation for the observed low percentage of land rights being inscribed in the property registry after land market transactions. This

16. Geographically, these examples mainly came from the western part of the fieldwork municipality in the department of Esteli and fieldwork municipality in the department of Madriz.

is related to the state not being the only provider of recognition of land rights. There are other entities, such as the local farmer community, the agricultural co-operative directive, the mayor or a high-ranking civil servant, that can also be a source of recognition that land rights are considered legitimate at the local level.

Some owners who have accessed their land through the land market or through inheritance feel such a high degree of tenure security that they see no sense of urgency about elaborating and/or inscribing formal land titles. In these cases, the elaboration of a simple sales agreement, certified by a lawyer, or the use of local witnesses to the land market transaction, may provide a locally legitimate proof of transaction and thus of property rights. This may be related to the high level of legitimacy associated with market-based land transactions, as suggested Bastiansen et al. (2006). The qualitative field data show that bought land is often considered to have greater legitimacy than land rights obtained from the state through land reform (see also Gengenback, 1998, quoted in Peters, 2004: 293).

Many interviews with private small-scale farmers (who did not receive land through the land reform) reveal a perception of nothing good coming from the state. In their view, there are many reasons to be sceptical and suspicious about the state. In general, this group of farmers does not view their lack of a land title as being a problem. Rather, they fear that intrusion of the Nicaraguan state into land titling in their peasant society will actually cause problems. As a result, they reject the idea of being subordinated to control by the state and its entities: there are even some who say that they may not want to have their land measured and titled for free under the PRODEP programme, because this would also force them to pay taxes and — even worse — it would subject them to supervision or control by the state (see also Bastiansen et al., 2006).

The Dynamics of Titling: Abuses of Office

At virtually every level of government one can find ‘officials’ or civil servants who take advantage of their office in order to form alliances with wealthy and powerful actors in exchange for favours and political and monetary rewards (such as granting land rights, giving a positive judgement in a court case or letting titles be inscribed in irregular ways in the property registry). While lower-level officials such as village committees or municipal or departmental level officials can, and often do, play an important role in mitigating land conflicts and power abuses, some are actually involved in land conflicts themselves. Generally, these officials are wealthier and better-connected than their constituency. Throughout the fieldwork, cases of land conflicts and abuses of office were encountered in the interviews, both in the rural and the urban settings.

The history of land grabbing described below offers one such example of how relations to higher-ranking officials and politicians determine land rights outcomes. While this case should not be considered as typical or representative, it nevertheless is a good example of the gross abuses of influence that occur. It thus also illustrates the kind of expectations that small-scale farmers may have when they enter a property conflict — or decide *not* to enter.

During his period in office, the former mayor of the fieldwork municipality in Chinandega department bought a large tract of land in the municipality. According to people in the neighbouring village, he fenced in much more land than he bought and took advantage of the fact that the farm was adjacent to so-called ‘national lands’ (land owned by the state as not previously registered as belonging to a private owner) in a nearby estuary, which had never been measured and thus was not included in the national cadastre system. Thereafter, he had the land measured by a topographer and then made a formal land title.¹⁷ Using his contacts and position as a mayor, he succeeded in having the title accepted in the cadastral record and subsequently inscribed in the property registry. As the national land had never been measured, it was hard to prove after the inscription of the title that the land in question was really part of the ‘national lands’. As one local lawyer said about the case: ‘Those with most economic resources are those who can move the border [of the farm].’

For decades, members of a neighbouring land reform co-operative had used the estuary wetland as pastureland for their animals in the dry season. However, once he had successfully fenced, titled and inscribed the national wetland area that was formerly a *de facto* communal area, the mayor restricted the co-operatives’ traditional practice of pasturing the animals. The co-operative then started a legal case against the mayor for usurpation of public property, but the local court chose to support the mayor because he was able to present an inscribed title. The fact that he was an influential mayor and politically well-connected probably did not hurt his case. Subsequently, the mayor filed a legal counter-case against the co-operative farmers for fence destruction and trespassing on private property.

The co-operative farmers visited the Office for Rural Land Titling (OTR) to ask the departmental officials to make a legal case on behalf of the State of Nicaragua regarding the usurpation of public property. OTR at the departmental level responded that they did not have the money to do this. Meanwhile, several of the co-operative members were sentenced to six months in prison. The mayor from a neighbouring municipality supported the co-operative and they agreed to visit the capital and further pursue the case. However, the first mayor — in the middle of his time in office — switched

17. ‘*Título Supletorio*’, a supplementary land title based on possessionary rights, is commonly used to register land not previously included in the property registry or that was inscribed as a reformed area, for example.

allegiance to the Constitutional Liberal Party, to which the President of the Republic belonged at the time. When the mayor had been seen several times with the President, the opponents gave up the case against the mayor, commenting that ‘it would have been like fighting a monster’.¹⁸

This example of abuse of office illustrates the highly personalized face of the State of Nicaragua, in which the rights of the powerful triumph over others. The result of the land conflict came to illustrate the relative power of the mayor (and his allies) *vis-à-vis* the local farmers. The legal system or the state do not work neutrally, with civil servants following pre-established rules. Rather, local ‘kings’ exchange favours with other individuals, by bending, reinterpreting, challenging or simply ignoring formally-established rules. As a result, land tenure security is not just about *rights*, but very much about *relations*.

The Dynamics of Titling: Influencing the Slope of the Playing Field

Another case from the same municipality concerns a non-formalized donation of land from a co-operative. Although a piece of land was given *de facto* to the co-operative by the land reform, it exceeded the area described in the land title. ‘Excess area’ is very common in land reform co-operatives. This case not only exemplifies the lack of enforcement of rights, but also illustrates how wealthy and well-connected people are able to go forum-shopping by overriding the departmental-level officials and going right to central-level officials in order to get support for their contention.

In the 1980s, a (men’s) co-operative with collective land reform title verbally donated an ‘excess area’ of land to a women’s collective. In 2000, when the men’s co-operative sold its land collectively they gave the land reform title to the buyer. However, when the buyer had taken possession of his new farm he ignored the verbal agreement between the co-operative and the women’s collective and subsequently established a legal case against the women for trespassing on private property and for cattle-theft (which is close to the worst crime one can be accused of in a cattle-ranging society). He also dug up the fence separating the women’s area from the former co-operative area. Although titles had never been issued in favour of the women, the women went to the Departmental delegate of the OTR, who had records of the land donation from the co-operative to the women’s collective. The OTR official appeared, accompanied by the police and a team of topographers to delimit the bought area from the area of the women’s collective. Weight was given to the original agreement between the co-operative and the women’s collective, as well as to the existence of land improvements such as fruit trees planted on the women’s land. However, as soon as the OTR officials

18. The former President was subsequently jailed for money laundering and other alleged crimes.

and the police officers left, the buyer invaded the women's land again. Soon after, he presented a letter signed by the National Director of OTR (who belonged to the same political party as the wealthy buyer) ordering that he should not be molested again. He then closed an access road to land situated behind the former co-operative land and put in armed guards to make sure that nobody crossed his land. The women's collective filed a legal claim against him for taking over their land; the women obtained a court sentence in their favour, but the sentence was never enforced. Given that they could not bear the constant pressure from their neighbour, nor did they have money for another court case or to demand enforcement of the first sentence, they were obliged to abandon their land (see also Broegaard, 2005b).

Another case of 'forum shopping' happened in a village in the fieldwork municipality in Esteli department, where the majority of the members of a former agricultural co-operative, whose land had been divided into individual plots like most other co-operatives, had sold their plots to a single buyer. Only one of the former beneficiaries of the land reform still had his land intact and this plot was now situated like an island in the sea of the land of the new landowner. Being the owner of the vast majority of the former co-operative's land, this new landowner had received the original collective land title from the former co-operative directive, as this was the only formal document that existed for the land. While this is not the correct legal procedure, it is nevertheless very common. With the title in hand, the new landowner had a stronger legal basis, as well as a firmer economic position, *vis-à-vis* the only remaining land reform beneficiary. The new owner used his land mainly for grazing cattle, but refused to fence it in order to prevent the cattle from eating the crops of the (smaller) neighbour. This made life difficult for the small-scale farmer, who depended on his own crops to provide him with food.

While preparing his one *manzana* of land, the land reform beneficiary burned plant residues, which is illegal according to the most recent environmental act in the municipality, but is very common practice nevertheless. On top of this offence, the fire got out of hand and burned some of the land of the rich neighbour. The rich neighbour had no interest in reaching an agreement on compensation for the damage through the village council, as is the norm in the area for a small incident like this, but instead went straight to the local court and filed a legal claim against the land reform beneficiary. The judge failed to notify the small-scale farmer about this claim until after the judgement was issued. While failing to notify one party is not correct legal procedure, it is also common. Not surprisingly, the judgement was made in favour of the new landowner, as no objections were presented. Conveniently, the demand for 4000 C\$, or exactly the local value (at that time) of one *manzana* of land in that area, was supported by the judge. The money was ordered to be paid within a period of two weeks, which was not possible for the land reform beneficiary unless he sold his entire one-*manzana* plot of land.

These cases from the two municipalities illustrate how powerful actors are able to move land conflicts from one forum, or playing field, to another (in this case from OTR at the departmental level to OTR central level, and from the village council to the local court). This ensures that the strongest party can mould the system to work to his advantage, by creating a situation in which the slope of the non-level playing field is shifted in his favour. These cases also show how the high degree of inequality of economic resources and access to legal advice combine to influence the outcome of land conflicts. In some cases counter-claims are not even presented, or cases are not brought to court, because of the unlevel slope of the playing field.

CONCLUSIONS: DIFFERENTIAL EFFECTS OF LAND TITLING AND REGISTRATION IN NICARAGUA

Institutional and legal frameworks in Nicaragua are either contradictory or open to the highest-paying party. In most cases legal ambiguity favours the wealthy in Nicaragua. Although there is nothing new about the finding that land titling and land market transactions take place in real-world settings of inequality and abuse of office, this reality is not sufficiently reflected in the prevailing land administration programmes and discourses about the ‘mysteries of capitalism’, which provide important arguments for promoting such programmes. The donors and government focus on titling and legal reforms (but not on access to legal advice), despite the fact that its pro-poor label does not overcome the inequality that influences the way that both the market and the formal titling system work in favour of the already most prosperous. The lack of benefits and high costs of titling and registration, as well as the lack of trust in the state, affect the poor more negatively than they affect the rich.

Many landholdings in Nicaragua are handled in extra-legal ways, for example, when being sold or inherited. If this practice is not changed, it will undermine the large-scale, loan-financed investments made in land titling and administration projects such as PRODEP. The generalized practice of not formalizing and inscribing documents in land market transaction cases and not updating documents in cases of inheritance and division is related to the high cost of titling and updating registry information, as well as the lack of direct incentives to do so. It is also related to the low level of trust placed in state authorities, as well as to the existence of plural providers of land rights recognition.

The custom of handing land conflicts extra-legally and not using the legal-formal system for land registration is a response to the way the state works. Small-scale farmers often try to avoid contact with the formal legal system, not only to cut costs but also to avoid the control of the state entities. Other authorities, such as village councils, co-operative leaders and lawyers may recognize the property rights of the rural poor, but while

they create a situation of perceived tenure security, they do not prevent the abuse of position. For the land reform beneficiaries, their contact with the state through land reform has been positive. However, with every change of government, their relation to the state also becomes increasingly ambiguous.

The land transaction case histories presented in this article illustrate abuses of public office and inequality. Many highly-positioned civil servants, including judges and mayors, use their position to force through land transactions or land-grabbing in favour of themselves or other powerful players. This weaves a web of illicit favours and debts involving higher-level officials and influential actors. Wealthy private landowners, as well as members of co-operative directives, were often found to use their privileged position in terms of economic wealth and/or information to buy land cheaply. The case studies also show that there are multiple providers of recognition of rights, and that strong actors are able to choose the body of authority that gives them the most advantageous outcome in a land dispute. Obviously, they choose a playing field where the slope is tilted to their advantage.

The results from the fieldwork in Nicaragua show that in practice, the functioning of the legal system often depends on the resources the actors are able to draw upon, more than on their formal titling status. This in itself not only reflects the unequal possibilities, but also creates even more unequal conditions, with the risk of this process continuing *ad infinitum*. There is ample evidence to show that the assumptions about investments in titling and the more fluid functioning of the land market as benefiting the poor do not hold true in contexts of inequality, power abuse, illegality and ‘forum shopping’.

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