



# DIIS REPORT

Rikke Brandt Broegaard

---

Biting the barefoot:  
Land titles and tenure security in the  
context of inequality

---

DIIS Report 2013:32

© Copenhagen 2013, the author and DIIS  
Danish Institute for International Studies, DIIS  
Østbanegade 117, DK 2100 Copenhagen  
Ph: +45 32 69 87 87  
Fax: +45 32 69 87 00  
E-mail: [diis@diis.dk](mailto:diis@diis.dk)  
Web: [www.diis.dk](http://www.diis.dk)

Layout: Allan Lind Jørgensen  
Printed in Denmark by Vesterkopi AS  
ISBN 978-87-7605-645-2 (print)  
ISBN 978-87-7605-646-9 (pdf)  
Price: DKK 50.00 (VAT included)  
DIIS publications can be downloaded  
free of charge from [www.diis.dk](http://www.diis.dk)  
Hardcopies can be ordered at [www.diis.dk](http://www.diis.dk)

*Based on Ph.D. dissertation defended December 2008 at  
International Development Studies, Institute for Society and  
Globalization, Roskilde University, Denmark.*

*Financial support: Danish Council for Development Research*

## Table of contents

Preface and acknowledgement	5
Abstract	6
1. Land tenure security, poverty and inequality. Introduction.	7
2. Theories of economic development, property rights and inequality	25
3. Origins of 'The Property Question' in Nicaragua and in Condega	53
4. Expected and experienced benefits of land titles	81
5. Do formal titles give access to credit?	104
6. Land markets in Condega: An unlevel playing field	115
7. Unequal access to titles and authorities	144
8. Conclusions	163
List of abbreviations	178
Map of Nicaragua	180
Annex 1. Fieldwork methods	181
References	185



## **Preface and acknowledgement**

This report is based on my PhD dissertation, which grew from my special interest in equitable land access and secure land tenure, along with all the inherent complexities and ambiguities associated with tenure documents, perceived tenure security, land conflicts and improvements. This interest arose from my experiences working in Nicaragua for decades, starting as a volunteer in Nicaragua in El Cuá and San Francisco Libre in the early 1990s and subsequent academic training as a human geographer. My research explored relationships between land titles, tenure security, land conflicts, land improvements, market transactions and credit access, as seen from a neo-structural perspective, but with a special focus on the implications of social inequality in poor rural households using tenure documents.

This report would have been impossible without support from the wonderful families and individuals in Condega who not only opened their homes, shared their stories and viewpoints with me, but became good friends; Laila Krytz, Ramón Castillo and Ann Hass Jensen whose for hospitality and debates about land tenure issues were unforgettable; Denis Pommier and Michel Merlet and their interesting discussions, moral support and invaluable contacts with experiences tenure conflict resolution in other parts of Nicaragua; and Alvaro Rivas.

Christian Lund helped shape the arguments and led my attention to the relevant literature. Helle Munk Ravnborg not only inspired and helped guide my fieldwork and analyses, but also provided innumerable benefits from our joint fieldwork, including how to involve our children. Dorte Thorsen's invaluable comments and moral support helped me pass critical humps. Michael Carter, Monique Nuijten, Jannik Boesen, Rie Odgaard, Søren Hvalkof, Kjeld Rasmussen, two anonymous referees of my initial research proposal, as well as talks with PhD-colleagues at DIIS and IU/RUC, and many PhD course participants and lecturers helped shape my research.

I am for the financial support from the Danish Research Council for Development Research (RUF). Last but not least, I would not have been able to finalize this work without the continuous support and encouragement of my husband and sister. I want to thank my children for their patience with my absence or absent-mindedness while working on this research. Thanks to all of you. Responsibility for any errors and the views expressed herein are solely mine.

## **Abstract**

This report is about poverty and inequality in Nicaragua and the processes (such as land market transactions, for example) that reinforce or exacerbate those conditions. It analyses land transactions and land conflicts and is built on original research and draws on more than 10 years of experience of working with land issues and rural development in Nicaragua.

The main argument of the report is that the dominant neo-liberally inspired 'policy-package' for land titling (as well as administrative reforms) is argued to be pro-poor because it is the poor who mainly lack formal documentation for their land rights. However, such policies face a sloping playing field in which land titles tilts toward the rich, without providing the same benefits for the poor. The study shows that other resources besides land titles and the formal recognition of property rights are required in order to obtain credit, get the attention of authorities in the case of a land conflict, and also for land titles to create perceived land tenure security. The report introduces the concept of *perceived* land tenure security as a separate issue from that of formal land titling. On this basis, the study is able to distinguish the effect of land titles from other resources on the levels of a landowner's perceived land tenure security. It argues that it is the level of perceived tenure security that forms the basis upon which the landowner takes land management decisions. Therefore, this is a key element to include in future land tenure research. Furthermore, the report shows that the land market, which the 'mainstream policy package' aims to vitalize, actually works to the disadvantage of the poor, by concentrating land among the wealthy and powerful. As such, it exacerbates existing poverty and inequality.

The report provides an empirical basis an argument for increasing attention on existing conditions of inequality in order to fully understand the benefits (and drawbacks) of land titles, as well as the limited use that poor people are able to make of formal land titles, and to understand how markets – such as the land market – works. Furthermore, it introduces and explains the little-touched upon concept of perceived land tenure security. It is the hope that this report will contribute to the existing debate on how to strengthen property rights and access to and control over natural resources for the rural poor, considering the large amounts of donor money spent or loans made available through land administration projects in which cadastral surveys and issuing of titles represent a major cost. While the issue of land tenure security has been widely discussed in an African setting, few published studies on rural land tenure security are available for Latin America.

## **I. Land tenure security, poverty and inequality. Introduction**

People's lives and their livelihoods are strongly influenced by property rights to land and the way those rights are produced and reproduced throughout the world. As a result, providing secure access to land and other productive resources for the rural poor is fundamental to poverty reduction and inclusive development. Land property rights are also key elements for the working of the entire economy, whether for subsistence or market-oriented economies.

Land tenure and tenure security issues have resurged onto the development agenda during the last decade, with many large-scale titling and land administration projects as well as much research being undertaken. Current land administration projects mainly focus on legal and institutional reforms as well as titling and updating of cadastre and register systems, with redistribution of land through the land market (the so-called market-based land reform). There are high expectations for the results on tenure security and investments, as well as for cost-effectiveness of these large-scale titling and land regularization investments through increased economic growth. Titling and 'getting the institutions right' for formalization of land tenure is expected to revitalize the land and credit markets and thereby create wealth (de Soto 2000; Deininger 2003b).<sup>1</sup> For example, in the policy research report from the World Bank (Deininger 2003b), Deininger comments on the positive impact of formal titles in Latin America, highlighting findings from Nicaragua in that *"...the greater security associated with registered title helped to bring the level of investment closer to the optimum and increase the value of land by almost 30 percent"* (p.47, reference to Deininger and Chamorro, forthcoming).<sup>2</sup> Another example comes from a World Bank Nicaragua Poverty Assessment report (World Bank 2003a:40): *"The 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 [...]. Only 35% of extremely poor and 49% of non-poor households has clear titles to their property"*.<sup>3</sup>

Thus, it is argued by some researchers that poor people's lack of land titles is what impedes their productive use of the (limited) assets that they have, and therefore titling of land that the poor already possess (and ensuring clear laws and well-functioning institutions, such as courts to handle disputes) will enhance growth and alleviate poverty.

This report examines political and economic conditions and processes that exacerbate existing structures of inequality as well as create new ones by conducting a detailed analysis of tenure security as perceived and experienced by small-scale farmers in Nicaragua, which is one of the most unequal countries in the most unequal region of the world. It also examines the role that formal land titles and the titling system play in this and it analyses the functioning of the land market and the implications that the land market has for land distribution among the rural poor.

I take my point of departure from the neo-structural assumption that conditions of inequality are reproduced by the way the wider political economy operates. This is because the unequal distribution of assets is not only a condition that creates unequal opportunities (to defend one's rights and to achieve better incomes, just to mention two examples), but also a condition that reproduces and exacerbates the unequal distribution of assets that exist. On this basis, I argue that it is especially important to pay full attention to the implications of high levels of inequality, both in terms of the distribution of assets and opportunities. Consequently, an analysis of the mechanisms through which property rights to land are gained, maintained and lost, can contribute toward a better understanding of the broader processes of production and reproduction of inequality – both of which have important implications for the debate on poverty alleviation.

Within this context, the market is a key arena through which property rights are transferred. Nonetheless, as will be demonstrated, such 'transfers' are sometimes better described as losses and gains. Authority and power to define and re-define norms and practices regarding property rights to land, and to sanction and enforce such norms and rules, comprise other key elements for study in order to gain a better understanding of the processes of inclusion and exclusion. These elements unfold at several different levels, ranging from international donor policies and national politics, to local government initiatives, village council activities and institutional rivalry, as well as within and between households.

### **The importance of land to rural livelihoods**

Land is still a key source of livelihoods for most of the rural population in developing countries.<sup>4</sup> Interventions that create land tenure security are highlighted as the single most relevant activity in order to strengthen food security (IOB 2011). Nevertheless, large-scale investor interest in land and large-scale land acquisition have grown steadily over the past five years, mainly driven by concerns about future food security, availability



of fresh water and other natural resources, as well as plans to produce agro-fuels. Speculations on future increases in the price of farmland, often from financial institutions, also represent a driving force in the land rush. A recent report by The High Level Panel of Experts on Food Security and Nutrition (HLPE 2011) on the issue of land tenure and international investments in agriculture observes that evidence from the land rush to date shows very few cases of international land investments that improve agricultural productivity or rural livelihoods. In view of the rising levels of rural impoverishment (Lund, Odgaard *et al.* 2006), and the increasing investment-pressures on farm land, it is paramount to ensure poor people's access to and control over land (and other natural resources) as a central element of any poverty reduction strategy. This is reflected in the policies and strategies of many development assistance agencies.<sup>5</sup>

The distribution and organization of the means of production obviously are of great importance in determining the ways that production and the distribution of wealth and surplus are organized. Historically, land has been and continues to be among the most important means of production, especially in societies where a large part of the population or economy depends on agriculture or direct harvest of natural resources.

The high level of poverty in developing countries is an acute concern for governments, civil society organizations and international donor organizations alike.<sup>6</sup> Latin America represents extreme levels of inequality on a global scale, both regarding distribution of consumption and of assets. Among the latter, the extremely skewed distribution of land in Latin America has attracted attention for decades, both because of its high degree of inequality and because of the role of land access and land ownership as key elements in determining production strategies and income levels, especially for rural households. *"If Latin America had the distribution of income of South East Asia then already extreme poverty would fall by 80 percent"* (Kay 2006:495). To live in poverty or extreme poverty creates high levels of vulnerability. de Janvry and Sadoulet (2000a) show that while periods of crises increase the levels of inequality, the reverse (increase of equality) does *not* necessarily occur during periods of renewed growth. This irreversibility of inequality justifies the necessity to pay careful attention to processes that increase inequality and polarization.

### **Neo-classical and neo-structural approaches to poverty, inequality and property rights reforms**

Past approaches to the long and engaged debate about property rights and land reform can generally be divided into two main schools (see for example Lipton 1993). The

neo-classical approach identifies ‘wrong prices’ generated by market distortions and insufficient formalization of property rights as a root cause of poverty, whereas the neo-structural scholars look to structural conditions in the organization of society and the distribution of assets and power in their explanations of poverty and inequality – and the reproduction thereof, which may persist even under economic growth.<sup>7</sup> What is seen as an appropriate response to inequality and poverty thus depends on the diagnosed root causes.

Neo-classical economic theory argues in favour of stabilizing property rights in order to achieve high levels of tenure security and thus create incentives for investments. This means that, generally, the state should be reluctant to reform the distribution of property rights because state interference would distort any (market-created) equilibrium, thereby negatively affecting stability and thus tenure security. However, at the same time, the neo-classical economists realize that ‘too much’ inequality is not desirable because it has negative implications for productivity, especially when large parts of the land assets are allocated through inheritance (and thus not based on economic efficiency of the landowner). The neo-classical school is therefore attracted towards some measures of redistribution in order to optimize farm size, considering the so-called ‘Inverse Relationship’ between farm size and area productivity (see Chapter 2).

The policy prescriptions based on this leans toward a neo-liberal viewpoint that calls for liberalization of markets and for macro-economic stability, while promoting policies that take a minimalist approach for achieving broadly based growth. This includes a policy package that aims at eliminating price distortions (which would favour large farmers and discourage labour-intensive production) and legally solidifying the property rights of small farmers. For example, this could take place through land titling, in order to increase incentives for investments and the ease of carrying out market transactions.<sup>8</sup>

One of the main arguments for this mainstream policy prescription is that land titling and implementation of policies that reduce price distortions (for example, regarding government subsidies or access to agricultural services) play an important role in enhancing the relative competitiveness of smaller farms. Some authors see the elimination of price distortions in a number of markets (land sales markets, land rental markets, credit markets etc.) to be so important that it may be sufficient to create poverty-reducing agrarian growth (Binswanger, Deininger *et al.* 1995). Within the same approach, de Soto (2000) argues that it is mainly the lack of formal proof of property rights that prevents the poor (urban as rural) from using their assets (such

as land) to invest more, to access formal credit in order to allow for more investments, and to convert what he calls 'dead capital' into live and growth-generating capital. In sum, it is argued that if by adopting this kind of 'policy package', price distortions are eliminated and secure property rights are created through titling, then the playing field will become level – based on the relative advantage in competitiveness of small farms over larger farms – as land is transferred to the most efficient land uses and land users through market transactions.

Looking at results from many parts of the world, there is no doubt that formal titles to land are much desired by many of those predominantly poor people who do not have such titles (see for example Bruce and Migot-Adholla 1994; Nuijten 1998; Deininger and Chamorro 2002; Roquas 2002; Deininger 2003). Emphasis is increasingly given to the securing of land rights at the community level and not just at the individual level (e.g. HLPE 2011; Byamugisha 2013). Likewise, considering the geopolitical changes of the last two decades and the influence of neo-liberalism in most aspects of international politics since the 1990s, much of the literature on poverty reduction and agrarian development (including land tenure security) accepts that the elimination of price distortions is important (Barraclough 2005; Carter 2006; Kay 2006). However, one important question remains unanswered: Can this 'mainstream' policy package – with land titling and reduction of price distortions that allow the market mechanisms to regulate social reproduction – provide a level or more level playing field, as argued by its proponents?

Structural analyses of the root causes of poverty virtually have an opposite starting point, namely the wish for the state to redistribute land and make equal landholdings. However, neo-structuralists also realize that the state is not neutral vis-à-vis interest groups, and thus that state-based involvement in land issues (e.g. land reforms) expresses and is shaped by power relations, rather than considerations for efficiency or equity. The following quote represents a neo-structural analysis of the causes of rural poverty:

“The main causes of rural poverty are structural, being related to the unequal land distribution and the uneven power system. Access to capital, technology and markets, as well as to knowledge and information systems, is becoming increasingly important in determining the success of an agricultural enterprise. But the sustainability of peasant agriculture and the alleviation of rural poverty depend on wider social and political issues as well as on a favourable economic context. Tackling the root causes of poverty will require major land redistribu-

tion and rural investments which raise employment opportunities and improve agricultural productivity.” (Kay 2006:456).

The ‘levelling’ effect of land titling and the land market is questioned by Carter and Barham (1996), among others (e.g. Lipton 1993; Barraclough 2005; Kay 2006). Carter and Barham observe (1996:1142):

“Because smallholders often lack well defined and legally recognized property rights to land, land-titling programs appear attractive as a way to provide institutional preconditions for broadly based growth. Three observations, however, question the necessity for “getting property rights right” as a precondition for broadly based growth:

- Current smallholders may already have localized, but nontransferable, tenure security.
- While land titling may make localized tenure security transferable (and thus valuable as collateral), this may not by itself suffice to improve the capital access to current smallholders; and,
- Making tenure security transferable may have its largest impact by enhancing the marketability of smallholder land to other, better capitalized farmers.”

### **Pro-poor development strategies in unequal settings**

While there is general agreement about the importance of working towards pro-poor growth and equitable development in policy documents, there are contrasting views and findings about what comprises pro-poor development. Market-oriented, neo-liberally inspired scholars argue that the titling is important, because they consider it to be a key component in securing rights and their transferability and providing tenure security for the poor, making it a pro-poor development activity *per se* (for example de Soto 2000; Deininger 2003; Feder *et al.* 1988). On the other hand, other researchers have found that titling mainly benefits the non-poor due to structural inequalities that are not overcome simply by titling (see for example Coles-Cogni 1993; Carter and Barham 1996; Jansen and Roquas 1998; Roquas 2002). This contradiction motivates the present report, which sets out to investigate whether, or under what circumstances, land titles and the state-endorsed property rights systems can actually reduce poverty and empower people and communities by providing poor people with land access and making their use of those land rights more effective (see Deininger 2003: xx). As I argue below, this question can only be

answered meaningfully by using an empirical background and in a context-specific way, not only as Roquas (2002), Jansen and Roquas (1998), Carter and Barham (1996) and Coles-Cogni (1993) have done, but also Feder *et al.* (1988). This analysis focuses on the concept of *perceived* land tenure security and is therefore able to examine contestation and conflicts over rights and resources from a different perspective than most analyses of land tenure security.

Latin America is the most unequal region in the world, with the highest level of wealth and income concentration (e.g. Kay 2006). This high level of inequality means that although growth may reduce poverty, poverty reduction may not necessarily reach the extent that could be expected under less unequal conditions. On this basis, Kay concludes that a more egalitarian and widespread access to assets is fundamental for achieving a substantial reduction in poverty, and therefore, that the issue of land reform is far from closed (see also Hoffmann and Centeno 2004). However, he also concludes that redistribution of wealth is not sufficient for sustainable poverty reduction in today's globalized economy. Economic, social and political measures for encouraging productivity growth, innovation and competitiveness are also required. Carter (2006) agrees and focuses especially on credit and other factor markets. Based on the above, agrarian development in Latin America offers an important opportunity for studying the relationships between tenure security, land titling and the land market within the context inequality.

Historically, land tenure structures in Latin America have been extremely uneven (Glade 1996; Ramos 1996). Starting from the Mexican revolution (1910-20), redistributive land reforms have attempted to achieve a more even distribution of land in most Latin American countries, especially during the 1960s and 1970s (see for example Dorner and Kanel 1971; Dorner 1992; Thiesenhusen 1996). However, when taking into consideration the large scale of many land reform undertakings (De Janvry and Sadoulet 1989; Thiesenhusen 1995; Carter 2006), the uneven land tenure structure has not been altered as much as was expected.<sup>9</sup> Ironically, it seems that it was precisely the extreme inequality of agrarian asset distribution that made the land reforms so necessary, yet made it hard for these reforms to succeed (de Janvry and Sadoulet 1989; Dore 2006; Kay 2006). Indeed, land reforms in Latin America often generated considerable tenure insecurity among landowners, including those who benefited from the land reform, because many land reform programmes failed to provide full ownership rights or formal property rights titles for land reform beneficiaries.

Much of the research within a Latin American context has focused on the inefficiency and insecurity that is created from prior state-interventions in land tenure issues. Among other things, this has placed a focus on the market as the arena for resolving issues related to land tenure rights and their distribution (Molina 2000; Deininger and Binswanger 2001; Childress and Deininger 2006; Rose 2011).<sup>10</sup> Contrary to the rest of Latin America, where urban poverty has outnumbered the rural poor, most of the poverty in Central America is comprised of rural poverty (De Janvry and Sadoulet 2000b). Therefore, it is especially relevant to look at the land tenure structure and land tenure security in Central America when discussing the issues of inequality and poverty alleviation, especially within the context of rural development. In Nicaragua and El Salvador, large-scale land reforms took place later than in other Latin American countries in the late 1970s and the 1980s. While land reform efforts were impressive, the land reforms often left legal issues pending, with titling and registration often not carried out, or not completed.

Structural reforms, changes in property rights, market-oriented development and the functioning of markets are large-scale phenomena related to national and international political and economic development. However, in order to get into the everyday workings of securing property rights, of the working of the land market, and of processes of production and reproduction of inequality, I found it helpful to study one specific place. Therefore, I have chosen to conduct a case study of political and economic processes of change and how these create new structures of inequality and exacerbate existing ones.

Some authors comment on how land tenure security or insecurity can be considered a ‘public good’ (or evil).<sup>11</sup> However, in addition to the ‘public good’ character of tenure security, I argue that people are affected by land tenure insecurity to different degrees, depending on the resources available for allowing them to put their rights into practice, as well as obstacles created by gender and other differences. This is because the structural elements in society continuously reproduce conditions of inequality and insecurity along lines of wealth, class, gender and ethnicity.<sup>12</sup>

### **Nicaragua – a case to study impacts of inequality**

Despite its small geographical area and the limited size of its economy, Nicaragua is high up on the list of countries in Latin America that have the most uneven distribution of consumption (Hoffmann and Centeno 2003).<sup>13</sup> Almost one-third of the arable land<sup>14</sup> was confiscated or expropriated, and subsequently redistributed

under the Sandinista land reform in the 1980s. The area of farm land held by small and medium-size farms increased substantially when compared to 1971 survey data (Carter 2001; Baumeister and Fernandez 2005). Today, however, the structure of land distribution is once again highly uneven (Deininger, Zegarra *et al.* 2003), and Nicaragua is characterized by some of the highest levels of poverty as well as some of the highest levels of inequality in the western hemisphere, making it an interesting country to analyse.

The literature generally agrees that Nicaragua is characterized by a high level of insecurity of land tenure<sup>15</sup> and that formalizing land tenure is expected to be very important. This is illustrated by the following quote:

“High levels of tenure insecurity are illustrated by an implicit or explicit demand for instruments that can increase land ownership security. For example, in Nicaragua the demand for registered certificates was significant even though households already had informal documents. Not surprisingly, this demand came mainly from the poor, who did not have the means to increase tenure security through other channels (Deininger and Chamorro, forthcoming).” (Deininger 2003b:36-37).

While these findings are not questioned, I argue that the importance of land titles for (perceived) land tenure security should not simply be *assumed* as a given, but that it must be analysed empirically. A detailed, empirically based understanding of the nature of perceived land tenure security is crucial before land titling is proposed as a policy tool for strengthening tenure security in order to obtain pro-poor or broadly based growth. This is important for two reasons: First, the frequently prescribed titling projects are extremely costly (see such diverse approaches as Roquas (2002) and de Soto (2000)). Secondly, even if land tenure security existed prior to titling, land alienability may increase substantially with titling and it could facilitate land transfers from small-scale farmers to wealthier farmers. As noted in the quote above from Carter and Barham (1996), titling and subsequent land sales may thus increase inequality (even if it is also followed by economic growth) at the expense of the poor (Binswanger *et al.* 1995; Carter and Barham 1996; Carter 2006; Kay 2006).<sup>16</sup>

This report shows how the functioning of the market and supporting government institutions exacerbate impoverishment of those who are already poor. It reaches this finding through an analysis of the concrete and specific case of the rural land market



and land tenure situation in a municipality in northern Nicaragua. In countries like Nicaragua and many other Latin American countries, access to justice is dependent on economic resources, as well as social or political contacts, where the judicial system is an interwoven and integral part of the political system. This situation leaves considerable room for manoeuvre for power abuses. Therefore, the study is relevant beyond Nicaragua and also beyond the issue of land tenure and property rights to land, even though it empirically examines the ways in which farmers obtain, maintain and lose land in the small, rural municipality of Condega in the northern part of Nicaragua.

The global relevance of my findings is tied to the previously described mainstream policy 'package' that has been (and still is) promoted globally in developing countries and in many post-socialist countries. Through a research assignment, I was fortunate to be able to conduct a parallel study in two other municipalities in two other administrative departments in Nicaragua (Broegaard 2005a). Compared to these other departments, the Condega municipality (in the Estelí administrative department) represents a situation in which there are relatively few land conflicts, relatively high levels of tenure security and relatively good access to legal advice and state institutions concerning land administration issues. On this basis, the study of Condega can also be *seen as a critical case* (Flyvbjerg 1991) in the sense that whatever power abuses and polarization tendencies found there can be taken to express mechanisms and tendencies that can reasonably be expected to occur much more frequently under less positive conditions elsewhere in Nicaragua.

Estimates of the degree of formalization of land rights vary greatly, but the World Bank (World Bank 2002c:15) estimates that around 70 percent of the plots do not have legal tenure documents. At the same time, it is common in Nicaragua for multiple documents (of different kinds) to exist for the same or overlapping geographic areas. Overlapping titles can even be inscribed in the registry as geo-referencing in the property registry is still often only descriptive, and the cadastral system covers less than 20 percent of the country. Furthermore, the registry information has only been updated sporadically since it was established in the 1970s (Broegaard and Mendoza 2004; UN-HABITAT 2005). The superposition of land rights has been exacerbated by the interventions over the past decade of several institutions, all with jurisdiction over land allocation.

Another of the motivating factors for my research proposal was the preparation of PRODEP (*Proyecto de Ordenamiento de la Propiedad*), a government programme for land administration and regulation in Nicaragua, mainly financed by a loan from



the World Bank with co-financing from the Nordic Development Fund, but which subsequently was supported by the Millennium Challenge Corporation (MCC). In addition to legal reforms, cadastral surveys and titling, the project addresses reforms of the property registry and cadastral information, both institutionally and technically. Given that the project was still in its initial phases when I was writing my research proposal and beginning my fieldwork, I did not design this project as a study of the PRODEP project, nor on its implementation *per se*. Rather, the preparation of the PRODEP and the discussions surrounding it motivated my research design, and it allowed me to test the main assumptions and arguments that are the *raison d'être* for PRODEP and other similar expressions of the mainstream policy package.

### **Research questions and conceptual framework**

My central research question was formulated to examine the assumptions of what I call the mainstream neo-liberally inspired policy package and the likelihood that these assumptions are valid in settings of high levels of poverty and inequality. If these assumptions are met, then there should be a strong likelihood that the mainstream policy package will reduce poverty and inequality. In order to test these assumptions, I developed two research questions:

1. How well does the neo-classical description of market exchange and price formation fit the way in which land is traded and the conditions surrounding land transactions in the case study area – i.e. is the land market primarily shaped by the market forces and their price formation, or by other power relations?
2. To what degree are the prerequisites for obtaining reduction in poverty and inequality based on the mainstream policy package fulfilled in Condega?

The answers to these research questions were derived through the empirical analysis of the following concrete research questions, posed when gathering my empirical data from rural Condega, Nicaragua:

- How do formal land titles influence rural people's perception of tenure security?
- What is the role of inequality (both unequal distribution and unequal opportunities) in access to the state-endorsed property rights system and its offer of protection of property rights?
- Do formal land titles increase access to formal credit in Condega? If not, then why?
- How does the land market function, and what are the observed distributional effects?

In this report I use a relational concept of property (*sensu* Roquas 2002), which views property as being about relations between people about things, not as relations between people and things (see also Macpherson 1978; Bromley 1989; and Rose 1994). This understanding of property is in line with many findings from legal anthropological research, which stress the fact that plural authorities can be involved in recognition of property rights (see for example Berry 1993; Long 2001; Lund 2001; Benda-Beckmann 2003; Nuijten 2003a; Nuijten 2003b). Consequently, because property relationships must be regarded as social institutions, I argue here that the concept of tenure security mainly relates to assurances about other people's respect for one's rights (i.e. their obligations to respect the rights of others), as well as enforcement of those rights and obligations by different authorities (whether the state or another authority). According to this line of thought, people with the same formal land tenure status (a certain type of title, registered or not registered) may assess differently the degree to which they have tenure security/insecurity, and may actually *be* in different positions to make use of institutions to obtain enforcement, namely to exercise their rights expressed in the title. Following the relational concept of property, I propose that tenure security is best understood as a result of multiple legal, social, economic and power-related elements and their interplay, as well as their specific historic context. Consequently, I use a concept of *tenure security as perceived by the landholder*, i.e. it takes seriously that legal situations, local enforcement practices, conflict experiences etc. are filtered through a subjective (or rather, local) 'filter'.

### **Research methodology and fieldwork methods**

There can be both an actor-oriented perspective to the study of inequality and a structural perspective. From an actor-oriented perspective, this study seeks to understand the means and strategies that rural poor people use to try to establish and secure access to natural resources. Norman Long (e.g. 2001) and several of his scholars from Wageningen University have been a source of inspiration regarding implications of an actor-perspective. On the other hand, from a structural perspective, this study seeks to examine the extent to which different patterns of inequality in opportunities results in different patterns of inequity in outcomes – for example, inequity before the law – which shapes poor people's agency to gain (or secure) access to natural resources (unequal opportunity) as well as the very outcome of their agency (unequal outcome). This perspective draws on the structural and neo-structural approaches to development as well as on the discussion about how the combination of the actor approach and the structural approach creates the duality between actor and structure (e.g. Giddens 1984).

The focus on the concept of perceived tenure security requires a methodology capable of bringing forth information about people's perceptions of the level of tenure security they enjoy, as well as the reasons for their perceptions. Furthermore, the methodology has to be able to provide information about possession or lack of land tenure documents, experience with land tenure conflicts and institutional support experienced, as well as 'background characteristics' for the actors, such as wealth, education, social networks etc. For this purpose, I have developed land tenure security rankings, adapted from well-being rankings (Ravnborg 1999). While much of the literature on land titles and land market functioning is written by economists using quantitative approaches, a different body of literature on land tenure security and insecurity, peasantry livelihoods and access to justice is based on anthropological traditions with much use of qualitative data. With the aim of being able to compare my findings to those of previous studies from each of the two above-mentioned bodies of literature, the present study had to be approached qualitatively as well as quantitatively.

The choice of case study methodology, which includes qualitative and quantitative methods, is based on the fact that much of the literature with which I wish to compare my findings is based on case studies.<sup>17</sup> The empirically based research design is also appropriate for developing the concept of tenure security, which is rarely discussed in detail in the existing literature. Moreover, the extent and seriousness of land tenure insecurity, with its strong social and emotional overtones, cannot be adequately described in a quantitative manner.

The fieldwork was designed in three phases, taking place between 2003 and 2006, starting with qualitative methods to explore concepts and understand relations and get to know the different local actors, as well as to formulate tentative hypotheses about the relationships to be explored in greater detail. On this basis, a quantitative household survey was developed and carried out in phase II. Based on the analysis of these quantitative data, hypotheses were re-formulated for further in-depth analysis, which was carried out in phase III using qualitative methods. Each of the methods used is explained in details in Annex I and in Broegaard (2008).

The questionnaire survey was carried out with a random sample of 384 rural households<sup>18</sup> in 21 villages in Condega (as well as a much smaller and not representative sample of urban-based owners of rural land, comprising only 30 households). Data were entered into a database and analysed in SPSS (Statistical Package for Social Scientists) employing various types of bi-variate analysis procedures. In order to test

the hypothesis regarding the relationships, cross-tabulations were used between sets of two variables. The majority of the tables presented are cross-tabs between nominal (categorical) variables. Three levels of significance are used: 99.9% (\*\*\*), 99% (\*\*) and 95% (\*).

There are limitations as to how far the findings of a case study analysis and the related questionnaire survey can be generalized, because statistical representativity cannot usually be claimed beyond the geographical scope of the study area, in this case the municipality of Condega. However, as the questionnaire survey was also applied in two other municipalities in different departments in Nicaragua (Broegaard 2005a), I believe that I have a solid empirical basis for presenting my results and suggesting where they can be expected to apply to a larger area than just Condega. Furthermore, I argue that the careful choice of the case study area to meet certain criteria makes many of the findings relevant beyond the department of Estelí, extending to most of Nicaragua and, in some cases, even to Latin America.

### **Structure of the report**

Chapter 2 reviews controversies about economic development in the post-colonial world. My analysis is inspired by Dore (2006) and her interpretation of Polanyi's work. If the function of the land market does not primarily follow the neo-classical construction of markets as free and self-regulating entities, it becomes relevant to explore what practices, power-relations and social hierarchies influence the functioning of the land market. This requires analyzing the market as something that is embedded in the wider structure of society. From the neo-structural analysis of the role of the markets in capitalistic and non-capitalistic societies, I turn to a review of theories about the evolution of property rights and the controversies about whether their evolution can be seen as linear or not. I also discuss the importance of formal rights, expressed in a title, and the importance of negotiability of rights, inspired by both neo-structural and some new institutional economics scholars, as well as by legal pluralism and its proposal about the negotiability of rights. The third main part of the theoretical chapter discusses approaches to inequality and its different dimensions. Finally, the chapter presents the conceptual framework, focused on the concept of perceived land tenure security and on the concept of inequality and its different elements.

Chapter 3 presents the origins of the so-called 'property question' in Nicaragua and Condega in a historical perspective. It also briefly describes the distribution of land

and the face of poverty as it is seen in Condega, as well as the types of land tenure documents used, and the local concepts of land tenure security.

The Chapters 4 to 7 contain the empirical analysis performed on the basis of qualitative and quantitative data from Condega. First, I present data on the expected benefits from titles, and use the remainder of the chapters to answer whether these expectations are fulfilled – and under what circumstances. In Chapter 4, I also analyse the local concepts of land tenure security and insecurity, as well as the importance of formal titles for perceived land tenure security, and the frequency of occurrence of land conflicts in relation to land title documents and the way in which the land has been obtained. While formal land tenure documents are ascribed much importance for tenure security when talking about ideal situations, people's everyday practices of documentation of transfers of land rights show that alternatives to the state-endorsed property rights system are used more often than the state-endorsed property rights system itself. Turning to an analysis of reported land tenure conflicts over the past 10 years, I show that formal institutions are involved in less than half of the conflict cases, and even when involved, they have a low rate of success in resolving the conflicts in a durable way.

Chapter 5 explores the use of formal credit and its relation to formal land titles. I find that formal credit is extremely restricted, even for landowners with formal land titles. Past government policies of very liberal credit practices, as well as the local concept of land as not being just any 'commodity', generate strong social indignation in case of foreclosure. This makes the use of land titles as collateral for loans unattractive for some credit institutions in the case study area, so that they no longer accept land titles as collateral. In addition to inadequacies and limited coverage of cadastral and registry information on property rights, the local perception of land ownership as having a social function (reflected in the Nicaraguan Constitution) thus restricts the supply of formal credit with land titles as collateral. Conditions of poverty and high-risk, rain-fed agriculture also limit the demand for credit, irrespective for the possession of formal land tenure documents.

Through my analysis of the quantitative and qualitative data, I show in Chapter 6 that the land market is active, and that lack of formal title does not limit land sales in the non-reformed areas. In the reformed areas, on the other hand, land obtaining formal, individual land titles eases and increases land sales. Land sales tend to take place from small-scale to larger-scale landowners, and as such, the land market serves to concentrate land among the wealthier segments of the population. Looking at the

reasons to sell and the circumstances around land sales, I show through the analysis of the qualitative data that in general, land transactions are better described in terms of resulting from pressure and unequal economic and power positions, than as a meeting between a willing seller and a willing buyer at the market place. Threats, pressures and conflicts, or economic emergency, often play an important role in facilitating land sales. Thus, inequality is both a constituting factor of how the land market works, as well as a result of it. The way the market works in Condega indicates the relevance of seeing it as embedded in wider societal structures.

Chapter 7 presents the high costs of formal land titling documents and of formal updating of them – and thus their limited availability to poor landowners. I also show examples of the inaccessibility of formal institutions, the high economic cost of using them, and their low level of conflict resolution and enforcement of agreements. The unequal access to different authorities and different legal figures are important elements in explaining the limited use of formal tenure documents, despite their high regard as important contributions to situations of perceived tenure security.

On the basis of the detailed analysis, I conclude by answering my concrete research questions about how formal land titles impact rural people's perception of tenure security; frequency of conflicts; access to formal credit; how the land market functions and how it affects the distribution of land. I evaluate the use of the concept of perceived tenure security. More interestingly for the wider audience, however, are my conclusions regarding my overall research question regarding the implications regarding the appropriateness of the mainstream neo-liberally inspired policy package that is offered in many developing countries and the relevance of the assumptions on which this 'package' is based, in a setting of high levels of inequality. I also conclude by presenting the implications of my findings for the theoretical approach to land tenure security. Land titles and their registration in the property registry are important parts of what create tenure security; but there are other elements that contribute to tenure security. Titles are important, but always in combination with other resources. Therefore titles do not offer the same benefits for rich and poor. Furthermore, the land market is primarily shaped by power relations and the combination of high levels of poverty and high levels of inequality. It results in land concentration, exacerbating existing inequality. In order to strengthen tenure security, it is important to pay more attention to poor people's access to legal advice as well as their legal literacy, as well as a profound reform of the legal system and culture of 'class justice'. To level the playing field, there is an acute need for combating inequality through working to enhance equal

opportunities, for example through the equal access to institutions, to education and to the right to have rights.

## Notes

<sup>1</sup> For example, the following quote from a recent World Bank Policy Research Report shows the policy-importance of land tenure issues, as well as the complexity of the issue:

“Access to land and the ability to exchange it with others and to use it effectively are of great importance for poverty reduction, economic growth, and private sector investment as well as for empowering the poor and ensuring good governance” (p. 1-2). “Providing secure land rights and establishing clear rules to guarantee broad access and facilitate the exchange of land have proven critical in post-conflict situations where land was often a key contributor to the conflict. Where local institutions that enjoy little legitimacy control access to land, this is clearly linked to broader governance issues” (p.4). “Given the key role of land as a determinant for access to economic opportunities [...] researchers and development practitioners have long recognized that providing poor people with access to land and improving their ability to make effective use of the land they occupy is central to reducing poverty and empowering poor people and communities” Deininger 2003b: xx

<sup>2</sup> This is an important element in favour of the cost efficiency of the PRODEP (World Bank 2002a:32).

<sup>3</sup> Another example comes from the PRODEP project appraisal document: “*Long-term insecurity of land tenure is an impediment to agricultural growth, natural resource preservation and social fairness, and constitutes a major risk factor for foreign and internal investment. Agriculture productivity and growth are limited among others, due to reduced incentives for individuals to invest in their land and to the high level of insecurity. Unreliable property titles (or a total lack thereof) provide no guarantee that investors will reap the benefits of their efforts. Insecurity also leads to (getting the most out of one's land as quickly as possible) environmental degradation by discouraging long-term investments which often have environmentally favorable effects. And, it leaves the poorest and the weak at the mercy of land grabs or repossession by more influential people, thus having potentially negative social consequences.*” (World Bank 2002b:7)

<sup>4</sup> - even though sources of rural livelihoods are increasingly diversified to also include off-farm and non-farm income-generating activities (including rural-urban linkages at many scales). (See for example Bebbington 1999; De Janvry and Sadoulet 2000b; Corral and Reardon 2001; De Janvry and Sadoulet 2001; Reardon, Berdegue *et al.* 2001; Ruben and van der Berg 2001; De Janvry and Sadoulet 2002).

<sup>5</sup> For example, one of the indicators under the Millennium Development Goal 7 is the ‘proportion of the population with access to secure tenure’. Goal 7: Ensure environmental sustainability. Webpage (<http://www.unfpa.org/icpd/about.htm>), visited December 2007. Also, the EU policy on land tenure captures the general recognition of the importance of secure tenure for rural (and urban) development among development practitioners and policy makers ([http://ec.europa.eu/development/Policies/9Interventionareas/Ruraldev/rural/landpolicy\\_en.cfm](http://ec.europa.eu/development/Policies/9Interventionareas/Ruraldev/rural/landpolicy_en.cfm)). (see also for example Feder, Onchan *et al.* 1988; Atwood 1990; Stanfield 1990; Binswanger, Deininger *et al.* 1995; Deininger and Chamorro 2002; Deininger 2003b; World Bank 2003a; European Union 2004; Boucher, Barham *et al.* 2005; Carter 2006).

<sup>6</sup> I understand poverty both as a state of deprivation of assets experienced by an individual or a household and as a relational phenomenon among poor, less poor and nonpoor households, as it is reflected for example in the work for Ravnborg (see for example Ravnborg 2003). “*The choice to use self-perceived poverty rankings was inspired both by Sen's reservations about the practicality of measuring poverty and well-being solely on the basis of income or expenditure data (Sen, 1981, 1985), and the increasing recognition among agencies like IFAD (Jazaïry, Alamgir, and Panuccio, 1992), UNDP and the World Bank (e.g., Narayan, Patel, Schafft, Rademacher, and Koch-Schulte, 2000) of the multidimensionality of poverty and the importance of including poor people's own perceptions in poverty assessments.*” (ibid.:1934-5). However, while I acknowledge and use the relational concept of poverty, I have not focused on the measure of poverty in this thesis, and thus often refer to much more simple measures of the level of economic wealth of an individual or a household, in addition to commenting on the ease or difficulty with which they are able to access institutions at different levels. Economic wealth in land or in cattle are important elements in the locally informed multifaceted measures of poverty (e.g. Ravnborg 2002).

<sup>7</sup> Another question could be whether inequality and poverty have to do with ‘wrong institutions’, as the scholars from new institutional approaches would phrase it. While I address this question, I do it partly under the Property Rights School (which I associate with the neo-classical economics), and partly in relation to legal pluralist approaches.



<sup>8</sup> I use the term 'mainstream policy package' or 'neo-liberal line of thought' as a brief description for a wide-ranging and rather broad set of policies and arguments that are market-friendly and focus more on efficiency than on equity. The theoretical points of departure for this are arguments presented by the neo-classical economics. However, there are varying degrees to which the importance of regulatory institutions other than the market is recognized. Over time, there have also been observable changes in the degree to which, for example, neo-structural critique has been included.

<sup>9</sup> This extreme inequality in agrarian asset distribution strongly distinguishes Latin America from East Asia and its broad-based growth and successful land reform experiences (Carter and Bardham 1996; Lipton 1993).

<sup>10</sup> However, the so-called 'second generation reforms' often include increased investment in human capital and social programmes to 'soften' the effects of the first generation of macro-economic reforms and structural adjustment programmes carried out in many developing countries in accordance with the 'Washington Consensus' from the 1990s.

<sup>11</sup> Property rights systems have a large degree of public-good characteristics. Rose (1994) points out that the creation of property right systems to a large extent depends on cooperation rather than on maximizing self-interest, something that cannot be explained by neither the neo-classical nor the new institutional economics within their assumptions about the economic rationality and preference structure of economic agents. See also Bates 1995. Deininger (2003b:24) writes: "*Establishing and enforcing a system of property rights to land has benefits that extend beyond the individual landowner. The benefits are to a large extent nonrival; that is, one person's enjoyment will not reduce others' ability to benefit from the system. However, it is possible to exclude some individuals or groups from access to these benefits. The broad distribution of the benefits associated with providing information about the assignment of property rights to land, as well as the enforcement of such rights, provides a strong rationale for government involvement. [...] Well-defined property rights reduce the need to expend economically valuable resources in defending claims and allow these to be used for productive investments instead*"

<sup>12</sup> See also the critical revisiting of the relevance of the concept of property rights for understanding inequality posed by Sikor and Lund (2008).

<sup>13</sup> Table 2, p. 366. According to these data from the late 1990s, Nicaragua is second only to Brazil in extreme inequality. Hoffmann and Centeno (2003) even comment that real levels of poverty and individual inequality are probably greater than is reflected in consumption data.

<sup>14</sup> Figures differ considerably between sources, but generally vary from one-third to half of the arable land area.

<sup>15</sup> For example, according to a property security index calculated by International Property Rights Alliance, Nicaragua ranks as number 100 out of 115 countries ranked according to their protection of property rights. <http://www.internationalpropertyrights.org/UserFiles/File/Results.pdf>, visited 06.08.08.

<sup>16</sup> Several studies identify an inverse relationship between farm size and labour absorption (see for example Carter and Barham 1996:1135). This inverse relationship means that with reconcentration of land from small-scale farmers to wealthier larger-scale farmers, the rural poor not only lose important access to land (their own, owner-operated land as well as rented land and land accessed through share-cropping arrangements), but also face reduced employment opportunities. Thus, from a broad-based growth argument, there is double reason to be wary about land policies that lead to concentration of land into increasingly fewer hands.

<sup>17</sup> Detailed study of one place provides conceptual tools and empirical findings that facilitate the interpretation of, and comparisons with, wider societal processes. A case-study approach is suitable for the in-depth investigation of concepts, perceptions, relations and practices in their local context. This was important for the first part of the investigation, which addressed the conceptual and perceptual aspects of land tenure (in)security and the relationships with titles, investments, credit access and land sales, and not least, inequality. In a way, the approach can be described as several case studies at different levels or spatial scales: Sometimes, Condega is considered a case – different from or similar to other municipalities in Nicaragua. Other times, the focus is on agricultural cooperatives – where one agricultural cooperative can be the object of a case study, e.g. to investigate the process of subdivision of plots or the use of different institutions to strengthen the property rights. And other times, a concrete conflict over land comprises a case.

<sup>18</sup> In the municipality of Condega, the number of rural families was estimated on the basis of information obtained during previous visits to the area, as well as through triangulation with information about the total municipal population (INIFOM webpage: [www.inifom.gob.ni/municipios/documentos/ESTELI/condega.pdf](http://www.inifom.gob.ni/municipios/documentos/ESTELI/condega.pdf)), the percentage of rural population, and a conservative estimate of an average of five persons per family. It was determined that the size of the sample in the study area of Condega Municipality, based on the estimated size of the rural population, should be 351 families in order to permit the desired confidence interval of five percent (Krejcie and Morgan, 1970, cited in Bernard (1994:77)).



## 2. Theories of economic development, property rights and inequality

“... property is not about things, but about relationships between and among persons with regards to things [Hohfeld 1919; Ellickson, 1991]. In short, to say that someone has a right to land is to summarize in one word a complex and highly conditional state of affairs that depends on the social, political and economic context. The place, the setting, the history and the moment, all matter.” (Moore 1998:33).

In order to understand the current debates and the arguments on which it hinges, it is necessary to turn to theories of economic development, property rights and inequality. *Classical* economics focused on the organization of society in such a way that each individual was free to seek his own maximum utility satisfaction. With the emergence of *neo-classical* economics, the focus shifted towards the determination of price, output and income distribution in the markets through supply and demand. In the neo-classical economic approach, prices, outputs and income distribution are mediated through a hypothetical maximization of income-constrained utility by individuals and of cost-constrained profits for firms employing the available information and factors of production.

*Structural* approaches are based on Marxist analysis, which emerged from Karl Marx's critique of contemporary classical political economists such as Smith and Ricardo. A key point in his critique was that the economic analysis performed by the classical economists was limited to capitalist institutions. An underlying premise for the Marxist approaches is the class character of society, and the opposed interests of different classes, which *conditions* the societal development. According to the Marxist approaches, the market is thus embedded in class relations. A unique feature of capitalism is that most people have to sell their labour (labour power) to the owners of capital and means of production in order to survive, and that the buying and selling of labour is regulated by market forces. Marx proposed that the study of the mode of production in specific societies comprised the study of a specific combination of productive forces (including labour power, technology, materials and land), social and technical relations of production (which include property, power and control relations governing society's productive assets, relations between people and the objects of their work and the relations between social classes).

Classical Marxist views of imperialism and colonialism argued that the countries of Latin America, Africa and Asia were underdeveloped because they were not (yet) capitalist. Later on, the argument was turned on its head by ‘dependency theory’ (Frank: *Capitalism and Underdevelopment in Latin America*) and ‘world system theory’ (Wallersteiner: *The Modern World System*), which argued that capitalism, not its absence, blocked development. These two intellectual currents strongly influenced Latin American studies during the 1960s, 1970s and 1980s. A third approach to the analysis of capitalism and development rejected the dichotomy between pre-capitalist and capitalist societies. Classical Marxism defines ‘mode of production’ as a social system stamped by the prevailing class relations of exploitation (in the way surplus is subtracted), coupled with the political and cultural institutions that facilitate this exploitation. The approach called ‘articulation of mode of production’ argues that rather than viewing the historical process as replacement of one system by another, different modes of production co-exist in time and interact with one another (Laclau 1971; Foster-Carter 1978). In this way, it was explained how free wage labour does not necessarily replace non-free labour, and that capitalism does not necessarily replace non-capitalist systems, as these well may co-exist for a long time. Within this line of thought, peasants sometimes struggle to preserve non-capitalist social systems to avoid capitalist exploitation (Scott 1985).<sup>1</sup>

These three post-1960 Marxist paradigms influenced scholars in developing countries tremendously. They provided a framework for criticizing the notion of a contemporary feudalism and the idea that history unfolds in linear fashion from feudalism to capitalism. Scholars from developing countries emphasized the contradictory nature of agrarian development and the zigzag character of capitalist transitions in post-colonial countries (Lukes 1974).

### **Markets in the post-colonial world**

The central significance of the theoretical construction of the market as the key mechanism for regulation of production and reproduction in society is one of the most significant distinguishing characteristics of classical and neo-classical economic theory. In his book *The Great Transformation*, Polanyi (1944/2001) analyses the role of the market in the transformation of society. He points out that the tradition of modern economic thought – classical as well as neo-classical economic theory – rests on a concept of the economy as a system of markets where buyers and sellers are free to buy and sell, and where the markets automatically react to one another and adjust

supply and demand through the market mechanism, and thus remain – over the long term – in equilibrium.

Polanyi (1944/2001, here also interpreted from Dore 2006) argues that the market is embedded in wider societal structures. Therefore, Polanyi argues, the self-regulating market is a utopian myth. According to Polanyi, an embedded economy is not autonomous, as assumed in classical and neo-classical economic theory, but subordinated to social relations and politics.<sup>2</sup> Following Polanyi, Dore (2006:22) uses the dynamics of price formation to illustrate the difference between capitalist and non-capitalist societies: “*Whereas in capitalist societies prices are largely regulated by market competition among companies, in noncapitalist societies prices are largely regulated not by market forces, but by custom, social hierarchy, kinship, power, and chance.*”<sup>3</sup> The reading of Polanyi (Polanyi 1944/2001) and Dore (2006) as well as the mode of production literature (Laclau 1971; Foster-Carter 1978) has inspired me to question the way the market works – in the specific setting of my fieldwork and with special emphasis on the land market.

### *Neo-liberal policies for economic development through property rights formalization*

The neo-liberally inspired approaches to economic development generally argue in favour of a policy package that helps eliminate market distortions and secure property rights through titling, thereby making property rights to land more easily marketable. Furthermore, in the 1990s, they were often coupled with a structural adjustment policy to reduce public expenditure and favouring private solutions over public. They generally argue in favour of liberalization and privatization in order not to cripple private initiative and risk-willingness for investments, which is seen as the primary motor of economic development. The World Bank Country Assistance Strategy (CAS) for Nicaragua, which includes helping Nicaragua graduate from a transition to a market economy, reflects the influence of the mainstream policy-package, among other trends: “*Rural development strategy in the CAS includes (i) encouraging well functioning land markets, improving rural financial services and agricultural productivity, and stimulating non-farm economic activity; (ii) strengthening rural municipalities; (iii) strengthening environmental protection; and (iv) legalizing indigenous property rights*” (World Bank 2002b:4-5).

Through the market mechanism, this policy package is expected by its proponents to create pro-poor growth and provide a more level playing field over time.<sup>4</sup> This expectation is based on the idea that smaller farms hold a fundamental competitive-

ness advantage over larger farms, mainly due to less transaction costs in contracting and controlling labour in family-driven farms as opposed to larger farms employing wage labour. This idea, also called the Inverse Relationship (IR) between farm size and output per hectare, is generally accepted in the econometric literature, also beyond the neo-classical schools of thought (see for example Lipton 1993). In the Nicaraguan context, studies have shown that small farms have 10 times higher area-productivity than larger farms (Deininger and Chamorro 2001, mentioned in World Bank 2002c:30-31). It follows that this advantage of the smaller farms should also manifest itself in land markets. Therefore, according to this reasoning, small-scale farmers and rural poor are expected, with a better functioning land market, to gain increased access to land due to the smaller-scale farmers' relative competitive advantage over larger-scale farms. Why, then, does this not seem to happen in real life, where concentration of land is happening (see for example Carter and Chamorro 2000 on land market dynamics and concentration of land in Nicaragua)? The market-oriented answer is that market distortions persist, often as the result of too much regulation by the state.

### *Markets and property rights*

In a rural setting, land tenure security is seen by the neo-classical property rights theory as a key element *sine qua non* investments in land are unlikely to be obtained, agricultural development is jeopardized and there is likely to be a short-term 'mining' approach to environmental resources. Parts of the basis for this view come from classic scholarly work on agrarian development and natural resource management (for example Boserup 1965). Other elements come from the so-called Property Rights School (Demsetz 1967; Johnson 1972). Put simply, this school argues that stability and clarity of property rights, including their expression in land titles, are necessary for economic efficiency, both through creating incentives for the landowner to invest and ensuring a long-time horizon to allow for long-term investments to be carried out; as well as through the facilitation of land market transactions that are expected to lead to economically optimal distribution of rights, optimal farm sizes, etc.

Economists from the Property Rights School argue that as a resource becomes scarce, the value will rise, as will the competition for owning the resource, and thus it becomes more important to define boundaries clearly and have them enforced. With scarcity, rising prices and increased level of conflicts, it becomes efficient to develop clear property rights systems: Although their development and maintenance is costly, they are less costly than the continued conflicts.<sup>5</sup> The titling of (individual) property rights is presented as a key characteristic of a land tenure system that works flexibly

and allows for sales and credit markets to develop, as well as incentives for investments through increased tenure security. For decades, it has been argued that land titles are needed to reduce or eliminate any uncertainty that landowners might have regarding land ownership (see Feder and Feeny 1991; Feder *et al.* 1988; World Bank 1999).<sup>6</sup> Furthermore, it is argued that property rights systems that do not include alienation are ill-defined and lead to inefficiency, as they do not allow the market to distribute the land to the most efficient user (e.g. Demsetz 1967; Johnson 1972).

Based in a neo-classical economic approach, the Property Rights School sees the development of property rights and their specification, documentation and individualization as a linear, evolutionary process: from ‘open access’ or the absence of property rights, towards increasingly more individual and specified property rights.<sup>7</sup> The individual, exclusive and tradeable property rights are seen as the end-point of an evolutionary process of rights and a situation worth striving for that has not yet been reached in developing countries (Demsetz 1967; de Soto 2000).

In sum, the Property Rights School viewpoint is based on three assumptions:

- that rights must be secure and exclusive in order for the property owner to have incentives to carry out long-term investments;
- that rights have to be tradeable, as alienability guarantees that even the fruits of long-term investments will be harvested by the investor (owner) in case of sale, through the reflection of the investment in the price of the land; and
- based on the ‘Inverse Relationship’ (IR) between farm size and area productivity, which creates a fundamental competitive advantage for smaller farms over larger farms,<sup>8</sup> that land over time will tend to be distributed to the smaller-scale farmers.

The focus of the so-called ‘Property Rights School’ (or what Platteau has catchingly called ‘The Evolutionary Theory of Property Rights’) on rights as having to be individual, exclusive, titled (and registered) and tradeable in order to be efficient and secure, has been questioned by many (Lemel 1988; Barrows and Roth 1989; Berkes 1989; Atwood 1990; Larson and Bromley 1990; Ostrom 1990; Place and Hazell 1993; Place, Roth *et al.* 1994; Platteau 1996; Gould 2006). It is now widely recognized that it is too simplistic and ahistorical to suggest that increasing land scarcity “leads to better definition of rights, which are then traded in sales and rental markets that are equally accessible to all players” and that “The outcome should be the allocation of land to the most efficient use and users” (Binswanger *et al.* 1995:2664), as proposed in the earliest writings of The Property Rights School. The same authors (and many

others) argue that the distribution of rights and their concentration is a result of power relations (see also Platteau 1996; Deininger 1999; Pagiola 1999; Deininger 2003; Deininger *et al.* 2003; Bromley 2008).

As mentioned in the introduction, neo-structuralism, takes its point of departure in the view that an unequal distribution of land (and other assets) tends to reproduce itself with negative consequences for economic growth and distribution of wealth (Lipton 1993; Carter and Barham 1996; Carter 2006). This position also argues that due to the initial inequalities, the different factor markets do not function neutrally. Rather, they function in ways that express the existing power relations, which are to the benefit of the larger-scale and economically better positioned farmers. Therefore, based on this analysis, it is not enough to 'leave it to market forces'; more active state involvement is usually needed to ensure broad-based growth in land access and the value of agricultural production.<sup>9</sup> Carter and Barham (1996:1143) express it this way:

"The expectation that land market reform policies can shift land to the rural poor by facilitating interclass land market transactions relies on the presumption that the rural poor do not suffer a fundamental competitive disadvantage in the sphere of production and marketing which affects their potential for participating in the land market. If such a large competitiveness gap exists, then neither politically feasible progressive land taxation, nor putting the rural poor on an equal transactions cost or mortgage capital basis with the better off, will achieve the desired redistributive effect. They will still be unable to earn sufficient returns to justify paying the market price for the land."

It is important to stress that the neo-structural view agrees with the mainstream or market-friendly view that secure property rights, as well as improved access to credit, are essential for improving the situation of poor farmers (e.g. Lipton 1993; Carter 2006; Kay 2006). An important difference between them is their respective views on whether structural limitations prevent the poorest farmers from participating in and benefiting from credit access, for example, i.e. in the sense that a minimum threshold of land must be owned before a positive effect of titling is observed (see for example Carter and Olinto 2003).<sup>10</sup>

Along the same line of thought and also with a focus on property relations but from a background of Neo-Institutional Economics, Bromley (2008:26) comments: "*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 regarding the universal prescription of land titling for tenure security and pro-poor growth.

### **Do titles strengthen tenure security?**

Another frequently used justification for land titling and land administration projects is that they increase poor people's access to secure land tenure (Deininger, Zegarra *et al.*, 2003). It is frequently argued that titles do provide tenure security and growth, especially for the poor. In a presentation from 2004, de Soto shows an example of the privatization and sale of the Peruvian Telephone Company (PTC) in the 1990s, which had a stock-market value of 53 million dollars (de Soto 2002:2; de Soto 2004:8). However, it was impossible to sell to foreign investors, as the property title and the Peruvian property law were unclear. A team of lawyers was called together, documents were rewritten and legal reforms made, and three years later the PTC was sold for 2 billion USD, 37 times its previous market valuation. *"That's what a good property system can do"*, states de Soto and ends this case story by emphasizing the importance of legal tenure security for both owners and potential buyers. From this success story, he goes on to argue that the poor and their enterprises in developing countries are undercapitalized, just as the PTC was before it was given a 'good title'. *"Without property records and representations, their assets remain financially and commercially invisible: they are dead capital"* (de Soto 2002:2).

Several influential studies have found that land rights should preferably be represented through a land title that is recognized by the state through inscription in a property registry and cadastral information system, in order to obtain more tenure security as well as higher land prices, credit access and investment incentives (e.g. Feder, Onchan *et al.* 1988; Stanfield 1990; Mendelsohn 1994; Alston, Libecap *et al.* 1996; Feder and Nishio 1998; Alston, Libecap *et al.* 1999; de Soto 2000; Deininger 2003b). The 'security rationale' rests on three expected outcomes of land titling (Feder, Onchan *et al.* 1988; Feder and Feeny 1991).

- First, the demarcation or clarification of physical boundaries of the property and associated property rights provides a record of the property rights at any given point in time, on the basis of which the state can intervene in any property right conflicts that might arise.
- Second, registration of property and cadastral information provides – in theory – easily accessible and reliable information to the parties in the land market. For example, it provides a potential buyer with recognized proof that he/she is



dealing with the recognized owner of the plot of land he/she wants to buy.

- Third, the existence and functioning of a title-issuing entity and related institutional setups are expected to ensure the enforcement of those property rights (Alston, Libecap *et al.* 1996, see also Lemel 1988). According to this line of argument, land titles are seen as a key element for tenure security through state recognition of property rights and enforcement in case of their violation.

These three elements, the demarcation, the registration and expectation of enforcement, form the basis for enforcement of property rights, but they are also key elements for the functioning of the land market. Finally, it is expected that the increased clarity and security of rights will reduce the frequency of land conflicts and ease conflict resolution, thereby saving valuable resources for society as well as individual property rights holders.

In addition to the benefit of the increased tenure security itself, proponents of titling and market liberalization assume that three additional benefits will be gained from the clarity and security of land rights:

- Fourth, development of a functioning land market will be achieved through the tradeability of rights, represented in formal land tenure documents that are inscribed in a central property registry. Through the development of a dynamic land market, it is expected that land will be re-distributed to the most efficient producers – again defined as those to whom the piece of land is most valuable, or in other words, those who are willing to pay the highest price.<sup>11</sup>
- Fifth, better access to formal credit is assumed to be the outcome of titling of individual, exclusive and tradeable property rights, and their inscription in the property registry. Feder *et al.* (1988), for example, argue that titling leads to lower transaction costs (for obtaining the credit and lower costs of recuperating the collateral in cases of foreclosure) and smaller risk due to the increased clarity of rights and their recording in the registry (increased security from the point of view of the credit supplier). It also follows that titling will create more supply of credit, which also reduces its costs for credit users (e.g. Feder, Onchan *et al.* 1988; Feder 1999).
- Sixth, the increased security of property rights as well as the increased price through the increased security and increased tradeability are argued to create incentives for the owner to make long-term investments in the property. Only under secure tenure conditions can the owner be sure to reap the fruits of his or her labour and investments on the land (Feder, Onchan *et al.* 1988, Alston Libe-



cap *et al.*1996). This argument is often extended to also include positive environmental effects of land titling and increased tenure security (Wachter 1992). The credit effect of titling makes it more possible for the landowner to obtain capital with which to make such investments (see also World Bank 2002c).<sup>12</sup>

### *Neo-structural approaches to property rights and property rights reforms*

The assumptions upon which the neo-liberally inspired or mainstream policy proposal is based have also been questioned by scholars from many lines of thoughts, including the neo-structural and the new institutional economists. For example, one key assumption that is challenged is that the institutions responsible for recognizing the validity of a land title actually are able to take action to enforce the property rights. For enforcement to be efficient, there must be transparent, easy and equal access to these institutions – even for poor, rural farmers – for enforcement to be efficient (e.g. Lemel 1988).

The proposal to use the market to allocate resources depends heavily on the state institutions and enforcement for the functioning of markets, as the following quote from a World Development Report shows:

“... good governments are essential for well-functioning markets. Markets operate within a framework determined by institutions, and they work only as well as those institutions do. They work best, therefore, when a capable state maintains order within the rule of law, provides effective regulation, macroeconomic stability and other public goods, and corrects other market failures.” (World Bank 2006:226).

Furthermore, there must not only be a high probability that any violation of the rights will be sanctioned, but also that the sanctions must be sufficiently strong to make property rights violations an unrewarding crime (Ostrom 1990; Bromley 1991). It follows that land titles are likely to have less importance for tenure security where enforcement is repeatedly lacking, where the formal juridical system is unfair or where there is a lack of conflict-resolution mechanisms, or where there is simply a general distrust in the formal rights and enforcement system (Pagiola 1999, see also Roquas 2002).

As the work of the von Benda-Beckmanns (1994; 2001a) shows, there are many additional resources besides formal titles invoked to achieve the recognition of property rights by (diverse) authorities. For example, the type and amount of economic resource-

es, information and contacts available to a landowner may influence the outcome of a conflict over land rights. Power relations and fear may additionally prevent people from soliciting help with enforcement.<sup>13</sup> Another complicating factor is that power relations, asymmetric information and opportunistic behaviour may influence the way in which institutions function, especially where there is corruption or abuse of government positions.<sup>14</sup> Furthermore, historical and on-going land invasions by landless affect the (in)stability of rights, as does the inability or lack of willingness of the state (legal system and enforcing authorities) to resolve the land conflicts created by these invasions. Under these circumstances, land titles alone cannot be assumed to create security because land rights are not always enforced, nor are they enforced equally for all members of society (see also Benda-Beckmann 2001a; Lund 2002; Lund 2006).<sup>15</sup>

This touches upon a central paradox in neo-classical economics and neo-liberalism: On the one hand, a strong administration and control system is expected to be in place to ensure the functioning of the market, since the neo-liberally inspired policies rely heavily on the ability of the state to enforce rights and to ensure justice (see Nugent 1993; Jansen and Roquas 1998).<sup>16</sup> However, on the other hand, the state is supposed to reduce spending and privatize according to structural adjustment programmes in order to allow the market to distribute the goods. The role of the state as provider of the frame within which the property rights system and the market works is gaining respect anew (Deininger 2003b; Kay 2006; Mitchell 2007; Bromley 2008).

Furthermore, Li (2001) points out in a critique of the neo-liberal approach to the study of societal changes and their expression in the land market, that by only looking at individual decisions and actions, the approach may overlook the structural elements that make many individuals reach the same decisions, for example about land sales.<sup>17</sup>

Bromley emphasizes how markets must function to hold down transaction costs, including costs of obtaining information, costs of negotiating contracts among market participants, and costs of enforcing contracts (Bromley 1997:1386). This is one of the elements that make the registry system a key for the development of a dynamic land market. In Platteau's critique of the 'evolutionary theory of property rights' (1996), he points out that transaction costs may not necessarily be reduced in a system of formal private rights, when compared with a traditional property rights system.<sup>18</sup>

Furthermore, due to the unequal distribution of wealth and resources among the different actors, these will be able to afford different levels of information. This

allows the possibility of cheating, and is likely to influence the market outcomes by benefiting the best-informed actors (Nabli and Nugent 1989; Kirk 1999). If transaction costs are indeed increased rather than decreased by titling and involvement in a state-sanctioned registry system, there is likely to be a widespread process of ‘in-formalization’ or what I call ‘para-formalization’ of property rights, in that neither are formal title deeds updated after each land transaction, nor is the information in the cadastral system and registry. Poorer landowners will especially be vulnerable to this situation. Consequently, there may well be a situation of co-existing parallel formal and informal land markets.<sup>19</sup> If this is the case, the sustainability of any investment in land administration projects is severely challenged.

After decades of theoretical discussions and empirical studies, the neo-structural critique has to some extent been included in some mainstream policy papers about land tenure issues, thereby making the divide between the two approaches less clear-cut. The discussion about property rights and tenure security increasingly takes into consideration the diversity of empirical findings. First of all, it acknowledges that property rights do not necessarily have to be individual; they could also be collective and still be efficient and associated with efficient use of natural resources (see for example Ostrom 1990; Migot-Adholla, Hazell *et al.* 1991; Bruce and Migot-Adholla 1994; Deininger 2003b). Secondly, property rights do not necessarily have to be exclusive, as there are natural resources and natural resource uses that are not characterized by easy exclusion (Berkes 1989, Ostrom 1990, Deininger 2003). Likewise, there is an increasing acceptance in organizations that previously represented a neo-liberal ‘Washington Consensus’ that land rights do not necessarily have to be tradeable, as other mechanisms for land access and distribution are shown to be of great practical importance.<sup>20</sup> Finally, it is acknowledged that tenure security may stem from multiple sources and not always be obtained through land titles alone, and the risk of leaving the poor landless through the revitalization of land markets is recognized (Deininger 2003b).<sup>21</sup>

The neo-structural approaches have an explicit focus on the structural elements in societal changes, thereby going beyond the study of formal rights and formal policies of equal rights, for example, into the implications of material differences in wealth and resources, and the implications of these inequalities for the ability of different actors (from different positions in the societal class structure) to make their rights be respected. The legal pluralism approach highlights the specific aspect of the differences in resource endowments (understood in its broadest sense to include education, information, social networks, and positions of influence, natural resources and economic

wealth) and how these differences can influence the specific outcome of a conflict. It does not just ask what formal rights different parties have, but also what resources they have and what position they are in to influence, negotiate and re-interpret the dispute to their advantage. Thus, the legal pluralism approach contributes with a stronger focus on agency than do structural and neo-structural approaches.

### **Competing institutions and forum shopping**

The growing body of literature about legal pluralism argues that in practice, there is no such thing as a single, all-encompassing legal framework that regulates a certain theme, because overlapping laws and rules often co-exist. The plurality of regulatory frameworks provides well-informed actors a ‘choice’ between regulatory frameworks, or between fora, each regulating according to certain frameworks, interests and power structures. Furthermore, regulations and laws are not just about the written legislation, but to a large extent as much – or more – about interpretations of the law(s), negotiations as well as persuasion (Rose 1994). Thus, according to a legal pluralism point of view, rights are not just about titles, but as much about the ability to persuade the relevant audiences and authorities that a certain dispute has to be settled within one regulatory framework and not another, or by this forum, and not that one (Benda-Beckmann 1991; Lund 2006). Where multiple, competing institutions coexist and compete for authority through their ability to sanction and settle disputes, some actors may be successful in ensuring that the dispute is attended to by a forum that gives preference to their point of view. This way, the plurality of legal orders and the ability to ‘forum shop’ makes an already uneven playing field slope even more toward a disadvantage for the weak (Broegaard 2009).

This approach is complementary to the neo-structural approach in that it also focuses on inherent inequalities in society and how these are used to reproduce – or change – positions of power, influence, and material wealth through the way the different bodies of law and custom, and different fora, distribute or concentrate wealth, including property rights to land. This has methodological implications, as for example discussed in detail by Long (2001), who argues for a more context-specific conceptual framework, going into a detailed analysis of practices of enforcement, negotiation, titling etc. in a specific empirical context.

Power structures and authority are hardly discussed by neo-classical economics, which implicitly operates with a separation of economic and political processes, and thereby in effect reduces the importance placed on social networks, patron-client relations

as well as violence and threat. Power relations are argued by sociologically inspired scholars to have fundamental influence on economic processes, and institutions and their development are often seen as consequences of power struggles and vested interests (Lukes 1974; Thiesenhusen 1995; Platteau 1996; Jansen and Roquas 1998). Likewise, rights and laws are seen as being embedded in the structures and practices of power and authority within society (Peters 2002; Lund 2009). Power relations matter very much in land transactions, whether in inheritance or sales and even more obviously in land conflicts, as Nuijten (1998) shows for Mexico, Roquas (2002) for Honduras, and Dore (2006) in a historical analysis for Nicaragua. Inequality – both of distribution of assets and opportunities – and power relations are thus seen as important for the eventual outcome of negotiations and transactions (Dorner 1992; Berry 1993; Rose 1994; Thomsen 1994; Peters 2004). Peters stresses the impact of inequality on outcomes of negotiations, when discussing the fluidity of rights and who benefits from that fluidity (Peters 2004).

Peters (2004:270) shows how “*processes of exclusion, deepening social divisions and class formation*” are at play in competition and conflicts over land in which land reform and titling programmes are involved. She continues that “[...] *widespread appropriation by elites must be situated within broader processes of social inequality*” [including corruption and local-national-global linkages] (ibid.: 271). As a result, one major challenge is to find how more attention can be paid to addressing these inequalities – both for outcomes and opportunities, including access to information, economic wealth and political connections – which further contribute to tenure insecurity irrespective of the legal tenure situation. This focus also highlights the importance of a ‘relational concept of property’ (see for example Macpherson 1978; Bromley 1989; Rose 1994; Roquas 2002).

The working of the juridical system in Central America is sometimes called a system of ‘class justice’ in that the necessary access to the protection of one’s rights (including property rights but not restricted to property rights) is dependent on one’s social class, economic wealth and political influence or contact to people having such influence. As a result, the legal system maintains the class character of the state (Roquas 2002). However, I want to stress the paradoxical nature of the judicial system, which both serves the ruling class and imposes inhibitions upon the activities of the rulers, in order to maintain the legitimacy of the system (Lukes 1974; Thompson 1987; Roquas 2002).<sup>22</sup> This paradox not only makes people despise and fear having anything to do with the juridical system, but at the same time makes them turn to the courts when all alternative conflict prevention or conflict resolution mechanisms have been exhausted.

## Inequality

The previous discussion has revolved around the relative importance of efficiency and equity. As a result, it is interesting to look more closely at theoretical understandings of inequality and its importance for how institutions work.

The World Development Report 2006 on equity and development defines equity as

“...individuals having equal opportunities to pursue a life of their choosing and be spared from extreme deprivation in outcomes” (World Bank, 2005:2). It argues that “...high levels of economic and political inequality [...] tend to lead to economic institutions and social arrangements that systematically favour the interests of those with more influence. [...] [A]dverse effects of unequal opportunities and political power on development are all the more damaging because economic, political and social inequalities tend to reproduce themselves over time and across generations” (ibid.).<sup>23</sup>

The above quote highlights two aspects of equality: Equality of outcomes, which is often translated into terms of distribution of economic wealth and natural resource endowment, and equality of opportunity to pursue a desired life (cf. Roemer 2005).

The focus on ‘equality of outcomes’ in terms of distribution of economic wealth and property rights is familiar for the neo-structural scholars with their analysis of unequal distribution and the recreation of unequal outcomes through societal structures. However, some scholars argue that a too strong focus on equality in terms of outcomes fails to hold individuals responsible for their actions: For example, if people do not put much effort into improving their situation or carry out imprudent actions that reduce the value of their assets, or if they act wisely and put in much effort to improve the value of their assets (cf. Roemer 2005). This critique resembles the neo-liberally inspired critique of state involvement in distribution of property rights, arguing that it increases tenure insecurity and thus reduces incentives to invest in land improvement and productive investments.

The pro-poor character of titling projects (that especially the poor will gain from titling) is repeatedly mentioned as a *raison d'être* for titling and land administration projects. For example, Deininger (2003b) includes concerns about the inequality of distribution of land usually expressed by theorists associated with the neo-structural approach to property rights issues:

“With many countries in Latin America having undergone significant economic liberalization, second-generation reforms will be required to tackle more deeply rooted structural problems, including the unequal distribution of land, if persistent poverty and destitution are to be overcome. Implementing such reforms will require formalizing the often highly informal property rights held by the poor; improving the security of tenure, and thus the functioning of land rental and possibly also of sales markets; addressing the legacy of reforms that were only partially successful; and making further efforts to redistribute land and non-land assets to the poor.” (p.4).

Concerns about unequal distribution of land and about the influence of power relations on titling and the functioning of the land market is gaining wider acceptance. For example, almost two decades ago, Binswanger, Deininger *et al.* (1995) observed that land market transfers can reduce equity and efficiency, if economic and institutional distortions encourage accumulation of land among large landowners. This notwithstanding, it can be questioned whether the implications of an uneven playing field with regards to the unequal opportunities for different groups of actors are taken fully into account in economic analyses and policy recommendations. This has to apply even in settings where there are high degrees of inequity and obvious problems related to the use and abuse of power and office.<sup>24</sup>

The other aspect of inequality proposed by Roemer (2005) is related to the inequality of opportunities. This could include unequal access to institutions and authorities, including political organizations, which offer an example of unequal opportunities to defend one's rights.<sup>25</sup> Inequality regarding information can also create unequal opportunities through its creation of uncertainty, misinterpretation and manipulation of the economic and legal systems (Platteau 1996; El-Ghonemy 1999; Ghimire 1999). In other words, not all actors have the same information nor do they have equal access to institutions that recognize their rights and enforce them. As a result, the legal pluralists (and new institutionalists) find it relevant to consider using non-market instruments (typically institutional) to help guide or correct economic behaviour, flows or information, and to reduce transaction costs.

The focus on ‘equality of opportunity’, however, is acknowledged to require active state involvement to level the playing field through compensation of the deficiencies in circumstances that an individual lives under (Roemer 2005). Roemer uses the term ‘circumstances’ for those elements that affect outcomes but which individuals do not choose for themselves, such as educational level, social background, affluence



of parents, ethnicity etc. He proposes that equality-enhancing policies should aim at making sure that opportunities are equal for all, even though circumstances differ. As such, the role of equity-enhancing policies is to compensate for less favourable circumstances, so that outcomes depend on effort rather than on circumstances.

Neo-classical and neo-structural scholars differ with regard to what they include as 'circumstances' that cause unequal opportunities. The more neo-structurally oriented scholars typically include much more in 'circumstances' to be compensated for in order to provide equal opportunities. Within the neo-classical or neo-liberal line of thought, inequality of wealth and resources are mainly seen as a result of different levels of effort invested in growth and development. This follows to a great degree from the view that to a large extent the rewards from individual investments are what motivate investments. Therefore, the reduction of individual gains in order to increase equality (as is the case for example with many forms of taxation) is seen as growth-reducing in that it cripples the incentives for each individual to invest and create growth. However, it has to be mentioned that there is recognition that too high levels of inequality are not seen as being attractive. If inequality reaches a certain point, it can become 'economically inefficient', causing protests and possible revolutions led by the poor (see for example Schiff 2004).

Seen from a neo-structural point of view, inequality is understood as a result of structural elements in society, including structures of distribution of economic wealth, as well as differences in circumstances and opportunities. According to the neo-structural point of view, these inequalities tend to reproduce themselves and intensify over time. The identification of ways to improve 'opportunities' for disadvantaged groups of actors is thus a major focal point for these scholars, as inequality is considered to be undesirable not just on moral grounds, but also in relation to long-term growth and stability.

Unequal enforcement of laws, which is often related to unequal distribution of wealth, presents another example of unequal opportunities. Enforcement cannot be taken for granted due to high transaction costs that would make it economically inefficient to ensure complete control and enforcement of all rules and laws, and because of opportunistic actors. Consequently, the ways that enforcement is organized and the associated costs become serious topics for investigation. An unequal enforcement of laws, as Barrios and Broegaard (2007) have shown, often means that it is mainly the poorer and less well-connected people who 'suffer' from the unequal enforcement of law.



The following quote from the World Bank Policy Research Report on land policy also underscores the importance of having economic resources to gain access to enforcement by the state or to provide self-enforcement. This acknowledges the impact of inequality, especially where government institutions ‘do not function well’. This also relates to what Roemer (1995) calls unequal opportunities, and Acemoglu, Johnson *et al.*’s (2002) reference to those modes of production that are “*working through political and economic inequality*” (p.4). At the same time, it gives a hint about why policy reforms that can successfully protect the property rights of the poor may encounter resistance among the political elite. This is because property rights prevent resource dissipation, as explained below:

“Public establishment of property rights will prevent resource dissipation, providing particular benefits to the poor” [...] “The benefits individual landowners derive from public provision of property rights will be proportional to the amount of land they own. At the same time, in situations where government institutions do not function well, the ability to involve the powers of the state and to resort to self-enforcement will be highly correlated with individuals’ wealth. For this reason, establishing institutions to systematically protect and enforce property rights will generally provide high benefits to the poor and vulnerable.” (Deininger 2003b:23-24).

The World Development Report 2006 (WDR) on inequality discusses how inequality and power abuses are often *mentioned* in development projects and policies, but that these projects and policies still are often implemented as if they operated in an ideal world, with corruption and uneven playing fields being 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 works – in favour of some, while at the expense of others. To ignore this reality would either be naïve, or would in effect approve of the *status-quo* operation of markets and legal systems. As the WDR pinpoints:

“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” (World Bank 2005:228).

Some scholars working on land tenure issues point to a relationship between inequality of assets (or wealth or initial endowments), inequality of opportunities and inequality of outcomes, even if they do not use these terms. For example,

Platteau (1996) pinpoints that the equity problem is hard to overestimate, and outcomes that create increasing inequity are also likely to be inefficient. Studies on inequality in initial endowments find that this leads to subsequent unequal and low economic growth on a larger scale (see for example Deininger 2003b<sup>26</sup> and Platteau and Baland 2001; see also Acemoglu, Johnson *et al.* 2002 for a historical analysis). Deininger highlights the importance of equitable distribution of land for the provision of public goods as well as for economic wealth in general:

“A second, complementary interpretation of the link between inequality in initial endowments and subsequent growth is that high concentration of land either reduces the incentives for provision of public goods such as infrastructure and irrigation or biases the provision of such goods in a direction that is more useful to the landlords. [...] In most cases the total surplus to be derived from land and associated public goods tends to increase with greater equality in the asset distribution.” (Deininger 2003:20).

Along the same line of thought, Bromley (1989) criticizes a “...*model of institutional change that seems to ignore as mere transfers the distributional implications of new institutional arrangements created by sheer imbalance of economic power*”. Likewise, Bardhan argues that norms and values, including views of justice, influence transaction costs (for example through opposition), and therefore “...*the question of efficiency-improving institutional change cannot really be separated from that of redistributive institutional change*” (Bardhan 1989). Furthermore, the inequalities in wealth and resources of the different actors can reasonably be expected to influence the level of information – and contacts – that each can afford. This is likely to influence the *way* the market works, benefiting the best informed actors (Nabli and Nugent 1989) by giving them the best opportunities.<sup>27</sup>

With regards to gender inequalities, it is important to note that unequal opportunities also often follow gender lines, as shown for example by Dore (2006), Varley (2007) and Roquas (2002).<sup>28</sup> As Varley (2007) argues, formal equality of property rights is not a sufficient guarantee for women’s rights to a home or land that they share with their male partner. The distinction between having a formal right to property and being able to exercise that right is crucial to remember. In Pauline Peters’ words: “... *the specification of rights in law is one thing but these have to be assessed in relation to the capacity for different categories of persons to put these rights into effect*” (Peters 2002:56).

### Theoretical and analytical framework

In much of the land tenure literature, tenure security is equated with having land titles. It is also often assumed that the lack of titles can be used as an indicator of a situation with an absence of tenure security.<sup>29</sup> This was especially true for the economically oriented land tenure literature up to the late 1980s and early 1990s (e.g. Feder, Onchan *et al.* 1988). While there has been growing recognition of the importance of other elements than just titling for creating land tenure security (see for example Berry 1993; Rose 1994; Benda-Beckmann 1995; Li 1996; Benda-Beckmann 2001b; Benda-Beckmann 2001a; Deininger 2003b; Deininger, Zegarra *et al.* 2003; Nuijten 2003c), 'tenure security' in much of the economic land-tenure literature, as well as in donor-funded project documents, is still used to describe situations with legal title deeds, and using the term 'tenure insecurity' to describe tenure situations without such documents (e.g. Feder, Onchan *et al.* 1988; World Bank 2003b).<sup>30</sup>

As briefly mentioned in the introduction, the re-conceptualisation of land tenure security brings into the debate the fact that lack of individual land titles does not necessarily mean that the land tenure is insecure. Likewise, individual, formal titles may not considerably strengthen tenure security (Lemel 1988; Barrows and Roth 1989; Atwood 1990; Place and Hazell 1993; Place, Roth *et al.* 1994; Gould 2006).<sup>31</sup> This argument is based on findings that formal land titling does not automatically improve tenure security, and that non-titled land does not necessarily suffer from tenure insecurity (Coles-Coghi 1993; Place, Roth *et al.* 1994; Jansen and Roquas 1998).

Regardless of the legal situation of a piece of land, it is the *perceived* tenure situation that forms the basis upon which the landholder makes decisions and takes action (Migot-Adholla, Hazell *et al.* 1991; Place, Roth *et al.* 1994; Jansen and Roquas 1998; Sjaastad and Bromley 2000). The active decision of the landowner to make (or not make) investments in the land has to do with the preferences of the investor (as well as his or her possibilities), and is based on a subjective perception of a wide variety of elements influencing the landowner's situation (preferences, possibilities, constraints, norms, values, risks, limited information etc.). Consequently, the *perceived* element is stressed in this report, because the perception of a situation may be different from 'objective' measurements of, say, the legal status of the land, the likeliness of land invasions or land conflicts, just to mention a few examples. This focus on perceived tenure security runs parallel to the comments by Sjaastad and Bromley (2000) stating that the perception of a likelihood of loss or violation of a right may be different from that likelihood itself. The main reason for this situation is that people assume that moral or socially defined rights exist and they behave accordingly, regardless of

whether these are in accordance with legally defined, formal rights. Freedon (1991:5) continues:

“...we could, for instance, happily adopt the view that a belief is false and still devote analytical attention to the *fact* that the belief exists and discuss the impact of that fact on both theory and practice. Whether rights *exist*, or are figments of the human imagination, or are what lawyers call legal fictions, is thus analytically irrelevant”.

Similarly, Roquas (2002) stresses the adequacy of what she calls a relational concept of property. Along the same lines, Boholm describes risk as a relational order for analytical purposes. Risk – or insecurity – can fruitfully be divided into objective and subjective risk (Boholm 2003). Objective risk is a phenomenon and causality in the natural world that can have measurable harmful effects, whereas, in contrast, subjective risk includes people’s beliefs and values:

“Subjective risk acknowledges that people’s beliefs and opinions often deviate from such scientific assessment. People understand and judge risk in terms of emic, locally defined values and concerns. [...] The psychometric model of risk perception involves dimensions such as knowledge, degree of novelty and familiarity, degree of personal control and catastrophic potential. [...] Statistical probability [...] has limited relevance for explaining how people think and act in situations where there is an element of uncertainty” (Boholm 2003:161).

To overcome the problem of a strictly *subjective* measure of perceived tenure security I use land tenure security rankings (see a description of this method in Annex 1), where I can show statistically that informants agree about categories of different levels of tenure security. The perceived tenure security category is a measure of people’s perception of the likelihood of losing their rights (or having them violated). It is based on a relative scale, ranging from high to low, and it is anchored to the concrete context they know and refer to.<sup>32</sup>

The definition of the concept of tenure security as the perception of a low likelihood of losing a bundle of specific rights or having them violated is interpersonal in the sense that it is based on experiences of social recognition of property rights and the enforcement of those rights and handling conflicts that are common to the rural population in the case study area. The elements used to operationalize perceived tenure security stem from repeated tenure security rankings that identify the elements that

local informants (selected to obtain maximum variation) relate to different degrees of land tenure security or insecurity. The tenure security rankings ensure, through statistical tests of the results, that the identified elements and their relation to tenure security are based on widely shared experiences among the local population.

Parts of the new institutional economics reach the same conclusion regarding the importance of including the perceptions of the landholder in order to understand the rationale behind his/her decisions (see for example Sjaastad and Bromley 2000). Their argument is that changes in the perception of the landholder will lead to changes in expectations about the future income streams.<sup>33</sup> As such, the concept of perceived tenure security may help understand farmers' decisions to carry out investments in land – or not to do so.

Given the previous theoretical discussion, this study attempts to provide a broader understanding of the elements involved in securing access and claims to land than is possible with a strictly legalistic approach by applying the concept of tenure security as seen from the point of view of the landholder. It is worth highlighting that the *perceived* tenure security may not necessarily coincide with the *legal* tenure situation, just as (subjectively) perceived (in)security may differ from 'objective' (in)security measures, such as (low) frequency of land conflicts, court cases and evictions.

When I stress the importance of the perceived character of tenure security – that is based on the experiential, rather than the legally based ('objective') concept of tenure security – I do not mean to say that perceptions are not related to titles, law, court cases, or frequency of conflicts.<sup>34</sup> Rather, I want to highlight how history and personal power/bargaining positions *also* influence the perceptions of how one stands in a particular situation, with specific resources (e.g. money, contacts, military experience etc.) to draw on. The performance or practice of those institutions responsible for enforcing property rights, people's experiences with and expectations of them are also elements that form part of the experience-based perceived tenure security. According to the neo-structural perspective, these perceptions are influenced by the person's position in unequal power structures. As a result, perceived tenure security is a socially experienced security that is influenced by larger structural characteristics of a society.

In summary, my approach to tenure security acknowledges the negotiability of both formal and informal rights, through the co-existence of multiple stakeholders and interests, as well as the influence of power relations. Furthermore, it stresses the im-

portance of studying legal and extra-legal practices in order to understand the actual creation and recreation of rights, duties and authorities.

### *Operationalization of perceived tenure security and insecurity*

Earlier, the term ‘tenure security’ was used in the land tenure literature (e.g. Bruce and Migot-Adholla 1994) to include some or all of the following elements:

- *Possession of an official land tenure document* recognized by the state through inscription in a public property registry and through inclusion in cadastral data bases
- *Breadth of the bundle of rights* (including rights to alienate the property, e.g. Demsetz 1967)
- *Duration* included in the concept of tenure security (Bruce and Migot-Adholla 1994)
- *Assurance of being able to maintain one’s right in the future*, and not have it violated, or as Sjaastad and Bromley express it: *inversely related to the level of risk of losing those rights* (see Barrows and Roth 1989; Place, Roth *et al.* 1994; Wachter 1996; Sjaastad and Bromley 2000)

However, based on the theoretical discussion in the previous sections, I argue that the term tenure security must be reserved or restricted to describing the assurance about others’ respect for one’s rights. This is what Rose expressed as being “*safe in the expectation of reaping the rewards*” of one’s investments (Rose 1994:296). In comparison with previous literature in the field, I thus propose a more concisely defined concept of tenure security in order to gain a more precise analysis of the different elements that make people feel secure about their present and future property rights.

I use the following definition of tenure security:

Tenure security is the perception of the level of likelihood for losing a bundle of specific rights or having them violated.<sup>35</sup>

This emphasises the difference between the perception of the likelihood and the likelihood itself and is in line with Sjaastad and Bromley (2000), Place *et al.* (1994), and Wachter (1996). Likewise, Barrows and Roth define tenure security as “...*the landholder’s perception of the probability of losing land within some time period. It can also be defined more broadly as the landholder’s perception of the likelihood of losing a specific right in land such as the right to cultivate, graze, fallow, transfer, or mortgage.*”

(Barrows and Roth 1989:21). The following quote by Sjaastad and Bromley (2000) highlights the assurance element, as well as the relevance of analysing the breadth of the bundle of rights:

“Violation, attenuation, replacement, annulment, and imprecision of rights may each assume different forms. Each form can be associated with a number of potential outcomes, each of which in turn is linked to a particular loss of benefit and a particular likelihood of occurrence. This leads to the realization that the security of a right is not the perception of a single likelihood but rather a locus of perceived likelihoods and associated with changes in net benefits. [...] Security, as defined above, is not easily measurable. Determining the probabilities of multiple outcomes and their associated effects is insufficient; the true measure involves the *individual perception of these probabilities*. The cost of insecurity finds expression through the effects of the behavioural modifications to which this perception gives rise” (Sjaastad and Bromley 2000:372, emphasis added).

Consequently, I propose that *separate* terms should be used to describe each of the different aspects often included in tenure security discussions:

- Tenure security as perceived by the landholder (assurance; perceived tenure security)
- Types of rights (the breadth of the bundle of rights)
- Formalization of rights – in which type of document, recognized by which authorities (tenure document/legal status)
- Duration of rights

The first aspect, the concept of land tenure security as perceived by the landholder (or: *assurance* as Sjaastad and Bromley (2000) call it, or *tenure certainty*, as Lund (2000) calls it, or *localized tenure security*, as Carter and Barham (1996) write) have required methodological innovation (see below). Regarding the second aspect, I deal almost entirely with private property rights, whether individual or collective. The third aspect, the formalization of rights, is addressed through questions about the type of document that exists for the plot of land (if any), in whose name, and whether the document is inscribed in the property registry. The fourth aspect, the duration of rights, is indefinite in this analysis, as I deal with *owned* land, and as such unrestricted in time in the future, although it may have lasted for any specific number of years in the past.



The tenure security rankings carried out in villages in Condega show that there is no statistically significant difference between the rankings made by the different informants in each village (selected through maximum variation sampling, see Ravnborg (1999)). In other words, the informants basically agree (within some acceptable degree of variation) on who has more tenure security and who has less tenure security in the village. This means that the ranking answers can be taken as expressions of locally agreed “evaluations” or perceptions regarding a household’s overall degree of tenure security. Thus, it can be said that these rankings show that interpersonal comparisons can be performed with the data on tenure security.

### *Operationalization of equality and inequality*

In my operationalization of inequality, I use two aspects of inequality: Inequality of outcomes and inequality of opportunity. Regarding inequality of outcomes, I mainly look at the distribution of land. I also present some data on the distribution of cattle and domestic animals, which is also a key indicator for economic wealth in the case study area. I have not collected data on income and consumption due to the methodological challenges that these variables present for a reliable estimation, but inspired by Ravnborg’s well-being rankings (1999, 2002), I have asked about the duration of periods where there is insufficient food in the household. I present this variable as a rough approximation of differences in consumption between households.

In order to operationalize inequality of opportunity, I look at differences in educational level, differences in access to institutions of different kinds in relation to conflict mediation and handling, and also at the special challenges faced by women compared to those faced by men.<sup>36</sup> I mainly use qualitative data for this analysis, but also present quantitative data on educational level, as well as the frequency of involving (or refraining from involving) authorities in land tenure conflicts. I also use my analysis of differential access to formal credit among rural households as a part of my argument about the existence of inequality of opportunities in rural economies, regardless of the possession or lack of formal land titles. Finally, my analysis of the functioning of the land market is also inspired by the discussion about unequal opportunities.<sup>37</sup>

### **Notes**

<sup>1</sup> As institutional analysts argue, institutional reforms are seldom completed but leave remains of the older institutions to function with a newer overlay. As such, the current property rights setup can be analysed to be a result of ‘bricolage’ of property institutions (Clever 2003).

<sup>2</sup> Polanyi argues that modern economic thought’s belief in a self-regulating market requires subordinating society to the logic of the market. In non-capitalist societies, the market’s exchange relations are subordinated to the

workings of society, because sale and purchase only happen on an irregular basis (rather than the characteristic constant selling of the ability to work and buying of food that characterize the capitalist mode of production), in contrast to capitalist societies, where markets come to regulate the dynamics of the social order.

<sup>3</sup> In Polanyi's analysis of the historical and social nature of markets and the transformative character of capitalism, he makes a distinction between market societies and societies with markets (non-capitalist societies). He argues that although markets are not unique to capitalism, they play a unique role in capitalistic societies. In societies with markets, people may work for wages or sell products, but where most households have access to land and produce much of what they consume, markets only play a marginal role in social reproduction. Class relations and the wider society are not governed by market relations in societies with markets; rather, social hierarchies, kinship and power relations influence the market relations. In market societies, on the other hand, most households are landless or land poor, and as they cannot subsist on their own production, they necessarily have to regularly sell their capacity to work (labour power) in order to survive. The coexistence of different modes of production, which is the key contribution of the articulation of the modes of production approach (Laclau 1971; Foster-Carter 1978), is argued to also have implications for the way in which markets work and their function in society (Dore 2006).

<sup>4</sup> Again, a policy document on Nicaragua presents a good illustration of the central significance of property rights and market reforms for pro-poor growth: *"The Government's Interim Poverty Reduction Strategy states: "The uncertainty surrounding property rights is one of the main factors inhibiting development of a market for land and other productive assets, as well as investment in, and diversification of, the rural economy"... "Improving the function of land markets is therefore listed among the priority measures in the IPRSP, including: modernizing the cadastral system and the property registry; increasing the efficiency of the process for legalizing, titling and registering properties; continuing titling of lands in the reform sector; elaborating land policies; approving the law for demarcating indigenous territories; and preparing a project for land administration" (World Bank 2002b:7).*

<sup>5</sup> See Rose (1994) for a very interesting discussion of the pendulum movement between what she calls 'hard edged, crystal clear' to 'muddy' rules and rights. The very fact of the movement between these categories illustrates that other concerns than ease of regulation are relevant in legislation, as for example when social or societal costs of 'clear rights' may become too high.

<sup>6</sup> Hardin's (1968) concept of the 'tragedy of the commons' adds an important element to this in that it combines considerations about property right regimes with natural resource management, focusing on the problem of free-riding that certain institutional setups (property rights regimes) are argued to infer. The concept has been translated by policy makers into suggesting that farmers without clear, individual property rights will exploit land for short-term profit. The 'tragedy of the commons' concept gained much influence on the environmental and developmental debates. The subsequent critique of Hardin's argument as being the 'tragedy of open access' rather than the 'tragedy of common property' (see for example Ostrom (1990) and Berkes (1989)) has also had much influence on the environmental debate, but has not been reflected in the property rights debate to nearly the same degree.

<sup>7</sup> Johnson (1972) acknowledges 'second best' systems other than individual property rights and the costs related to the change from one system to another.

<sup>8</sup> It follows, according to the neo-liberal argument, that when market distortions are removed, land will be redistributed through the market mechanism to the most efficient users, defined as those to whom the land is most valuable, or in other words, those who are willing to pay the highest price (see for example Demsetz 1967).

<sup>9</sup> The current focus on the land market as a way to redistribute land is – among other things – a reaction to past decades of land reforms with varied results in numerous developing countries, almost never meeting expectations (Childress and Deininger 2006). It is therefore understandable that there is a widespread call for new policy tools for influencing land distribution. A balanced position treats the land market (and market-assisted land reform) as one among several tools to redistribute land (see for example Carter 2006). The suggestion to use the market to allocate resources is thus not necessarily anti-state, as it is sometimes interpreted.

<sup>10</sup> Some studies have found a differential effect of land titling on growth and investments, depending on the level of economic wealth the household had prior to titling. For example, Carter and Olinto (2003) use panel data from Paraguay to compare situations on the same land holdings before and after titling as well as in contrast to a non-titled control group, which allows for very good control of farmer-specific characteristics. However, Carter and Olinto could only identify the expected positive effect of land titling on the medium and large farms. Thus, the small-scale farmers do not seem to benefit from titling to the same extent as wealthier farmers. What is more, if the medium and large farms prosper while the small-scale farmers do not, land titling will have an effect that enhances *inequity* rather than being pro-poor (see also Coles-Coghi 1993; Roquas 2002; Adnan 2006; Gould 2006).

<sup>11</sup> Based on an assumption about inter-personal comparison of preferences, it can be argued that the sum of utility is enhanced this way. Although the key role of central authorities to ensure trust in institutions is increasingly recognized (e.g. de Soto 2000; Deininger 2003b), the assumptions on which titling/market processes are based raise questions of whether sufficient attention is given to this aspect in the design of land administration and land titling projects and the conditions of equality/inequality under which they are expected to work.

<sup>12</sup> Many land tenure specialists agree that tenure security is important and can have investment-enhancing effects (see for example Bromley 1991; Bruce and Migot-Adholla 1994; Berry 1988; Carter 2006; Deininger 2003b; Rose 1994; Roquas 2002; Wachter 1996). However, the questions remain whether titles in themselves increase tenure security and investment incentives, and if this so, whether this is equally so for the poorest rural landowning households. See Broegaard (2008) for an analysis of this.

<sup>13</sup> This was the case in an example presented from Honduras, whereby a poor farmer refrained from using the formal system, because he feared sanctions from the powerful person who violated his rights (Jansen and Roquas 1998). The same, coupled with the prohibitive high level of costs in the legal system, is reported as important limitations by Roquas (2002). Bardhan (1993:637) mentions another example from India where the rich farmers in a village need not comply with certain tenure rules, because they do not depend on the cooperation of other farmers.

<sup>14</sup> Ostrom (1990) points out how expectations as to the functioning of institutions are also important for their effect. The argument about the importance of expectations about the functioning of institutions for their effect resembles the argument about the importance of perceptions about land tenure security, as presented in Chapter 1.

<sup>15</sup> Some scholars call to caution with much of the previous quantitative research carried out on titles, tenure security and investments, which they criticize for possibly identifying spurious (positive) relationships between titles, tenure security and investments (see for example Braselle *et al.* 2002). If the possession of a formal land title depends on certain household or individual characteristics (such as wealth or connections), then any identified positive relationship between title and higher tenure security or higher level of investments may be spurious, in that it may not depend on the legal status of the land, but rather on those household characteristics that enable the household to obtain a legal title (more easily than other households). It thus becomes an empirical question whether such underlying causal factors in 'household characteristics' can be identified to impact the land titling as well as tenure security status.

<sup>16</sup> Ulrich Beck observes (in a different context) that the legitimacy of the state to use coercion is a precondition for security and he relates this to taxation. This fits unpleasantly well with Latin American reality, where the legitimacy of the state is extremely low, as are property tax revenues: *"Without taxation, there can be no state. Without a public sphere, democracy and civil society, there can be no legitimacy. And without legitimacy, no security."* (Beck 2002:48).

<sup>17</sup> Based on historical evidence, there is also a strong criticism of resulting inequality from market liberalism (for example, large-scale dispossession through land sales and use of land as collateral, see Mitchell 2007; Bromley 2008). From Africa, Peters calls attention to the pervasive competition and conflict over land, which reveal processes of exclusion, deepening social divisions and class formation (Peters 2004), just as Berry pinpoints that the way in which land concentration takes place is as important as the fact of concentration itself for understanding its consequences for agrarian change (Berry 1988:54).

<sup>18</sup> Although his observation is made in a Sub-Saharan context, it is an interesting finding to take into consideration also in other contexts. *"...when customary group rights and community control are extinguished by a procedure of registration/titling, there is a transfer of transaction costs from local land authorities to the state; it is the inability of the state to bear them that accounts (...) for the failure to adjudicate and register all rights existing under the customary system. (...) [D]ue to high information and other transaction costs, governments in poor countries are typically unable to record accurately all existing land rights. Such failure is likely: (1) to create new uncertainties for vulnerable sections of local populations; and (2) to reduce the efficacy of traditional institutions or mitigatory factors that used to provide economic security to all members of village communities and to help hold economic differentiation in check"* (*ibid.*:43-44). Furthermore, it should be noted that many informal transaction costs may also exist in a formal property rights system, in addition to the formal costs. These could include bribing and transaction time, among others.

<sup>19</sup> Interestingly, de Soto describes and criticises the difficulties related to getting into the formal property rights system in several developing countries, but in his argument he seems to assume that once a property right is recorded into the property system, it will stay there. *"Once assets are in a formal property system, they endow their owners with an enormous advantage..."* (de Soto 2000:58).

<sup>20</sup> As pointed out by Platteau and Baland (2001), parallel to the focus on land market mechanisms to acquire land, it is also important to look at the non-market access mechanisms and what mechanisms provide tenure security

in those cases. This is relevant as a large segment of current owners of land in developing countries, especially among the small-holders, have inherited rather than bought their land (or obtained it through the land reform, where land reforms have taken place).

<sup>21</sup> To use Rose's terminology (1994), the pendulum has moved somewhat towards a middle position compared to the Property Rights School's call for crystal-clear rules but is still dominated by the neo-liberal 'crystal' tendency.

<sup>22</sup> Many Nicaraguans make explicit reference to the fact that high levels of poverty are inversely related to levels of respect and protection of rights. Poor people thus generally live unprotected, and high levels of insecurity and violence are a part of life. It is a common statement – and experience – in Nicaragua that *"while a poor person may rot up in jail for the theft of a chicken, a rich person can get away with murder and pay a 'bail' to be released within a few days"* (Fieldwork 1999 and 2003; see also Roquas 2002 on exactly the same observation). Hoffmann and Centeno (2003) also have thought-provoking comparisons of level of police violence and income levels, using Los Angeles and Sao Paulo as examples. See also discussion about the possible existence of relationships between land inequality and political violence in (Muller, Seligson *et al.* 1989).

<sup>23</sup> The quote expresses, at least in part, a neo-structural viewpoint. This is interesting as it comes from the World Bank and serves as another illustration of the integration of neo-structural critique in at least parts of the analyses performed by the World Bank.

<sup>24</sup> It should be recalled from the introduction that Latin America has extreme degrees of inequality (in land ownership and in distribution of consumption, for example) and that Nicaragua is high on the list among the most unequal.

<sup>25</sup> Institutions are to a large extent seen by new institutional economics scholars as being created and maintained by individual actors through collective action, among other things in order to reduce their transaction costs (e.g. Nabli and Nugent 1989; Bromley 1997). Transaction costs have two major dimensions, namely information and enforcement. It is argued by new institutional economists that information is often incomplete and asymmetrically distributed (Williamson 1984; Nabli and Nugent 1989; Bromley 1991; North 1991; Kirk 1999).

<sup>26</sup> Figure 2.1 p. 18, which shows that between 1960 and 2000, countries with more equal distribution of land are associated with higher economic growth. Nicaragua is associated with negative economic growth (GDP) and high inequality (land ownership gini coefficient around 0.86). Furthermore: "Land concentration reduced efficiency of resource use [comparing Guatemala and El Salvador with Costa Rica and Columbia]" (p.20) "...and can also affect the political economy and provision of local public goods – and reveals itself in a gap with respect to literacy rate, other human development indicators and the establishment of democracy." See also Network on the Effect of Inequality on Economic Performance, Institute of International Studies, University of California, Berkeley, <http://globetrotter.berkeley.edu/macarthur/inequality>. Easterly (Easterly 2007) goes one step further trying to show that inequality causes underdevelopment.

<sup>27</sup> The level of inequality in distribution of wealth is also found to influence the efficiency of regulation of natural resource management in a negative direction (Baland and Platteau 1999). In a study from Nicaragua, Larson (2001:58) also comments on how regulation has to be seen as reasonable, justified and equitable for it to be accepted. She adds that this rarely is the case with environmental regulation and natural resource management in Nicaragua. The negative impact of inequality of wealth on the efficiency of regulation of natural resource management, and the unequal enforcement of laws and regulations that benefit the large-scale producers or extractors, and as such represent an example of unequal opportunities, form a vicious circle; they result from and reproduce inequality. This vicious circle is also related to the discussion about access, arguing that issues about access or lack of access may be more important than property rights *per se*, in that they may severely mould and limit the appropriation of surplus from a plot of land and its products (Ribot 1998; Ribot and Peluso 2003).

<sup>28</sup> Following Dore (2006:27), I define gender as *"a constitutive element of social relations based on the perceived differences between the sexes and on the sexual divisions of labour and behaviour in society's interconnected public and private domains"*, which has implications for "structuring and producing relationships of power".

<sup>29</sup> This is also how tenure security is modelled in many economic models: as a Boolean value, 1 for title, equals tenure security, 0 for lack of formal title, equals insecurity.

<sup>30</sup> Boucher *et al.* (2005) provide an example of how the terms 'tenure security', 'property rights' and 'titles' are used interchangeably in the neo-liberal, market-oriented literature: *"This shortcoming [the inability of beneficiaries to establish clear property rights over land] is remedied in the liberal plan by granting and registering freehold titles. From this perspective, land titling should activate credit markets via both a supply and a demand effect. On the supply side, land title increases a farmer's ability to provide collateral. Tenure security also increases farmers' willingness to undertake fixed investments, thereby increasing credit demand. There is thus a positive synergy between property rights and credit markets that leads to a win-win scenario of efficiency and equity gain"* (p. 110-11).

<sup>31</sup> “... when titling impact of security is evaluated, the mere absence of title is taken to imply ‘insecurity’. That may or may not be true. To ascertain the nature of the pre-titling situation requires that the tenure forms be closely evaluated for the degrees of security they provide. Tenure labels will not provide the answer” Lemel 1988:276.

<sup>32</sup> I agree with Boholm that people’s perception of security and insecurity is based on locally defined values and concerns. Boholm continues: “*Uncertainty has to do with what is unpredicted in life, the odd possibilities and irregular occurrences*” (Boholm 2003:167). “*In real life situations, the boundary between certitude and uncertainty is of course seldom razor-sharp, and vagueness and ambiguity tend to be the rule rather than the exception.*” (ibid.:168). Boholm argues that ‘citizens in modern nation states’ think they have a moral right not to be put at risk (Boholm 2003:159). In contrast, rural and poor Nicaraguans do not think that they have such a moral right. In Nicaragua – as in developing or struggling countries in general, I suppose – citizens do live with risk or rather with uncertainty as a part of life.

<sup>33</sup> Barrows and Roth emphasize the same in their conclusion from Kenya, Uganda and Zimbabwe, that high levels of tenure security can exist without legal possession of title, and conversely, that high levels of tenure insecurity may exist even with legal title, mentioning that whether registration affects investment demand depends on titling leading to changes in landowners’ perception of tenure security (Barrows and Roth 1989): 21,23). The emphasis on the importance of perceptions resembles the recognition in the new institutional economics that people’s expectations about the functioning of an institution influence its effect (e.g. Ostrom 1990).

<sup>34</sup> However, I find it important to remember (in a plural-legal line of thought) that ‘The Law’ is often not a clearly defined territory either. There are plenty of twilight areas, options to choose between contradictory laws, use of old, outdated laws (and get them accepted in the rest of the system) as the study from Condega shows (see Roquas 2002 for a legal-sociological analysis of land issues in Honduras, and Dore 2006 for a historical analysis of different interpretation and enforcement of rules and norms in Nicaragua, according to divides of gender, ethnicity and class).

<sup>35</sup> It should be mentioned that the Government of Nicaragua has adopted an evaluation of land tenure security that includes both legal issues and perceived land tenure security as indicators to be improved in order to keep receiving full budget support from the General Budget Support group. (<http://www.prorural.net.ni/?q=node/658>, visited October 16, 2007). The indicators were proposed by a strong engagement by the EU Commission in Nicaragua on land tenure issues. They include the fear of being thrown off one’s property as indicator for perceived land tenure security at household level. Inclusion of similar indicators were discussed in research documents from Peru prepared for the International Land Coalition, see for example [http://www.landcoalition.org/pdf/07\\_cepes\\_ind.pdf](http://www.landcoalition.org/pdf/07_cepes_ind.pdf)

<sup>36</sup> Dore shows in her historical analysis how gender is at the heart of the construction of consent and the negotiation of compliance within households and between classes. The power struggles that go on within the household between men and women, and the patriarchal domination and contestation can be seen as central to the constitution of relative power positions of men within households (and of ruling classes within the society) (see Dore 2006 for a historical analysis).

<sup>37</sup> As part of the discussion about unequal opportunities, inequality in access to information plays an important role among legal pluralists and new institutional economists. Von Benda-Beckmann highlights the importance of information for the recognition of land titles (1994; 2001b; 2001a). New institutional economics places a strong focus on under-informed actors and bounded rationality, which fundamentally modifies the viewpoint regarding the basis upon which decisions are taken. Thus, due to the modified assumptions about economic actors as opportunistic in a world of asymmetric information, new sources of uncertainty are introduced (Williamson 1984; see also Bardhan 1989; North 1991; North 1995; Mehta, Leach *et al.* 1999). The presence of transaction costs also implies that enforcement by formal institutions such as government institutions, police, court systems, and land registration may be especially insufficient in developing countries due to serious capital constraints (Harriss, Hunter *et al.* 1995; see also Eggertsson 1997), and that access to enforcement may be unevenly distributed among different groups of the population. One implication of the above is that enforcement and control are key elements, which must necessarily be evaluated when analysing a land tenure security situation.

### **3. Origins of 'The Property Question' in Nicaragua and in Condega**

Nicaragua is one of the poorest countries in the western hemisphere, with a highly uneven distribution of wealth, including a very unequal distribution of land ownership, although not extreme in the Latin American context (Deininger, Zegarra *et al.* 2003; see also Hoffmann and Centeno 2003).<sup>1</sup>

Nicaragua, like many other Latin American countries, has experienced major land reforms and abrupt changes in land legislation during the past three decades. Land reform and property rights were key issues in the civil war that tormented the country in the 1980s. Nicaragua has long been characterized by unequal access to land and a high level of land tenure insecurity (World Bank 2008). Transparency International's corruption perception index (CPI) gives Nicaragua a score of 29 on a scale from 100 (highly clear) to 0 (highly corrupt) (2012). Thus, there was plenty of 'insecurity' of land tenure to study in Nicaragua. In addition, Nicaragua was one of several Latin American countries about to undertake a large-scale pilot project in land titling and land administration, funded mainly by a World Bank loan, when I sat out to start my research.

A complex, ambiguous and often contradictory legal framework for the formal regulation of property rights has resulted from the different changes of government. The property registry is incomplete, slow and has irregularities, and only a small part of the country is covered by updated cadastre information. This combines to produce legal tenure insecurity. It is estimated that less than half of the households have titled or registered properties, and overlapping titles are still a problem (Hendrix 1992; Lavadenz and Deininger 2001). Stanfield (1995) estimated that about 40 percent of all households in Nicaragua were in a situation of property conflict or potential conflict. The World Bank characterizes the level of land tenure insecurity in the northern departments of the PRODEP pilot project as ranging from high to extreme (World Bank 2002c). The over-burdened court system only progresses slowly in resolving land claims (Merlet and Pommier 2000c). By mid-2001, 83 percent of the rural properties under review after the 1990 change of government were still pending or on appeal (EIU 2001).

Agriculture remains the largest employment sector, with 40 percent of the workforce (mainly within the informal sector). Nonetheless, agricultural yields are extremely



low when compared to regional standards. Some observers suggest that this is due to a lack of investments that result from poor land tenure security, as well as grossly inadequate access to credit (only about six percent of farmers receive formal banking financing) and technical assistance (covering only eight percent of small and medium-size farmers). The recent growth of the cattle and milk production in Nicaragua is a reflection of an on-going re-concentration of land, among other things (see e.g. EIU 2005:25). According to the newest agricultural statistics in Nicaragua, nine percent of the farms control 56 percent of the existing farmland, whereas at the other extreme, 61 percent of the smallest farms command only nine percent of the area. Close to half of the landowners own less than 10 *manzanas*<sup>2</sup> of land (INEC 2001). A recent evaluation of EU support to Nicaragua states that “*the agricultural sector faces structural problems such as (i) land tenure conflicts – relics of the unachieved agrarian reform of the 1980s, still unsolved today due to a deficient legislation, an inefficient judicial system and the politicising of the issues.*” (DRN 2009, Annex 1, p.4).

Reluctance to enforce laws, especially regarding property disputes, is another problem creating tenure insecurity in Nicaragua. As Stanfield and Hendrix (1993:962) commented regarding the reluctance of enforcing entities to enter property disputes in Nicaragua more than a decade ago: “... *having title or getting a court order still does not mean you get the property*”. This continues to be true, and therefore it is of crucial importance to remember that the reality of things is still often very far from what is implied in legal documents. Furthermore, many rural properties in Nicaragua are handled in extra-legal ways: for example, when being sold or inherited or when invaded by force. Power abuse and corruption are widespread. Some households are being threatened to leave their land as a result of land conflicts, or because of economic and natural emergencies that lead them to distress sales (Broegaard 2000; Merlet and Pommier 2000c).

The aim of this chapter is twofold: first, to discuss the so-called ‘Property Question’ in Nicaragua in a historical perspective, taking as a point of departure that an understanding of historical processes is important in order to understand present-day positions and practices regarding land tenure issues. It discusses the historical origins of current land tenure practices in Nicaragua and looks at five main historical periods, based on major changes in land tenure issues (Colonial, Independence, Somoza, Sandinista and Post-war). Secondly, the aim is to place Condega, the municipality where I have carried out my fieldwork, in a larger, national context in order to be able to place my findings in this larger context as well. Much of what has taken place in Condega reflects larger-scale trends that have affected big parts of the country. Thus,



with certain reservations which I will return to, Condega can be taken as an example of land tenure dynamics typical for the North-Central Pacific part of Nicaragua, with strong *campesino* characteristics.<sup>3</sup> The second part of the chapter focuses on present-day Condega and briefly explores how the traits of history can be seen there. It also includes some descriptive empirical findings about distribution of land, distribution of different types of land tenure documents and the frequency of inscription of land tenure documents in the property registry, as well as the frequency of the different land access mechanisms that are present in the case study area.

#### **Origins of the so-called 'property problem' in Nicaragua.**

Before the Spanish conquest of Nicaragua, the most valuable land was divided between the different indigenous groups in the territory, under chief leadership. Social structures were much less differentiated in Nicaragua than in the contemporary indigenous cultures in Guatemala and Mexico. Land in a farming community was usually held under communal tenure, and was inherited patrilineally. Land could not be sold, but if it was left idle for a long time, it could be redistributed by the community authorities to other families (Merlet and Pommier 2000b:21).

With Spanish colonization, the Spanish Crown gave itself total ownership of the conquered land of what was later to become Nicaragua. However, in practice, the Spanish did not control the land beyond the agricultural frontier in the central part of the country. Control over the areas east of the Segovias became heavily disputed. The property relations under the Spanish Crown were based on racial criteria.<sup>4</sup> For example, the Spanish Crown ceded large *haciendas* (farms) to the conquerors from Spain and Spaniards born abroad, as well as loyal servants of the crown, backed by a '*Título Real*', a royal title. A large legislative body was established relating to the land tenure in the New World, as well as a large administrative apparatus, with registries in Guatemala and Sevilla (Spain) (Merlet and Pommier 2000c; Merlet 2001). Land was given or sold to some indigenous groups by the Spanish Crown (Merlet and Pommier 2000b:21), and some had their land possessions (*tierras comunales*) recognized by the colonial powers (known as *derechos reales*). Over time, the area in possession of the indigenous groups diminished, mainly due to pressures from other land users (Lukes 1974; Gould 1997). According to Merlet (2001), *mestizos*<sup>5</sup> were excluded from land ownership. However, indigenous people and *mestizos* were successful in establishing themselves on land located outside of Spanish control. In relation to hunger crisis under the Spanish rule, Merlet (2001:4) writes: "*Illegality was a necessity not just to individually get out of misery, but also in order for the nation*

*as such to progress*” (Merlet 2001:4, own translation from Spanish). The indigenous and *campesino* resistance against the control of the central state can still be seen.

### **Land tenure reforms under Independence (XIX and early XX century)**

After independence,<sup>6</sup> municipal governments were superimposed on the older ethno-political jurisdiction of the indigenous communities and were allocated *ejidos*, municipal land, often also superimposed on former *tierras comunales* (Dore 2006:73ff). Inspired by European legislation, a Civil Code was written. It recognized ‘absolute property’ (*propiedad absoluta*) [full ownership rights] in contrast to the use rights under the feudal system. In contrast to colonial times, ‘adverse possession’, or a mechanism to turn possession into property, was established (through the legal figure of the *Título Supletorio*, among others). This way, long term *de facto* possession could be recognized through a legal procedure and turned into full property rights, independent of original titling by the state. This mixture between ‘first possession’ and ‘mixing labour with land through improvements’ was – and still is – generally recognized as a legitimate way to establish claims to land.<sup>7</sup> However, these mechanisms were generally not used by (or accessible to) poor farmers. Dore (2006) provides a detailed analysis of the ‘triumph of private property’ in Nicaragua during this period, and of how this ‘triumph’ was achieved through a mix of “*relentless state intervention to divest Indians of common property rights they had enjoyed since the conquest*” (p.72), as well as a process of privatization that was regulated by political influence rather than the market’s invisible hand (p.86).<sup>8</sup> Likewise, Gould (1997) describes how indigenous communities in Nicaragua lost large parts of their communal land, mainly to an elite of coffee planters, through invasions, forced sales and questionable demarcation processes.

A Property Registry was created in Nicaragua during this period, and the Civil Code made it obligatory to inscribe land ownership rights in the property registry (MAGFOR and BIDE 2002).<sup>9</sup> In addition to ‘adverse possession’, land could be obtained through purchase and inheritance, although many such transactions were never recorded officially due to the high costs of title registration as well as widespread illiteracy.

This period was still characterized by strong efforts to control labour rather than land, for example through laws on forced labour and laws against tramping [*vagancia*] in order to ensure inexpensive labour for the growing *latifundios* (large farms).<sup>10</sup> Pa-

tron-client relationships developed and the high level of inequality was also reflected in the uneven distribution of land. From the 1870s onwards, coffee was a booming export crop, grown especially in the northern parts of the country where Condega is also located. The introduction of an export crop had far-reaching implications for the transformation of land distribution as well as for the transformation from communal land rights to individual, private property rights (Dore 2006). Later on, cotton and cattle were added as important agro-export crops. Literature on Nicaraguan land tenure and agricultural development highlights how small-scale farmers and indigenous communities were gradually removed from the most valuable land, as it became useful for export crops. Also, the high levels of economic growth could not have been achieved without the production of staples (mainly beans and maize) by small and medium-size farmers (e.g. Maldidier and Marchetti 1996; Merlet 2001). Dore (2006) comments on how *"Nicaragua's first coffee barons did not purchase their land; they marshalled political influence to expropriate land from the peasantry [...] by violating the common property rights of Indians and poor ladino peasants"*.

#### **Land tenure under the Somoza regime**

Under the Somoza dictatorship from the 1930s, the state was a strong, hegemonic power. A law was introduced that allowed confiscation of land for 'public utility' (Merlet 2001). With the lack of respect for civil rights that characterized the dictatorship, it is questionable whether strictly public interests had to exist to justify confiscation of land. Several sources maintain that large amounts of forced or coerced land transfers took place, especially in the fertile Pacific region, in relation to the cotton boom and created insecurity of land tenure among small-scale farmers (Maldidier and Marchetti 1996; see also Fernandez in Broegaard 2005a and Thiesenhusen 1996).<sup>11</sup> From the end of the second world war, the use of '*Títulos Supletorios*' was discontinued in so-called 'national lands' with a return to a situation where the state saw itself as the only owner of land unless it had already given a title to a third party. The role of the state as the hegemonic giver of land rights was strengthened through land reform programmes of redistribution and colonization of virgin land on the Agricultural Frontier, where the National Agrarian Institute (IAN) titled and distributed land to some landless people in the 1970s. While this land was considered 'national land', much of it has recently been recognized as belonging to different ethnic and indigenous groups.<sup>12</sup> Land ownership in Nicaragua was highly concentrated (De Janvry, Sadoulet *et al.* 2001), and approximately one-third of the households were landless during the Somoza regime (Prosterman and Reidinger 1987).

## Land reform under the Sandinista regime

While there were major changes in land ownership compared to the previous regime, the land tenure issues were still led by a strong, hegemonic state under the Sandinista regime. Changes in property rights and confiscations of land were a major point of conflict, and played an important role in the civil war that started a few years after the Revolution in 1979. Destruction of books from the Property Rights Registry shows the importance of such information, and as many political scientists have pointed out, the property issues lie at the heart of politics. Much of the confiscated and expropriated land was not transferred legally from being registered in the name of the former owner to the Nicaraguan state before being assigned by the state to land reform beneficiaries or state farms (Stanfield 1995). Therefore, a parallel system of registration of land rights was created for most of the reformed sector<sup>13</sup> (in the so-called 'Books of agrarian rights'). Furthermore, the Sandinista government discontinued the use of the judicial system for granting property rights, thereby re-confirming the hegemonic position of the state as granter of property rights. Considerations about the 'social function of property' – as a precondition for continued ownership – were introduced into the Constitution, but as no adjustments were made in the Civil Code (which still talks about full property rights), this legal reform opened the door for legal disputes (Ortega 2000; Merlet 2001).

The land reform was an important flagship of the Sandinista government, aimed at reversing the extremely uneven distribution of land. The land holdings of the former dictator and his close associates, comprising about one-fifth of Nicaragua's arable land, were confiscated (Dorner 1992; Thiesenhusen 1996), and idle land or indebted properties were often expropriated by the state (Stanfield, Molina *et al.* 1994). Great extensions of land were passed into 'People's Property Areas' (*Área Propiedad del Pueblo*, APP), which were driven as state farms, as well as into agricultural cooperatives, given thereby to the beneficiaries of the land reform.<sup>14</sup> However, for ideological reasons, the use of individual land reform titles were only introduced reluctantly, after *campesino* complaints about the collective titles issued almost exclusively during the first part of the revolutionary government (see also Dore 2006).

The agricultural cooperatives and state farms (and other social infrastructure such as schools, health clinics and drinking water supply) were preferred targets of Contra attacks during the civil war. In addition to participating in civil defence groups in and around the cooperatives, male cooperative members were also regularly drafted and sent to the front lines of the war as soldiers. Rather than as passive recipients, the beneficiaries of the land reform therefore see themselves as having actively partici-

pated in defending their country, family and land and having thereby won the right to the land. The high risks connected with being a member of a cooperative made many people decide against becoming members, despite the open offer of land for cultivation. Another limiting factor for integration into cooperatives, and a reason for leaving cooperatives after having once become a member, were the conditions for the organization of production, which had to be collective since only limited areas could be cultivated on an individual basis. This clashed with the generally more individualistic entrepreneurship of traditional farmers.

While the agrarian laws under the Sandinista government also talked about equality between the genders, very few women in practice accessed land in the Sandinista agrarian cooperatives. Despite the stated political priority given to equal rights for women and men, roughly only 8 percent of the individual beneficiaries of the land reform were women (Galán 1998; Ceci 2005; Agurto, Guido *et al.* 2008). The low participation of women in the agricultural cooperatives sheds light on how the ideals about gender roles influence access to land. Although the laws speak about equal rights for men and women, it was usually only men who were considered to become land reform beneficiaries during the Sandinista land reform era. Women were considered to benefit indirectly through their husband's membership in a cooperative. However, it is clear that with subsequent (*de facto* or *de jure*) individualization of land rights, only the male head of household and cooperative member figures as holder of the land. Property rights have been individual and, in practice, patriarchy triumphed over any considerations of gender equality in the agrarian laws.<sup>15</sup>

Even during the Revolution (the local name for the period of the Sandinista government), it was important for land reform beneficiaries to obtain documents for their land. The handing over of land reform titles was always surrounded with much festivity and media-attention, being one of the heavily symbolic acts which could show that the Sandinista government cared for its people, the proletariat and the poor and that the revolutionary government was recognized as the authority to cede land rights. This was probably also one of the reasons that the Sandinista government changed the *Títulos Supletorios* to land reform titles, even for land that was not given but only *titled* by the land reform agency (Merlet 2001). The importance of titles and their proper inscription in the property registry, however, grew much more acute when a change of government resulted after the Sandinista defeat in the 1990 elections.

It was not until the transition period (February-April 1990) between the elections and the entry of the new government (a multi-party coalition, *Unión Nacional Opositora*,

with mainly center and right-wing parties) that land reform beneficiaries and their representatives in organizations (INRA, UNAG, FENACCOOP) busily tried to ensure that the legal paperwork was taken care of in order to counter future claims from former owners. A wave of rights to property were given/taken/appointed between Sandinistas – mainly the more influential ones. Some of these rights were merely the formalization of long-existing *de facto* possessions. Other rights, however, were new, taken by people trying to make the most of their now limited time in or close to power. These actions were popularly called '*la piñata*', named after a children's game involving a fight over candy.

### **Post-war land tenure situation**

From 1990 onwards, Nicaragua returned to a market-based economic system instead of the mainly state-planned economic system that had been in place during the 1980s. The new government promised as one part of the peace agreements that the ex-combatants of both armies would be given land through a new era of land reform in order for these soldiers to surrender their arms. Although, theoretically, records should be kept regarding who was given which lands, this was in practice very difficult, since most people had no identity cards and control was difficult in this early situation of fragile peace and little trust in the government after more than a decade of civil war. The situation was further complicated by the parallel structure of register records created during the Sandinista era (the so-called 'Agrarian books') and the lack of overview created by the destruction or disappearance of records from the National Agrarian Reform Institute and property registries caused by some civil servants before the power was handed over to the new government (personal comm.). As a consequence, or maybe using this as an excuse, much of the land given to the demobilized soldiers overlapped *de facto* with other land rights (existing land reform cooperatives, indigenous land rights or small landholders). This, of course, fuelled land conflicts as well as armed protests against the government, demanding that it kept its peace promises. Also, some beneficiaries of the new era of land reform did not receive any formal document to their land, and many (illegal) land sales by ex-soldiers, who received land far from their relatives or did not want to be farmers, created a situation where land reform beneficiaries sold their land even before they received a title.

The new government wanted to reverse the injustices and irregularities created under the Sandinista government with regard to property rights. Thousands of land claims were presented to the new government by former owners whose land was confiscated



or expropriated by the Sandinistas. Numerous land conflicts followed in the so-called 'reformed areas' (the areas covered by the Land Reform) where former owners frequently visited their former property, accompanied by lawyers or even (bribed) police officers or judges, to threaten the beneficiaries of the land reform to give up the land or sell it back inexpensively. Even when there was no legal basis for the claims made by the former owners, it was experienced as threatening and intimidating by many cooperative farmers. Others would not allow themselves to be threatened and were ready to take up arms again to defend their land. Many of the conflicts became violent. As a consequence, in 1995, the National Assembly passed a law of property stability, designed to offer security of land possession to beneficiaries of the Sandinista agrarian reform, while at the same time attempting to correct the abuses of '*la piñata*'. More specifically, this meant that all plots of land that had been transferred or had papers issued during the 'transition period' had to go through a special process of review. If everything was found to be in order, a certificate could be issued which would make permanent registration possible. For all other properties already given to cooperatives and inscribed in the property registry, property rights of present owners (beneficiaries of the land reform) were confirmed; but at the same time, a door was kept open for former owners to apply for compensation for expropriation and confiscation.

Also from the early 1990s, a spontaneous process began with individualization of plots of land within the formally collective cooperative sector despite pressure from left-wing political leaders, partly for ideological reasons and partly due to fear that such splitting up of plots would lead to land sales. Actually, a process of re-concentration of land began due to massive land sales from the 'reformed sector'. These sales took place partly due to the cooperatives' debts, which they could not pay back under the new and much stricter credit regimes of the new government (see for example Jonakin and Enríquez 1999). But much of the sold land was not indebted; rather, it was sold because of the great insecurity of land tenure due to the abrupt political changes and uncertainty about future changes in land tenure security (de Groot and Spoor 1994; Broegaard 2000).

Renewed tenure insecurity arose in the presidential campaign in 1996, when the eventual President, Arnaldo Alemán, promised to reverse the 1995 legislation. In 1997, an agreement was reached between the Liberal-Christian party (PLC) and the Sandinista party (FSLN) that sanctioned ownership of farms by legitimate beneficiaries of the Sandinista reforms, while establishing a new period of claims by former owners and an arbitration mechanism for properties still in dispute. However, due to high levels of corruption as well as very aggressive rhetoric about the reformed areas and the rights



of the former owners, a high level of insecurity of tenure persisted in the reformed sector for several years after the election (see for example Broegaard 2000). A study by Merlet and Pommier (2000a) identified about 200 laws, *reglamentos* and decrees, mostly from the last 20 years, that regulate property in Nicaragua. This is illustrative of the importance that has been given to the issue of property rights, the difficulties of implementation as well as the level of confusion and scope of ‘forum shopping’.

An agreement (locally referred to as the ‘pact’, *el pacto*) was made between the two largest political parties, PLC and FSLN,<sup>16</sup> in which the two parties effectively divided the influence in different key state institutions between them, especially those related to control of corruption. For example, the court system came under political control with judges appointed by FSLN and PLC in the Supreme Court. Judges on all administrative levels are appointed based on political criteria, from the Supreme Court to the local courts (as in Condega). The political influence in the judicial system, as well as the almost open corruption and political ‘friendship favours’ (*amiguismo*) have resulted in limited trust in the impartiality of decisions made by the judges. The property registries are administered by the Supreme Court, and although efforts have been made to modernize the registry, there are persistent complaints about its openness to political manipulation and bribes. All in all, the ‘pact’ severely weakened Nicaragua’s democracy.<sup>17</sup> A politicized and poorly trained judiciary also renders a fragile enforcement of property rights (Rose 2011).

The land reform as an institution was discontinued from 1996, turning the focus mainly to regularization of awarded land in rural areas, and only in special cases of prior seizure of land by former soldiers was any new land awarded. Land seizures were especially frequent on indebted land (and almost always in reformed areas), as well as in some cases on former state farms. Geographically, the land invasions have been most frequent in the Matagalpa-Jinotega area but have also taken place in as diverse departments as Chinandega, Managua and Estelí, and more recently on the Pacific coast, where land prices have sky-rocketed due to tourism development. There have also been cases of double-titling, as well as very little progress in titling the areas awarded during the previous land reform eras.<sup>18</sup>

### **Land administration project in Nicaragua**

In 2002, the government Land Administration Project, PRODEP, came into existence, financed mainly by a loan from the World Bank as well as additional funding by the Nordic Development Fund and the Government of Nicaragua – a 45 million

USD, five-year pilot project in three northern departments of Nicaragua covering Chinandega, Madriz and Estelí, where the municipality of Condega – the case study area for this report – is situated (World Bank 2002a; World Bank 2003b).<sup>19</sup> The aim of PRODEP was to secure property rights, activate the land market and stimulate investments as a way to integrate agriculture into the world market. The long-term development objective of the proposed Land Administration Project was to “*improve the security of land tenure and thereby (i) boost investment in agriculture, leading to productivity and income growth; (ii) contribute to social fairness by focusing on the most vulnerable groups (small farmers and indigenous people); (iii) promote the sustainable use of natural resources; and (iv) increase revenue collection and facilitate planning at the municipal level, as a means to foster the decentralized provision of services*” (World Bank 2002cb:3). Titling, adjudication or certification of 80 percent of the plots in the three pilot departments were listed as key performance indicators (World Bank 2002cb:4).

The project proposed to achieve this objective by regularizing property rights; establishing a secure and legitimate land rights regime by collecting current field information, and improving provision of land administration services. This process was expected to facilitate elimination of overlapping land claims; pending legal revisions; extremely centralized and ineffective service delivery (i.e. titling, registration); land-related conflicts; non-sustainable land use patterns; and other property problems. Furthermore, it was expected to facilitate and accelerate the incorporation of regularized property rights in the country's official land records, integrating geographic data with legal information.

PRODEP acknowledged that land titling alone would not be sufficient and therefore also addressed land administration services. “*Under Nicaragua's existing property conditions and given the current legal and institutional framework, the approach of a mere land titling project would not be sufficient for resolving land tenure conflicts and for improving land tenure security*” (World Bank 2002c:26). However, PRODEP expected to be poverty-alleviating and productivity-increasing, as well as to lead to more rural employment opportunities. “*To the extent that the project facilitates the market's ability to mobilize and maximize efficient resource allocation, important productivity gains would be realized. In addition, more secure land tenure tends to increase rural employment. In Nicaragua, the propensity to undertake largely labor-intensive investments is significantly increased by the receipt of land title. Finally, according to the land occupants' perceptions, land registration increases a property's market value by 30 percent.*” (ibid.: 30).<sup>20</sup>

The wholeheartedness of the government intervention in the reforms to property rights administration can sometimes be questioned. In the National Plan for Human Development (2008-2012), only three short paragraphs out of a total of 177 pages are devoted to the issues of land rights. They state that the land tenure regularization (with cadastre, delimitation, demarcation and titling) is a key element in creating stability in the rural areas and improving agricultural production. The plan also comments that PRODEP will help ensure more access to land for the small-scale and medium-scale farmers as well as currently landless people, and that PRODEP pays special attention to women's access and rights to land (Gobierno de Nicaragua 2008:112). Many of the legal reforms proposed as integral parts of PRODEP, including proposals to integrate the cadastral and registry information, have been severely modified in the parliament. Kay's comment (2006:477) comes to mind regarding the common lack of political support and therefore the slim chances for institutional innovations to be implemented where they are most needed.

### **Condega: land reform and minifundio in the PRODEP pilot area**

Condega is a rural municipality in the department of Estelí. It has important indigenous roots, although many indigenous people fled further north to escape the colonial exploitation of indigenous labour. Condega is situated on one of the main routes to Honduras and Guatemala, as well as to the gold mines further north, and by the middle of the 18<sup>th</sup> century, it had become a village with dynamic trade. Today's population still show signs of comprising descendants from different ethnic groups (Amerindians, Afro-Caribbean descendants as well as people with fair skin and eyes). However, the population in Condega consider themselves *mestizos*, and I met no labelling of ethnic minorities whatsoever.

There is no mention of indigenous communal land, and even the *ejido* area (an area extending a couple of kilometres on either side of the *pueblo* of Condega, including very fertile river banks), which used to belong to the municipality, is often treated as if it was private land. Most people do not distinguish *ejido* land from other land. A former mayor explained that by the beginning of the 20<sup>th</sup> century, the *ejido* area, which had been granted to the municipality 'a long time ago' for the population of Condega to have a place to cultivate crops and collect firewood, had passed into being rented to individuals (men) living in the area who wanted to cultivate the land. They paid a *cánon* to the municipal government every year.<sup>21</sup> By the time of the revolution, or maybe even before, people stopped paying the *cánon*, and the municipal government stopped collecting the fee. It is now considered to be so long

time ago that the land has *de facto* become private property, which is accepted by the municipal government.<sup>22</sup>

#### **Distribution of land in Condega**

Land distribution in Condega has been highly unequal, as in the rest of Nicaragua. During the Somoza regime, the majority of the land in the eastern part of the municipality belonged to a few owners who had very large haciendas, mainly for coffee, timber and cattle production. The area was sparsely populated, with only the necessary farm workers living with their families on the land of the absentee hacienda-owners. There were also a few small and medium-size private farmers situated between the large haciendas. Most of these owners generally had titles to their land, inscribed in the property registry in Estelí, although often only parts of the farm were inscribed in order to evade taxes. Furthermore, some farm workers had been given a plot of land to live and farm on by their *patrón*. However, usually, these landholdings were not formalized.

After the revolution, many agricultural cooperatives were created during the Sandinista Land Reform, especially in the eastern part of Condega where large estates were expropriated. After the war, many ex-contras and ex-soldiers from the Sandinista army were given land in Condega, again, mainly in the eastern part. As in the rest of the country, land was mainly given to individuals during this post-war era of the land reform. A number of previous owners returned in the eastern part of Condega, some of them with lawyers and police to demand their land back. They were generally met by a well-organized group of farmers who refused to give up their land. Yet, no violent confrontations occurred with the former owners. However, some of the local farmers who had not received land during the Revolution, invaded parts of cooperatives and demanded land to be given to them. Massive land sales also took place in the reformed areas, partly due to the fear of losing the land to the former owners, and partly due to debts which the cooperatives were unable – and unaccustomed – to pay under the new, strict post-war credit policy.

The El Pire zone in the western part of Condega was much more densely populated, and landholdings were much smaller. Already under the Somoza regime, it was a *minifundio* area, since medium-size farms had been divided through inheritance. Many of the present inhabitants tell how an ancestor, often a great grandfather, or a great-great-grandfather, arrived in the area of El Pire. At that time (approximately 100 years ago), El Pire was considered a '*sitio*', an open space, where one could fence off a

plot of unused land and gain property rights through possession and use. However, instead of mentioning *Título Supletorio* as the most likely legal means forefathers could use to formalize their land tenure, people locally refer to a '*título real*'.<sup>23</sup> This is interesting, as this term refers back to colonial times. Generally, land tenure documents for the land in El Pire may thus exist, or may have existed at one point, but documents have often not been updated when land was subdivided through inheritance or land sales. Furthermore, tenure documents and other important documents risk being lost or damaged in hurricanes, inundations etc.

The El Pire area experienced almost no land reform, because land was already distributed in many small, individual plots (*minifundio*) before the revolution.<sup>24</sup> Here, the Sandinista land reform mainly affected land documents, in the sense that land reform meetings were held where land reform titles were offered to people, who saw this as a chance to update their documents (often outdated titles in the name of some forefather). However, without the annulment of the existing, outdated titles in the property registry, inscriptions were basically duplicated. After the war, people in El Pire started valuing their old, outdated property papers higher than their newer land reform documents, but still saved both – in order to provide as much proof as possible for land ownership. More recent, informal papers stating land transactions and inheritance are also saved.

In the eastern part of Condega, most of the population obtained land from the land reform or bought it from somebody who did. The area has had a strong increase in population due to the land reform but is still less heavily populated than El Pire. There are still several cooperatives functioning, although most cooperatives have by now *de facto* split up their land holdings into individual plots, whether or not this process is reflected legally in the official books and papers of the cooperatives and individual land titles.

### **Infrastructure improvements**

Condega enjoys good infrastructure of roads, as the Pan-American Highway passes through the municipality. Furthermore, a web of good rural roads connects a large proportion of the rural communities, although a few are only accessible by vehicle during the dry season. Other infrastructure is also above national average, despite Condega being a rural municipality. For example, 77 percent of the rural households are considered to have safe water supplies (Condega 2003), whereas the national average for rural areas is 69 percent (World Bank 2003a). These infrastructural achievements

are in large part a reflection of a better-than-average-organized municipality as well as much development support.

Condega municipality covers officially an area of 438 km<sup>2</sup>, but this is disputed with neighbouring municipalities. Condega's population is approximately 28,000 persons, of which some 65 percent live in the rural areas. The population density is 42 persons/km<sup>2</sup> in the rural areas (INIFOM/FNUAP 2001).<sup>25</sup> According to poverty-line measurements, the percentage of poor has diminished from 67 percent to 63 percent of the population from 1998 to 2005 (Gomez, Martínez *et al.* 2008). Consumption level is about three-quarters of the national level (*ibid.*), but growth has been more than 60 percent above the national average (*ibid.*).

The landscape in Condega is characterized by flat tabletop hills ('*mesetas*') and high mountains, where rivers have carved themselves dramatically into the landscape. In the north-eastern part of the municipality, the soil is generally fertile and the climate is more humid. El Pire is a dry zone, a bit lower (but still with a dramatic topography) and with more arid soils. Here, the climate is dryer, with variations according to altitude. The landscape is from moderate to sharply inclined. In the western part, the lack of water is a strong limiting factor for agriculture. Thus, there is a great difference in productivity level between plots with irrigation (as those located closest to the rivers or on the river banks *and* with economic resources to pay for irrigation systems) and plots without such irrigation. On the riverbanks, tobacco is cultivated, especially in the central and western part of Condega.

The main crops in Condega are staples (corn and beans) as well as coffee in the highest parts, cattle for those who can afford it, and tobacco and vegetables in the lowest parts of the area, especially using water from the rivers for irrigation. Temporal migration to Costa Rica and Honduras is an important source of income for many families, also to help finance inputs for subsistence agriculture, especially in the El Pire area.

#### **Current distribution of land, land titles and registration in Condega**

Generally speaking, Condega is characterized by small landholdings. According to the questionnaire survey of a random sample of the rural households, more than one-third of the households (36 percent) have no land of their own for cultivation. The majority of the land is owned as farms in the interval between 1 and 10 *manzanas*.<sup>26</sup> However, it should be mentioned that there is quite a difference between the size of landholdings between the land-reform influenced parts of the municipality (the

**Table 1. Proportions of households according to total area of farm, divided between villages affected by land reform and not affected by land reform**

*Percentage of households in intervals of land holding size, survey data, rural sample*

Total area of farms in Condega	No or very limited land reform impact in village (N=168)		Land Reform area, (cooperative or redistributed land) <sup>a</sup> (N=215)		All of Condega, % (N=383)
	#	%	#	%	
Without land	64	38	71	33	36
0,1-5 mzs	62	37	65	30	33
5,1-15 mzs	27	16	49	23	20
15 mzs +	15	9	29	13	11
<i>Total</i>	<i>168</i>	<i>100</i>	<i>215</i>	<i>100</i>	<i>100</i>

<sup>a</sup> One household did not inform about total area of plot, although they had land received from the land reform.

eastern part), and the western, generally non-reformed part of the municipality (El Pire). The non-reformed area is characterized by a distinct fragmentation of plots (a large degree of *minifundismo*) with more small plots and more landless households.

A different aspect of the level of inequality in distribution of wealth in the case study area emerges from the questionnaire data regarding duration of periods in which the household had insufficient food during the past year. As the table below shows, two-thirds of the rural households experience periods with insufficient food. For almost half of the households, these periods last more than 3 months.

Another aspect of inequality, which is related to inequality in opportunity, is reflected in the level of formal education of the heads of household in rural Condega. As the table below shows, close to one-third of the heads of households are illiterate, followed by almost half of the sample of rural households in which the head of household reads and writes but has not completed primary school. Only in the top fifth of the households has the head of household started secondary school, and of these, only one-quarter (5 percent of the total sample) have completed the secondary school level or continued to higher education. These data show that formal education is highly unevenly distributed.

As shown by Ravnborg (2002), there is a statistically significant relationship between land tenure and level of poverty in Condega. More than half the households classified



**Table 2. Measures of inequality: Duration of period with insufficient food in household and level of formal education. Rural sample**

<i>Duration of period with insufficient food during the last year, N=383</i>	<i>Insufficient food for more than 3 months</i>	<i>Periods with insufficient food, less than 3 months</i>	<i>No periods with insufficient food</i>	
Number of households	184	100	96	
Percentage of households	48%	27%	25%	
<i>Level of formal education by head of household, N=384</i>	<i>Does not read and write</i>	<i>Incomplete primary school</i>	<i>Completed primary school</i>	<i>Secondary school or higher education</i>
Number of households	118	189	56	21
Percentage of households	31%	49%	15%	5%

as the poorest does not have access to land (either as owners or sharecroppers). The other half of the poorest has less than 10 mzs of land. On the other hand, more than 40 percent of the least poor households own more than 10 mzs or land.

The most frequently used access mechanism to land today in Condega is the land market, with 42 percent of the surveyed plots (rural sample). Just under one-third (29 percent) of the plots have been acquired via the agrarian reform (during its different phases or eras), and a similar proportion of the plots (29 percent) have been inherited or pre-inherited.

In Condega, the so-called reformed sector represents just under 40 percent of the plots. One-third of the plots have been obtained from the land reform, either directly (29 percent) or via inheritance from a land reform beneficiary (four percent), while six percent of the plots that exist today have been bought from land reform beneficiaries. Sixteen percent of the plots that at some point were given under the land reform have been sold and are today in the hands of different owners.<sup>27</sup> 61 percent of the plots have not been affected by the land reform.

### **Types of land tenure documents**

A total of 10 different types of land tenure documents – or documents used for documenting land rights or claims and referred to by the landowner as 'the land documents' – were encountered during the questionnaire survey in rural Condega.

Table 3. Frequency of types of land tenure documents, plot level, rural sample

Type of document		#	%
Formal individual document	<ul style="list-style-type: none"> <li>• Escrituras Públicas (124)</li> <li>• Títulos Supletorios (6)</li> <li>• Assignment by Municipality in 'ejidal' area (1)</li> </ul>	131	40
Formal individual land reform document	<ul style="list-style-type: none"> <li>• Individual land reform titles (25)</li> <li>• Collective land reform title (76 plots referring to fewer collective titles)</li> </ul>	25	8
Formal collective land reform document	<ul style="list-style-type: none"> <li>• Papelitos, small documents written by village council (9)</li> </ul>	76	23
Informal document	<ul style="list-style-type: none"> <li>• Receipts signed by transaction parties and witnesses (17)</li> <li>• Temporary, non-inscribable letter from land titling office (1)</li> <li>• Will, non-inscribed (2)</li> <li>• Private sales promises (30)<sup>a</sup></li> </ul>	62	19
No document	<ul style="list-style-type: none"> <li>• No land tenure document of any kind (36)</li> </ul>	36	11
Total		330	100

<sup>a</sup> The sales promises are included in the informal documents despite the fact that theoretically sales promises (*promesas de venta*) could be inscribed. However, this happens extremely rarely in practice.

These 10 different types of documents have been compiled into five categories of legal tenure situations, including one category for the properties that do not have any tenure documents. The frequency of each category (and of the specific types of land documents comprising the category) is shown in Table 3. Almost half (48 percent) of the plots<sup>28</sup> in rural Condega have a formal, individual document and just under one-third (30 percent) have either informal documents or no documents. Just less than one-quarter of the plots depend on formal collective land reform titles.

As there is a known tendency by the informants to exaggerate the formality of their land tenure documents, great care has been shown when asking about the type of land tenure document; the question is approached from several directions and with cross-check questions in the questionnaire format. The table shown above presents data that have been checked for inconsistencies and corrected through call-back visits whenever a need for this was suspected.

When taking into account not just the type of document, but also the name in which it is issued, an even smaller percentage of plots have formal tenure documents. Only

about a quarter of the plots of land in the rural sample have formal individual documents (*escritura pública*) in the name of the current owner. Twelve percent have the same type of document but in an outdated version in the name of a relative of the current owner. One-third of the plots have no document, or only an informal document or a formal document issued in the name of someone who is not even related to the current owner (often the previous owner).

Staff from the technical unit of the municipality of Condega estimate that only about 10 percent of the population has formal documents:

“In the Pire area, people have small plots of land, minifundio, inherited... They were pioneers, positioning themselves, re-populating the zone without legal documents, and without previous cadastral or registry data. In the majority of the cases, there are no ‘Escritura real’ even though the people talk of one [...] very few people had public deeds... the rest have only possession rights.”

#### **Inscription of titles in the public property registry and cadastre system**

It is obligatory to inscribe a property in the property registry, and fines are established for the lack of compliance with this obligation (MAGFOR 2002; MAGFOR and BIDE 2002). However, in practice, no mechanism exists that obliges owners to carry out the inscription of property transactions, due to the lack of cadastral system coverage over large parts of the country, and due to weaknesses in the public registry systems (ibid.:23). The lack of cadastral system coverage in parts of Condega and the lack of integration or coordination between cadastre and registry allows for multiple registrations of the same (or geographically overlapping) plots of land.

**Table 4. Frequency of inscription of documents in the property registry, taking into account in whose name**

<i>Inscription status of land tenure document</i>	<i>#</i>	<i>%</i>
Document inscribed in the name of current owner	82	26
Document inscribed in name of relative of current owner (alive or deceased)	43	14
Document inscribed in name of cooperative	72	23
Document not inscribed, or inscribed in the name of somebody other than the current owner or a relative hereof, or no document to inscribe	118	38
<i>Total</i>	<i>315</i>	<i>100</i>

Table 4 shows that only about one-quarter of all plots are inscribed in the property registry in the name of the current owner. It is estimated that the real number can be even lower than what is shown in the quantitative data, partly due to a known tendency to exaggerate security and formality, and partly because of widespread confusion among informants between the fiscal registry at the municipal level and the public property registry at the departmental level.

Not all the plots that (according to the interview person) fulfil the conditions for inscription of documents in the property registry (i.e. the plots have formal individual documents in the name of the current owner) are actually inscribed in the property registry.

More than 80 percent of the plots with *Escritura pública* are inscribed in the name of the current owner; however, 15 percent are left without inscription, or inscribed in the name of someone other than the current owner and not even a relative. These cases are usually caused by a land transaction (sale) in which the documents are not updated in the registry (and also often not in the cadastral system).<sup>29</sup> The outdated documents naturally also have outdated registry information. The low level of inscription in the name of the current owner is surprising for the plots with individual land reform titles, as most of these were given already inscribed in the property registry. However, the data reflect the considerable rate of transfer of land reform plots, and that these changes have not been updated. The formal obligation to inscribe land rights is not enforced and has limited practical impact.

Condega is situated right on the border of the extent of physical cadastral information, with (outdated) cadastral maps existing for the south-western part of the municipality but not for the rest of the rural areas of Condega. North of Condega, only the urban areas have cadastral information. This means that in theory there is even less control regarding overlapping rights claims, as there is no system for geo-referencing the start of one property and the end of the next.<sup>30</sup> There is a complete lack of cadastral surveys and maps in the northern and eastern parts of the country – and outdated information in the rest of the country. Condega is illustrative of both – although it does not seem to make much difference whether cadastral data exist or not, because the existing database is so out of date. According to the questionnaire survey, less than half of the plots of land in Condega have a cadastral map (46 percent), but like the information on registration status, this is considered an optimistic estimate. No statistically significant relationship was found between plots located in villages inside of the cadastral map coverage area and higher frequency of cadastral plot maps. This

indicates that the formal requirement to update cadastral maps, which only applies to land within the cadastral map coverage area, has no practical significance. The plots with informal documents are – not surprisingly – those that have a cadastral map less frequently (19 percent). None of the plots without documents have a cadastral map.

#### **Local perceptions of land tenure security**

The method of land tenure security ranking (See Broegaard 2008 for details) allows me to identify local concepts of tenure security, or what I call perceived tenure security (PTS). The results are interesting, as they do not just identify the individual concepts related to perceptions of different levels of tenure security and insecurity. A correlation test (Spearman's *rho*) shows that there were statistically significant correlations between the rankings of the different informants.<sup>31</sup> In this way, the rankings can be said to represent a “common” or widespread perception of land tenure security levels in the area. Thus, the ranking methodology helps transcend the individual perception of levels of land tenure security and enable insight into the shared understanding about the levels of tenure security and their associated characteristics in the local community and in the municipality.

The type of document held by a landowner plays an important role in determining whether a landowner is locally perceived as enjoying tenure security. However, it is only one element out of several that are considered to influence PTS. There is general agreement that the most desirable situation, conferring the highest possible level of tenure security, is possession of an *Escritura pública* in one's own name (i.e. an individual, updated document, issued by a lawyer). There is further agreement that documents given by the government through administrative procedures provide less tenure security and are associated with less legitimacy, and that they result in transactions that are far more cumbersome and characterized by slow administrative procedures. There is some discussion, mainly between land reform beneficiaries and non-beneficiaries, regarding whether land reform documents provide medium or low tenure security. Sales agreements, even if they are neither formal nor inscribed, are considered to provide a quite high level of tenure security, mainly because of the legitimacy that is associated with land-market transactions.

For both tenure documents and registration in the property registry, many informants consider it sufficient basis for high levels of tenure security if the land is titled and/or inscribed in the name of a *relative* of the current owner. Registration of collective

Table 5. Tenure security ranking, based on local concepts

Perceived tenure security	Aspect	Level	Description
	Tenure document	High	Formal document, updated in the name of current owner. Some also include sales agreement and formal documents in the name of a close relative. Others place sales agreement and formal documents in the name of close relatives in the lower tenure security category.
		Medium	Land reform title. Collective land reform titles are sometimes placed in the lower category.
		Low	No document; Solvency papers from OTR; documents from cooperative board (sales agreements, certificate of donation).
	Registration	High	Inscribed in the property registry in the name of current owner. Some also include inscriptions in name of a family member, as well as the importance of tax payments at the municipal level, in order for the property to be included in the fiscal property registry at the municipal level.
		Medium	Registered, but as cooperative land.
		Low	Not registered.
	Delimitation	Low*	Non-delimited land as for example in cooperatives.
	Land access mechanism	High	Bought land. Most agree that non-reformed areas are most secure. Inherited land is also included.
		Medium	Reformed areas, especially when received from land reform itself, not through a donation from a cooperative, for example.
		Low	Pre-inherited land. Some place reformed areas here.
	Degree of independence	High	Do not have to ask anybody for permission on sales, credit or land use.
		Medium /low	Dependent on others, whether a group of co-cooperative members, or a father from who land was pre-inherited, for decisions on sale, credit and land use. Complicated and expensive to make formal transactions, as they involve a state agency (reformed areas). Collective documents and therefore only access to formal credit as a group, not on an individual level.
	Economic wealth	High	Economic resources to be able to meet most situations (e.g. a buffer in case of an emergency, economic ability to contact a lawyer if need be).
		Low	Poorer.
	Debt	High	No debt in the property.
		Medium /low	Debt, especially if it is considerable amounts.
	Participation	Low*	Do not participate in any organizations.

\*) In the ranking sessions, only one level of perceived tenure security was mentioned for these aspects.

property rights are considered to provide only a medium level of perceived tenure security. Following the same logic, individual plots of land that have not been physically delimited from adjacent lots are considered to have a low level of tenure security, because borders may be disputed. It should be noted that what people emphasize is the *de facto* delimitation, making property boundaries and walking them with neighbours; and *not* the formal demarcation procedure with a cadastral map that is produced by a topographer and authorized by INETER, the National Institute for Territorial Studies.

The access mechanism to land was another element in the local concept of tenure security. Here, bought land was mentioned as the most secure, followed by inherited land, which is also considered to be associated with high levels of tenure security. Land accessed through the land reform process, irrespective of era or government, is considered to be less secure, as is pre-inherited land. The high level of legitimacy associated with land market transactions is consistent with interviews. For example, a plot of land which had been affected by the land reform was considered to increase its level of tenure security with the increasing number of land transactions it had passed through.<sup>32</sup> The same is mentioned for inherited land, where disputes about inheritance usually come to an abrupt end, as soon as one party succeeds in selling the land.<sup>33</sup>

#### *Women's access to land*

Although Nicaragua is congratulated for its equal-gender legislation, differences in the difficulties involved in obtaining protection of property rights often follow gender lines (see Lukes 1974 for a historical perspective; Lastarria-Cornhiel, Agurto *et al.* 2003).<sup>34</sup> The formal gender equality in legislation is not strongly felt in the field, where titling still often takes place only in the name of the male spouse, for example. Thus, although gender equality is sometimes used as an argument in favour of granting land rights to women, especially when they are mothers, women are generally marginalized in their access to protection of property rights, both in the private and public spheres. In the case of the village of Santa Rosa, for example, out of 21 cooperative members, there is only one woman. Doña Teresa accessed land through her former husband, a cooperative member, who was killed in the war. Becoming a widow, one of the so-called "martyrs and heroes" of the war, Doña Teresa was given the land rights of her former husband in the cooperative. There are many other female-headed households in Santa Rosa and the fact that none were included as members of the agricultural cooperative shows that inclusion in the cooperatives was not just a question of providing land to *heads* of landless or land-poor households. Doña Teresa gained land



rights in the cooperative through becoming a widow of her deceased husband, not in her own right.

Property rights are usually held individually in Nicaragua, rather than as a household good. According to the civil code (1904), spouses retain individual ownership of assets owned prior to marriage as well as those obtained during the marriage. Common property between spouses is only obtained through the elaboration of a legal document, inscribed in the public registry. This is rarely practiced – the fact that many people do not even have birth certificates illustrates the limited use of formal documents, and the use of ‘common-law-marriages’ is widespread in rural areas (leaving women unprotected in case of broken relationships). Furthermore, the practice of non-inscription of property rights to land in the property registry is mentioned in the interviews as an extra difficulty for women in ensuring them their share of the household wealth in case of divorce. As land and farming are considered mainly male activities, land issues are often left to the men to handle. Traditionally, land transactions are a male-dominated domain, and often when a man buys land, even if it was purchased through the common effort of husband and wife, it will only be titled in the name of the husband (if titled). The quote below illustrates this. However, women can perfectly well own property, and daughters are supposed to inherit equally with their brothers.

“No, I am not included in the ‘papelito’ [informal receipt for the land that my husband recently bought]. I did not ask him [to include me].”

Maria, El Pire area.

Still, female land ownership can and often does provide an important source of income for rural women. For Frida in Santa Rosa, for example, who is one of the beneficiaries of a UNAG loan for land purchase, owning her own piece of land means that she now has her own income and thereby money that she controls. She has to hire day-labourers to help her in the field, as her children are studying and can only help her with smaller tasks. The income from her field allows her to pay for most of the expenses for the children’s schooling, so that she does not have to ask her husband for money so often. This also allows her to send her oldest daughter to school, despite the fact that her husband did not want to spend any more money on her education after she became pregnant.

The following table shows that land is owned individually, and that men outweigh women by far as formal landowners. Official policy requires state titling entities

Table 6. Land tenure documents by gender and family relation

<i>Name in which document is issued</i>	<i># plots</i>	<i>% of plots</i>
Male head of household	126	42.9
Land reform cooperative (almost exclusively male members)	76	25.9
Relatives (incl. collective created by relatives, gender not specified)	59	20
Female head of household	24	8.2
Former owner (gender not specified)	9	3.1
<i>Total</i>	<i>294</i>	<i>100</i>

to issue land titles in the name of both the male and female head of household in order to ensure equal rights to property for both genders. However, this government policy is not noticeable in the actual titles that people have.<sup>35</sup> Still, this does not necessarily mean that the gender-sensitive laws do not have an impact on the negotiation of land rights going on in the everyday struggles over rights and assets.

It is rare that women purchase land on the land market, as they generally handle only smaller amounts of money due to the typical household division of labour. In the case study area, women who had purchased land were mainly members of the farmers' organization UNAG, which has a strong women's section in Estelí department. UNAG-Estelí facilitated long-term credit to some members of the women's group for purchase of land. In addition to these women, only a few women from the wealthier families had purchased land and pursued a larger-scale farming strategy that included cattle breeding.

Ownership of economic assets is an important indicator for economic autonomy of women and an important determining factor in the fall-back position of a woman, and consequently of her wellbeing, especially when a household is dissolved (Freeden 1991). Katz and Chamorro (2002) find in a study of Nicaragua (and Honduras) that the amount of land owned by women has a significant and positive impact on food expenditure, as well as the education levels that children attain.

In the next chapter, I explore in more detail *why* the existing mechanisms created to strengthen tenure security and create clarity regarding distribution of rights and their spatial limits are used to such a limited extent, despite the fact that tenure insecurity and land conflicts are always a relevant issue in Nicaragua.

## Notes

<sup>1</sup> Nicaragua is ranked as the poorest country in Central America, with a Gross National Income calculated to be only 810 USD/capita in 2004 (EIU 2005). Almost half of the population (46 percent) is estimated to live below the poverty line, with 15 percent in extreme poverty (World Bank 2003a). These figures actually represent a reduction in both “poverty” and “extreme poverty” over the last decade. However, in absolute terms, the number of poor people is growing (EIU 2005). Poverty is still most widespread in the rural areas, where approximately two-thirds of the people are poor, compared to the urban areas where one-third of the people is poor. Extreme poverty affects a quarter of the rural population (*ibid.*:1). In the coffee-dependent central region (including Condega), the reduction in poverty has been less than the national average, and from 1998 to 2001, poverty actually increased here. The widespread poverty is further aggravated by the fact that the economic resources are extremely unevenly distributed. The top 10 percent of income earners account for 35 percent of the total consumption, while the lowest 10 percent account for under 2.5 percent (World Bank 2003a). Under-employment affects almost half of the workforce (45 percent, EIU 2005). The informal sector is large (according to the Central Bank (*Banco Central de Nicaragua*) accounting for almost two-thirds of all jobs (EIU 2005). Illiteracy has declined some over the last decade, but remains at almost 19 percent at the national level, whereas in the rural areas illiteracy affects close to one-third of the population (30 percent) over 10 years of age (World Bank 2003a).

<sup>2</sup> 1 *manzana* = 0.7 hectares.

<sup>3</sup> I will not go into any detail here about how other macro-regions differ (for example, the Atlantic coast, or the so-called ‘old agricultural frontier’ (see e.g. (Maldidier and Marchetti 1996) for a characterization of macro-regions, and (Rivas and Broegaard 2006) for discussion about the land tenure situation on the Atlantic Coast).

<sup>4</sup> Spanish, mestizo and Indian. The indigenous population was forced to work for free and/or pay heavy ‘tributes’ to the Spaniards. Oppression and abuse, in addition to new diseases, led to an extremely rapid population decline (Dore 2006, Chapter 2).

<sup>5</sup> *Mestizo* is a term for descendants of indigenous people who mixed with Europeans.

<sup>6</sup> Nicaragua achieved independence from Spain and became part of a Central American Federation in 1821. It became a sovereign state in 1838.

<sup>7</sup> Today, it is mainly associated with the continuously advancing agricultural frontier, although with Law 445, there is hardly any ‘unclaimed’ land left. See Rose (1994) for a discussion of adverse possession.

<sup>8</sup> Dore (2006) also shows how liberalism and privatization played a leading role in gender transformations during the 19th century.

<sup>9</sup> However, according to a recent World Bank publication (World Bank 2008) in relation to the discussion of the proposed Registry Law, the National Assembly has questioned whether the inscription of the properties is declarative (*declarativo*, i.e. voluntary) or constitutive (*constitutivo*, i.e. obligatory).

<sup>10</sup> See also comments by Acemoglu, Johnson *et al.* (2002) about what they call ‘extractive institutions’ and their devastating effect on broad-based development, for example in Central America and the Caribbean.

<sup>11</sup> However, other sources (Faurby, personal comm.) question this account of history, as most of the accounts of pre-revolution land tenure build on post-revolution sources without seriously questioning their version of pre-revolution Nicaragua.

<sup>12</sup> This recognition has in principle been given with the approval of the Law on Demarcation of Indigenous Land (Law 445) in 2003.

<sup>13</sup> ‘The reformed sector’ is the local term for all the land that was distributed by the land reform and the land reform beneficiaries.

<sup>14</sup> Several analysts comment on the difficulties associated with making the ‘hacienda type’ land reform work in practice, see e.g. (Deininger 2003b).

<sup>15</sup> Obviously, other elements than gender had to be fulfilled to gain cooperative membership. There were also many male-headed households that did not become cooperative members, either because they were not invited, or because they did not want to accept the obligations of local defence and other political tasks. Dore (2006) and Roquas (2002) provide very interesting gender analyses of how the construction of gender ideals were interrelated with access to and exclusion from land rights in Nicaragua and Honduras, respectively. It should be mentioned that there are many female-headed households, and that it is still common practice for a man to have more than one family (see also Dore 2006:56 and note 9, on state regulation of gender norms that mean extremely different liberties for men and women, respectively).

<sup>16</sup> Political leaders promised each other support in different criminal charges raised against them (from large-scale drug traffic and corruption to charges of sexual abuse of minors), thereby achieving a guarantee for maintaining

### 3. Origins of 'The Property Question' in Nicaragua and in Condega

their political immunity as Members of Parliament and also seeking to strengthen their positions in spite of declining popularity and increasing popular protest. Proposals by PLC and FLSN concerning reforms of the courts have been ruled by the Central American Court of Justice to violate the separation of powers. The Supreme Court of Nicaragua, controlled unofficially by FSLN and PLC, has stated for a second time that they do not want any interference with Nicaragua's internal affairs.

<sup>17</sup> Recently, six major Western European cooperation agencies have withdrawn funding in protest over the state of affairs. For example, the Danish withdrawal was related to the FSLN government refusal to allow previously authorized Danish assistance to Ethics and Transparency and other civic groups planning to monitor the 2011 elections.

<sup>18</sup> There have been cases where the Property Ombudsman (*Procuraduría de la Propiedad*) has administratively annulled *Constancias de Asignación*, individual land reform titles as well as collective ones. Although in some of the cases it is a public 'secret' that family relations were placed above Law 209, which guarantees the validity of the agrarian reform titles, no sanctions were made. Such administrative processes of annulment of documents produced by the former administration or former administrator leaves the generalized perception in the population that state power, without any valid legal argument, can annul land distributions and titles given by the same institutions, in order to favour family members or political friends. While no cases of this type have been found in Estelí department (but in Chinandega, as documented in (Broegaard 2005a)), these incidents increase the insecurity of tenure of the farmers in the reformed sector far beyond the area that was concretely affected.

<sup>19</sup> The loan-part from the World Bank is 32.5 mio. USD. Additional funding (6.8 mio. USD) was obtained from the Nordic Development Fund and from the Government of Nicaragua (5.8 mio. USD), and has later also included funds from the MCC, extending the area to also include León department. PRODEP started its implementation in Chinandega in 2003 (where I also carried out fieldwork) and in Estelí department in early 2006. It also worked on the Atlantic Coast of Nicaragua.

<sup>20</sup> PRODEP was also expected to have a positive environmental impact: "*Land tenure security can provide environmental benefits, as households with secure title tend to improve their properties by planting trees or maintaining existing forest and/or tree cover. With land title, landowners have greater assurance of their future possession of land, and therefore expect to reap the benefits of long-term investments such as reforestation. Also with suitable legal documentation to claim land ownership, landholders no longer need to clear forests to prove land tenure through the 'use of land'*" (World Bank 2002c:31).

<sup>21</sup> Payment for land use rights; the term originates in relation to indigenous communal lands.

<sup>22</sup> No overview exists over what the current legal situation is for the land that used to be *ejidal* land. In principle, the municipality has to grant the transfer of *ejidal* land to individual property holders for it to be titled, but this is not always the case in practice with the '*Titulos Supletorios*'. One case of assignment of land by the municipality in the *ejidal* area in the name of a deceased relative was found in the rural survey. Considering the intensity of the debate and claim-staking regarding a former state farm in Los Alpes, and the general importance of land tenure issues in Condega, it is surprising how little is commented about the *de facto* private appropriation of public goods in a not very distant past. How was this allowed, and by whom? What was the response or interest of municipal rulers in this appropriation? These are interesting questions for further research. How land passed from indigenous land to private property is also beyond the scope of this thesis. Dore (2006) presents a very interesting analysis of these transitions in Diriomo, a small municipality of originally Indian inhabitants in the southern-pacific part of the country, also in what became a coffee production area. See also Gould (1997) on the indigenous resistance and loss of land.

<sup>23</sup> There is a generalized tendency to label a wide range of formal and non-formal land tenure documents as '*Escritura real*' or formal tenure document. This is a methodological challenge, as commented by MAGFOR (2006).

<sup>24</sup> There were only three cases of confiscation of land for cooperatives in El Pire region: in Santa Lucía, Santa Teresa and Ducuale Grande. In one case, the landowner left the country after the revolution; in the other cases, the landowner was killed in the war, and the land subsequently turned into cooperatives. However, the number of beneficiaries as well as the extent of the land is minimal compared with the non-reformed areas.

<sup>25</sup> According to a report from INIFOM/FNUAP (2001), the area of the municipality is only 370 km<sup>2</sup>. Despite negotiations with neighbouring municipalities, in some communities the population and local and central governments still cannot agree which municipality they should belong to (in the northeast).

<sup>26</sup> Comparing the survey data from Condega to the data from CENAGRO III, (<http://www.inec.gob.ni/cenagro/consulta/Capitulo%20II-8.pdf>) it can be noted that the present questionnaire does not capture the reconcentration of land in its totality, due to the fact that the data do not include the landowners who live outside of the rural

communities. When excluding the households without land from my own data, the difference becomes clearer: I find 13 percent of households having less than 1 mz versus 8 percent in the CENAGRO data, 60 percent of the households having 1-10 mzs (CENAGRO=56 percent), and 27 percent of the households having more than 10 mzs whereas the CENAGRO identifies 36 percent. It should also be mentioned that there is much more marked concentration of land in *other* parts of Nicaragua, as for example the regions where cattle ranching is more dominant. However, the differences between my data and the data from CENAGRO are also in correspondence the criticism that has been presented of CENAGRO for under-representing the poorer households.

<sup>27</sup> These data do not necessarily reflect the percentage of the affected area, as they are based on the percentage of plots. In many cases, the original land reform beneficiary sells only parts of his land, not the entire plot. What has been measured in the questionnaire survey is the number of current plots of land. The sold area corresponds to 14 percent of the original land reform area.

<sup>28</sup> Plot defined as a connected piece of land, with one continuous perimeter, acquired in one way and at one point in time, and with one document.

<sup>29</sup> There is a tendency to claim that property rights are inscribed in the property registry, despite only having an informal document. The table shows data where inconsistencies have been corrected based on call-back visits and cross-checking of several entries. A similar situation where people report that their documents are 'formal' although they are actually not formal tenure documents is described in MAGFOR 2006.

<sup>30</sup> This was one of the reasons for choosing Condega as the case study municipality, as it was expected that some differences would be observable in regard to land tenure documents. However, in practice, this is not the case. There is no observable difference in people's attitude and practice regarding inscription.

<sup>31</sup> Correlation statistically significant between informant I, III and IV at 0.01 level (\*\*) in Santa Rosa, and at the 0.05 level (\*) in Oro Verde, between informant I and II and between II and III, but not between I and III.

<sup>32</sup> In the interviews, comments were made about how an increased number of land market transactions helps increase validity of ownership – especially in the reformed sector: *"Now, with two transactions in a row, there is more validity of the transaction"*.

<sup>33</sup> See also Roquas (2002) for a similar observation from Honduras, including the use of land sales to put an end to claims from excluded co-heirs.

<sup>34</sup> Nicaragua appears in the literature as a country where important steps have been taken towards gender equality regarding land ownership. *"In an attempt to improve gender equality [...] Explicit equality between men's and women's land rights is guaranteed by Nicaragua (as of 1981)[...]; joint adjudication and/or titling of land to couples is a requirement in Nicaragua (1993); [...]and] Nicaragua give[s] priority and charge[s] lower fees to female household heads in land-related interventions"*(Deininger 2003:60). See also (Agurto, Guido *et al.* 2008).

<sup>35</sup> What was noticeable, however, was that a number of women had been able to purchase land through long-term loans from UNAG, and subsequently with the help of UNAG access a titling project through OTR. A review by World Bank (2008) also comments that joint titles are more frequently given to father-son combinations than to husband and wife. See also Lastarria-Cornhiel, Agurto *et al.* (2003), who comment on the very low percentage of jointly issued titles.

## 4. Expected and experienced benefits of land titles

“... property is a right in the sense of an enforceable claim; [...] while its enforceability is what makes it a legal right, the enforceability itself depends on a society’s belief that it is a moral right.[...] “Property is not thought to be a right because it is an enforceable claim; it is an enforceable claim because it is thought to be a human right” (Macpherson 1978:11).

The ‘property rights school’ argues that land titles are a key element of tenure security through state recognition of property rights and related promises about enforcement in case of their violation. Tenure security is a cornerstone in the mainstream argument about growth-generating market liberalization; and most people, from laymen to politicians and land tenure specialists, will agree that land tenure security is a *sine qua non* for sustainable development to take place. The neo-liberal argument presents individual, alienable property rights, certified by registered land titles, as the supreme tool in order to ensure tenure security and thus investments, credit access and dynamic markets, which in turn are argued to be able to ‘level the playing field’ for rich and poor and create pro-poor growth (see for example Feder 1999; de Soto 2000; de Soto 2002; Deininger 2003b). As discussed in the introduction, modifications have occurred in the World Bank research department’s position towards whether property rights necessarily have to be individual, and whether they necessarily have to be alienable (Deininger 2003b).

From another background, the anthropological research on land issues argues that a wide variety of resources – in addition to titles – are in play to sustain claims to land, and that poorer people remain disadvantaged on an uneven playing field, even if they obtain title to their land. They also find that land titles may not always increase the level of tenure security, and that the land tenure may be secure, even in cases without titles to land (See for example Berry 1993; Coles-Coghi 1993; Jansen and Roquas 1998; Benda-Beckmann 2001b; Roquas 2002; Peters 2004; Broegaard 2005b). As argued in the introduction, this contradiction between the mainstream policy package and anthropological findings motivates the present research project, which analyses whether titles provide the expected benefits of tenure security, also to poor households. Furthermore, this chapter is motivated by my wondering why so few small-scale farmers use the existing state-endorsed system of land titles and land registration, in the context of threatening land conflicts and land invasions, and with a recent history of expropriation and confiscations of

land, in which registration of land has been crucial for payment of compensation to the former owners.

“Well, regarding the land tenure, in Condega it is one of the most serious problems, because the majority of the demobilized and civil people have the land, but they do not have legality. [...] They only have possession right; they are using the land in relation to the work that they carry out... The Sandinista government gave land to these people and so did the Violeta [Barrios de Chamorro] government, but a large number of people do not have the land reform titles; the [topographic] measure of the plots is still pending for them to be able to see their titles. In other words, it has been a particularly slow process. There has not been any concern on the part of the current governments; this makes it difficult for the people to... say... ‘This is mine’, because... there is insecurity and with the property problems in Nicaragua suddenly the judge comes and will evict them because the old owner came, presented the title that he has of property rights of the land, and with this the people can be evicted.”

Javier, ASOEXCOPADE (ex-combatants association)

The level of land conflicts in Condega is not exceptionally high when compared with other municipalities in Nicaragua where fieldwork has been carried out. Yet the issues of land conflicts, lack of formal tenure documents, and insecurity of land tenure are among the ever-present themes on the public agenda in the municipality. The quote above is from a leader in an ex-combatants association and a beneficiary of the post-war land reform, and highlights the lack of formal titles and high levels of tenure insecurity in the reformed sector, i.e. among land reform beneficiaries. It also highlights the importance of the unequal access to justice for land conflicts and for perceived insecurity of tenure. However, the lack of formal tenure documents, land tenure conflicts and perceived tenure insecurity is not restricted to the reformed sector, although it is the land tenure problems in the reformed sector which receive most of the attention in policy making and the media in Nicaragua. The same is the case in other Latin American countries, as is shown for example by Roquas (2002). In this chapter – as in the subsequent chapters – I analyse both the reformed and the non-reformed sectors.

### **Expected benefits of land titles**

When asking about the expected benefits of obtaining a more formal or more updated document, the most frequent answer is to “feel more secure, more owner” (*sentirse más*



Table 7. Expected benefits of titling. Multiple answers, rural sample, plot level

Expected benefits if formal documents are obtained or updated (N=225)		#	% of answers	% of cases
Security	Would feel more secure, more owner	168	32.1	74.7
	Could arrange inheritance better	44	8.4	19.6
	Could avoid intra-family conflicts	10	1.9	4.4
	Could prevent conflicts with other cooperative members	3	0.6	1.3
	Could prevent conflict with neighbours	4	0.8	1.8
	Could prevent conflicts with third parties	5	1	2.2
	Could put an end to on-going conflicts	1	0.2	0.4
Credit	Could gain increased access to formal credit	148	28.3	65.8
Land value	Increased value of the land	56	10.7	24.9
Investments	Could make more investments in the land	45	8.6	20
Projects	Would gain increased access to development projects	39	7.5	17.3
Total		523	100	232

*seguro, más dueño*). In Condega, this response was given for three-quarters (75 percent) of the plots where the existing documents are not completely up to date.

Here, the issue is not so much the fear of losing the (possession of) land, but rather the possibility to *also* be able to protect land rights through the legal system (in addition to the norms and controls of the socially embedded system within the village structures). Another important expected benefit of obtaining a more formal or more updated document is to be able to make formal arrangements for inheritance. For 20 percent of the plots in Condega, this is an important expectation and a reason to want to obtain a more formal or updated document. All in all, the ‘security’-related expected benefits of titling account for 45 percent of the total expected benefits in the responses. This is a strong indication of the importance for local farmers of titling in relation to land tenure security. In order of importance, the ‘*security expectations*’ are followed by expectations about increased access to *formal credit*, higher *land values*, higher levels of *investments*,<sup>1</sup> and better access to participation in *development projects*. Now, do formal tenure documents live up to the local expectations (which coincide roughly with the mainstream expectations for land titling and administration projects)? This is one of the leading questions throughout the rest of the report. This chapter focuses on perceived tenure security and conflict frequency, while access to credit and the working of the land market are dealt with in subsequent chapters.

### Perceived land tenure security and insecurity in Condega

Despite much talk about insecurity of land tenure in Nicaragua in general, and especially in the northern part of the country, the quantitative data from the questionnaire survey in Condega show a moderate level of land tenure insecurity, as perceived or expressed by the landowner. When asking directly about the level of perceived tenure security/insecurity for the 330 plots of land for which information was obtained, 90 percent (296 plots) are seen as having secure tenure. 10 plots (3 percent) are in the category of 'more or less secure', while 24 plots (7 percent) are considered to have insecure land tenure.<sup>2</sup> The data reflect an unexpectedly high level of perceived tenure security in the municipality of Condega, when compared to publications about land tenure security and insecurity in Nicaragua (e.g. World Bank 2002c) as well as when compared to other municipalities where fieldwork has been carried out.<sup>3</sup> In 13 percent of the properties in Condega, landholders fear future conflicts. Conversely, there is no fear about future conflict in 83 percent of the plots, five percent do not know and no information was obtained for two plots. These two variables are combined to express the level of perceived tenure security, as shown below.

**Table 8. Frequency of different levels of perceived tenure security (PTS)**

<i>Level of tenure security, Condega, rural sample</i>	<i>#</i>	<i>%</i>
Feel secure about current land tenure and fear no future land conflict	265	80
Feel medium secure about land tenure and/or fear future conflict	41	12
Feel insecure about land tenure	24	7
<i>Total</i>	<i>330</i>	<i>100</i>

The table below is based on the questionnaire survey and shows that while the formal tenure document status is considered to be important for tenure security, the access mechanism through which land was acquired is as important. Furthermore, close to one-third of the answers to the question, "What makes [the owner] feel tenure security?" are related to duration of possession as well as local recognition of rights. This presents strong evidence that these elements (access mechanism, duration of possession and local recognition of rights) should be taken into account when analysing land tenure problems and designing policy recommendations.

Table 9. Reasons for feeling tenure security, rural sample (multiple answers)

		Condega (N=306)		
		# Answers	% Answers	% cases
Some kind of tenure document	Public title ( <i>escritura pública</i> )	93	15.3	30.4
	Land reform title	57	9.4	18.6
	Document in process	3	0.5	1
	Informal document or cadastral map	5	0.8	1.6
Access mechanism	Bought	86	14.1	28.1
	Trust in person (who sold or gave land)	8	1.3	2.6
	Inherited	67	11	21.9
Long duration of possession	Possession rights	51	8.4	16.7
	Old inhabitants (lived long time on land)	84	13.8	27.5
Local recognition of rights	Recognized by community	49	8	16
	Improvements in the land	1	0.2	0.3
Past experience	Have never had any problems	37	6.1	12.1
Trust institutions	Trust in institutions	7	1.1	2.3
Total		609	100	199

When it comes to the reasons mentioned for feeling tenure insecurity (by the rural-based owners of plots considered to have insecure land tenure (N=24)), two-thirds (66 percent) of the answers were related to the absence or insufficient formalization of land tenure documents. This was followed by the politics of the government and the lack of enforcement by the government in 26 percent of the answers. Land conflicts in themselves were mentioned in five percent of the answers and economic situation in only one case, representing three percent of the answers (table 10). Regarding those who fear future conflicts (N=42), close to one-half (48 percent) mentioned a lack of a formal document or lack of an individual document as the reasons that they feared future land tenure conflicts. For more than one-third of those plots where the owner fears a future conflict, the fear was related to lack of enforcement or the politics of the government. 17 percent were related to some kind of (dormant) conflict, whether intra-family conflicts, property boundaries or access issues (see table 11).

As mentioned in Chapter 2, it is often assumed by the mainstream approach to land titling and tenure security that it is the lack of formal, inscribed titles that is

Table 10. Reasons for feeling tenure insecurity, rural sample (multiple answers)

		Condega (N=24)		
		# Answers	% Answers	% cases
Lack tenure document	Lack public title (escritura pública)	15	39.5	62.5
	Lack land reform title	6	15.8	25
	Lack inheritance documentation	2	5.3	8.3
	Lack of topographic measure (delimitation)	2	5.3	8.3
Politics, lack of enforcement	Politics of the government	6	15.8	25
	Level of crime and lack of enforcement	3	7.9	12.5
	Property rights but not possession	1	2.6	4.2
Conflicts	Conflicts	2	5.3	8.3
Economic situation	Debt	1	2.6	4.2
Total		38	100	158.3

the main barrier for enforcement of property rights by the state. However, more than one-quarter of the reasons mentioned for perceiving one's tenure situation to be insecure is related to lack of enforcement by the government, as well as the politics of the government (see table 10).

Also in the qualitative interviews, the importance of the political environment for tenure security, or rather *insecurity*, is highlighted.<sup>4</sup> The changing legal regulation of property rights issues also adds to the level of insecurity, as it creates confusion. Often, several legal instruments may be at work simultaneously at one point in time, despite some of the laws being outdated. When explaining how the politics of the (changing) governments create insecurity, land reform beneficiaries often express that they would not permit the land they obtained through the reform land to be taken away from them. Instead, they would defend and fight for it. In this context, it has to be remembered that most people over 30 years of age in this part of the country fought on either one side or the other in the civil-war, so they know what they are talking about. In this way, the insecurity created by the changing politics of the changing governments, and the lack of trust in the state as a guarantor of property rights is related to land conflicts. The following quote from two ex-contras in San José also expresses that insecurity is created for the land reform beneficiaries by the lack of trust in the government:

“Without a security it means that we do not have anything... we evaluate that they will not ask us to leave the land, after all. The owner [sic] does not do it. He has never returned – he does not need the land. He is in Honduras. It is the Government that makes me a bit afraid, that they throw us out. [...] Violeta<sup>5</sup> promised, but they have not given the land titles ...”

Alejandro and José; San José (emphasis added).

The same is reflected in questionnaire data: More than one-third of the reasons to fear future conflict are related to lack of enforcement or the politics of the government. In addition, almost one-fifth of those people who fear future conflict relate their fear to some kind of (dormant) conflicts, which indirectly are also related to an experience or expectation of lack of enforcement and protection of property rights by the state.

Table II. Reasons for fearing future conflict (rural sample)

		Condega (N=42)	
		#	%
Lack of document/ individual document	Lack legal tenure document	17	41
	Lack individual documents	3	7
Politics, lack of enforcement	Lack of respect for laws (lack of enforcement)	10	24
	Politics of government	5	12
Conflicts. intra-family, boundary or access	Intra-family conflicts	4	10
	Property boundary issues (fences destruction, animal invasion)	1	2
	Access issues	2	5
<i>Total</i>		42	100

### Experienced benefits of land titles: Do formal titles increase perceived land tenure security?

In order to triangulate between methods and data sources, cross-tabulations and Chi-square tests were carried out regarding the statistical relationship between perceived land tenure security (PTS) and (most) of the elements that the qualitative data showed were constituting elements of PTS. The analysis includes different variables related to type of land tenure document and its inscription in the property registry; economic

**Table 12. Level of perceived land tenure security by type of document, inscription, wealth, access mechanism, duration of ownership, organizational level as well as land reform effect**

*Number of plots by perceived land tenure security according to type of document in whose name, name on document, inscription status, economic wealth in cattle ownership, access mechanisms, year of obtaining land, UNAG membership and land reform affectation*

Rural sample	Perceived tenure security			All levels
	Secure	Medium and/or fear future conflict	Insecure	
<i>Type doc in whose name***</i>	265	65		330
EP, indiv doc name of current owner	78	7		85
EP, indiv doc name of relative	34	6		40
Indiv land reform title (current owner, relative of owner or former owner)	21	2		23
Collective land reform title	50	27		77
Informal doc/ no doc/ EP in name of other	82	23		105
<i>Name on document***</i>	265	41	24	333
Owner	140	9	7	156
Relative	47	4	2	53
Cooperative	50	21	6	77
Other name / no document	28	7	9	44
<i>Inscription status***</i>	251	40	24	315
Inscribed owner	74	3	4	81
Inscribed, relative	37	4	2	43
Inscribed cooperative	46	20	5	71
Not inscribed/inscribed other name/no doc	94	13	13	120
<i>Wealth in cattle**</i>	265	41	24	330
4 or more heads of cattle	53	3	2	58
1-3 heads of cattle or oxen	61	10	13	84
No cattle or oxen	151	28	9	188
<i>Access mechanism**</i>	262	41	24	327
Bought	115	10	11	136
Inherited or pre-inherited	83	11	2	96
Via land reform	64	20	11	95
<i>Year of obtaining land<sup>ns</sup></i>	244	55		299
- 1989	123	23		146
1990-1996	62	10		72
1997-2003	59	22		81
<i>UNAG membership*</i>	194	28	14	236
Member of UNAG	60	13	1	74
Not member of UNAG	134	15	13	162
<i>Land reform effect***</i>	262	41	24	327
Non-reformed land	176	15	9	200
Obtained via land reform, inherited or bought from LR beneficiary	86	26	15	127
<i>Land reform effect***</i>	262	65		327
Non-reformed land	176	24		200
Obtained via land reform or inherited from LR beneficiary	75	32		127
Bought from land reform beneficiary	11	9		20

\*\*\* Correlation significant at the 0.001 level (Pearson's Chi-square test). \*\* Correlation significant at the 0.01 level (Pearson's Chi-square test). \* Correlation significant at the 0.05 level (Pearson's Chi-square test). <sup>ns</sup> Correlation not significant at the 0.05 level (in this case only at 0.06 level).

wealth (here expressed in ownership of cattle); access mechanism to land; duration of land ownership; as well as organizational level, here expressed as membership of the small and medium-size farmers' organization. It also looks at the special case of the reformed areas versus non-reformed areas. Many of these elements are interrelated, and all are relevant for the analysis of what creates perceived land tenure security in the case study area.

The empirical data from Condega show a strong relationship between the type of document and the name that appears on the document, and the level of perceived tenure security. Not surprisingly, the questionnaire data show that it is with regard to those plots with individual land titles (*Escritura pública*) in the name of the current owner that most landowners perceive that their land tenure is secure (Table 12). However, what may be surprising when compared to the mainstream argument about the importance of formal, updated documents for tenure security is that it basically does not make much difference for the perceived land tenure security whether the document has been updated or left in the name of a relative, whether deceased or still alive. 85 percent of plots with formal, individual documents in the name of a relative of the current owner are considered secure. This percentage is only slightly lower than the equivalent figure for plots with documents in the name of the current owner (92 percent).

Owners with individual land reform titles (regardless of whether they are in the name of the current owner, the owner's relative or even in the name of the former owner) feel secure with a similar frequency as do possessors of *Escrituras públicas* in the name of the current owner (91 percent). Within the reformed sector, the perceived tenure insecurity is concentrated in the plots with a collective land title (only 65 percent within this group express that they feel tenure security, 35 percent medium to low level of security). This low level of perceived tenure security is comparable to what is expressed for the plots without any documents (of which 64 percent express feeling tenure security, 36 percent medium to low level of tenure security).

When distinguishing between plots with informal documents and formal documents in the name of someone who is not the current owner or related to the owner, on the one hand, and plots without any documents, on the other hand, it is interesting that the first category is generally considered to be secure at about the same level as plots with more formal documents (86 percent within this category, versus 92 percent within the category with formal titles in the name of the current owner, and 85 percent within the category with formal documents in the name of a relative). As the informal documents can be receipts or testimonies of land transactions from lawyers and notaries, or a piece



of paper from the village committee, this result shows that there is much trust in the local informal documents, even though they are not inscribable in the public registry for property – or that there is much trust in something *other* than formal documents.

The statistical analysis of the questionnaire data also shows that the name under which the document is issued is also very important for the level of perceived tenure security. Those properties for which the document – *of whatever type* – is issued in the name of the head of household (female or male; i.e., in the name of the current owner), the vast majority (90 percent) consider themselves to have tenure security. When the documents are in the name of a relative (whether alive or deceased), there is also a high level of tenure security (89 percent considering themselves as having security), despite the fact that these documents are out-dated. Among the properties with documents issued in the name of a cooperative or collective, or in the name of somebody else (normally the former owner of the property), the frequency of perceived high level of tenure security is much less, 65 and 64 percent respectively. More than one-quarter of the plots of land for which a document is issued in the name of a cooperative are considered to have a medium level of tenure security. For the plots without documents, or where the existing document (of whatever type) is issued in the name of somebody other than the current owner or a relative hereof, more than one-fifth consider their tenure to be insecure.

While there is also a statistically significant relationship found between possession of documents inscribed in the property registry and perceived tenure security, as argued by the mainstream policy package, data from the case study area show that it does not make much difference whether documents are inscribed in the name of the current owner or in the name of a relative (within these groups, 91 percent and 86 percent, respectively, perceive their tenure situation as being secure). Comparing the groups of landowners with titles inscribed in the name of a cooperative with the group of landowners without inscribed titles (or inscribed in the name of someone other than (and unrelated to) the owner), it is interesting to note that a smaller percentage of the former perceive their land tenure as being secure, compared to the latter (65 percent and 78 percent within each group, respectively). While the lack of updating of for example land that used to belong to a relative does not protect against intra-family conflicts, it is interesting that people *perceive* their land-title situation as secure in these cases. Thus, they feel little or no incentive to update their land titles. Based on the findings from the case study, the argument about the importance of full registration of documents for land tenure security, as presented for example by Deininger and Chamorro (2002), thus has to be somewhat modified. Even in a

setting where a formal, legal system for land tenure documentation and registration is in place and is widely extended throughout the country, the majority of the properties without land tenure documents are not considered to be insecure with regard to property rights. Yet, the landholder often expresses that she/he would feel more secure with a formal document. Thus, while the results confirm the importance of formal, individual documents for conferring high tenure security, they also show that other elements exist which give tenure security, as is the case for the plots that lack tenure documents but are perceived as being secure. This shows that information about land tenure documents *alone* is not a good proxy for perceived tenure security.<sup>6</sup>

A statistically significant relationship was found between the ownership of cattle herds and a high level of perceived tenure security (Chi-square, \*\*; Table 12). This result confirms the qualitative data, which strongly relate tenure security to higher levels of economic wealth. Both types of data show that resources (including economic and social) other than just legal documents are needed to obtain tenure security. This highlights the relevance of considering endogeneity problems. When there is a relationship between economic wealth and perceived tenure security, comparing households with titles and households without titles will over-estimate the impact of titles on household wealth, for example.<sup>7</sup>

How the land was acquired (i.e. mode of acquisition) as well as land tenure history of the plot are very important for the level of tenure security perceived by the landowner in the Nicaraguan context.<sup>8</sup> It is also expressed in the tables on the reasons for perceiving tenure security (Tables 9 and 10). The Chi-square tests show that the plots of land that have been inherited are least affected by perceived insecurity of land tenure, together with the plots of land accessed through the land market mechanism, and that the relationship is statistically significant (Chi-square, \*\*, Table 12). It is clear that the plots obtained from the land reform are considered medium secure or insecure. Actually, the inherited land is considered slightly more secure than bought land (87 percent of heirs to land consider that they enjoy secure tenure, 12 percent medium secure, and only two percent insecure tenure; versus the owners of bought land, where 85 percent consider that they have secure tenure, seven percent medium tenure, and eight percent insecure tenure). The high levels of insecurity of land tenure associated with the reformed areas are discussed further below.

No statistical relationship was found between the duration of ownership of the plot and the level of tenure security. However, a tendency was observed towards the newer acquisitions (after 1997) being those most affected by tenure insecurity. This

trend that insecurity of land tenure decreases with increased duration of ownership (although Chi-square test shows statistical significance only at the 0.06 level) is in accordance with the importance given to the duration of possession as the basis for perceived tenure security (above).<sup>9</sup>

UNAG members feel more secure (or less insecure) than others (Chi-square, \*, Table 12).<sup>10</sup> The explanation for this is that this organization works actively for the defence of property rights for poor people and offers free or inexpensive legal advice, mediation, as well as legal training in cases involving land conflicts.

*Tenure insecurity: The special case of the reformed areas*

The often commented difference in level of tenure security between the reformed sector and the non-reformed sector is confirmed by the quantitative data, which show that a high level of perceived insecurity of tenure persists in the reformed sector (see Table 12).<sup>11</sup> Whereas 88 percent of the non-reformed plots of land are considered to have secure tenure by their owners, this is only the case for two-thirds of the plots that have been affected by the land reform (even if they have subsequently been traded on the land market). For the plots affected by the land reform, one-fifth of the plots are considered to enjoy only a medium level of perceived tenure security, whereas 12 percent are perceived to suffer from tenure insecurity. This is almost three times as high as the similar category for land that has never been affected by the land reform.

The preference for land that has never been affected by the land reform is also expressed in the following quote from a young, successful tobacco producer and land buyer:

“When the cooperative disintegrated, everyone delimited their plots and started to sell. I bought two manzanas. The entire cooperative was gathered, everybody signed a paper that the plot belonged to the beneficiary and that he could sell it. Afterwards, we went to the lawyer; we made a title [a private sales document] and the paper is archived. For me it is better to buy private land... more secure.”

Denis, tobacco producer, Ducuale.

However, other interviews show that the difference in level of tenure security between the reformed sector and the non-reformed sector in Condega is being reduced over time. Several informants commented that there is no longer the same fear as before in the 1990s regarding the property rights to land from the reformed sector. According to these informants, land values are becoming increasingly comparable over time between the two sectors and can be seen as an indicator of this development.

##### **“History is over now”**

The reformed areas are still influenced by their history. Land tenure history is important for posting and justifying land claims. History may be re-elaborated or re-interpreted in order to be able to present as convincing a case as possible. A member of a collective that came into being by invading parts of the land of an already established cooperative (on land that was not reflected in the existing land reform title) explained that it would *not* be acceptable if the present-day landless invaded parts of the land of the collective: *“History is over now – nobody can be allowed to claim land reform rights or revolutionary claims of equal distribution... that is over...”*. In other words, they invaded land belonging to their uncles and *padrinos* and other (mainly senior) members of the community, justifying their invasion with an argument of equity and justice: that land had to be evenly distributed and it was not fair that a few members of the community (the original members of the cooperative) had the main part of the land, while they in the larger group had no land of their own. But now that they are land-owners, on equal terms with the members of the original cooperative (although with smaller plots), they maintain that the same thing cannot happen again, as it would now affect them as landowners. This example shows how *some* parts of history and *some* values are invoked or stressed at some points in time and by some actors (when it benefits them), but not at other times or by other actors. History itself, and norms and values supposedly guiding behaviour, are very much a big sum from which parts are selected in order to present the image and argument that currently is advantageous.

Although, technically, there are documents for the major part of the land from the reformed sector in Condega (with the exception of the land reform beneficiaries in San José, who are still waiting for their land titles, more than 10 years after the fifth topographic survey of their plots of land), these documents were in the early part of the Revolution usually issued to an agricultural cooperative, which today has been dissolved or *de facto* individualized. Therefore, the present owners of the plots, whether they are the original beneficiaries of the land reform or have purchased the land afterwards, often express the wish to have a document which supports them (individually) with respect to their property rights. The absence of updated and individual documents causes problems in some land sales, due to lack of clarity regarding boundaries and rights, or because the board refuses to permit land sales for ideological reasons.

“There are cooperatives that are still not parcialized, and this means that the one that wants to legalize his land, depends on the others and their acceptance of common costs. [...] Or they may sell their land rights, without knowing exactly in which area they are and how much land it is. [...]. And all of this

creates more complications in the reformed areas, where the land tenure was transformed. The conflicts are diminishing when it comes to level of violence, but the legal conflicts continue as before. There is still not legal security.”

Luz Maria, Lawyer, Condega.

### **Do formal titles reduce occurrence of conflicts?**

Land conflicts, land tenure insecurity and lack of formal tenure documents are considered among the most important problems in the municipality of Condega. Land tenure issues have a high profile throughout Nicaragua. The following quote nicely captures the urgency of the land tenure question, especially in those areas affected by land reform, and the explosive potential for land tenure conflicts to erupt into violent conflicts.

“Nobody is secure in Nicaragua. Not land, not people; each government invents something new...[...] There is fear that the government invents something... but it would be difficult for them to take the land away from us... it would be a war! They use the economic way to take the land away from us!”

Pedro, ex-contra leader, land reform beneficiary, Santa Gallo area, Condega

The qualitative data highlight the importance of the national political environment for the level of land tenure conflicts:<sup>12</sup>

“The level of conflictivity is getting lower. People have possession and the conflicts have calmed down quite a bit. There are almost no conflicts about land any more. Before, we, the Mayor’s office, attended much mediation. Now, the conflicts are about water. The last five years or so, the property conflicts have been calm. They calmed down almost when Alemán left the Presidency [2001]. The only real conflicts we have here are in El Bramadero, Venecia and Monte Redondo, all reformed areas.”

Vice Mayor, Condega

The level of land tenure conflicts is not high in Condega compared to findings from other parts of Nicaragua (Stanfield 1990; Merlet and Pommier 2000a; Broegaard 2005a).<sup>13</sup> According to the questionnaire data, 13 percent of the properties in Condega (or 43 properties) have experienced land conflicts over the last 10 years.<sup>14</sup> In relation to the percentage of the rural population that was interviewed in the municipality, this is equivalent to just over 400 conflicts related to land in Condega during the last 10 years.<sup>15</sup>

In addition to the cases reported as conflicts, there are other incidents that are reported as ‘pressure to sell land’, which in most cases strongly resemble conflicts.<sup>16</sup> In total, combining the households that experienced a land conflict or pressure to sell the land, 45 plots (of the 330 plots included in the survey) had experienced some kind of conflicts or pressures. This corresponds to 14 percent of the answers.

No conflicts related to renting or letting of land were reported, despite land rental being frequent and agreements usually only verbal. This raises an interesting point, given that the literature often mentions that the lack of tenure documents restricts land rentals and causes conflicts related to land-leasing (Carter 2001; Macours, Díaz *et al.* 2002; Deininger, Zegarra *et al.* 2003; Boucher, Barham *et al.* 2005).

**Table 13. Land conflict experience by type of document and inscription status in property registry, Condega**

*Number of plots by conflict experience, according to type of document and property registry inscription*

Option <sup>ns</sup>	Type of document						All types
	Formal individual <i>Escritura Pública</i>	Individual <i>Escritura Pública</i> , in name of a relative	Individual land reform title	Collective land reform title	Informal document or <i>Escritura Pública</i> in name of other, who is not a relative	No document	
# plots	85	40	23	77	69	36	330
Have experienced conflict in plot	8	6	5	12	10	1	42

<sup>ns</sup> Correlation not significant (Pearson’s Chi-square test)

Option <sup>ns</sup>	Inscription status in property registry				All types
	Inscribed in name of current owner	Inscribed in name of relative	Inscribed in name of cooperative	Not inscribed/inscribed in name of other (non-relative) or no documents	
# plots	81	43	71	120	315
Have experienced conflict about plot (past 10 years)	8	6	12	15	41

<sup>ns</sup> Correlation not significant (Pearson’s Chi-square test)

Contrary to what would be expected from the policy recommendations about land titling as conflict-reduction, the empirical data from Condega show no statistically significant relationship between type of document (taking into account in whose name the title is issued) and frequency of land conflicts. In parallel, no statistically significant relation was found between inscription in the property registry and the frequency (or probability) of having experienced a land conflict during the past 10 years (see Table 13). Also, no clear pattern was found between type of conflict and inscription status of the plot of land. However, considering that the questionnaire suffers from a sub-reporting of conflicts, especially by the poorer households who tend to hold the least formal documents, these data should only be read as conservative estimates.

Despite of the lack of a statistical relationship between formal titles and (lower frequency of) conflicts, it is clear from the qualitative data that *some* conflicts seem to occur because of a lack of tenure documents, even informal ones, and demarcation of sub-divided plots. However, it should be noted that most cases of land tenure without formal land tenure documents are peaceful and without conflicts. Many land transactions are not formalized. Problems arise especially when the sales are only partial or in cases of inheritance between several heirs (i.e. involving sub-divisions of the land). Due to lack of economic resources the buyers of the land often do not make topographic surveys or formal dismembering. When sub-dividing a property without formally dismembering it, only one of the land buyers obtains the original (outdated) document. During the fieldwork, several cases of conflicts were encountered due to this situation, or because this situation created opportunity for abuses by the person with the original document, for example by indebting the entire property (including the land possessed by the other buyers) for an individual loan.

No statistically significant relationship was observed in the statistical data between the way the land was acquired and the frequency of land conflicts (neither when including the plots where ‘pressures’ to sell had been exerted).<sup>17</sup> However, as already mentioned, there are some conflicts that are specific to the reformed sector.

#### *Conflicts: The special case of the reformed sector*

Despite of the higher level of perceived land tenure insecurity identified in the reformed areas in Condega, no statistically significant difference was found between the frequencies of conflicts in relation to non-reformed land versus land that at some point was affected by the land reform.<sup>18</sup> Just over half (52 percent) of the 42 plots



that reported having experienced a conflict were non-reformed plots, and just under half (48 percent) were from the reformed sector. This is interesting, as it differs from what has been found by similar investigations elsewhere in Nicaragua (Broegaard 2005a; Broegaard 2005b), where reformed land has a much higher (and statistically significant) frequency of having experienced land conflicts.<sup>19</sup> This finding thus shows that Condega deviates from the common expectation that reformed land is more conflict-ridden than other land. This special pattern in Condega could be related to the fact that Condega is in a favourable situation compared to other parts of Nicaragua, in that all previous owners of reformed areas who qualify for compensation have received compensation. Therefore, the former owners do not have a strong case for claiming back their land, as they do elsewhere where compensation is still pending. Furthermore, the high level of organization by the land reform beneficiaries, which is related to the fact that the war was heavily fought in the municipality of Condega, may also have a positive influence, in that attempts by former owners to make land claims have not developed.<sup>20</sup>

The fact that the reformed sector does not statistically have more conflicts than the non-reformed sector, but does have a statistically significant higher level of perceived tenure insecurity, shows that the frequency of land conflicts *alone* is not a good proxy for perceived tenure insecurity.

The following quote also illustrates the conflicts and insecurity in reformed areas that is related to irregularities in the expropriation and registration process under the Sandinista government. It is interesting to note that the area mentioned was given individual land reform titles and that everything was considered secure for 15 years. It also shows how property rights are always open to re-negotiation:

“Currently there is an example of a problem with a former owner in a neighbouring community with some 80 manzanas divided between some 18 families. In the 1980s, the Agrarian Reform gave them the land – or told them that they could take it – and in the 1990s, they gave them individual titles. And there are also others, who were not land reform beneficiaries, who have bought land there. But there is a problem with the former owner: It was not confiscated land; rather the owner abandoned the land and the state took it and gave it to the Agrarian Reform who gave it to the ‘colonos’ [farm workers]. Now the owner came and said that he has the title deed [escritura real]...and that he continues to be the owner. By now he has returned 3-4 times to pressure and threaten them. Who knows how they will solve it... the people have to negotiate.

The people there are afraid. They are poor people, they have made their small houses there... it is all they have. If they are thrown out, they lose everything. The problem started last year, in 2005. Before that, all was considered normal, all secure. There, for example, no-one wants to buy any land [any longer]... there may surge a conflict, and those who have bought land fear that they can lose everything.”

Rosa Elena, Corralitos.

Cases like this, as well as administrative annulment of land reform titles that have been going on in other departments (see Broegaard 2005b), result in lower confidence in land reform titles than in other titles.

### **Gender and land conflicts**

According to the Nicaraguan legal framework, women are supposed to inherit on equal terms with their brothers. This is not always the case in Condega, as it is argued that men need land more than women in order to make a living, as men are expected to be the main breadwinners for the household. Another argument for giving preference to sons in regard to inheritance of land is that, since it is usually (but not entirely) men who cultivate land, the land could escape the control of the family by leaving it to a daughter who lets her husband cultivate her land. In a women’s focus group discussion, women from the area of El Pire explained how daughters in principle inherit as much as their brothers – at least among the legitimate children.<sup>21</sup> Still, some parents may prefer to give other valuables to their daughters and the land to their sons; or some brothers may purposefully (and successfully) try to exclude their sisters (and sometimes also brothers) from inheritance. However, the degree of control retained by women over the plots of land they own varies, if they do not farm the land or organize its cultivation themselves. Often, female landowners leave the cultivation of their land to their husbands.

Throughout Nicaragua, especially in the rural areas, couples are often ‘just’ forming stable common-law relationships that are not formalized in any way. While there is a proposed law to legally recognize such stable ‘*de facto* unions’, it has not advanced. As a result, widows usually cannot inherit property from their deceased (common-law) husband. The lack of legal recognition of the most common way that couples in the rural areas organize themselves is one of the main barriers for strengthening women’s secure access to land (and housing), even at a mature age (Alejandra Guido, FIDEG, personal communication). (See also Peters 2004).

The lack of legal literacy and consciousness of rights among many in the rural population, especially the least formally educated and most timid persons, thus leaves room for abuse of their rights. They may not know that they have a right to inheritance that they have to claim. The case of Auxiliadora certainly illustrates these points:

##### **The case of Auxiliadora certainly illustrates these points:**

Auxiliadora was one of the eight children of Don Mercedes and Isabella. Mercedes had a lot of land in Santa Rosa – estimates mention around 45 *manzanas*. Much of it was inherited from his father and contested by some of his sisters and their children, who claimed that Mercedes abused his position as the oldest son and possessor of their father's land title, to not divide the land that had not already been subdivided by the time of their father's death. After Mercedes' death, the conflict continued and escalated between one of Auxiliadora's brothers and several of their cousins and aunts. Auxiliadora had been given a small plot of land of some 6-7 *tareas* (less than half a *manzana* in total). This was a pre-inheritance from her father to construct a house, after she entered into a common-law marriage with Don Samuel. Yet, this is not anywhere near an eighth of the more than 40 *manzanas* that Mercedes used to own. After Mercedes' death, a conflict evolved between Samuel and Auxiliadora's family, and they refused to give him a piece of land that he had a receipt of payment for, but never received from Don Mercedes. With this as a pretext, Auxiliadora's oldest brother, who handled the inheritance process, refused to give Auxiliadora any inheritance. She has not claimed it, as she does not want the conflict to escalate further. She is ashamed about the whole thing and does not like to talk about it. Her mother, Mercedes' widow, lets her son handle the inheritance process, as it is often the case in Condega. She also depends on him for food and shelter.

The qualitative data indicate that women generally have a weak bargaining position in land conflicts, most frequently expressed in inheritance conflicts. Other cases indicate that women are often in a disadvantaged position in seeking to obtain access to institutions (other than the 'women's network') for support to enforce property rights. This means that there is a gendered element in land tenure insecurity, and that women face *other* threats to their land tenure security and property rights, *in addition to* the threats faced by men.<sup>22</sup> This is consistent with the analysis of Roquas (2002) from Honduras.<sup>23</sup>

## **Conclusions**

The data show that titles are unequally distributed, acquired mainly by the non-poor. This means that potential endogeneity problems are very relevant to consider, even

though a large share of the not-so-poor households are also without formal titles to their land. It also means that, potentially, on-demand-titling will mainly reach the poorer landowners, thereby to some extent justifying the 'pro-poor' potential of land titling projects – as long as no-one takes a closer look at the slope of the playing field and its implications.

While formal tenure documents are an important element of perceived land tenure security, it is only one of multiple elements that together form the perceived tenure security. The most important other elements in PTS is the access mechanism to land, economic wealth, political connections and organization, as well as the unequal access to formal institutions, including the judicial system.

Regarding the perception or feeling of tenure security, the data show that the way in which land was obtained is a very important factor in the level of tenure security. In general terms, if land was at one point bought into the family 'pool', and a title was obtained, it is still considered secure, despite the fact that the title may have become unactual a long time ago and there may have been several *de-facto* sub-divisions. In other words, when the land has been obtained through family (mainly through inheritance), actual formal papers are given very little importance, unless the land was obtained through the land reform. It is also interesting that land with an informal tenure document (or a formal document, but in the name of somebody other than the current owner and not even a relative) is associated with as high tenure security as plots of land with outdated formal documents.

For land obtained through the land reform, the possession of a formal land document is much desired and given much importance. However, land reform titles are seen as giving less rigorous land rights than an *escritura pública*, a privately elaborated title certified by a lawyer and notary, mainly because the land reform titles may be annulled, as has been seen in some cases elsewhere in Nicaragua. The collective character of many land reform titles further created problems associated with lack of control of land and credit use, and were associated with free riding. These elements cause the collective land reform titles (but not the individual land reform titles) to be associated with higher levels of perceived tenure insecurity. The level of perceived tenure security is almost equally low for plots with collective land reform titles and plots without any tenure documents.

Based on the analysis, I conclude that perceived tenure security (PTS) is a useful concept, as it is shown that titles in themselves are not enough to explain PTS, and

frequency of conflicts is not related directly to PTS. There are other important elements, including access mechanisms, social legitimacy, economic wealth, inequality and the political character of rights.

Women face more challenges than do men in gaining access to land. They have been discriminated against in the land reform, despite gender-profiled formal policy. Due to the traditional division of labour in farming households, women have less income than men and therefore much more difficult access to acquire land via the land market, unless they have access to especially designed land-purchase credits earmarked for women. Despite equal inheritance rights between sons and daughters, male heirs often try to grab land from female heirs, by for example abusing the position of the oldest son as the traditional administrator of the inheritance process. Conflict avoidance often means that women surrender their land rights.

#### Notes

<sup>1</sup> I find in my research in Condega (and elsewhere in Nicaragua) that most small and medium-scale farmers (60 percent) start making investments in the land from the day they take possession of it. This is usually prior to having obtained a formal tenure document, and most landowners continue owning the land and investing in it without having what would be considered to be, in strictly legal terms, a fully legal tenure document. This goes against the conventional wisdom (associated with the Property Rights School, but also assumed much more widely) that secure and exclusive rights are required in order to make investments. Furthermore, I find that investments in land improvements are often made *in order to* strengthen tenure security, especially by those in possession of the intermediate category of tenure documents, such as outdated or informal documents. This relationship, that visible land improvements are carried out in order to create higher tenure security (through the local legitimacy of ownership gained due to the investments), is strongly reflected in the qualitative data, as well as in the fact that the great majority of landowners (94 percent) in the questionnaire survey stated that investments helped strengthen their tenure security. The qualitative data show that the statistically significant relationships between investments and perceived tenure security are not mere correlations, but rather express causal relationships. Local norms that increased recognition of property rights result from an owner's investments in the land are also rooted in the civil code that says that property rights can be granted by the state to those individuals who improve a plot of land through investments. It is part of the everyday work of creating tenure security. Land improvements are carried out to strengthen tenure security more often than the other way around. This is especially the case when the level of tenure security is perceived to be medium; here, investments in the land are often made to increase tenure security. The implication of this situation is that environmental benefits of titling are probably not as strong as often expected, as there is no simple causal relationship between titles and investments, at least in the small-scale agricultural sector in long-settled parts of Nicaragua. The relationship between security and land improvements is thus better understood as a two-way relationship, rather than as the conventionally described causality, running only from security to investments. This finding is consistent with findings by Braselle *et al.* (2002) (see also discussion by Sjaastad and Bromley 1997; 2000). See Broegaard (2008) for more details regarding the importance of titles for land improvements, and (more importantly) the importance of land improvements for perceived land tenure security.

<sup>2</sup> This is carried out for the rural data base, on plot level, as households with multiple plots of land sometimes do answer with different tenure security levels/perceptions for the different plots of land. This justifies that this variable is maintained at plot level.

<sup>3</sup> Comparative studies were carried out in two other municipalities in a study for the World Bank (Broegaard 2005a), where it was found that especially Villanueva (Chinandega department) had a much higher degree of tenure insecurity than Condega (Esteli department) and Las Sabanas (Matriz department). Also, a previous study from Carazo department (Broegaard 2000; Broegaard 2005b) shows a much more pronounced level of tenure insecurity, as well as power abuses and fraud.

<sup>4</sup> Not surprisingly, MAGFOR found in a study, which was carried out just prior to the presidential elections in 2006 (MAGFOR 2006), that the tenure insecurity they identified (mainly among large landowners, as the Sandinista candidate was ahead in the electoral campaign) was related to the political environment.

<sup>5</sup> Violeta Barrios de Chamorro, first president of Nicaragua after the civil war.

<sup>6</sup> Nonetheless, this has often been used as such in previous studies of land tenure security (see e.g. Feder, Onchan *et al.* 1988; see also Bruce and Migot-Adholla 1994 for a discussion of proxies).

<sup>7</sup> Studies by Place and Migot-Adholla (1998) and Carter and Olinto (2003) account for endogeneity of land titling decisions by using panel data. In the Nicaraguan context, the study by Carter and Chamorro (2000) controls for spurious effects and includes more elements than just titles as indicators for tenure security. In a more recent study from Nicaragua, Deininger and Chamorro (2002) explain that they use a 'first differencing' approach to control for initial investment differences, but they do not explain how they control for endogeneity problems related to titling and wealth/investments: They write on page 3 that "*titling was undertaken in the context of an intervention targeted at all agrarian reform beneficiaries in a given area, thus being clearly exogenous and alleviating concerns that the results of any measurement of the impact may be affected by endogeneity*". However, they do not explain how this alleviates concerns about endogeneity problems for the other three sub-samples, including the 'non-reformed sector', where titling usually happens only on initiative of the household (as they for example acknowledge on page 11).

<sup>8</sup> A research and policy document by the World Bank on Nicaraguan land tenure recognizes that: "*the nature of the land tenure depends crucially on how and when the land was acquired*" (World Bank 2003b:37). This means that it is not enough to just distinguish between possession or lack of formal title in order to understand the 'nature of the land tenure'. However, while the importance of access mechanism is acknowledged, it is not always reflected in the operationalization of land tenure security, which is still often assumed to be synonymous with a formal title.

<sup>9</sup> The relevance of considerations of the duration of land rights (especially in relation to type of crops and the duration of time from planting to harvest) is mentioned by Coles-Cogni (1993) and Sjaastad and Bromley (2000), among others. These findings support my findings based on the qualitative data; however, the quantitative data do not offer (strong) support for this. Rather, the quantitative results are in line with findings from the World Bank (2003b), which in the Nicaraguan context find that the time-span of possession of land is *not* significant for increasing land investments. As risk is related to claims by pre-1979 owners, it is irrelevant whether a plot was acquired in the 1980s or 1990s.

<sup>10</sup> With regard to the organizational level and level of perceived tenure security, the level of statistical significance found is at the 0.10 level for households organized in NGOs and community organizations feeling more tenure security than households not organized in NGOs or community organizations, table not shown.

<sup>11</sup> In the previous sub-section, a purchased plot of land that was once affected by the land reform would be classified as bought, whereas in this section it is classified as 'affected by the land reform'.

<sup>12</sup> While the number of civil cases heard by the local judge in Condega shows a slight tendency to increase over the past 13 years, the number of cases related to land tenure issues has stayed more or less stable. On average, the cases represent just over one-quarter of all the civil cases attended by the local court in Condega. The fact that the number of cases of property conflicts handled by the local court diminished after a local peak in 1997-98 could be a reflection of the (temporary) establishment of other local entities for conflict resolution, such as Justice and Peace Commissions. It could also be a reflection of the economic crises experienced in Condega due to low coffee prices and drought, which prevent many households from using the legal system in case of a conflict. It is important to recall that these data reflect *legal cases*, all of which do not necessarily have to do with a *conflictive* case. For example, although there may be a conflict behind the application for a '*Título Supletorio*', it is not always the case.

<sup>13</sup> The same questionnaire format was used in the municipality of Villanueva (department of Chinandega, west of Estelí department) and showed that 23 percent of the plots had experienced land conflicts in the past 10 years (Broegaard 2005a).

<sup>14</sup> The questionnaire survey shows that challenges (passage way, plot boundaries and invasion of land) to the 'rights in practice' are the most frequently mentioned cause of conflict (15 incidents reported), followed by conflicts based on repeated intrusion by cattle (12 incidents). Access to water and natural resources (mainly wood) are less frequently mentioned as reasons for the property rights conflicts (5). Intra-family conflicts (in relation to inheritance) and intra-cooperative conflicts comprise a similar portion of the conflicts reported in the questionnaire survey (6). Furthermore, there are few cases of conflicts related to debt or credit (4). Two incidents were reported regarding conflicts related to lack of documents in land transactions, and only one case of conflicts due to claims by a former landowner was reported in the rural questionnaire survey in Condega. However, it is important again to mention that contrasting the questionnaire data with the qualitative data shows a large under-reporting of conflicts in the

#### 4. Expected and experienced benefits of land titles

questionnaire. As a result, the data presented here should be interpreted as providing very conservative estimates of the level of conflicts.

<sup>15</sup> To put these figures into perspective, the local court in Condega registered 267 property-related cases between 1990 and 2003. Between 2002 and 2003, the Justice and Peace Commission (CJP) heard approximately 15 cases of land conflicts. The rural questionnaire in Condega captures about 55 percent more conflicts than the number of cases reaching the local courts. Roughly one in every 10 conflicts identified in the questionnaire are heard by the CJP in Condega.

<sup>16</sup> In a total of six percent of the plots (16 plots), the landowner felt pressured to sell his/her land. Personal threats and violent confrontations account for more than one-third of the cases in Condega. Closure of an access road is another way to exert pressure, as is the closure of access to water sources, which accounts for close to one-fifth of the cases. Repeated destruction of fences or invasion by cattle is another type of pressure, accounting for over one-tenth of the cases. An offer to buy the land, especially between economically highly unequal parties, is yet another type of pressure, which makes up one-quarter of the cases.

<sup>17</sup> 13 percent of the plots accessed through the land market were exposed to conflict, nine percent of the inherited plots, and 16 percent of the plots obtained through the land reform. A total of 13 percent of the plots in the survey were reported to have been exposed to conflict.

<sup>18</sup> Qualitative and quantitative data show that there is a higher level of perceived land tenure insecurity in the reformed sector than for plots of land that were never affected by the land reform (Table 12). Furthermore, members of cooperatives feel *more* tenure insecurity than others (\*\*\*, Chi-square, 0.001 level). This insecurity is related to the access mechanism to the land, the history of land devolutions to former owners, as well as invasions by others who claim to have rights to benefit from the land reform, as well as the collective character of their legal land rights.

<sup>19</sup> For example, in Villanueva (Chinandega department) 78 percent of the plots which had experienced conflicts during the past 10 years had been affected by the land reform.

<sup>20</sup> When looking at the *type of village* where a plot is located in relation to frequency of land conflict experience, there is a weak tendency for more conflicts to have been experienced on plots in land reform affected villages. 14 of the 42 conflicts reported revolved around plots in villages that had not been affected by the land reform (or only to a very limited extent), whereas 28 conflicts took place in villages directly affected by the land reform. This corresponds to nine and 16 percent of plots in the two respective types of settings affected by conflicts. However, the relationship is not significant at the 0.05 level (only at 0.10 level). Combining these data with those above, the data give weak support to the logical expectation that changes in land tenure that are caused by the land reform will cause some increased level of disputes over ownership and other types of conflicts in the area adjacent to the land reform area as well as on the plots directly affected by the land reform. No difference was observed between use of authorities, involvement of lawyers, duration of conflict and frequency of resolution of conflicts in villages with no land reform effect and villages where land was distributed by the land reform and/or cooperatives were established.

<sup>21</sup> Children born outside of marriage (or, at least in common-law marriage) have legal rights to inherit from both of their parents, although to a lesser degree than legitimate children. However, in practice, the so-called 'natural children' often do not inherit anything from their fathers. Several of the interviews with both men and women about inheritance showed strong resentment of this discrimination towards 'natural children', who often also grew up in poverty due to the father's unwillingness to help support them. Although the inheritance proportion for illegitimate children is regulated by law, in practice, a strong struggle still often goes on between 'natural children' claiming their right to inheritance from their fathers on the one hand, and the legitimate children's efforts to ensure as large a portion as possible for themselves. Inheritance conflicts can also arise among a group of legitimate brothers and sisters.

<sup>22</sup> However, no statistically significant relationship was found between the gender of the landowner and frequency of having been exposed to land conflicts or having lower levels of tenure security. This probably has to do with the design of the questionnaire format, which was to ask to talk with the male or female head of household. In the patriarchal society of Nicaragua, this would usually be primarily interpreted as being the husband, out of respect for him. Furthermore, the questionnaire was not designed especially to explore gender dimensions of conflicts, and the survey had the rural household as the sampling unit. Finally, tension or conflicts between spouses or other conflicts between members of the same household are only mentioned once a relationship of trust has been established. The questionnaire survey thus faced strong limitations in this respect.

<sup>23</sup> For more general comments on gender issues and land rights in Latin America, see for example (Deere and León 2001; Deere and León 2003; UN-HABITAT 2003; World Bank 2003b). For a historical perspective on gender inequalities in Nicaragua, see Dore (2006). (On women's rights to land more generally, see also Benda-Beckmann and al. 1997; Meinzen-Dick, Brown *et al.* 1997; FAO 2002; Roquas 2002; Agarwal 2003; Deere and León 2003; Lastarria-Cornhiel, Agurto *et al.* 2003).



## 5. Do formal titles give access to credit?

‘...to the extent that they perceive a high risk of losing their land through foreclosure, smallholders are resultant to incur land-secured debts...[...] The critical importance of other-than-tenurial constraints thus makes it difficult to empirically assess the relationship between freehold titling and use of mortgage credit.’ (Platteau, 1996:62)

According to neo-liberally inspired mainstream argumentation regarding land titles, it is the lack of formal land titles, which can otherwise be used as collateral for a loan, that restricts access to formal credit and thus prevents accessing capital to invest and make land productive (e.g. de Soto 2000). It is mainly the poor that suffer from this lack of formal land documents. From this observation, some scholars and policymakers conclude, or promise, that land titling will increase access to credit and alleviate poverty (e.g. de Soto 2000; World Bank 2003b). Feder (1999) refers to two studies presenting empirical evidence to support the argument that land titles increase access to formal credit as well as the amount of it. According to these studies (Thailand 1988 and Honduras 1996), farmers with land titles have considerable credit advantages over untitled farmers, with 3-4 times higher levels of obtained credit. Stanfield *et al.* (1990) also argue that titling increases the access to credit (see also Foltz, Larson *et al.* 2000 for evidence on the credit-effect of titles in León and Chinandega, Nicaragua). The same is highlighted by the World Bank (2003b:1) in a publication on Politics and Land Administration in Nicaragua, which refers to the lack of formal titles: “*The insecure land tenure impedes the use of the land as bank guarantee and thus impedes that the poor have access to inexpensive credit.*”

However, it is generally recognized that the ‘collateral’ or ‘credit effect’ of titling depends on the functioning of market institutions (Carter and Chamorro 2000; Deininger 2003b; Boucher, Barham *et al.* 2005). Referring to the influential study from Thailand by Feder, Onchan *et al.* (1988), Feder and Feeny pinpoint that the ‘credit effect’ of titling is a key element for obtaining other positive effects of titling:

“A surprising finding was that most of the impact of title ownership in this particular case [Thailand] stemmed from the fact that titles increased farmers’ access to formal credit, rather than from elimination of actual risk to the land rights of the farmers.” (Feder and Feeny 1991:145).

Yet other studies show that the initial level of wealth may influence the ‘credit effect’ of titles, and thus that in this respect titles may reproduce or even exacerbate existing levels of inequality. In an influential study by Carter and Olinto from Paraguay (2003), it is concluded that the positive impact of land titles on credit supply almost exclusively applies for farms with more than 10 hectares of land.<sup>1</sup> de Janvry and Sadoulet (1989) reach similar conclusions from Columbia. Boucher *et al.* (2005) find a similar threshold for Nicaragua and Honduras, in that credit access for small-holders (with less than two manzanas of titled land) has decreased, despite titling efforts – but with the important difference that in Nicaragua, they find that “*it is not until the 100-manzana holding level that the estimated probability of formal credit access in 1999 even reaches 10 percent*” (p. 118). A study from Nicaragua by Carter and Chamorro (2000) concludes that land titles do not give the expected increase in access to credit, in that only five percent of the households report improvements in access to credit. Deininger, Zegarra *et al.* (2003) find for Nicaragua that there are indeed credit market (and other) imperfections, which depress the otherwise expected credit effect of titling, as well as the effect of titling on stimulating the land market.<sup>2</sup> While Condega is a *minifundio* area, titling projects are still presented across the board as ‘pro-poor’ based on the expected ‘credit effect’.

It is an underlying assumption for the mainstream argument about the growth-effects of titling that the lack of formal title is the main constraint for institutional credit. In order to understand the credit market, however, it is relevant to analyse other constraints than just the constraints on credit supply. The uncertainty of future harvests, as well as lack of trust in credit institutions, may severely limit the demand for formal credit. Other constraints could include limitations in credit supply as well as high transaction costs.<sup>3</sup>

The fear of losing land as a consequence of credit is widespread.<sup>4</sup> Jonakin and Enríquez (1999) show that in Nicaragua in the early 1990s, credit and debt very often led to land sales, and that the peasantry was excluded from formal credit.<sup>5</sup>

The impact of credit on inequality (through foreclosure of land used as collateral for defaulted loans) is another point that is mentioned as a critique of the discussion of the ‘credit effect’ of titles. Based on historical evidence from Egypt, Mitchell (2007) discusses that while titling may often lead to credit access, it is important not to overlook the frequency of foreclosure and loss of land, concentration of land and increased inequality. For example, de Soto has among other things been criticized for ignoring that alienability of property rights has historically led to distress sales and

increased inequality (Mitchell 2007; Bromley 2008). As Platteau (1996:61) suggests, “*perverse equity effects results from the operation of a land market (with free mortgage) when it is combined with a biased judicial system*”.

Considering the empirical evidence that the credit market is severely restricted in Nicaragua for farms smaller than 100 *manzanas*, it is surprising that the ‘credit effect’ is still used as an argument in favour of land titling in Nicaragua (e.g. World Bank 2003b). A similar observation is made by Boucher *et al.* (2005:108), who comment on the high level of conscience in research circles, but not in policy circles:

“While the important role played by these complementary markets [mainly credit markets] is widely recognized in research circles, [...] this recognition was arguably absent from the core measures of the first generation of Latin American agricultural modernization policies.”

The present chapter analyses the role of land titles in providing poor people access to formal credit in Condega, as well as the different elements that constrain the access to and demand for formal credit, based on quantitative and qualitative data from my fieldwork. It should be remembered that it is generally recognized that comparisons between situations with titles and without titles tend to over-estimate positive benefits of titles, due to the fact that those plots currently with titles have been selected for titling over the remaining plots, for one reason or the other. As such, it can *a priori* be expected that finding a positive relationship between titles and credit in a research setup like this will present an (overly) optimistic picture compared to an evaluation of the results of more generalized titling efforts (as for example a titling programme like PRODEP).

### **Limited use of formal credit in Condega**

Curiously, farmers in Condega (or the NGOs or micro-finance institutions with which they have contact) said that their motivation for wanting titles was related to their expectations to improve their access to credit (66 percent of the cases, Table 7). Almost everyone will confirm to you that titles are necessary in order to obtain credit.

“... with the document [individual land reform title] any organization can give me a loan; I can get a loan because I have something that backs me up, something that accredits me, which is this document. Now, with this document,

the land has value, and when I did not have it, nobody could give me a loan... it is very important, because if you do not have a legal title, nobody will give you a loan..."

Frida, Santa Rosa, having just recently received land reform title

However, the actual experiences of ordinary people in Condega contradict to a large extent this expectation. The following quote is from an interview with two beneficiaries of the land reform, who paid to have their land delimited from the rest of the cooperative and the collective land title in order to obtain an individual title deed [*Escritura pública*]. The quote catches the positive expectations for the 'credit effect' of titles, as well as the disappointment in finding that reality does not live up to the expectations and the mainstream argument about the credit effect:

*Q*: So what changes have you experienced since you changed from having a land reform title to a private title deed (*Escritura pública*)?

*(Sebastian)*: It changes a lot. First of all, each of us can do what we want to regarding credit. Now I can do it, without having to go to the cooperative president. I can use the land as collateral if I want to. Secondly, the paperwork [*vueltras*: run-around] is quicker when getting credit. (...)

*Q*: So, in this past year and a half that you have had the title, have you obtained credit?

*(Sebastian)*: 'No, we have not obtained credit... of any kind. There is no credit! I have solicited, in the micro-finance institutes, for example San Juan... They do not have money... and they look for sellable things, such as cows, televisions, trucks, but not the land. They do not accept titles!

*(Jesus)*: 'It is the same for me, for the same reasons. I have also looked, I wanted credit for a cow, but they [CAPRI, a micro-financing institute] have not let go of anything.'

Sebastian and Jesus, El Pire area

Of a total of 384 households, who have answered questions on credit access in the questionnaire survey, 155 (40 percent) have accessed some kind of credit during the past five years, leaving 59 percent of the rural households without any source of credit during the past five years. Some households have obtained credit from more than one source of credit. However, of these 155 households, only four (3 percent) have obtained credit through a bank. 19 households (12 percent) have obtained credit through credit cooperatives, and 37 (24 percent) have obtained their most formal credit from micro-finance institutions (operating as banks, but with slightly more flexible conditions, and with a much more distributed set of

offices). More than half (59 percent) of the households that have obtained credit during the past five years have done so through NGOs and development projects that give credit on a less commercial basis with less formal conditions. The limited credit supply reflected in the percentages below (Table 14), as well as in the above quote, may well be one among several reasons for a relatively limited interest in/demand for land titles.<sup>6</sup>

“There is no support from the Government, so we cannot say that we will improve with a title... It would be beautiful with long-term loans with low interest that would allow us to work...”

Pedro, Ex-contral leader, Santa Gallo area

As can be seen from table 14 the situation is surprisingly not much better for the urban-based owners of rural land, who tend to have larger extensions of land. Among them, only 38 percent have accessed any kind of credit, and of the entire urban sample, only six percent of the households have accessed bank credit. Adding commercial banks, credit cooperatives and micro-finance institutions, these sources

Table 14. Frequency of different sources of credit – for credit-accessing households as well as the entire sample. Rural and urban sample

Type of (most formal) credit supplier	Rural sample			Urban sample		
	% of hh with some credit during the past 5 years (N=155)		% of all households in sample (N=384)	% of hh with some credit during the past 5 years (N=12)		% of all hh in sample (N=32)
	%	#		%	#	
Commercial bank	3	4	1	17	2	6
Credit cooperative	12	19	5	17	2	6
Micro-finance institution	24	37	10	42	5	16
NGO or development project	59	92	24	17	2	6
Other sources (friends, money lenders, buyers of products)	2	3	1	8	1	3
No credit	-		59 (229)	-	-	63

provide credit for 28 percent of all the urban-based, land-owning households (and a total of 76 percent of the credit obtained). Thus, while the level of credit access remains low among the urban sample, the sources of credit tend to be more formal than in the rural area. Better access to institutions, and more familiarity with them as well as with paperwork in general, and a higher level of affluence may explain this difference.

The quantitative data do not show any statistically significant relationship between formal land titles and better access to credit, nor between inscription status of the most formal document possessed by the household and access to credit (See Table 15). The following quote expresses the same experience:

“There are NGOs who give credit without documents, only with the sales promise document that we have, and a photocopy. This is what we use. We work fine only with a sales promise. With banks, no, because they demand a public title. It is expensive to have a public title made. It is not worth it to invest so much... it is better to be working like I am. [...] There is no benefit of having a public title!”

Julio, El Pire area.

The same picture is shown by the urban sample, although the number of observations is too low to allow for a Chi-square test.<sup>7</sup> This corresponds well with findings by Carter and Chamorro (2000), Deininger *et al.* (2003) and de Laiglesia (2004) for Nicaragua; Boucher *et al.* (2005) for both Nicaragua and Honduras; and Coles-Coghi (1993) and Larson *et al.* (1999) for Honduras.<sup>8</sup> Thus, it is not a new finding, but it seems that it is a finding that is not taken to heart by designers of land titling programmes, who, on the contrary, still use the argument of the ‘credit effect’ in favour of titling and land administration programmes (e.g. World Bank 2003b).

However, the quantitative data show a statistically significant relationship between credit access and size of total landholding. In other words: It is the wealthy that have access to most of the formal credit. The same relationship between larger landholdings and better access to formal credit is found for the urban sample (although again a too low number of observations prohibit the performance of a Chi-square test). This is the same finding as Carter and Olinto (2003) and Boucher, Barham *et al.* (2005) found for Paraguay and Honduras/Nicaragua, respectively. This finding is also consistent with for example El-Ghonemy (1999), who finds that transaction costs in relation to credit are relatively higher for small-scale farmers

than for owners of larger landholdings. Also Feder and Feeny (1991) point out the size-invariant transaction costs, which are a disadvantage for smaller farmers' access to credit (see also Maxwell and Wiebe 1999 on size-related inequalities in access to credit).

**Table 15. Access to formal credit by most formal type of document (name), registry inscription, amount of land owned and NGO participation**

*Number of households by credit access according type of document (name), inscription status, size of land owned and NGO participation*

	Access to formal credit during past 5 years, rural sample			All
	Obtained formal credit	Obtained informal credit	Obtained no credit	
Most formal type of document in household, <sup>ns</sup>	52	69	127	248
EP individual name of owner	17	18	29	64
EP individual name of relative	7	12	18	37
LR T, individual	16	13	32	61
LRT cooperative	8	14	17	39
Informal doc/ EP other name	3	8	20	31
No document	1	4	11	15
Most formal type of inscription in household <sup>ns</sup>	52	69	127	248
Inscribed in name of current owner	16	15	32	63
Inscribed in name of relative	6	9	21	36
Inscribed in name of Cooperative	16	13	28	57
Not inscribed or inscribed in name of other (non-relative)	14	32	46	92
Total size of landholding in household *	52	69	126	247
0.1-5 mzs	17	37	73	127
5.1 mzs-15 mzs	20	22	34	76
15.1 mzs +	15	10	19	44
Participation in NGO during past 5 years***	61	93	230	384
Yes, participated in NGOs	49	83	98	230
No, did not participate in NGOs	12	10	132	154

\*\*\* Correlation between credit access and NGO participation stat. significant at the 0.001 level (Pearson's Chi-square test). \* Correlation between credit access and size of landholding stat. significant at the 0.05 level (Pearson's Chi-square test). <sup>ns</sup> Correl. between credit access and inscription in registry not stat. significant at the 0.05 level (Pearson's Chi-square test).



As informal credit is strongly associated with participation with NGOs and in development projects, it is not surprising that a strong statistically significant relationship is identified between participation with NGO and access to credit (formal as well as informal) (Table 15). The same result is obtained when crossing with participation in community organizations (village council, water committee, church). For the urban sample, the participation with NGO is also associated with more access to credit, both formal and informal credit (statistically significant at a five percent level).

### Reasons for not using credit

“Loan is not my idea; if it goes well, we will get ahead – but *alone*. Because there are also bad years, and then one can lose the land if it is indebted. It is almost like being back in the old times, with confiscations... It is better to work alone. Not use the land as collateral. One feels more secure that way. With more love to work the land...”

Fabio, Santa Rosa

According to the questionnaire survey, more than half of the responses to why the household had not accessed credit during the last five years were related to a lack of demand from the household (not having applied for credit, or preferring to work without indebting themselves) (Table 16). 11 percent of the answers (from

Table 16. Reasons for not using credit, multiple answers

Reason for not using credit	Rural sample (N=227)			Urban sample (N=20)		
	# resp	% resp	% hh	# resp	% resp	% hh
Has not applied for credit	133	36	59	13	33	65
Prefer working without credit/no debt	66	18	29	11	28	55
Fear of losing land	39	11	17	5	13	25
Too expensive (interest rate/application cost)	39	11	17	6	15	30
Has nothing to back loan	25	7	11	-	-	-
No credit available for desired activity	7	2	3	2	5	10
No documents	60	16	26	2	5	10
Total	369	100	163	39	100	195

17 percent of the households without credit) express fear of losing the land as the reason for deciding against using credit.<sup>9</sup> Cost-related limitations (that the credit is too expensive, either in interest rates or in application costs) account for 11 percent of the responses or 17 percent of the households. Indirectly, a similar proportion of the answers also deals with costs, namely the fear of losing land (through default and foreclosure). However, there is also an element of fear for fraud in this answer, as the text box below illustrates. Seven percent of the answers (from 11 percent of the households) mention poverty (or lack of land) as the reason that they have not received credit.

### **Conflicts related to credit**

Conflicts related to fraud and abuse of position and information are found all over Nicaragua. These conflicts include cases related to credit fraud that lead to foreclosures (attempts). The number of court cases related to credit issues has increased drastically, and from 2000 to 2003 has accounted for more than two-thirds of the civil cases. The increase in credit-related court cases is partly a reflection of a high level of defaults with related foreclosures, and partly a reflection of a high number of cases of credit-related fraud.<sup>10</sup> In the early 2000s, there was a wave of fraud related to credit and using land titles as collateral, with high-level bank and credit institution officials abusing the trust involved in local-level credit arrangements. While Condega was not among the areas hardest hit, some cases of conflicts related to fraud were identified. Sometimes, copies were made of the tenure documents as the basis of credit fraud; other times the titles were physically deposited as security for a loan – and while they were in the custody of the crop buyer and credit supplier, signatures were falsified and bank loans obtained on the basis of these tenure documents:

“We had obtained a loan for the coffee production from [a firm that buys coffee], and we had repaid the loan. The person who had given us the loan had made a photocopy of the title and had later obtained a bank loan in the name of my father. He falsified the paperwork. We did not know anything about it until the bank showed up here to declare a foreclosure. That was one year ago. The bank came here, with the judge, in order to execute the foreclosure! We managed to get them to give us three days, and my father found a lawyer. Since he had kept all the receipts for the cancellation of the loan, the lawyer made a letter and sent it to the court. With this work of the lawyer, the falsifier decided to run away, because there was a capture order waiting for him. They did not foreclose the house. Everything is calm now. Lawyers had helped the person falsify the titles. There were several cases – just in this village there were three other people affected. It was a lot of money. My father had to pay the lawyer. The lawyer still has not told him how much the final bill will be, but he has paid him one part, some 1000 C\$.”

Diego, Potrerillos

Cases like this, and the rumours about them, make people afraid to show their tenure documents to anybody. There is a lot of fear of fraud, as especially the poor and illiterates are vulnerable, in that they depend on the information given to them from other people.

Since it has been shown that there is a relationship between formal land titles and economic wealth, it is clear that the lack of documents for credit is also indirectly related to poverty. However, 16 percent of the answers (from 26 percent of the households without credit) points to the lack of formal title as the main barrier for obtaining credit. This last figure thus gives some, although not very strong, support to the argument that land titles are important for credit access. However, table 16 also illustrates that formal titles are not a sufficient condition for credit access in Condega. For the urban sample of urban-based owners of rural land, a similar pattern is found, although the lack of formal titles being less frequently answered (only in 10 percent of the cases).

### **Conclusion**

This chapter has shown based on the empirical evidence from Condega that while lack of formal land title does limit access to formal credit in banks, the credit supply within banks and credit cooperatives was so restricted during the period of the fieldwork (2003-6), and during much of the previous decade, that the lack of formal titles is not the most relevant limiting factor for credit access. Other limitations are related to poverty, fear of losing the land, fear of abuses by the credit institutions, costliness of credit as well as a preference to work without debt. The higher degree of trust in NGOs and development projects is one of the reasons that this credit source is so prevalent. Also, the credit acquired from these sources is often more flexible: While it may still be very expensive (and as such given on commercial terms), there is a general understanding that the NGOs will not carry out a foreclosure on families who default their loans. Rather, the practice of the NGOs is to prolong the time span, possibly with penalties.

The data confirm the findings from other studies that larger farms have better access to formal credit than smaller farms. Thus, this illustrates that also with regard to credit, the playing field is sloping, making it easier for the wealthy than for the poor to access credit and put their land title to use in this way. However, due to the general use of credit from NGOs, the level of organization is also important for credit access in the case study area. Therefore, in practice, the lack of land titles cannot be said to be the main limiting factor for access to credit. The lack of 'credit effect' of titles in the case study area can be expected to have implications for the other benefits of land titling expected by the proponents of the mainstream policy package.

Furthermore, a link between credit access (debt) and concentration of land through land sales is supported by the widespread fear among the rural population of using

land titles as collateral. This is reflected by the change of policy of some micro-finance institutions to no longer accept land titles as collateral, as they want only items that can be easily sold.

## Notes

<sup>1</sup> The minimum farm size for the credit effect varies of course from one location to the next, depending on soil quality, infrastructure, production strategy, costs, etc.

<sup>2</sup> From the agricultural frontier in Guatemala, Gould (2006) concludes that titles do not improve credit access for the rural poor. Larson, Palaskas *et al.* (1999) find that credit is not severely limited due to lack of formal land titles in Honduras, and that titles seem to have little, if any, 'credit effect'. They also report that other Latin American studies suggest that the credit effect is most likely to be found among owners of large farms, or among farmers in areas with good physical infrastructure (*ibid.*).

<sup>3</sup> In a summarizing study from Honduras, Nelson (2003:17) argues with reference to Childress (1991) that in addition to the lack of formal titles, poverty may be an important limitation for credit demand: "*Peasants frequently lack access to commercial credit and agricultural technology in large part because they lack clear title to the national lands they occupy without clear title (Childress, 1991:6)[...]. Beyond title, however, their poverty and attendant inability to access economic resources of virtually any kind limit their productivity...*"

<sup>4</sup> Platteau (1996) reports that farmers are afraid to lose their land if they are in debt. See also the opening quote in the beginning of the chapter, and Barrows and Roth (1989) for findings from Kenya and Uganda on the fear of losing land if it is used as collateral.

<sup>5</sup> It should be mentioned in the Nicaragua context, that during the 1990s, extended and inexpensive credit was provided to land reform beneficiaries by the Sandinista Government. Much debt was cancelled, and high rates of inflation rapidly reduced the burden of debt. As such, it was an abrupt awakening, when the small-scale farmers, including the land reform beneficiaries, had to start working with credit on a commercial basis.

<sup>6</sup> A similar finding is reached by Boucher, Barham *et al.* (2005): "*The most notable observation on Nicaragua's credit market evolution is how low overall credit access is in both time periods relative to Honduras. In Nicaragua, it is not until the 100-manzana holding level that the estimated probability of formal credit access in 1999 even reaches 10%. [...] Thus, for Nicaragua, the very low levels of formal credit access suggest that rural financial markets have not evolved sufficiently to aid in the activation of land markets*". It should be mentioned that Pagiola (1999) mentions for Guatemala that past involvement of weak state institutions placing very little importance on repayment, have acted as a disincentive to commercial bank participation in the rural financial sector (1999:5). In Nicaragua, the same has been the case, but for example efforts by Danida have helped reverse this trend, so that more commercial loans are now being offered to the agricultural sector.

<sup>7</sup> While some studies find a statistically significant relationship between educational level and credit access, no such connection was found in the data from Condega.

<sup>8</sup> See also for example Migot-Adholla *et al.* (1991) for Sub-Saharan Africa.

<sup>9</sup> There are many reasons for this. For example, the temporal variations make agriculture a risky business. According to a study made by the NGO Octupan in Condega, the first part of the bi-module rainy season lasted only 40 days in more than half of the years between 1970 and 1995, thereby affecting the cultivation of long-term maize in the first of the two rain periods (*la primera*). However, in more than one-third of the years in the same period, the *primera* rain lasted 80 days, thereby affecting the bean harvest.

<sup>10</sup> The increase in applications for Supplementary Titles (TS) is related to credit, in the sense that a TS often lives up to the credit institutions' requirements of a formal document in the name of the credit applicant as collateral. The issuing of TS has recently been discontinued by presidential decree, due to the high number of irregularities.

## **6. Land markets in Condega: An unlevel playing field**

“Markets operate within a framework determined by institutions, and they work only as well as those institutions do.” (World Development Report 2006:226).

This chapter focuses on the functioning of the market mechanism with regard to land, and analyses whether – and in what ways – social and political relations and relations of domination and power influence buying and selling on the land market as well as the distributional outcomes. Using Polanyi’s terms, this chapter examines whether – or to what degree – power relations and other expressions of an embedded market characterize the land market, as it functions in Condega. Conceptually, the chapter contributes to the discussion about the functioning of the land market and its implications for poverty and inequality, the latter to be understood both as unequal opportunities and unequal outcomes. I propose that legal pluralism, and its understanding of how strong actors can go ‘forum shopping’ in their efforts to accumulate land, is a helpful conceptual framework for understanding the way in which the land market functions in a setting of acute poverty and high inequality such as in Condega. Based on my empirical analysis, I find the land market to be an uneven playing field strongly influenced by the unequal distribution of wealth, and at the same time contributing to the reproduction of inequality. I also find that price establishment is not so much a result of adjustment between supply and demand, as it is a result of coercion, threats and power relations, as well as situations of distress due to high levels of poverty and climatic vulnerability.

### **Pros and cons regarding land market liberalization**

As mentioned in the beginning of the report, a well-functioning land market is increasingly being proposed as a way to obtain a more dynamic agricultural and rural sector in developing countries (Feder, Onchan *et al.* 1988; Deininger 2003a; de Soto 2004; Carter 2006).<sup>1</sup> During the last two decades there have been large-scale land administration projects in most Latin American countries that focus on formalizing property rights (e.g. Barnes and Griffith-Charles 2007). In the neo-liberal, mainstream view, market-assisted land reform allows redistribution to be achieved with a minimum of state involvement by bringing ‘willing sellers’ and ‘willing buyers’ together in a decentralized fashion.<sup>2</sup> While the underlying

assumptions for such a meeting of ‘willing buyers and willing sellers’ in the market place – such as fair and equal competition in a market place that is a level playing field – are often *mentioned*, the implications of such policy recommendations in real world situations that do *not* live up to these assumptions are often not given much attention.

de Soto (2000) and (2004) argues that titling will increase the wealth of the poor, but only when these titles express sellable land rights and can thus also be used as collateral.<sup>3</sup> Thus, titling of property rights is seen as a poverty-alleviating, growth-enhancing activity.

The lack of well-functioning land markets are argued to constrain economic growth, especially for the poor, who generally are those who lack formal documentation of their property rights.

“Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other...” (de Soto 2002:2-3).

The reason that the market is expected to play such an important role in a pro-poor development (the so-called ‘market friendly perspective’) is based on three primary claims (here as presented in the critical analysis by Boucher, Barham *et al.* 2005:108):

- “a) Land-poor households enjoy a fundamental competitiveness advantage over larger- scale producers because of agency costs that raise the cost of labour to the latter.
- b) ‘Agricultural modernization’ and policy reforms that complete and secure individual property rights to land, and ‘get prices right’ by eliminating distortions caused by state intervention in product and factor markets, will serve to activate the competitiveness advantage of small holders; and
- c) Once policy reform is in place, land market transactions can substantially weaken the link between ownership structure and land access and agricultural performance, thus enhancing the land access of the rural poor as well as efficiency and growth performance of the rural sector.”

With a well-functioning land market, land access is thus expected to be increased for the rural poor, through land sales markets and land rental market transactions. Land titling and a well-functioning land market are also expected

to increase land values. This is often mentioned as an argument in favour of land administration and titling programmes, which tend to be extremely expensive. Several influential studies provide empirical evidence supporting the hypothesis regarding the positive effect that titling has on land values (Feder, Onchan *et al.* 1988 from Thailand; Alston, Libecap *et al.* 1996 from Brazil; and Feder 1999 from Honduras).

Promotion of market-oriented policies have been criticized for, among other things, ignoring that alienability of property rights has historically led to distress sales and increased inequality (Mitchell 2007; Bromley 2008). In parallel, Lemel (1988) includes dispossession through the market (sales of land due to disadvantageous position within the production-marketing chain) in the threats to tenure security. Furthermore, if transaction costs are indeed increased rather than decreased by titling and involvement in a state-sanctioned registry system (as mentioned in Chapter 2), there is likely to be a widespread process of ‘informalization’ of property rights, especially for poorer landowners. Consequently, there may well be a situation of co-existing, parallel formal and informal land markets. If this is the case, the sustainability of any investment in land administration projects will be severely challenged.<sup>4</sup>

Practices of good governance are increasingly recognized to be essential for a well-functioning market, as markets operate within a framework determined by institutions. Therefore, as pointed out by World Development Report (2006, quoted in the entry of the chapter), the market can only work as well as the ‘framework’ institutions do. Scholars working within the tradition of legal pluralism argue that so-called forum shopping also influences land markets (see for example Benda-Beckmann 1991; Nuijten 1998; Lund 2001). It is therefore relevant to contribute with an empirical analysis of whether the land market, in a setting of inequality and power abuse, which is the Nicaraguan reality, can be expected to lead to increasing equity or inequity. In order to carry out this analysis, I first explore some key assumptions made in the mainstream policy proposals about the limited level of activity on the land market, the restricted character of the land market transactions in settings without formal land titles, distributing versus concentrating effects of the land market, as well as the positive price effect of land titles and the role of competition for the establishment of land prices. Furthermore, I analyse the frequency with which land market transactions are formalized, and thus their impact on the level of updated land tenure documents. Inspired by the discussion about the influence of structural inequalities and the embedded character of the



market, I analyse the role of inequality in land market transactions and the way in which the land market functions in Condega.

### **An active land market in Condega, with or without land tenure documents**

Of a total of 2547 *manzanas* owned currently by the households in the rural sample, 606 *manzanas* were reported to have been purchased through the land market during the past 10 years. In other words, almost a quarter of the area (24 percent) has changed hands via the land market! In the sample of urban-based owners of rural land, 26 landowners own a total of 1520 *manzanas*, of which 675 *manzanas* or more than 40 percent of the area (44 percent) were reported to have been bought during the past 10 years. Similar high figures are reported in a case study of a cooperative in Condega, where 45 percent of the area was sold since 1990 (see below). At the household level, 15 percent of the households in the rural survey have *bought* land during the past 10 years.<sup>5</sup>

Despite the much smaller sample of the urban-based owners of rural land, compared to the rural-based owners, it is remarkable that a greater extent of rural land has been purchased by the urban-based owners than by the rural-based owners. The data on land purchases are summarized in the below table.

A total of seven percent of all households in the rural questionnaire survey report having *sold* land during the last 10 years, and an additional four percent have lost land (mainly due to conflicts or environmental disasters after Hurricane Mitch). For the urban sample, the percentage of land sales is higher (13 percent have sold land, and 11 percent inform having lost land, again mainly due to Hurricane

**Table 17. Land purchases among rural- and urban-based owners of rural land**

		<i>Rural sample</i>	<i>Sample of urban owners of rural land</i>
Total number of landowning households		247 households	26 households
Total land owned, mzs		2547 mzs	1520 mzs
Bought during the past 10 years	Total area, mzs	606 mzs	675 mzs
	% of total land	24%	44%
	# purchases	62 purchases	15 purchases
	% of hh purchases	15%	50%

Mitch, which destroyed much valuable agricultural land along the riversides). In the urban-based sample of owners of rural land, there have been two reported sales of a total of 102 mzs.

The figures on land sales seem to underestimate the real amount of land sales activities. This may be partly due to the sampling method, because if a family has sold land and moved away, they are not included in the survey. However, contrasting the qualitative and quantitative data, it seems that land sales are sensitive topics (for example, in relation to distress sales connected with family emergencies). Another reason for this is probably fear of taxes and involvement by the state. The under-reporting of land transactions means that the percentages of land traded on the market are likely to represent conservative estimates.

The land market is the most frequent mode of obtaining land in the case study areas, especially among the urban-based owners of rural land (see Table 18). More than 40 percent of the plots owned by rural landowners and three-fourths of the plots of rural land owned by urban-based landowners have been purchased through the land market. The predominance of the land market is hardly surprising: In the 1980s and early 1990s, the land reform was an important form of land acquisition. As would be expected, this proportion is diminishing, as the land reform was discontinued more than a decade ago. Still, just less than one-third of the present landowners in the rural sample have accessed their land through the land reform process. In the sample of urban farmers, the plots obtained through the land reform account for one-tenth of the plots of land. Inheritance and donations are also common land acquisition methods in the rural sample, where a little less than one-third of the properties were obtained in this way. Among the urban-based farmers, however, the percentage is much lower, accounting for only 15 percent of the plots.

Table 18. Mode of acquisition of land, rural sample and urban sample, plot level

<i>Mode of acquisition</i>	<i>Rural sample, N=327</i>		<i>Urban sample, N=41</i>	
	<i># plots</i>	<i>% of plots</i>	<i># plots</i>	<i>% of plots</i>
<i>Bought</i>	136	42	31	76
<i>Via land reform</i>	95	29	4	10
<i>Inherited, pre-inherited or donated</i>	96	29	6	15
<i>Total</i>	327	100	41	100

Altogether, these data show that the land market is active and involves a large part of the land that was originally given to land reform beneficiaries.<sup>6</sup> Furthermore, as the land transactions generally take place from smaller-scale farmers to larger-scale, they show that land market transaction is the main mechanism for urban-based (wealthier) farmers to accumulate land in the rural areas.

When looking at all of the land transactions reported in the rural questionnaire survey (32 sales and 62 buys), one finds that almost half of the transferred land had a formal land title (45 percent), just under one-quarter (24 percent) had a collective land reform title, 19 percent had informal documents and 12 percent had no documents prior to the land transaction. The results from the urban sample correspond well to the results from the rural sample, although the land tenure documents of the land bought by urban-based owners tend to be slightly more formal.<sup>7</sup> However, it is interesting to see that the lack of formal documents does *not* seem to limit land purchases or the ability to sell the land.<sup>8</sup>

Sometimes, the lack of land tenure documents and tenure insecurity is mentioned as a *reason* for land sales in the reformed areas (but not for untitled land in non-reformed areas). This could contribute to explaining why there are so frequent land sales in the reformed areas – they may be seen as insecure when they lack documents, but also even when land tenure documents exist.

“... from the moment the people feel insecure they sell the property, they sell their land right. They sell it low, at a low price, and they continue demanding land. This is the problem that the government is facing because they [the government] have been unable to legalize the land for these people. Therefore they sell: ‘Before they come and take it away from me I will sell it in order to take advantage of this benefit that I have. I sell it cheap and I go to Managua and see how I can take me another piece of land.’

Javier, ASOEXCOPADE

### **Titling increases land prices – except for land sales caused by distress and land sales in non-reformed area**

As concluded in the theoretical discussion, it is an important empirical question whether the higher land values (expressed in land sales prices) for titled land which are to be expected according to the mainstream, neo-liberally inspired argument, can be found in Condega, and whether they apply equally to all actors, most importantly to the poorest households. Where the households that have formal land titles

mainly have obtained them on their own initiative, caution should be exercised when ‘extrapolating’ positive effects of titling from this self-selected sample (as the current sample can be characterized) to apply equally strongly to an ‘area-based’, all-inclusive titling approach. The reason for this is that it is likely that the most valuable pieces of land have been selected for titling (or the plots most affected by tenure insecurity). Furthermore, there are household characteristics (such as a certain level of wealth) that distinguish households (or actors) in a ‘titles on demand’ sample from a sample of actors or households in an ‘area-based titling’ approach.

The lack of formal and updated documents does lower the prices of land in the reformed areas, as the following quote illustrates:

“Of course we can sell, easily, and many people do that. The Padillas have bought everything, but cheaply, because there is no security [document]. The neighbours cannot buy, because they do not have money. [...] The Padilla-family, they buy the land and we go to OTR to do the paperwork [traspaso]. Or sometimes they do it with a lawyer... just recently they made the transfer for some land hereabouts, and they did not contact OTR, so that means that in the OTR registry the former owner still figures.”

Ricardo and Mario, San José

According to the qualitative data, the value of the land increases once the land has been titled, at least in the reformed areas.<sup>9</sup> However, this seems not to be the case for the non-reformed areas, where there is high population density and low levels of perceived tenure insecurity. The following three quotes, one from a reformed area in the process of titling (the collective in Santa Rosa) and two from non-reformed areas (El Pire area and Ducuale), illustrate this difference.

“We already know who it is that will sell, now, after the titling. They say: ‘With this title, I sell more expensively’. For example, if someone was going to sell his five manzanas for 30,000 C\$ before, now with the land title, the price rose to 50,000 C\$.”

Natalia, pre-titling land-buyer in the Santa Rosa collective

“Grazing areas cost 5-6,000 C\$/mz, and plots apt for ploughing cost 9-10,000C\$/mz. To have or not to have documents does not influence the price. Normally, the people sell the land legally, that is, with a sales promise,<sup>10</sup> so in that sense they have some security. And in addition, everybody knows each other.”

Humberto, El Pire area

“The other five mzs of my father were always grazing land. They did not have any documents. He had bought the land and had a receipt for the purchase, but he lost the papers. It was sold in 1992, without papers, to someone from here. Later on, we made a document with witnesses and a lawyer. A sales document in front of a lawyer. They were sold at 1000 C\$/mz; that was what the price for grazing land was like in those days. The fact that there were no papers did not lower the price at all...”

Miguel, Ducuale

These findings do not fit well with findings from Carter and Chamorro (2000) in Nicaragua, who report that land values for farms inscribed in the property registry are 30 percent higher than non-inscribed farms (see also World Bank 2003b). Furthermore, they find that land accessed through the land market is associated with higher land values. At first glance, their finding seems to suggest that there *are* de Soto-type wealth gains from land titling. However, a closer look shows that these findings may be consistent with the proposal by Zimmerman and Carter (2003) and Ruben and Masset (2003) that at least in part the transaction of land goes from poor to non-poor landowners, and that the latter ask a higher price for their land. The price ‘gain’ associated with the land accessed through the land market (as identified by Carter and Chamorro) may thus be an expression of the reconcentration of land from poorer to wealthier households.

It seems that land prices are rising over time – as a general trend. This fits well with the observation that the demand for land is high and increasing. However, when poor people have to sell due to emergencies (whether due to climate, death or disease), they are in no position to negotiate price and usually receive a low payment.<sup>11</sup> At times when they might recover and wish to buy back, the price is high, as the new owner has no urgent reason to sell.<sup>12</sup> Jonakin and Enríquez (1999) find that for Nicaragua many land sales are best described as distress sales, due to extreme hardship.

“The price of the land is rising because it is scarcer now... The land is in the hands of the people with money... and a poor one cannot buy [land] any longer. Here is also re-concentration of land...”

Judith, Santa Rosa

### **Irreversibility of land sales**

The process of losing land for the small-scale farmers is usually gradual, as well as irreversible. For example, more than one-third of those rural farmers who have sold land during the last 10 years have sold *all* of their land, while close to 60 percent have sold *most* of their land. Only few (a total of nine households captured by the rural

Table 19. Land-holding status of seller, for the properties that have been purchased through the market during the past 10 years. Informed by current owner

<i>Land-holding status of seller</i>	<i>Rural sample</i>		<i>Urban sample</i>	
	#	%	#	%
Sold all land	21	36	7	47
Sold most land	35	59	4	27
Sold only small part of land	3	5	4	27
<i>Total</i>	<i>59</i>	<i>100</i>	<i>15</i>	<i>100</i>

questionnaire) have bought new land after having had to sell, and those few who have managed to buy, usually have bought much less land than they had before. Thus, land sales are an important part of the rural differentiation process going on. This fits well with the findings by de Janvry and Sadoulet (2000b) that levels of inequality increase in periods of crises but are not reversed in periods of renewed growth.<sup>13</sup>

In the El Pire region, population density is high as is the demand for land. As such, land is considered a scarce resource, even more so than in the reformed areas of eastern Condega. Consequently, conditions should be right for a high demand on titling and formalization of tradable rights (as proposed by the Property Rights School, see chapter 2). An active land market should also be expected. However, this is not the case. There is very little activity on the land market in the non-reformed areas, although demand for land is high. Most of the land is inherited.

“Here are only little sales of land. It is only inheritance. It is the same in the neighbouring villages.”

José Luis, El Pire area

“Here are neither land sales nor land buys... it is almost impossible to find land to rent.”

Julio Mercedes, El Pire area

While market-purchased land is often not formally titled and inscribed in the property registry, the lack of formal titles is no hindrance for land sales, whether in reformed or non-reformed areas.

“There are MANY land sales with informal papers. Especially in the reformed areas, they are the ones that mostly are sold, and cheapest.”

Lawyer, UNAG Estelí

There is a statistically significant relationship between households living in land-reform affected areas and having sold land more frequently, and households living in areas that were not (or hardly) affected by land-reform redistribution of land and hardly having sold any land (See table 20). Interestingly, the table below also shows that the majority of land purchases by rural-based land buyers during the past 10 years reported in the rural questionnaire survey involved non-reformed areas.

**Table 20. Land sales and land purchases in reformed and non-reformed areas (rural sample)**

*Number of households having sold land (past 10 years) according to land reform effect in village where they live*

<i>Rural sample*</i>	<i>Household has sold land (past 10 years)</i>		<i>All hh</i>
	<i>Yes</i>	<i>No</i>	
<i>Number of plots</i>	30	354	384
Non LR affected village (or affected to limited extent)	8	160	168
LR affected village (redistribution or coop)	22	194	216

*Number of plots affected by land reform according to sales and purchases*

	<i>Sold or lost land due to conflict</i>	<i>Not-sold or not-lost land due to conflict</i>	<i>All property</i>
<i>Land reform effect**</i>	38	289	327
Land not affected by the land reform	15	185	200
Land affected by the land reform	23	104	127
<i>Village type (land reform effect)**</i>	43	423	466
Land in village not affected by the land reform	9	206	215
Land in village affected by the land reform	34	217	251
	<i>Bought land</i>	<i>Not bought land</i>	<i>All prop.</i>
<i>Land reform effect*</i>	64	229	293
Land not affected by the land reform	49	139	188
Land affected by the land reform	15	90	105

\*\* Correlation between land reform effect and land sales, significant at 0.01 level (Pearson's Chi-square test).

\* Correlation significant at 0.05 level (Pearson's Chi-square test).



A comparison of the agricultural cooperative and the agricultural collective in Santa Rosa (the former called Carlos Fonseca Amador and members depending on collective land reform titles, while the latter, called Ivan Montenegro, initially depended on a title possessed by the cooperative whose land they had occupied, and after 2003 has obtained individual land reform titles), shows that there is an increase in land sales after the titling of the land in the collective. However, comparing the entire period (1990-2006), there are more land sales in the cooperative than in the collective. As such, lack of titles may indeed be said to somewhat restrict the amount of land sales. However, after performing a cross-tabulation of the questionnaire data, no statistically significant relationship was found between land sold and the type of document (Chi-square tests carried out for the entire sample), nor when looking only at the owners of land in villages affected by the land reform. So this finding is not supported by the statistical data. Furthermore, when land sales lead to concentration of land,<sup>14</sup> it is not a straightforward conclusion that it is desirable to activate the land market further.

This means that in the case study area, the lack of formal title deed does not seem to restrict land sales significantly, nor to accelerate them. Actually, it does not seem to have much impact on land market participation. I do not know of studies that have investigated the (possible) impact of titling on land sales in *rural settings* in Latin America, but the finding is in line with findings from research in *urban and peri-urban settings* in other Latin American countries (see for example Gilbert 2001). Yet, admittedly, formal titling of all land would make it easier for especially the land buyers without connections or only few connections at the local level to purchase the land. Thus, the *type* of land buyer may change with more titled land. The obvious question thus arises whether such land titling projects are cost-effective, if they have very little impact on the land market. On the other hand, some of the fears of 'dispossession through provision of titling and rights to alienate' seem to be exaggerated in the Nicaraguan context, as titling does not 'make it or break it' for land sales, in the sense that inferior land tenure documents can be 'fixed' through connections.

### **'Outsiders' as active players in concentrating land through the land market**

As was concluded in the theoretical discussion, it is an empirical question to what extent the land market as it currently works in Condega, with its high percentages of less-than- formal land titles and lack of updated inscriptions in the property registry, limit the land market activity of actors external to the communities.

### Land transactions in a non-titled reformed area

A large property with more than 1500 manzanas in San José was abandoned by the owner during the war and in 1990 was given by the National Land Reform Institute (INRA) to former soldiers (mainly ex-contras) as well as landless people from the area. None of the plots were measured. While the former owner was compensated for the land, he did not sign any accept to transfer the land to the name of the Nicaraguan state in the property registry. Therefore, to date, the property remains registered in his name, and no land title has been given to these beneficiaries of the land reform.

At the time of the land turnover, the land was not evenly distributed, as the local campesino families received less land than the former combatants. Over time and through land market transactions, the land distribution has become even more unequal.

"There have been many land sales. Of the families in our group of ex-contras, whom received about thirty or forty manzanas each, at least seven have sold. Of the civil population, not one has sold. They got about twenty-five manzanas per family." (Ex-contras combatant and land reform beneficiary, San José).

In 2000, when the rural office for land titling (OTR) measured the land, there were a total of 84 landowners in the area. At this point, there had already been considerable land sales and concentration of land, compared to when the land was originally given to the beneficiaries by the land reform. Today, the land-poorest 36 percent own less than three percent of the area (a total of 54 mzs, mean 1.6 mzs); in total, the land-poorest two-thirds of the households share 18 percent of the area, and the 10 land-richest families own 50 percent of the entire area (1020 manzanas). According to the OTR archives, between mid-2000 (at the time of the last topographic measurement) and mid-2004, a total of 22 transactions were recorded within the measured area of San José. This means that roughly – as a conservative estimate, since not all transactions are recorded – one-quarter of the landowners from 2000 have sold land during these four years. This is a very high figure. Nearly half of the transactions (10) have been to two families from the municipal capital without former ties to San José. One has bought (at least) seven pieces of property, thereby owning at least 324 manzanas within San José. The other family bought (at least) three pieces of land, owning at least 97 manzanas. Between them, these two families, who were not among the original beneficiaries of the land reform in San José, own one-fifth of the entire area. The remaining plots of land have been bought by local farmers, some neighbours as well as friends or relatives of the sellers.

The land purchases by landowners outside the community show that the lack of formal titles does not impede the activity of the land market. However, in this case it does affect the land prices negatively. The high degree of land sales in the San José area is interpreted as being related to several factors: First, the involved land was given by the land reform to ex-combatants who did not belong to the area. Secondly, the lack of land reform titles produced uncertainty about the level of tenure security for the owners. Some thus chose to sell, rather than losing the land later. Finally, interviews from the area indicate that numerous types of pressures are being applied from large-scale land buyers in order to 'help' the land sales, such as repeated offers to buy, threats, money lending in relation to family emergencies, followed up by pressure and offers to buy, as well as sexual harassment of female family members of potential land sellers.

The majority of the land market transactions took place between parties who were already known to each other before the transaction.<sup>15</sup> Thus, at a first glimpse this seems to support the mainstream argument that without formal land tenure documents, the land market is restricted to a limited circle of friends and relatives. When we look at the amount of land transferred, however, the actors from outside the rural communities of Condega emerge as more important: For the reported land purchases in the rural sample, 35 cases of transfers involving half of the total transferred land was transferred between friends and relatives (302 mzs), while the other half was transferred from neighbours and people without prior social relations (13 and 10 cases respectively, involving 58.5 and 239.5 mzs, respectively).<sup>16</sup> But with greater impact, the urban-based landowners indicate that they bought close to nine-tenths (89 percent) of their rural land (594 mzs) outside family and friendship relations.<sup>17</sup> Thus, it cannot be said that the land market mainly operates within a rather closed circle of people who are acquainted, despite the many plots of land with no or informal land tenure documents.

The case from the large reformed area in the eastern part of Condega (p. 130) illustrates that many land transactions take place despite the lack of land titles, even to 'outsiders' who are large-scale landowners from the municipal capital. It is also an example of concentration of land through land market transactions.

### **The land rental market: Somewhat limited by lack of formal titles**

In the questionnaire survey, questions were asked about the renting of land. The data show that a total of 56 plots were rented out during the planting season previous to the questionnaire sample (2003). In other words, 17 percent of the plots had been rented out in that year, according to the information given. According to the mainstream theory about property rights, it can be expected that the lack of formal titles will limit land renting (due to unclear and informal land tenure and related high costs of enforcement of such rights). The quantitative data also show that there *is* a statistically significant relationship between informal, non-inscribed documents and lower frequency of land rental agreements (Table 21). The same relationship and same statistical significance is found when performing cross-tabulation and Chi-square test with the variable for type of document, taking into account in who's name the document is issued. This fits well with the argument that legal insecurity of tenure due to lack of formal documents restricts land rental agreements. However, as only a few of the rental agreements have been formalized by written agreements, this argument may not be the only element that explains the frequency of land renting.<sup>18</sup>

**Table 21. Land rental by inscription in registry***Percentage of plots of land by land rental according to inscription in registry*

Land rental activities	Inscription in registry				All types
	Inscribed in name of current owner	Inscribed in name of relative	Inscribed cooperative	Not inscribed/inscribed in name of third party	
Rural sample **					
Number of properties	81	43	71	120	315
Rented land out last year (2003)	18	9	19	8	54

\*\* Correlation between land rental and inscription in registry is statistically significant at the 0.01 level (Pearson's Chi-square test).

Actually, the rental market can be considered active in Condega, with 17 percent of plots having been reported rented out in one cropping season, despite the fact that only one-quarter of all land plots are inscribed in the property registry in the name of the current owner (Table 5). This level of land rental is high compared to Boucher, Barham *et al.* (2005), e.g., who report that 10 percent of all households in their panel sample rented out land in 1999. The same study comments on the very small areas typically included in land rentals; thus, the land rental market does not significantly affect the overall distribution of land in operation. This is in line with findings of the World Bank report on land policy and land administration in Nicaragua (2003b:27) that the land rental market only distributes land to a limited extent (owner gini coefficient 0.86, user gini coefficient 0.80). The same report mentions that three-quarters of the rental agreements are between relatives or 'old friends'. Informal institutions are mentioned to be of primary importance for solving conflicts related to land rental. The report finds that the land rental market is severely restricted by the lack of formal titles, as fear of losing land at the end of the rental agreement, if the land is not titled and inscribed, prevents much land renting (*ibid.*: 31).

Other studies of market-friendly land reform in Latin America (for example Carter 2001, Deininger, Zegarra *et al.* 2003; Boucher, Barham *et al.* 2005, Carter 2006) find that while land titling and land market liberalization show a positive effect on land rental activity (but insignificant in redistributing access to land due to the minuscule plots of land being rented), the same trend is not found in ownership markets (here, with specific reference to Nicaragua and Honduras), where land distribution stays highly unequal, with gini coefficient at 0.86 (Nicaragua). With specific reference to the market-friendly reforms and efforts to increase tenure security and improve the

fluidity of land markets, Carter (2006:8) comments that “*the fact that land holdings remain highly dualistic with little sign of significant change is unsettling for policy that has as a major aim transferring land into the hands of the rural poor*”.

### **‘Informalization’ of land rights through land transfers**

To what degree are land titles and inscription data updated after land transactions, and what are the reasons for possibly not updating? Is information equally available to all actors, or can some actors afford more information than others? These questions are discussed based on the empirical data from Condega.

“One family sold [their land], without papers or anything. Here you buy with a small piece of paper [*papelito*], but it is not inscribable. The lack of legalization or updating is due to the lack of resources; it is EXPENSIVE. And people do not worry about it.”

Isabel and Fausto, non-reformed area, Sabana Grande<sup>19</sup>

Land transactions are very often carried out without any formalization, as the above quote illustrates. As discussed in Broegaard (2009), the data from the study show that a large percentage of the cases of land transactions taking place via the land market is *not* followed up, either by updating of formal land titles (Chi-square, \*\*\*), or inscribing such documents in the property registry (Chi-square, \*\*\*). For the land purchased through the land market, less than half is updated with formal title, and as many as 38 percent have informal documents or formal documents that remain in the name of the former owner (not even counting those documents that are left in the name of a relative). Regarding the inscription in the public registry, the situation shows an even higher degree of ‘in-formalization’. For the farmland obtained through the market in the rural sample, just over one-third (38 percent) are inscribed in the public registry in the name of the current owner, and nine percent remain inscribed in the name of a relative. More than half (53 percent) are not inscribed at all or they are inscribed in the name of somebody who is not even a relative of the current owner.<sup>20</sup> This means that even for the land purchased through the land market, titles and inscriptions in the registry are more often than not, not updated. These findings show that the land market transactions actually undermine the land titling and registration activities that are promoted by donors and the state, through projects such as PRODEP. It is ironic that one of the objectives of the titling projects is to stimulate the land market, which in the way it is currently working erodes the advances in updated land tenure documents.

**Table 22. Inscription in the property registry by mode of acquisition of land**  
*Number of plots by mode of acquisition according to inscription status*

Inscription status in the property registry Rural sample ***	Mode of acquisition			All modes of acquisition
	Bought	Inherited/ pre-inherited	Land reform	
<i>Number of properties</i>	130	91	94	315
Document registered in name of current owner	49	23	9	81
Document registered, but in name of (often deceased) relative of the owner	4	38	1	43
Document registered, in name of land reform cooperative	8	2	61	71
Document not inscribed, or no inscribable documents	69	28	23	120

\*\*\* Correlation between mode of acquisition of the property and inscription status significant at 0.001 level (Pearson's Chi-square test).

Similar trends are found for the rural land acquired by the urban-based land owners, for both (lack of) titling and inscription in the property registry. However, there are too few observations that are too unevenly distributed to allow for a Chi-square test.<sup>21</sup> Regarding the inscription in the property registry in the urban sample of rural property owners, just over one-third (37 percent) of the plots acquired through the land market have been inscribed, while close to two-thirds (63 percent) are inscribed in the name of somebody else or not inscribed. For the inherited land, half of the plots are inscribed in the name of the current owner, whereas for land obtained through the land reform, three-quarters are inscribed in the property registry in the name of the current owner. Despite the lack of statistical tests, these findings are interesting because the urban-based farmers are generally wealthier and economic limitations cannot be expected to exclude them from using the registry. In effect, the property registry does not seem to be perceived as sufficiently important to justify the cost.<sup>22</sup>

The fact that land market transactions are often not followed up with updating of formal documents and inscription in the property register is also related to the fact that there are different advantages (and disadvantages) of the informal (extra-legal) land market when compared to the formal land market, as summarized in the table below.<sup>23</sup> Among the advantages of the informal land market is that no tax is charged for the transaction; otherwise, there is a transaction tax of one percent of the market price of the land as stated in the sales document, or according to land value tables managed in the finance office, the '*Renta*'. There are also fees for lawyers for writing title deeds, as well as fees for inscription in the register. As one of the results of PRO-DEP and the government commitment to eliminate land market impediments, the level of the transaction tax was lowered in 2005 from four percent of the land market

Table 23. Comparison of informal and formal land market transactions

<i>Characteristics of land transactions</i>	<i>Informal land market</i>	<i>Formal, state-sanctioned land market with titles</i>
<i>Property tax on transaction</i>	No	Yes
<i>Property tax on ownership</i>	Only if municipality obtains information about ownership	Municipality has to issue 'Solvencia municipal' for the inscription to happen. Based on this, they will tax the property
<i>Speed of transaction</i>	Rapid	Often slow
<i>Bureaucratic requirements</i>	None, sometimes lawyers notarize bills of sale ('escritura privada'), using local witnesses	Considerable paperwork must be submitted to the land registry and cadastre office, as well as involving the municipal fiscal register
<i>Costs related to transaction (travel and lost work time, lawyer's fees, topographer)</i>	Low, usually no lawyers or topographic surveys involved (even in case of sub-division)	Very high, with multiple visits to departmental capital, registry and cadastre; plus fees to lawyer and topographer (the latter usually only in case of sub-divisions or where no previous cadastral map exists)
<i>Restrictions on sales</i>	None	Temporal restrictions (five years) on sales of land titled through the Office for Rural Titling (reformed areas), or special exception has to be applied for (involving additional paperwork and visits to the OTR office in the departmental capital)
<i>Local enforcement of ownership</i>	Yes, when local authorities are involved as witnesses	Only to the extent that local authorities are called upon
<i>State enforcement of ownership</i>	Usually not	In theory, yes, but in practice, it often depends on other resources necessary to attract state institutions to get involved in a case of land conflict

price or cadastral value as managed in the tables of the *Renta* office.<sup>24</sup> The high level of transaction costs for formalization of land purchases clearly stimulates the process of 'in-formalization'. In addition to the transaction tax in the *Renta*, there has to be paid a 0.5 percent tax on the transaction value at the municipal office. As commented by Proenza (2006), Nicaragua is still the most expensive country in Central America for registration of land in the property registry.



Furthermore, as the informal land transaction can typically be carried out in the rural community where the land is sold, or at most with a visit to a lawyer in the municipal capital, many costs of travel and time are avoided, compared to the formal land market transactions that involve multiple visits to the departmental capital (by the buyer and seller, or by their respective lawyers). The disadvantage, of course, is that the rights of the new owner are not recorded by institutions outside of the rural community/municipal capital, such as the public registry of property rights.

In non-reformed areas, the lack of formal land titles is not limiting land sales. Often, the Village Council is used first, and if funds allow it, a lawyer may be contacted to write a more formal transfer document later on. However, even if a lawyer has been involved, the land documents usually remain un-inscribed. People in the rural areas express little or no desire for inscription in the (departmental) property registry. Furthermore, they tend to confuse the departmental Public Registry of Property with the (municipal) *fiscal* property registry, with which they have more contact (if any). The following quote from a medium-size farmer in El Pire, talking about the seven plots of land that he manages – some owned by himself and others by his wife, none of them inscribed – illustrates the local use of non-formalized or semi-formalized transactions:

“Plot 1, I bought 18 years ago, with a small piece of paper from the Agrarian Reform in my name... or rather, in the name of the man that sold me the land, and with a note saying that he sold it to me. That was all. In any case, the land was bought without papers. It was not until afterwards that the seller took advantage of the possibility of getting an Agrarian Reform document in order to legalize the sale [of an inherited piece of land]. Plot 2, I bought 12 years ago and the gentleman [el Señor, the seller] made a deed [escritura privada] with a lawyer, but it is not inscribed.<sup>25</sup> Plot 3, I obtained buying it, a quarter of a manzana, so... I did not make any documents. It was part of an inherited land, and the quarter of manzana [which I bought] was in the middle of the land of the rest of heirs. Well, it would have been very complicated to make a deed and the plot was very small to justify it. A small piece of paper was made stating that he sold to me. Anyway, there would not be any problems, because it was so tiny and in the middle of what was inheritance. I have had no problems with the purchased land, despite the lack of formal papers.”

Jorge, El Pire area

Especially in the case of the land in the reformed sector, there is often a political dimension to the land tenure information that is not ‘publicly available’. Good po-

litical connections are often important in order to access information about what land compensation has been paid for by the state to the former owner, and therefore can be considered safe to buy.

“Here, [...] the Cubans came and bought; they have some beautiful farms there, which used to be given by the land reform. They bought them with the blessing from above, from the president and the ministers: “Buy that farm, it is good, buy it, there are no problems, it has already been indemnized ...” That is, they give information to the interested buyer ...”Don’t worry, it has not been indemnized, but we are going to give him a better piece of land elsewhere, so just go ahead and buy it from those Indians. Leave them with nothing; they do not even know what it is they have been gifted with, from the Piñata.” [...] Sometimes there are interests from very high up to get in charge of a piece of land, and little by little they move the campesinos out of there, buying the land... [The lack of formal papers] does not affect them the least, because they already have the information about which pieces of land will be taken away and given back to the old owner, or whether the land will be indemnized...[...] and the campesino in the rural area does not have this information. They do not know how things really are, so that makes it easy for them [the interested buyers] to go and tell the campesino: “They will take the land away from you; they will take the land away, so it is better that you sell it...” They use any way to send that message [...] and suddenly the person loses faith, since he may have no documents at hand, right, or if it is a collective title for a cooperative, only the President has the title, and maybe the Board is not even clear about their situation. Then, there is really trouble. We have seen a case from El Mango, where the Board gave the land reform title to the former owner; this was a really a nasty thing... The only reason that this case was resolved was because the owner no longer was the owner, because he had been paid [the indemnification of the land by the government].”

Javier, ASOEXCOPADE (ex-combatant association)

It can be concluded that information is asymmetrically distributed in Condega (and outside) and that access to information often goes through political contacts. Registry information is often not updated, as many titles are not re-elaborated when there has been a land transaction. This practice of not updating documents undermines investments in titling and updating of registry information, such as those carried out by PRODEP, and leads to a process of ‘in-formalization’, as the parallel informal land market is used more frequently than the formal one. This is also a reaction to the uneven playing field,

which makes it easier for wealthy and well-connected individuals to obtain formal titles as well as gain easier access to enforcement of property rights.

### **The uneven playing field: The market as embedded in power relations**

As commented above, it seems that titling status is not the main key feature to look at when wanting to understand the reasons for land sales in Condega.<sup>26</sup> Rather, we should look at the economic situation of the household. Distress sales, whether due to emergencies in the family caused by illness or by climatic disasters,<sup>27</sup> and debt are the most frequent reasons for land sales, accounting for almost half of the reasons stated for land sales in the questionnaire survey, as shown in the table below. Conflicts and threats related to land account for only 13 percent of the sales. Based on the qualitative interviews, it is clear that land sales motivated by moving are mainly related to areas declared prone to natural disasters after Hurricane Mitch.<sup>28</sup> This leaves only 13 percent of the cases of land sales motivated by investment opportunities.

A widow from Santa Rosa offers an example of a distress sale related to an environmental emergency:

“I sold my land due to Hurricane Mitch, because where I lived was declared as a high-risk zone for landslides, and I couldn’t live there anymore. Therefore, I had to sell my land [1 mz], where I also had my little house, and buy this house plot, only twelve by twenty-five varas [yards]. I do not even have space to keep chickens. It was not difficult to find a buyer, but the price was much under what I asked. I had imagined a price of 8000C\$, but the buyer only gave me 3000C\$. There was another interested buyer, but he offered even less. Now, the value of the land is 15000C\$ or more. At that point in time, this was the most I could get for the land. [...] Land sales often take place here in order to cover necessities, due to family emergencies...” Ana Sofia, Santa Rosa

When living in severe poverty, there is not much of a buffer to help a household bounce back after a shock or a crisis. Poverty also represents a weak bargaining position when offering land for sale. The wealthier buyers know and take advantage of this. When emergencies are related to loss of harvest, it often affects an area generally – so that many families need to sell land in order to generate income, and this presses down the price further. This is much less the case for farmers in the urban sample, who are generally much wealthier than the farmers in the rural sample. The following quote, from an ex-contra leader and beneficiary of the post-war

Table 24. Reasons to sell (rural sample)

Reasons to sell land	Rural sample (N=39)	
	#	%
Economic emergency, debts	19	49
Conflicts, threats	5	13
Moving	10	26
Another investment (in land, buying land, buying animals)	5	13
<i>Total</i>	39	100

land reform, shows this ‘irreversible’ and gradual process of becoming landless:<sup>29</sup>

“[Of the Contrás that received land through the post-war land reform in Daraylí,] the majority sold their land... Only six or seven out of nineteen are still here, in this cooperative. We each received twelve manzanas of land. Most of them sold everything at once. Some of them are here, a few bought other land, but at a disadvantage. For example, they sold twelve manzanas and bought only two.”

### **A vicious circle between inequality and the way the land market functions**

The last empirical question to analyse in this chapter is whether the land market, as it works in Condega, can be said to contribute to a pro-poor development, as the proponents of the mainstream policy package argue that the (theoretical construction of the) free market ideally should do; or whether it mainly increases inequality due to its embeddedness in current unequal power relations. It is important to note that this is not an attempt to enter the efficiency discussion, as I do not have empirical data that can contribute to that discussion. While concentration of land and increased inequity may (or may not) be ‘economically efficient’ in a strictly economic sense, increasing attention is (again) being devoted to the fact that inequality often goes hand in hand with inefficiency in the long run (see for example Deininger 2003b; Platteau 1996 and World Bank 2006; see also Acemoglu, Johnson *et al.* 2002). However, here I address the equity/inequity question in its own right.

The questionnaire data show that land market transactions lead to concentration of land. The land transactions generally take place from smaller-scale farmers to larger-scale farmers, leading to re-concentration of land. For both the rural and the urban

Table 25. Range of land owned by buyer after purchase or seller prior to sale. Rural and urban sample. Number and percentage of buyers and sellers, respectively

How much land does the buyer own after the purchase of your land? / How much land did the seller own prior to the sale of the land you bought?	Rural				Urban			
	Buyers (N=31)		Sellers (N=62)		Buyers (N=6)		Sellers (N=11)	
	#	%	#	%	#	%	#	%
Only this land	11	36	21	34	2	33	4	36
Some other land	15	48	35	57	2	33	4	36
Several other farms	2	7	3	5	1	17	1	9
Do not know how much land (s)he has/had	3	10	3	5	1	17	2	18

sample, less than 10 percent of the plots were bought from a larger-scale farmer. Even the wealthier, urban-based landowners only rarely buy from other large-scale farmers. Consequently, land transactions in the study areas tend to increase the already high proportion of landless in the rural areas and concentrate land among the wealthier landowners.

These findings correspond well with findings by Carter and Chamorro (2000); de Laiglesia (2004); Deininger, Zegarra *et al.* (2003); Boucher, Barham *et al.* (2005); and Ruben and Masset (2003). A World Bank study on land issues in Nicaragua finds the same: That the land market leads to land concentration among the large-scale landowners, and the land sales (and rental) market is segregated. None of the large-scale landowners sell to small-scale landowners, but the small-scale landowners sell to both large- and small-scale (World Bank 2003b:27).<sup>30</sup> The same tendency is reflected in the following quote from a village leader in a non-reformed part of Condega:

“[Whenever somebody sells land here] it is people from here that buy, those that already have twenty, thirty or even a hundred manzanas of land. Those that have one or two manzanas are not able to buy. There is no credit available for land purchases. The big get bigger. There is a process of re-concentration going on.”

Alvaro, Corralitos

From San José, the reformed area without land titles mentioned earlier, the following

quote illustrates the high degree of land concentration going on through land market transactions:

“There is a big re-concentration of the land. The Padillas are smart [vivos]... they take advantage of one’s need. They are in no hurry. They buy little by little, whenever one is most in need and without possibility for negotiating the price. [...] We will soon be situated as isolated islands in the property ocean of the Padilla family. They are several brothers and cousins who coordinated buy up land, and not just in [these three adjacent villages here], but also on the other side of the mountain.”

Ricardo and Mario, San José

Another example of re-concentration of land, also among politicians and their relatives, comes from another village:

“Those who bought here [in the cooperative] are from Condega town [...] and some brothers of a member of parliament from Estelí who have a finca here, big, from land bought from the cooperative.”

Miguel, Ducuale

In other cases, larger-scale urban-based farmers have bought entire cooperatives, with a much higher degree of concentration of land through the land market than shown in the above example. Thus, land market activities tend to polarize the land tenure structure by creating landless (or nearly landless) and wealthier, larger-scale landowners.

### **Land concentration within a cooperative**

The Carlos Fonseca Amador cooperative in Santa Rosa offers a typical example of how land sales lead to concentration of land among some of the leaders. Of the original 21 members of the cooperative, only four have retained their original plots; three members have both bought and sold land but have decreased their landholding from 54 manzanas to 36 manzanas between them (current average landholding of 12 manzanas); 10 members have only sold land, reducing their landholdings to one-third, from 180 to 62 manzanas (average landholding just over six manzanas); and three members have only bought land, having increased their land holding nearly threefold, from 54 to 157 manzanas (average of more than 52 manzanas). The treasurer and vice-treasurer accounted for more than half of the land purchases of the cooperative land: Of 27 land sales made by the 21 original members of the cooperative since 1991, the treasurer was the buyer in 10 cases, and the vice-treasurer in another four cases. Between them, they purchased close to two-thirds of the land that has been transferred (62 percent). Including two other board members, they have bought 96 percent of the land transferred between cooperative members, a total of 155 mzs.

The situation of land sales in San José (mentioned in an earlier textbox) is an example of such a higher degree land concentration among large-scale absentee landowners.

The re-concentration of land has negative implications for the poor and nearly landless, as they used to be able to get land for share-cropping or renting, or employment as temporary farm workers on the medium-sized farms.<sup>31</sup> However, with very big land-holdings, and often absentee landowners, there is hardly any work or land offered to the local population:

“Here are many people without land (...) The hacienda... belongs to a Cuban, an international business man [empresario]. He does not live here. Before [the hacienda] gave land for rent, or for share-cropping, but not any longer. They changed the ploughed areas into areas for grazing, in order to increase the number of cattle... That was in 2002. They only give some work to day labourers...”

Miguel, Corralitos

## Conclusions

Many landholdings in Nicaragua are handled in extra-legal ways when being sold or inherited. Currently, less than half of the farming plots acquired through the land market is inscribed in the property registry. Thus, land market transactions (as well as informal inheritance) currently increase the percentage of outdated or informal land documents. The lack of trust in and familiarity with the formal system is partly the cause of this. High costs and slow procedures are other causes. This finding is related to advantages of the informal land market over the formalized land market, mainly in relation to transaction costs, as pointed out by Platteau (1996), Gould (2006) and Barnes and Griffith-Charles (2007). If this practice is not changed, it will undermine the large-scale, loan-financed investments made in land titling and land administration projects such as PRODEP. Interestingly, one of the main arguments for land titling presented by the proponents of the mainstream policy package is that titles are necessary to make the land market work more dynamically. However, as I show, the very same land market erodes investment in land titling.

The land market in Condega is very active, with more than 10 percent of households reporting that they have sold or lost land over the last 10 years, and 15 percent of households that they have bought land. Of the land currently possessed by rural-based owners, almost one-quarter of the area has changed hands during the past 10 years. The urban-based owners of rural land report that they have bought 44 percent of



the area they currently own during the past 10 years. The land market transactions mainly involve the reformed areas, whether these are titled or not. No statistical evidence was found that shows that the lack of titles reduces the frequency of land sales in the reformed area, although some qualitative data suggest that this may be so in some cases. However, in the non-reformed areas, the lack of formal title is no barrier for land sales.

Due to misuse of information and connections in the political and juridical system (whether paid for or through social or political friendship), the act of titling and registration in itself does not seem to be able to create a much more level playing field. Although some of the abuses of office have a larger room for manoeuvre in situations where land is collectively titled or where no title exists, it does not seem as if titling and registration of land rights alone would level the playing field of the land market.<sup>32</sup>

There is a process of concentration of land, as small-scale farmers often sell to larger-scale farmers. Most of the land sales are related to distress sales, threats or conflicts, and should thus be understood as results of extreme levels of rural poverty and high levels of inequity, which affect the way the land market, as well as the 'supporting institutions' such as courts, work – often against the interests of the poor. Whether it is called '*distortion*' of the way the market should function, lack of complete and secure and individual property rights (see Boucher, Barham *et al.* 2005) or whatever other name it is given, the practical reality of Condega is that the land market works to increase already existing inequities. It can only be understood within the wider social and political processes, or the 'social embeddedness of the economy'.

It is argued in this chapter that any premise about transactions between 'willing sellers and willing buyers' misses an important part of the picture due to the great inequalities in wealth and information as well as the abuse of power. In Nicaragua, land is increasingly re-concentrated, leaving more and more people landless or nearly landless. Although the finding that land market transactions tend to exacerbate an already unequal distribution of land is not a new one, it is hardly reflected in the prevailing land administration programmes (and discourses about the 'mysteries of capitalism'), which argue in favour of titling and promotion of the land market – also to benefit the poor. The mainstream, neo-liberally inspired argument is that liberalization of the land market will lead to a 'levelling of the playing field', through the 'inverse relationship' of farm size and area productivity, thus making the small-scale farmers more competitive. The mainstream policy proposal does not lead to a 'levelling of the playing field' but quite the opposite. Under the conditions in Latin

America, the land market does not work to distribute land; on the contrary, it concentrates it. Yet the neo-liberally inspired mainstream policy package continues to be almost the 'only game in town'.

Land values increase with titles in reformed areas – not in non-reformed areas. The land market in Condega is not characterized by a meeting between a willing seller and a willing buyer, but by needy sellers, pushed by extreme poverty into distress sales... and sometimes power abuses by the 'overly' willing buyers. The land price is only to a limited extent a result of market forces and free competition; it is more a result of unequal economic positions and high levels of poverty and distress. Prices on land are largely regulated by social hierarchies and power relations.

Taking the embedded character of the economy into account fundamentally changes the view of the market economy, illustrated here through an analysis of the land market in Condega. Rather than seeing the market as free competition between parties, it becomes obvious that market 'exchange' is regulated by relations of power and inequality. Rather than 'levelling the playing field', which the neo-liberals argue that the mainstream policy package for market liberalization will eventually do over time (if allowed to work sufficiently well and sufficiently long), I show that the very nature of inequality in opportunities is at the heart of the functioning of the land market, and that this also leads to the reproduction of unequal outcomes (unequal distribution). Thus, if reduction of poverty and equitable outcome is a goal, then it follows that it is the power structures, the unequal opportunities and the regulating institutions that must be in focus; not the myth of the self-regulating market. It is necessary to subordinate the economy to the society, as Polanyi writes.

## Note

<sup>1</sup> The 'market-friendly perspective' on the functioning of the land market, which has been very influential for the views (and policies) of important donors such as the World Bank and Millennium Challenge Corporation (MCC) with regards to land titling and land administration projects, while the European Union expresses a more sceptical view on the use of land-market-based policy, at least in Latin America. See European Union (2004) as well as for example [www.cuentadelmilenio.org.ni](http://www.cuentadelmilenio.org.ni) or World Bank (2002c). Deininger (2003b) especially highlights the importance of rental land markets for equity effects. However, this chapter focuses mostly on the land sales market.

<sup>2</sup> See for example (Demsetz 1967; Feder and Feeny 1991; Feder and Nishio 1996; Olinto, Correia *et al.* 1998; Vogelgesang 1998; Deininger 1999; Feder 1999).

<sup>3</sup> This draws upon Demsetz (1967), who argues that prohibition of negotiation and transactions cause externalities. Legal reforms associated with land administration projects, furthermore, often lift any restrictions there might have been on the alienability of land, in order to make the land market more dynamic and fluid. In the case of Nicaragua, there is a five-year temporal restriction on land sales of land titled by the land reform (Rural Titling Office) from the date of issuing the title, but this practice can easily be – and is – circumvented.

## 6. Land markets in Condega: An unlevel playing field

<sup>4</sup> There are many radical voices in the discussion about land market and market-friendly reforms, which is often highly politicized. On the one hand, a 'package' of land titling, improved land markets and legal reforms through land administration projects is often argued by its proponents to be 'pro-poor', as explained above. On the other hand, it is passionately criticized by its opponents for not improving the access of poor and landless households to land in practice, but rather facilitating re-concentration of land among the wealthy and leaving more poor people landless. The critique may have been heard, as there are some recent reservations about the ability of the market to redistribute land without leading to an inefficient concentration of land (see for example Deininger 2003b; Carter 2006; Childress and Deininger 2006). However, despite a certain 'convergence' between economists and anthropologists about the importance of an enabling institutional environment, the implications of the lack of a level playing field are still not often taken *sufficiently* into account in economic analyses and policy recommendations, even in settings with high degrees of inequity and obvious problems in relation to the use and abuse of power and office (see for example Boucher, Barham *et al.* 2005). Furthermore, the structural adjustment programmes recommended by the donors in the 1990s meant that the vast majority of the state support for technical service as well as rural credit was withdrawn. It is within this weakened state institutional framework that the market is now expected by donors and governments to work – almost on its own.

<sup>5</sup> This is a considerably higher figure for land market activity than what is found according to a World Bank (2003b), which concludes that about two percent of the rural households inform that they had *bought* land during the past five years (1993-1998). However, compared to information from Honduras, the land market activity is not remarkably high (Coles-Coghi 1993).

<sup>6</sup> Similarly, Ruben and Masset (2003) find that about one-quarter of the sold land involved land reform areas.

<sup>7</sup> For the sample of urban owners of rural land, it seems from the purchases that the most frequent tenure document for the land prior to the purchase was a *Escritura pública* (8 cases, 53 percent), followed by four cases of informal titles (sales promises and a signed paper from the village committee, 27 percent in total), and individual land reform titles (three cases, 20 percent).

<sup>8</sup> This finding does not seem to fit with findings by Boucher, Barham *et al.* (2005). They find for panel data from Honduras and Nicaragua that titling does stimulate the land market, but only to a limited extent, and without expected gains in land access for the poor.

<sup>9</sup> It is difficult to make a statistical analysis with the quantitative data collected through the questionnaire, as these refer to rough estimates of land values (by the owner) as well as land sales in different periods of time. It should be noted that land prices are considered a very sensitive topic in Nicaragua, and traditionally fictitious prices are mentioned even on formal title deeds (to reduce tax payments).

<sup>10</sup> It should be noticed that what in this quote is called 'legally', does not qualify for inscription in the property registry. However, it is a common view that the involvement of a lawyer in a land transaction makes the deal 'legal'. It is also a common explanation for having tenure security that the land was bought from 'its legitimate owner' – irrespective of titling status before as well as after the land purchase.

<sup>11</sup> Generally, poor people cannot buy land. Based on the income for a farm-worker, 30 C\$/day (under two dollars/day, fieldwork 2003-4) or even based on the monetary income from the produce of a small farm, small-scale farmers are rarely able to save money for a land purchase. However, some land purchase is related to temporal immigration to Costa Rica, where salaries are somewhat higher. It should be mentioned, however, that there are a few important exceptions where a revolving land-purchase-fund has helped poor families to purchase land (OCTUPAN and UNAG).

<sup>12</sup> See argument by Ruben and Masset (2003) and Zimmerman and Carter (2003) on price changes under emergencies.

<sup>13</sup> See for example Platteau (1996) on the irreversibility of land sales.

<sup>14</sup> It is also likely to increase poverty among the remaining landless or nearly landless population. For example, Marvin Ortega (2000) comments that the expectation to sell at a higher price with titles goes contrary to efforts to secure *ownership* of land among the poorest households.

<sup>15</sup> Regarding land sales reported in the rural sample, 90 percent took place between relatives or friends (*compadres, amigos*) or members of the same organization (whether NGOs or cooperatives). Only nine percent of the land sales took place without prior social relations between buyer and seller (with three percent sold to the bank; N=32). Looking at the land purchases reported in the rural sample (N=62), 61 percent of the reported plots were bought from relatives, friends or members of the same cooperative (31, 23 and eight percent respectively); 24 percent from neighbours; two percent from patron to client, and 13 percent of the land purchases were obtained from people with whom there was no prior social relation. In the sample of urban-based owners of rural land, one-third of the 15 reported purchases were made from owners of neighbouring plots (in the rural areas), 40 percent from

family and friends, two cases (13 percent) from members of the same organization (cooperative) and two cases of purchase from people without previous social relationship (13 percent). See also Ruben and Masset (2003), who find that 80 percent of land sales take place between farming households living in the same village, and more than 65 percent of the transactions involve family and friends.

<sup>16</sup> Regarding sales reported by the rural survey, about 90 percent of the area (268 mzs, 25 cases) are sold to friends and family, with only 10 percent of the land (33.5 mzs) sold to neighbours or people with whom no social relation existed prior to the land sale. The discrepancy between what is reported for sales and purchases may be related to a strategy by the seller to try to establish a reciprocal although uneven relationship with the buyer, for example in order to obtain employment.

<sup>17</sup> Three purchases were made from friends and relatives, totalling 68 mzs; five purchases were made from owners of neighbouring plots (in the rural areas), totalling 105 mzs; and two purchases from members of the same organization (cooperative) totalling 215 mzs, and two purchases from people without prior social relation, totalling 206 mzs.

<sup>18</sup> Another explanation could be related to the fact that the plots of land with informal or no documents tend to be the smallest plots, owned by the poorest people – and it is generally the households with a bit more land than they can farm that rent their land out. However, no statistically significant relationship was found between plot size and land rental activities.

<sup>19</sup> Interestingly, the elderly man in this couple had a formal and inscribed land title for one of his plots of land. However, it was inscribed in the property registry prior to the revolution, during which the property register in Estelí burned. A subsequent re-inscription process has been going on for more than a decade. However, this man was still not aware of the damage to the property registry and the need for re-inscription of property rights. This is a good illustration of limitations in access to information.

<sup>20</sup> Not surprisingly, the inherited, pre-inherited and donated lands are less frequently inscribed in the name of the current owner, and they are most frequently absent from the property registry.

<sup>21</sup> For the rural land acquired by the urban-based landowners, under half of the bought land (42 percent) has a formal title in the name of the owner, 10 percent is titled in the name of a relative of the current owner, and almost half (48 percent) has a formal document in the name of somebody other than the current owner (not even a relative of the current owner) or an informal document. For the inherited land, half has documents in the name of a (deceased) relative, one-third has informal documents or documents in the name of others, and only one inherited property has formal documents in the name of the current owner. Only four properties among the urban-based rural landowners were obtained through the land reform. Most of these (3) are titled in the name of the current owner, and only one has an informal document.

<sup>22</sup> Barnes and Griffith-Charles (2007) conclude, in their study from St. Lucia carried out 18 years after a large-scale land titling project was completed, that property is reverting back to the informal system. They find that the 'in-formalization' of the property rights in St. Lucia happens primarily through unregistered inheritances. Similarly, Gould (2006) finds the presence of a strong extra-legal market in land on the agricultural frontier in Guatemala. See also Barrows and Roth (1989) on the lack of updating registry information in Kenya. Wallace and Williamson (2006) warn us that land markets are difficult to establish, and that titling alone will not do the job, stressing the importance of integrating and reflecting social processes and cognitive capacities. The increased transaction costs on the state-sanctioned land market is in accordance with the critique presented by Platteau (1996) and Bromley (1989), and recognized by Deininger (2003b), de Soto (2002) as well as the World Bank, which especially emphasizes the high taxation level of land transactions that leads to informality (World Bank 2003b).

<sup>23</sup> See also Gould (2006) for findings on advantages of the extra-legal land market in Petén, Guatemala, and Coles-Coghi (1993) on the informal land market and its advantages in Honduras.

<sup>24</sup> The *Renta* tables of land values for fiscal purposes do not seem to be public information. I have applied to see them several times with no result. Civil servants in the Registry, as well as in the fiscal cadastre at the municipal level, do not have access to these tables either. This provides for speculations about 'funny games' going on.

<sup>25</sup> It should be noted that this document is not even inscribable.

<sup>26</sup> Ortega (2000:10) expresses it the following way: *"If certainly the small producers need a title that gives them security for their property their first objective is to produce. (...) The title alone does not guarantee them that their property can have that social function, and to the contrary, its legalization without development alternatives only facilitates the sale [of the land]."* (own translation).

<sup>27</sup> These kinds of shocks that affect a whole area are called covariant shocks. Although Ruben and Masset (2003) find that shocks related to the individual household (idiosyncratic shocks) lead to distress sales more so than

covariate shocks, I find very frequent land sales related to Hurricane Mitch. See also Zimmerman and Carter (2003) for a discussion on the covariant / idiosyncratic shocks.

<sup>28</sup> Some households sell land to move away from small-scale agriculture, which is very hard work and not very economically secure or rewarding. However, as commented before, this option is rarely used by the poorest, but more by those who have more assets to sell.

<sup>29</sup> See also Baumeister (1999). In the rare cases where new land is acquired after land sales, it is often on the agricultural frontier, where land is less expensive.

<sup>30</sup> Other studies have also found that poverty in itself can make the land market work against the poor households – ‘the willing sellers’ – whether they have land titles or not. Zimmerman and Carter (2003) find that poorer rural households tend to sell at low prices and buy at high prices. This is because many of the risks and shocks that make the poorer rural households sell their land are shared with an entire geographical region (e.g. climatic shocks). This therefore means that the land sales market can be expected to increase inequality in land distribution, a key factor for household income and subsistence among rural small-scale farmers. Emergency, frustration or fear due to insufficient levels of enforcement may likewise influence the land price negatively (e.g. Jansen and Roquas 1998; Ribbink 1994). In a study on the Nicaraguan land market, Ruben and Masset (2003) find that poor households face more demographic shocks (illness and death) and crop loss than other households. Compared to other types of shocks, demographic shocks lead more frequently to land sales. In this way, poverty is important for land sales. Furthermore, Ruben and Masset find that land sales (including distress sales) further increase the ongoing process of rural differentiation (ibid.:489), in that more households become landless or near-landless, while others accumulate more land. Similarly, Platteau (1996) warns us that land sales by small-scale farmers are often irreversible (p. 54).

<sup>31</sup> Similar effects of land concentration are mentioned by Carter and Barham (1996).

<sup>32</sup> While most of the *land transactions* take place between people who know each other, as ‘predicted’ by de Soto and others in situations with incomplete titling and registration of property rights, the majority of the *transacted area* is passed from the rural landowners to urban-based landowners outside of family and friendship relations. Also, the lack of formal titles does not impede land purchases by these outside buyers. However, external buyers generally have some prior contacts in the area or are able to establish them, since most live in the nearby municipal capital. The land market as such is still semi-local. With more formal titles and updating of registry data, more outsiders without connections with the village’s social network or the municipal authorities are likely to feel that they are now better able to purchase land safely.

## 7. Unequal access to titles and authorities

Land titles are often given a high symbolic importance by the local farmers. Old land tenure documents may be framed and hung behind glass on the wall, and *entrega de títulos* (handing over the land titles) are much portrayed instances that are given much space in newspapers and talked about a lot.<sup>1</sup> Based on the interviews, most farmers agree that titles are – in principle – very important, and in order to have the highest degree of tenure security, it is necessary to have individual, formal and inscribed tenure documents.<sup>2</sup> In practice, however, formal tenure documents are often *not* made after a land transaction, nor are they inscribed in the property registry, even though people often plan to make documents in the future.<sup>3</sup> This is also illustrated in the quote below:

“The land is as when we bought it. We did not buy an entire plot, but only part of one. The public title is in the name of the seller, and there is a paper made by the Village Committee. We think that we will make more papers, as the purchase involved only one part of a plot of land and we plan to buy the rest and make one single document. The man wants to sell. He already gave us the original document, which is still in his name, because we already have bought the biggest part of the plot. This is the line of reasoning: Wait and make one document only. Depending on the [economic] resources, maybe it will be inscribed in the registry – but I do not promise you that [smiling].”

Blanca, El Pire area

In a setting where land tenure problems are considered serious and frequent, and where there exists a state-endorsed system for the recognition and recording of property rights, one would suppose that titling of property rights would be given high priority by landowners. The Estelí department, where the Condega municipality is located, is often referred to as one of the departments with high levels of land tenure conflicts and high levels of tenure insecurity (e.g. World Bank 2002c). Yet, according to the questionnaire survey, only a small percentage has formal tenure documents in Condega municipality (Chapter 3).<sup>4</sup>

### The choice of not updating land tenure documents

In Condega, the majority (71 percent) of the plots with formal documents in the name of the present owner has been acquired via the market. However, for the plots

that have informal documents, the corresponding figure is even higher. 74 percent of the properties with informal documents have been acquired via the market. This reflects the generalized practice not to inscribe – and sometimes not even to make documents – even when buying a property. Many of these transactions leave the name of the former owner (the seller) on the land tenure document. These findings are interesting, as they document a titling practice (i.e. lack of updating documents) that strongly differs from the expressed ‘ideal titling document situations’.

The high costs of formalization of property rights and their transfers are without doubt an important limitation of their use. Many of the costs are fixed or have economies of scale, thereby making it much more expensive, relatively speaking, to formalize property rights for half a *manzana* than for a plot of 50 *manzanas*. Precisely from the *minifundio* areas, where plot size is often around one *manzana*, several interview persons commented that they would prefer to buy another piece of land with non-formalized land tenure rather than formalize the property rights for the plot(s) of land they already own. This is illustrative of both the high level of costs related to formalization of land rights in Nicaragua, and the relative strength of land tenure security obtained through other sources than the formal land tenure document. The following quote from Corralitos is an example of how plots of land have been subdivided and passed from generation to generation without updating of formal papers due to the costs it implies.

“My grandfather had a title. When my father inherited, the papers stayed in the name of my grandfather. He had 100 manzanas with a separate title deed that he sold, and gave the buyer the title. He had 75 manzanas with a title which is what he passed on, in three parts. The [formal] delimitation of my father’s plot from my uncle’s plots is still pending. There are only fences put up. My father’s 25 manzanas have effectively been parcelled, into five pieces. Because of the economic situation, the papers have not been updated, because it is a terrible expense. We would even have to sell the land in order to get all the papers. Maybe it wouldn’t even be enough, because someone told me that the costs would be more than 15,000 C\$. We have wanted to do it, we had someone who would help us start it, but it was too expensive. [...] My father is 88 years old, and it is too expensive to sort out all the papers before he dies. There is nothing we can do. There is no way. Each of us work our own little plot, and we know the boundaries between us.”

Miguel, Corralitos

The conclusion reached by many small- and medium-scale farmers in Condega is that it is beyond their economic capability and not worth the time and money to invest



in a formal land title and its inscription in the property registry under the current levels of poverty, titling and inscription costs. As a farmer from Santa Rosa, who had both inherited (non-reformed) and reformed land expressed it:

“They charge a huge amount of money to make a public title deed... it is like buying the land once again! And if we, the brothers and sisters, are the owners, who can force their way in? [...] The costs of updated and individual documents are very high, and there are not many advantages...it is not worth while [...]. There is one way that the poor can arrange it, which is by measuring, here, among ourselves, by conscience, and then go to a lawyer and make a private document and avoid that expensive measurement. If I had the money to legalize, I would instead choose to buy more land!”

Ignacio, Santa Rosa

Even for the relatively wealthy farmers, titling and registration is considered expensive, too expensive. A young, successful tobacco-producer from Ducuale, who in addition to other plots had bought land in a cooperative, expresses that the costs related to delimiting property and inscribing it in the property registry make him not inscribe:

“I was going to delimit my land from the other cooperative plots, but the costs are so high, about 5000 C\$ for the five manzanas, it is very expensive. And furthermore it costs some 3000 C\$ to inscribe in the registry...”

Denis, Ducuale Grande

The cost of the inscription, including the taxes and titling, is an important limiting factor for the inscription of titles in the property registry. The cost, and the distance to the property registry and the travel times that this implies when starting from a small farm on the fringes of a rural municipality, are important limitations for the inscription of properties in the registry.<sup>5</sup>

Below, I present an approximation of the level of costs related to the dismembering and titling of cooperative land, relative to income levels in rural Nicaragua, based on interviews made during the fieldwork.<sup>6</sup> Two important points emerge: First, the costs of dismembering and elaboration of documents are very high in comparison with salaries in the rural areas, whatever the type of document. Second, the cost of a public deed (*escritura pública*) is almost eight times higher than the costs of sales agreement documents, and almost four times more expensive than a *título supletorio*. This explains to a large extent the limited use of public titles within the general population, and the concentration of use of public titles among those landowners who possess large

Table 26. Approximated costs of dismembering and elaboration of documents

Type of service	Approx. cost USD	# person working days, day labourer (2 USD/day)
Measurement, a necessary step for dismembering	20	10
Sales agreement (inscribed)	50	25
Supplementary Title (Título Supletorio) (inscribed)	104	52
Escritura Pública (inscribed)	385	192
Inheritance	200 per heir	100 per heir

Source: Elaboration based on fieldwork interviews carried out together with E. Fernandez.

extensions of land, or the most expensive land, such as well-irrigated river banks. It also helps explain why so few sales agreements are inscribed and why so few heirs choose to go through the formal process of (legal) inheritance.<sup>7</sup>

### Unequal distribution of titles between rich and poor

The quantitative material also shows that a lack of economic resources is an important obstacle for obtaining formal tenure documents and inscribing them in the property registry. In Condega, ownership of multiple heads of cattle and large extensions of land are important indicators for economic wealth. A statistical relationship was found between ownership of cattle herds and landowners with a high frequency of formal documents in the name of the current owner (Chi-square, \*\*, Table 8). A statistically significant relationship was also found between economic wealth (whether measured in land or cattle) and inscription in documents in the property registry: Owners of many heads of cattle (as indicator of substantial wealth and often also a certain social status) are those who most frequently have their tenure documents inscribed in the property registry. Likewise, there is a statistically significant relationship between ownership of large extensions of land (as indicator of wealth) and higher frequency of inscription of the plot document in the name of the current owner in the property registry (Chi-square, \*\*).<sup>8</sup>

Both the qualitative and quantitative data show that formal titles and inscription in the property registry are concentrated among the wealthier households in Condega. Similar data on an area-based sampling procedure for all of Nicaragua (excluding the Atlantic Coast) are presented by Boucher, Barham *et al.* (2005). The same conclusion

is reached by a study by the Ministry of Agriculture and Forestry in that the lack of tangible incentives for titling lowers the motivation of the producers to legalize their properties: *“The smallest producers in the most remote zones argue that it makes no difference whether the property is legalized or not”* (MAGFOR 2002:119, own translation). At present, the fee system of the inscription process results in higher relative costs of inscription for smaller than for larger properties. Therefore, it is inherent in the registry system that it favours the larger landowners at the expense of the small-scale farmers. Furthermore, costs and trouble related to inscribing property rights increase with increasing distance to the departmental capital.

As shown above, updating of titles, cadastral information and registry inscriptions are left pending in more than half of the titling cases and in almost three-quarter of the inscription cases in the case study area. The lack of updating erodes the accuracy and usefulness of the entire registry and cadastral information system, as data within these systems can no longer be reasonably expected to represent the current land tenure situation on the ground. This of course affects the efficiency of the system in relation to it being able to prevent and resolve conflicts. However, the response to the state-endorsed property rights system is also a reaction to the level of costs, as well as the lack of enforcement and the experience that the system is ‘an uneven playing field’ that always slopes to the disadvantage of the poor.

### **High costs of judicial system reduce relevance of titles for the poor**

In the introduction, I discussed the importance of equal access to enforcement by the state. As may be recalled, de Soto says that what the poor lack is *“easy access to the property mechanisms that would legally fix the economic potential of their assets so that they would be used to produce, secure, or guarantee greater value”* and that formal ownership can *“bring everyone into one social contract where they can cooperate to raise society’s productivity.”*

How then is the access to such a ‘legal fix’ in Condega? In Condega (and even more so in other parts of Nicaragua where fieldwork has been carried out, cf. Broegaard 2005a), there is a general lack of access to legal advice for the rural poor. The Justice and Peace Commission (CJP) offers legal advice (mainly used by the Catholic segment of the population), and members of UNAG can visit the UNAG lawyer at the departmental office in Estelí. Political organizations also offer access to legal advice, but mainly to their more influential members. When asking the legal advisor for the municipality of Condega (who also has a private law office) whether access to legal advice exists for poor people, she answers as follows:

“It does not exist. There is no access to legal advice. People are unprotected. They do not have access to legal advice. There is no organization that works with this issue now.”

Luz Maria, Lawyer, Condega

Less than half of all the conflicts reported in the questionnaire survey actually involve any authorities at all. This corresponds well with the picture obtained from the qualitative data, which underline the limitations, mainly economic, for using the legal system, especially by the poorest segment of the rural population and those living furthest away from the municipal capitals. Of the cases that did not involve any authorities in their conflict, one-fifth mentions the economic costs as the main limitation. These relatively high costs are related to transport, food, possible lodging, lost work time and very often costs related to transporting the judge, police or civil servants from their office to the rural site of conflict. In the interviews, the economic limitations and the high level of costs to resolve a land conflict through the juridical system are often mentioned. Several interviewees expressed having had to give up pursuing a land tenure conflict due to economic limitations. However, no statistically significant relationship was found between economic wealth and frequency of involving/not involving an authority.

“There have been some isolated conflicts here. Conflicts between families, problems with disagreements, words. The village committee has the power and authority to talk with them. If they do not want to talk to the village committee, then they have to go to the judge. But that means economic costs. Many people say: ‘I prefer not to go [to the judge], because of my poverty.’”

Emigdio, village with land reform cooperative

In more than half of the cases of land conflicts reported in the questionnaire survey, people do *not involve any authority* (23 of 42 reported cases of conflicts, or 55 per cent).<sup>9</sup> The prohibitively high costs of land court cases effectively exclude the poor from taking legal action. The following quote gives an example of this:

“There are frequent conflicts here, over property boundaries. Sometimes one goes to the village council; sometimes one goes all the way to the judge. Right here, there is a conflict. The owner, Rosario, has the title from the land reform, but it is some people from [a neighbouring community] who have the land! There are other cases like that, with people who have a land reform title, but do not have [possession of] the land. At least there are two other cases; they have gone to court. The resolution is still pending... the

court cases drag out, and one has to spend more than what one is fighting for...”

Fausto and Douglas, El Pire area

“And everybody knows that the one who has money can hire a lawyer and win over the one who does not have money and cannot hire a lawyer.”

Joel, Village Committee, Santa Rosa

What is the reason for this low frequency of involving authorities in land conflicts? The most frequent answer in the questionnaire survey is that no authorities were involved in order not to escalate the conflict (10 cases, 44 percent). This is related to another frequent answer, namely that the interviewee prefers a local solution to the problem (30 percent of the interviewed did not involve any authorities at all). In one case (four percent) the distrust of authorities is given as reason for not involving them. Finally, five cases (21 percent) mention that the level of costs related to contacting authorities and getting their attention restrained them from seeking their involvement. In sum, more than three-quarters of the people that do not involve authorities in the conflicts do so because of lack of confidence in the authority or in their competence to handle the land conflict appropriately or in such a way that their involvement does not escalate the conflict. Costs are mentioned as the limiting factor in the rest of the cases in which authorities were not involved.

In Condega, there was no statistically significant relationship found between having involved an authority and obtaining a durable solution to the land tenure conflict. 48 percent of the cases that involved an authority were solved, compared to 52 percent of those cases that did not involve any authority. This situation, that the involvement of a municipal or departmental authority does not increase the probability of reaching a durable solution to the conflict, helps explain why more than half of the population chooses not to involve any authorities in conflicts.

Furthermore, the high costs and inaccessibility to the legal system are also taken advantage of by some wealthier actors. Here, it is relevant to recall the pronounced inequality in land distribution, income and educational level. By moving a conflict into the legal – and expensive – realm, a wealthy actor is able to position the contestation of rights within a setting where the slope of the uneven playing field works to his advantage, since the poor can hardly afford to defend themselves in this arena. The issue of forum shopping is further discussed below.

Despite policy attempts, the national government has not succeeded to offer much attention to the land tenure conflicts in the rural areas. *None* of the interviewees in

either rural areas or municipal or departmental capitals mentioned DIRAC, the Entity for Alternative Conflict Resolution, when asked about '*other possibilities for legal advice*'. This is highly problematic, because DIRAC was supposedly the main response from the Nicaraguan state to address the handling of land conflicts at the time of the fieldwork. From the analysis carried out by Fernández (2005; Annex J in Broegaard 2005a), it is obvious that DIRAC's activities were biased towards the biggest cities in the first years of its existence. Even after the cadastral survey had been carried out by PRODEP in parts of Estelí department and conflicts surged, DIRAC did not have its departmental personnel appointed.<sup>10</sup> Therefore, the government effectively failed to offer special access to legal support for solving land tenure conflicts in the rural areas.

The lack of transparency in decision making by authorities, and the feeling that land tenure conflicts are not treated in a fair way, create resentment in the rural population. This leads to many latent conflicts.<sup>11</sup> Many of the land tenure conflicts in Condega drag out for years. Successful involvement of authorities may not speed up the case. Court cases for example can also drag out for several years, especially for the poor, who do not have the economic resources required to pay in order to 'grease' the process and speed it up – or pay for a resolution. In some of the interviews in the non-reformed villages (with the longest settlement and continuous land tenure) comments were made about land tenure conflicts that date several generations back and still cause resentment by at least one party. Dormant conflicts were encountered in several communities, both in reformed and non-reformed areas. This shows that there is a potential for dormant conflicts to resurge whenever the conditions become more favourable for one of the parties. This of course depends on political climate, connections to influential people, changes in policy, etc.

The qualitative interviews show that it is the poorest households that are most affected by land conflicts. As shown below, frequent references were made to a strong relation between poverty and tenure insecurity, and that in the case of land conflicts, the poor have very few ways to defend their property rights.

"No organizations or institutions attend to the case of the poor in land conflicts. The Office for Rural Titling (OTR) only attends to land reform areas. This means that the only remaining option for the poor is to use a lawyer. There are many conflicts in the villages, especially where the wealthier people abuse the lack of economic resources of the poor, who therefore can hardly defend their rights."

Iris, Lawyer, Condega

“The humbleness of the person, the fact of not being able to express himself, or maybe they are not so intelligent, or they do not have any formal education and do not know anything, this also affects their possibility for defending their rights.”  
Vicente, farmer, Santa Rosa

Q: “Is there the same respect for big and small farmers?”

A: “No, because he, who has more, IS more... is worth more.”

Ignacio, farmer, Santa Rosa

The qualitative data suggest that the lack of formal proof of rights does limit the involvement of authorities in some cases. It usually goes hand in hand with economic limitations.<sup>12</sup> However, no statistically significant relationship was found between having experienced a land conflict or (non-economic) pressures to sell the land, and the level of economic wealth.<sup>13</sup> This is surprising, as the qualitative material indicates that inequality plays an important role in making the poorest households most vulnerable to land conflicts, and making it difficult for them to defend their property rights.

### **Sloping the legal playing field to the disadvantage of the poor**

Sometimes the current legal system operates in a way that actually contributes to future conflicts, rather than reducing and preventing them. While the legal construct of the *Título Supletório* (TS) has been created in order to offer a possibility for titling those plots of land that have no registry data, and thereby enter them into the state-endorsed property rights system, it simultaneously opens opportunities for abuse as well as for transposed titling. Transposed titling often forms the *legal* basis for one part of the land conflicts arising in the reformed areas. Furthermore, there is little control of the issuing of TS. For example, TS may in practice be issued in reformed areas, where they are *not* legal. While this situation could be resolved through a court case, it would incur high economic and social costs before getting that far.<sup>14</sup>

Application for a TS is a common response to conflicts or disputes related to the lack of an individual title by the affected landholders. However, in the cases where a previous (inscribed) title exists, this creates ‘double-titling’ (and registration) of land. The frequent cases of issuing supplementary titles in areas which already have a collective land reform title or other formal titles provide a good example of the ‘complicity’ of some lawyers and judges in these kinds of illegal services. It is also an example of the fact that the institutions that are in place to control



these problems (local judge, local government, Ombudsman, and OTR) do not fulfil their roles. The reasons for this may differ. According to what I found in my fieldwork, the judges often give priority to social relations and particular interests over the application of the law.<sup>15</sup> The other control institutions are sometimes not consulted, as they should be according to the formal procedures, or they turn the blind eye to infractions of the law, as it is the easiest and most comfortable path for civil servants, rather than entering into a conflict.<sup>16</sup>

“The TS is used much in the cases where there is land tenure that has not been legalized for generations, and therefore is without papers. In the rural areas, it is also used because some have not received their land reform title, or they only received a collective title, and subsequently the people divided the land between them. Or in some cases where people do not have land titles due to ignorance, and suddenly they need them in order to be able to present proof of land ownership for credit or for whatever land they buy and sell. All of these situations apply for TS. It is also used in the reformed areas, for example, in dismembering and division between members... If they do not have the money to pay for a formal dismembering, they may take out a Supplementary Title just for the area they need, for example for a sale of a smaller plot of land. In these cases, the general Ombudsman for justice (the regional office, in Estelí) ought to oppose it himself... but it is difficult for one single Ombudsman to overlook all of Estelí, Nueva Segovia, Madriz and Jinotega departments, it is very difficult for him to see everything that goes on...”<sup>17</sup>

Matheo, Lawyer, Condega

Matheo has papers in his office for a case where the Ombudsman did oppose an application for TS, demanding proof the people soliciting the TS had 10 years or more of possession.

“But even if the Ombudsman should oppose again, it is the court system that has the final say in these matters. The local judge may extend a sentence in favour of the TS, even if the Ombudsman does not like it.”

From the way this is said, it seems that the lawyer can play an active role in ‘convincing’ the judge about a positive sentence. Matheo issues a lot of supplementary titles:

“It is flexible, here in Condega... You just create a new registry file for each Supplementary Title.”

Even though the quantitative data do not support the premise that people from poorer households are more frequently exposed to conflicts than wealthier people, the qualitative data show it very strongly, as does the evidence about unequal access to justice and the sloped playing field.<sup>18</sup> Furthermore, conflicts are under-reported in the questionnaire survey. Based upon comparison of the different sources of data, I find that the poorest and most vulnerable households are those who mainly under-report.

### **A system of class justice**

The term ‘class justice’ is used to refer to the role the legal system plays in maintaining the class character of the state (Thompson 1987; Roquas 2002). As discussed by Thompson, even a system of class justice has the paradoxical effect of working to the benefit of the ruling class, but at the same time restricting their actions. It is the latter that maintains the legitimacy of the system. This can be compared in many ways to Nuijten’s (2005) description of the Mexican state as a ‘hope generating machine’, in that it usually favours the ruling class, but keeps giving promises and hope to those who are ruled. And this is exactly how the judicial system works in Nicaragua. In Condega, the poor generally want to avoid conflicts and avoid contact with the legal system, because they know that it is expensive and that the system does not work as a level playing field. However, when all other means have been exhausted, even poor landowners may turn to the legal system as a last resort, and hope that it will help them defend their rights and put them into practice.

It seems from the above that it would be naïve to see the cases where laws are not enforced, violations of rights not sanctioned, or abuses of position and information allowed to take place, as if they were ‘system errors’. Rather, they express the very way the state-endorsed property rights system is designed to work: in favour of some and to the detriment of others (see also comment by WDR 2006 mentioned in Chapter 2). A World Bank review of institutional and governance issues also highlights the importance of the high levels of corruption, the ‘bending of rules’, and political influence on the legal system, for the tenure insecurity and negative investment climate in Nicaragua (World Bank 2008).

Throughout the fieldwork, references were made to the political and class-based workings of the judicial system.<sup>19</sup> Through its work, the Justice and Peace Commission in Condega (CJP) sees many irregularities in the legal system and the work of lawyers, as for example the lack of an obligatory notification of involved parties after a sentence has been given, which effectively prevents them from appealing. However, the CJP

does comment and report on these irregularities. The representative of CJP in Condega thinks that this is why the relations between the CJP and the local judge and several lawyers are tense.<sup>20</sup> The local judge in Condega has been changed frequently, due to criticism related to irregularities in office. To the many reported irregularities in the work of the lawyers – and judges – of Condega, the supplementary judge turns a blind eye: *“Irregularities in the work of the lawyers? [Smiling] Well, one has to follow the law. I am not that well informed. And not everything is visible from here”*. Furthermore, the secretary who works in the local judge’s office basically denies ordinary people’s access to the judge and talks disrespectfully about people who cannot read and write.<sup>21</sup> The high level of corruption that many people associate with the juridical system makes some people look for other authorities to help resolve a conflict, especially if they see that the opponent in the case has a better economic possibility to bribe the judge.<sup>22</sup>

“Try to make the experiment and look up 10 case files in the local court and see how many have been resolved, how many have reached a sentence. I would think that maximum one! In the rest of the cases the lawyers leave their clients ‘hanging in the air’. Try to see when a case was started, and at what date the last appointment was established. That will show you that the cases never get finalized. We have brought up several cases of complaints for delays in justice!”

Promoter, CJP, Condega

The result of the way the judicial system works in Nicaragua is that the wealthy and well-connected have better access to justice and to receiving favourable court sentences. As mentioned above, this is what is summarized in the concept of ‘class justice’. It lets conflicts persist for decades, and they may even be passed along to succeeding generations.<sup>23</sup> The class justice system makes formal land titles irrelevant for those landowners who do not possess economic resources and/or social or political contacts to make the system work to their benefit. Thus, the unequal access to justice prevents titles from creating perceived tenure security for all. Nonetheless, the judicial system and the formal land titles from the state-endorsed property rights system are continually referred to as the framework that should ideally be used for creating tenure security.

In addition to the economic limitations for the use of the judicial system, the qualitative data indicate that there is a severe lack of confidence in state authorities (especially at departmental and national level). Furthermore, the law is seen as ‘heavy’, and involvement of the juridical system is therefore seen as being likely to escalate the conflict or at least damage severely social relations within the local community.

### Pressures to sell through 'forum shopping' for conflict handling

In the hamlet of Laguna de Santa Rosa, the majority of the members of a former agricultural cooperative that had *de facto* been divided into individual plots like most other cooperatives, had sold their plots to a single buyer. Only one of the former beneficiaries of the land reform still had his land intact, and the plot now became situated as an island in the sea of the land of the new landowner. Being the owner of the vast majority of the land of the former cooperative, this new landowner had received the original collective land title from the board of the former cooperative, 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 strong legal position, in addition to his favoured economic situation *vis-à-vis* the only remaining land reform beneficiary. The new neighbour used his land mainly for grazing cattle, but refused to fence his land 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 food for him and his family.

While preparing his one *manzana* of land, the land reform beneficiary burned plant residues, which is illegal according to the most recent environmental law in the municipality, but nevertheless is a very common practice. On top of this offence, the fire got out of hand and burned some of the land of the rich neighbour. The rich neighbour did not have any interest in reaching an agreement on compensation for the damage through the village council, as is the norm in the area for a smaller incident like this, but instead went straight to the local court and placed a legal demand against the land reform beneficiary. The judge failed to notify the small-scale farmer about this demand until after the sentence was issued. While failing to notify a defendant is not the correct legal procedure, it is also common. Not surprisingly, the sentence was made in favour of the new landowner, as no objections were presented. Conveniently, the demand for 4000 C\$, or exactly the same as the local value (at that time) of one *manzana* of land, 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 one *manzana* of land. Furthermore, he was sentenced to 15 days in prison.

The problems of enforcement of the law do not only affect the poor. In this case, several months went by without the court sentence being executed. Thus, although the legal system may work to the benefit of the wealthier most of the time, the difficulties with enforcement somewhat reduce their power. However, the high level of insecurity produced by the court sentence is indisputable.

These responses also reflect the potential importance of local-level institutions for conflict handling and mediation (when it is fair), such as the village council or the Justice and Peace Commission.<sup>24</sup> The case story above illustrates the influence of inequality on the course and outcome of land tenure conflicts.

The conflict case story from Laguna de Santa Rosa illustrates how the high level of expenses associated with the legal system slopes the playing field, which wealthy

people are able to use to their advantage. This type of conflict would usually be solved between the parties themselves or with the mediation of someone from the village committee, if it happened between two neighbours of equal economic power, living in the rural area. Norms exist about the valorisation of the damage and its compensation. However, by ignoring such local norms and moving the conflict into the formal legal realm – which is expensive and information-demanding – the wealthy party now gains access to an uneven playing field that slopes to his advantage.

The qualitative data suggest that wealthy landowners, especially if they do not live in the community, instead of following local procedures for low-level conflict resolution can choose to move conflicts into the legal realm. The case story from Laguna de Santa Rosa about pressures to sell also provides an example of this ‘forum shopping’. It illustrates the capability of wealthier actors to circumvent local mechanisms for conflict mediation by going straight to the legal system and influencing the judge to set an unrealistic value on the damage, which is out of proportion with the damage caused. As a result, the legal system can be used as a mechanism for gaining access to and rights over the land of someone who is economically challenged. In the case story, this person had previously refused to sell his land. It is in this way that the function of the legal system is shaped by the existing inequality and further exacerbates this inequality.

### **Lack of enforcement – limits rights for the poor, but also affects the wealthy**

Land grabbing goes on. It is led by powerful elites, whether rural cooperative chairmen or urban-based lawyers, politicians and cattle owners. The cases of land grabbing are often well-known to a large public, but are nevertheless allowed to take place without interference. The same happens in inheritance cases, where land grabbing by the most powerful or most scrupulous heir is not uncommon. Lack of enforcement and lack of protest, even when it is ‘publicly known’ that an injustice is going on and nothing is done about it, are in effect the same as accepting that injustice. It seems as if no political will to change this exists within the state-endorsed property rights system. It goes on both where formal land titles exist and where property rights are only documented para-formally; but even more frequently where property rights have not been documented, or documents have not been updated.

Closing of a right-of-way is frequently used to force somebody less powerful off their land. Again, the difficulties faced by the weaker party in re-establishing access rights

represent a serious threat. If the perpetrator is unwilling to negotiate or allows the conflict to escalate, land sales are often seen as the only ‘solution’ to the claim and the repeated lack of enforcement by the state-endorsed property rights system. This interaction between land tenure conflicts, inequality and unequal access to justice, on the one hand, and the land market on the other was also shown in the previous chapter.

However, actions by powerful landowners and the ruling class are not unrestricted. One of the elements that restrict their control over property rights is the lack of enforcement within the state-endorsed property rights system, which also affects the wealthier farmers. Even if they are able to have decisions made within the formal system – such as obtaining a favourable court sentence – it may not be carried out due to lack of enforcement as for example in the case history about pressure to sell land in Laguna de Santa Rosa (presented in a text box above). The lack of effective enforcement of court sentences and the very low presence of legal authorities in the rural areas, limit the effectiveness of the legal system, even for those who are able to obtain a court sentence in their favour. There are no systematized data about the outcomes of the cases heard by the local courts.<sup>25</sup> However, the interviews show that there are often situations in which the local court pronounces a sentence, but when the authorities are no longer present at the site of the conflict, the party who does not like the sentence, ignores it, and the conflict continues. Therefore, one cannot conclude that the cases that are attended to by the legal system are resolved in any long-lasting way.

In addition to problems regarding enforcement, the political character of the judicial system and the government offices influence how the different authorities fare when trying to resolve land-tenure-related conflicts in a sustainable way. According to the answers obtained in this questionnaire, half of the reported land conflicts have been resolved, while more than one-third have not been resolved, and close to 15 percent believe that the resolution will not last. These results are obviously alarming, when only half of the conflicts reported for the last 10 years are considered solved. These results also underscore the existence of many latent conflicts.<sup>26</sup>

## Conclusions

The costs of land titles are very high, especially for the small-scale farmers. In *minifundio* areas, they have multiple micro-plots that are fragmented and situated in different parts of the landscape, reflecting sub-divisions of land in cases of inheritance as well as an active record of land transfers – of tiny pieces of land.

Due to the high fixed costs of the land titling and registration process, the cost per plot of land becomes prohibitively high for these – already poor – small-scale farmers. High costs are therefore an important limiting factor for titling and updating documents. However, the high costs of titling and updating and inscribing are not the only reasons that so few plots of land have formal, individual, updated and inscribed tenure documents. Even wealthy farmers who produce tobacco on their land and have profitable contracts with tobacco companies, often choose to only title and register a small part of their land.

For most small-scale farmers, titles are considered to be either inaccessible due to high costs – or they are ‘not worth the cost’. Para-formal mechanisms for local recognition and documentation of property rights and rights transfers have developed. The para-formal mechanisms are very low-cost and work well most of the time. However, at other times, they have the same weaknesses as the formal-national system, with lack of enforcement and acceptance of power abuse. And of course, they may be easily overruled by formal documents, although no cases of this were observed in the fieldwork.

Other reasons to not title and inscribe land are fear of tax payments and a general rejection of increased level of control by and involvement with the state through cadastral and registry systems. Local farmers, especially those in the non-reformed areas, have few positive expectations to the state and its formal land tenure institutions and legal system. Furthermore, many farmers evaluate that, given the way organizations and state institutions currently operate, a formal, inscribed title may not make much difference in their tenure security or other tenure aspects, since they do not have the required resources to make the formal tenure documents effective and reap the potential benefits. For example, economic resources are required to find your way in the legal system as well as to obtain formal credit. Many households in the non-reformed areas also express that they consider their tenure situation to be secure, despite the lack of formal land titles. The general unequal access to enforcement as well as to other resources needed in order to gain access to enforcing institutions, also creates a situation where land titles may make little difference for the poor. The multiple sources of tenure security, combined with the high costs of formal documents and their updating as well as the unequal access to justice, helps explain the limited use of the state-endorsed property rights system in Condega.

There are either few or no incentives to update formal titles. This means that the data in registry and cadastral systems are eroded or undermined by unreported



land transactions. Hereby, public investments in registry and cadastral systems are unsustainable.

## Notes

<sup>1</sup> See also Nuijten's discussion of the symbolic value of land tenure documents in a Mexican context (Nuijten 1998; Nuijten 2003b).

<sup>2</sup> When performing pair-wise comparisons between different locally existing tenure situations, almost everybody expressed that they would prefer a more formal situation over a less formal situation, and most people (except some of the land reform beneficiaries) expressed that they preferred non-reformed areas over reformed areas, due to the higher level of tenure security conferred by the former.

<sup>3</sup> Coles-Coghi (1993) comments from Honduras that peasants use the expression '*la seguridad*' (the security) about the bundle of documents that describe the nature of previous transfers made on the parcel ('*los antecedentes*'). According to the local view, the more documents collected in the bundle of '*antecedentes*', and the more official these (informal) documents look, the better.

<sup>4</sup> Boucher, Barham *et al.* (2005) report similar high levels of households without land tenure documents in their study from Nicaragua and Honduras. Furthermore, these results correspond well with the results by Ortega (Ortega 2000) from a questionnaire from Las Segovias (Estelí, Madriz and Nueva Segovia departments), where 55 percent of the farmers do not have a document for their property. In a recent study conducted by the NGO *Acción Contra Hambre* (ACH) on land tenure and land markets in the department of Madriz, an even bigger proportion of less formal documents were found (Acción Contra el Hambre 2003:95).

<sup>5</sup> The same preoccupation is expressed in a study by MAGFOR (2002) on costs and times of legalization of rural properties in selected municipalities in Nicaragua. The study concludes that the economic costs (especially those related to the topographic measurement of the land and the payment of taxes) are a limiting factor in the titling process, when the titling is based on the initiative by each individual landowner (as opposed to state-initiated/paid titling).

<sup>6</sup> The shown table is a constructed example, based on several interviews regarding the costs related to the elaboration of legal documents of a *de facto* parcelled cooperative or another plot. Plot sizes varied from 3 to 10 mzs but costs were largely found to be size-indifferent.

<sup>7</sup> Likewise, a study by Proenza (2006) shows that Nicaragua is the most expensive country in Central America to register land (in this case urban property), with an average cost of 6.5 percent of the property value for registration, opposed to for example 0.5 percent in USA (Proenza 2006: 3). Likewise, Nicaragua has the second-longest duration of registration procedures in Central America, with an average inscription time of 65 days (as opposed to one day in Norway, and 12 days in USA).

<sup>8</sup> It is important to confirm whether underlying interrelationships exist between the elements related to wealth and power and formal titling and tenure security. This is important in order to be able to ensure that any positive relationship between formal titling and tenure security is not spurious, because if it is spurious, then the positive relationship may be caused by interrelationships having to do with other household characteristics, such as economic wealth. Attempts were made to develop a well-being index to cross with formal titles and level of tenure security. However, the results do not seem reliable. Without this index, I am not able to say anything about poverty and tenure security as such, but only about elements that are usually (but not always) related to poverty/wealth, such as number of *manzanas* or number of cattle owned. It is acknowledged that the concept of well-being or of poverty is much more complex than this.

<sup>9</sup> It should be mentioned that this is a *high* percentage of cases involving authorities compared to the municipalities surveyed in Chinandega and Madriz (Broegaard 2005a). This study of three municipalities finds that an average of just over one-third of all reported conflicts involved any authority at all.

<sup>10</sup> Personal communication, civil servant of the *Intendencia de la Propiedad*, June 3, 2008.

<sup>11</sup> In his study from Las Segovias (older departmental division which includes Condega), Marvin Ortega (2000) describes the bullying that goes on in local-level conflicts and the role of inequality. According to him, these local-level conflicts are the most important in relation to their number and the amount of people they involve/affect: "...but not for its impact on society [in general], because the contradictions take place within a hamlet, without getting to the point of violent confrontations between groups of persons. Therefore these conflicts go quite unnoticed.

*Their solution is very expensive because they are individual problems spread out over the territory; normally those who have the most and best economic position impose themselves on the other party, or those who belong to the most numerous family group in the village, or the most conflictive man or woman. However, very few of the conflicts are solved legally, and they end up with the strongest part imposing their possession on the land*" (p.7, emphasis added, own translation).

<sup>12</sup> The lack of formal tenure documents was not mentioned as being a limiting factor for gaining access to formal authorities. This does not mean that having only informal or outdated tenure documents does not severely limit the possibilities of a party to a land tenure conflict to defend his or her case (the fact that it is not mentioned may at least reflect in part that it is taken for granted). However, no statistically significant relationship was identified between type of tenure documents and having involved an authority.

<sup>13</sup> – whether using ownership of cattle and oxen or *total* size of land owned by the household. It may be relevant to recall that it is expectable that the poorer and most vulnerable households will have the biggest tendency to under-report conflicts in order not to expose their vulnerability to strangers, who may take advantage of the situation.

<sup>14</sup> According to a decree issued by the General Ombudsman of the Republic of Nicaragua, the use of TS was supposed to be temporarily discontinued in 2008 due to too many irregularities in its use (personal comm., OTR technician, June 2008).

<sup>15</sup> From fieldwork in Las Sabanas in the department of Madriz, cases were found where the mayor had taken active part in soliciting TS in a reformed area. In this case, the lack of protest from the municipality was obviously due to personal vested interests.

<sup>16</sup> In a way, the use of TS in reformed areas is a way of 'forum shopping' away from cooperative and OTR to lawyers and judges.

<sup>17</sup> Formally, comments ought to be expressed by the different instances within three working days, but in practice it takes longer.

<sup>18</sup> The state includes a range of official institutions that are involved in governance. Even though states represent themselves as governing "*in the interest of the general public*", class, gender and ethnic divisions frequently belie this claim. "*Except under extraordinary circumstances, states promote the common good of particular sectors of the dominant classes*" (Lukes 1974:53).

<sup>19</sup> The National Assembly elects the magistrates for the Supreme Court and the supporting judges (Political Constitution, art 138, no 7). Likewise, it is the faculty of the Supreme Court to appoint (and replace) magistrates to the appeal courts, as well as appoint (and replace) judges to courts throughout the country (Constitution, art 164, no. 5 and 7, and Law of Judicial Power, art 64). Through reforms of the constitution in 2000, the courts and the comptroller-general's office came under direct political control, in that the two largest political parties agreed to distribute the seats to their own candidates. In 2007, the National Assembly violated the political constitution of the state by electing 32 new civil servants for the juridical system. The two strongest political parties, PLC and FSLN, did not consult 'civil society organizations' or give any weight to the opposition voiced by the smaller parties in parliament, who rejected the re-election of some magistrates and civil servants to the supreme court who had previously pronounced sentences that were not in accordance with the law, giving preferential treatment to high-level civil servants. (EIU 2005:8 and [http://www.transparency.org/regional\\_pages/recrea/estudios/poderes\\_estado/pj\\_nicaragua](http://www.transparency.org/regional_pages/recrea/estudios/poderes_estado/pj_nicaragua), visited May 09, 2008).

<sup>20</sup> However, the CJP also observes and protests against irregularities in the work of the police, but it still has a good relationship with this entity.

<sup>21</sup> I tried getting access to case files in the local court, in order to see, out of a sample, how many were resolved, how many had reached a sentence, as well as the duration of the cases, but it was impossible for me to gain access to any files. The judge and her secretary would not allow me to see them. She claimed that *all* the cases were in process of appeal and thus had been sent to the district judge in Estelí, and refused to find old cases from their archive. If this was true, which I strongly doubt, it would also be interesting, as it would show how cases drag out and become costly. Two appointments were made with the District Judge, Estelí, but she never showed up. From waiting in the office for the judge (three times two hours, including when the first appointment was sat up), it was obvious that the secretaries of the district judge treated known lawyers with much preference compared to the [lack of] service that was offered to ordinary citizens, in relation to finding information, dates, summaries of cases etc. This shows that access to this part of the legal system is also not a level playing field.

<sup>22</sup> One questionnaire survey comments: "*There was no support from the local judge – only talking disrespectfully to us*". The conflict is unresolved and continues. In another case, the interviewee comments that the mediation was biased, as the judge was a relative of the other part in the conflict. The conflict goes on unattended, despite a written agreement between the two parties witnessed by a lawyer about water rights and fence lines.

<sup>23</sup> In her study from Honduras, Roquas (2002:241) shows that when people are involved in a conflict they are “confronted with the politicised character of their own community and the dual roles of local and regional judicial authorities, who are expected to maintain law and order but who are politicised and not able to judge independently. The judicial system is accessible exclusively to the rich and the administration of justice works in such a way that it provides advantages to the rich, thus enforcing the class justice image.”

<sup>24</sup> Although only one questionnaire respondent pointed to the lack of trust in state institutions as the main reason for not involving authorities in handling land tenure conflicts in the past, the interviews represent this situation much more strongly. Many people expressed that they have very little confidence that state authorities will treat poor and rich equally. This lack of trust is based on (stories about) abuses of position and public office, corruption and the low quality of attention given by some public offices. There are many cases that show that there is a real basis for this negative expectation. The generally high level of corruption in Nicaragua confirms this attitude further. All in all, as a result, the poor often do not even attempt to use the state-endorsed property rights system, because they only expect unequal treatment from it. The resistance towards expanded state control (and taxation) is also an important element for understanding why so few farmers have formal or updated land titles. There is a strong rejection of the control of a state which most small-scale farmers do not feel offers support or a safety-net, but is rather a mechanism for exploitation, an element of suppression and a system that cannot be trusted. Within the Nicaraguan context, this raises the question of whether this resistance dates back to the ‘conditions of illegality’ that *mestizo* (and indigenous) farmers had to live under in order to be able to own land and farm under colonial rule, or whether it is ‘just’ related to life-long experiences of the state representing the ruling class and protecting its interests – or what Scott (1985) calls ‘everyday forms of peasant resistance’. The same rejection of the expansion of state control is noted in Bastiaensen *et al.* (2006:9), who use a quote from Migdal (1998) paraphrasing an old prayer by French farmers: “*Deliver us from all evil and from justice*”. The disdain for formal papers and for being enrolled in the state system, whether the registry of property rights or other systems, is also expressed in the following quote:

“People do not like paperwork... not even with the bank. People say: ‘I was born here, the land belonged to my grandfather and nobody can take the land away from me, so I feel secure.’ And: ‘If I begin to legalize, I will have to give information... they will register this... and I will be in the registry and I will have to pay taxes.’ So, the fact of not inscribing and not legalizing is a way to evade taxes. There is a whole discipline in tax-evasion. It is a custom!”

Former mayor, Condega

<sup>25</sup> Access to individual court files was never obtained, despite several applications. Only data from the entry-book were analysed at the local level. It was impossible to obtain statistical data about the results/outcomes of the court cases, although solicited at the Supreme Court statistics office.

<sup>26</sup> No statistically significant relationship was identified between having involved a lawyer and having obtained a solution to the conflict. Whether this is because lawyers only get involved in the most difficult cases, or whether it is because some of them do not do their job, cannot be assessed on the basis of the quantitative data.

## 8. Conclusions

The overall research interest has been to examine political and economic conditions and processes that reproduce existing structures of inequality and create new ones. The central research question presented in this report is how well does the mainstream description of market exchange and price formation fit with the way the land is traded and with the conditions surrounding land transactions in settings characterized by high levels of inequality? The empirical analysis also highlights the role of power relations in the price formation on the land market, i.e. an analysis of the market as embedded in wider societal structures. Based on my findings from Condega municipality, I have analysed the elements constituting what is locally perceived as situations with tenure security/insecurity. On this basis I discussed the appropriateness of the conventional operationalization of 'tenure security' as being equal to possession of formal titles, with special emphasis on the role of inequality. I have not only analysed the frequency of conflicts related to titled and non-titled land, as well as the importance of land titles for access to formal credit, but also analysed the way that the land market functions, including the role of land titles and power relations, as well as the distributional outcomes of the land market transactions. On this basis I then answer the overall research question about the extent to which the prerequisites for obtaining pro-poor growth and reducing inequality through what I call a mainstream policy package are fulfilled.

### Property rights and perceived tenure security

The analysis views property rights as rights (and obligations) developed in concrete social, economic and historical settings and constantly being re-negotiated and re-interpreted. Property rights are understood as relations between people concerning an object, which in this case is land. By stressing the relational character of the concept of property, this study starts from the premise that 'rights in practice' have to be empirically researched, because the possession of a land title may not necessarily provide rights in practice. Similarly, rights in practice may – or may not – exist without a formally recognized land title. Based on this *de facto* separation between formal titles and actual rights in practice, I suggest that it is helpful to define the concept of perceived tenure security as seen from the point of view of the owner, as the (un-)likelihood of losing a bundle of specific rights or having them violated. This definition also stresses the conceptual division between perceived tenure security and land tenure documents (which may or may not confer tenure security to the owner).

State officials and private small-scale farmers have strikingly different interpretations regarding the formality of different types of land tenure documents, as well as the level of tenure security they confer. While local perceptions of property rights revolving around what comprises a 'formal land tenure document' often differ from national law (or at least parts of the national laws, as these also present internal contradictions and allow for interpretations), these local perceptions are related to local norms that can be traced back to legal notions and local interpretations of the law. As such, they are not in opposition to state law.

In general terms, the rural population agrees about which plots and circumstances are considered to have secure or insecure land tenure. The land tenure security rankings carried out with different informants within each community show statistically significant agreement on the rankings between informants. This means that the different informants, selected on the basis of maximum variation criteria, agree on the concrete elements in situations characterized by tenure security and insecurity. Based on this, I argue that although perceived land tenure security applies to landholders individually, it consists of a set of experiences and expectations that are generally shared among members of a community.

The study clearly shows the adequacy of using a relational concept of property, as well as a concept of perceived tenure security that distinguishes the experienced and perceived levels of tenure security from the possession or absence of a land tenure document. When addressing the concept of perceived tenure security, it has been useful to separate the terms used for tenure documents and for the landowner's experience of level of tenure security. This helps highlight that tenure security is not equal to having a land tenure document, although this is often how 'tenure security' has previously been operationalized in many studies. The tenure security ranking method has been useful in my work by identifying the local concepts related to different levels of perceived tenure security. Furthermore, it has allowed me to show that these local concepts are actually based upon shared views and shared experiences.

While formal tenure documents are considered to be very important for characterizing the level of tenure security, several other elements are also important.<sup>1</sup> The access mechanism through which the land was acquired is taken to be *as* important for tenure security as is the formal land tenure document. This means that property rights that are inherited are considered to have highly secure tenure, even if no formal titles exist, especially for land that has never been affected by the land reform. Furthermore, duration of ownership, as well as local recognition of rights are locally

considered to be two important elements in the perception of high tenure security. It should further be noted that the level of economic wealth is also considered important for the ability to defend property and other rights. The great importance of the level of economic wealth that a person possesses for his or her perception of tenure security, as well as for access to the institutions of the state-endorsed property rights system, show that it is indispensable to consider endogeneity problems when analysing land tenure security.

On the other hand, the most important elements found to create a situation of perceived land tenure *insecurity* are:

- absence or insufficient formalization of tenure documents;
- a lack of trust in government institutions and their enforcement of laws; and
- (to a lesser degree) the existence of dormant or ongoing conflicts.

Furthermore, the use of land as collateral for credit is also considered to introduce higher levels of tenure insecurity.

People have high expectations about what benefits formal tenure documents bring to a property owner. Their expectations fit the expectations of the property rights school (and those of the mainstream policy package), which predicts that such benefits will accrue with increased tenure security, greater access to formal credit, higher sales price, possibility for more investments due to improved access to credit, and greater incentives to invest due to the higher tenure security. However, most local people find that many of their expectations of titles are not fulfilled.

Despite the high expectations stated about the benefits of formal land titles, few rural landowners have formal and updated land titles. Only a quarter of the plots are reported to be titled in the name of the current owner and inscribed in the property registry. This is probably an optimistic figure due to a known tendency of informants to exaggerate level of formality regarding land tenure documents when answering questionnaire surveys. Reasons for the low percentage of updated land titles include the high level of costs, the long and cumbersome bureaucratic procedures, as well as experiences regarding the limited benefits that formal land tenure documents and registry data will provide land owners who do not have the sufficient economic and social resources to manoeuvre in the judicial system. Thus, the lack of *experienced benefits* from formal titles provides either few or no incentives for the landowners to update land tenure documents and their inscription in the property registry. With

an active land market, land tenure documents are rapidly outdated. This threatens the sustainability of the on-going large-scale public investments in titling and registry-modernization.

Land reform titles (issued by a government administration) are not considered to provide nearly the same level of tenure security as 'public title deeds' (which can be issued by a lawyer). The political-administrative character of the land reform titles, as well as experiences with (and especially rumours about) transposed titles, create the low level of tenure security associated with land reform titles. Similarly, the highly contested character of many land reform rights after the Sandinista electoral defeat in 1990 contributes to this situation, which is also related to the above-mentioned fact that the legitimacy of the government as political body is extremely low. The low legitimacy associated with land rights that are obtained through the state negatively affects the level of tenure security for land reform beneficiaries. Rather than assuming that future policies and projects will work better than they did in the past, this low legitimacy associated with land rights obtained from the state must be taken into account when evaluating calls by neo-structural scholars to renew efforts to make a redistributive land reform.

Regarding land tenure conflicts, I find no statistically significant relationship between formal land tenure documents and lower frequency of conflicts in the quantitative analysis. However, land conflicts are underreported in the questionnaire survey, possibly most strongly so by the poorest and most vulnerable households having the least formal land tenure documents. Therefore the findings are inconclusive in this regard based on the quantitative data. However, the qualitative data reveal many conflicts and point to that some conflicts surge when not even informal documents are made. Nonetheless, titles may not necessarily be sufficient to create tenure security if the land rights are contested, or if the landowner does not have the other necessary resources to ensure that he or she can put the rights into practice and count on some authority to help enforce those rights. Therefore, the presence or absence of a formal land tenure document is not in itself a good indicator of the level of perceived land tenure security.

Formal land titles are important for people's perception of tenure security, and there is a statistically significant relationship between formal land titles and higher levels of perceived tenure security, but they are only one of several elements that influence the level of perceived tenure security. Formal land titles could not be shown to reduce the frequency of land tenure conflicts. The practical use of a formal title is dependent on



access to other resources (economical, social and political). As such, formal land titles bring more benefits, including higher levels of tenure security to non-poor landowners than to poor landowners. High costs and cumbersome procedures are important reasons why few landowners update land titles after land market transactions. Another reason is scepticism regarding the tangible benefits that titles will provide, especially to poor landowners. Furthermore, in addition to formal land titles, other sources of perceived land tenure security exist.

### **The role of inequality: Unequal access to enforcement**

Conflicts over land take place in people's day-to-day life and they often stretch over long periods of time that are punctuated by varying degrees of conflict. There are also many dormant conflicts. The quantitative data do not show the commonly expected relationship between formal land tenure documents and lower frequency of conflicts. In only half of the reported conflicts are there authorities from any level involved in the conflict resolution process. The village committee is the most frequently used authority for mediating and solving land conflicts. It is important to note that the involvement of authorities from whatever level does not increase the frequency of resolving land conflicts. Furthermore, titling *does not* increase the frequency of involvement of an authority in the mediation of conflicts. That people express that in practice land titles give them limited benefits is partly explained by the limited involvement of authorities in land conflict mediation, even when land is titled, as well as the limited ability of the authorities to solve the conflicts.

More than three quarters of the households that reported to have experienced land conflicts and chose not to involve any authorities expressed that they feared that involving the authorities would worsen existing conflicts, rather than solve them, or that they do not trust the authorities. This is partly related to the experience of many rural landowners that civil servants often do intervene in a conflict in a way that makes one of the parties feel humiliated. If someone's pride is hurt, the situation may become even tenser in the future. Another element contributing to this limited confidence in the authorities' ability to resolve conflicts is related to the general lack of enforcement that characterizes many state institutions due to their very limited local presence. Finally, the low legitimacy from which most authorities suffer is partly due to Nicaragua's recent past of dictatorship and revolution, and partly due to the high levels of corruption and the general perception in the poorer parts of the population that the government does not protect their rights.

There are several explanations for this general lack of enforcement. They are partly related to budgetary cutbacks after structural adjustment programmes, but also as a consequence of a low political priority. As a result, poor people's chances of having their property rights protected by the state are limited. At the same time, however, this has the (unintended) consequence of limiting the perverse influence that the biased court rulings and power abuses have on the everyday lives of small-scale farmers. Nonetheless, while court rulings may not be carried out and enforced, they still influence the general environment of tenure insecurity. Likewise, state law may have far-reaching effects without ever being adequately implemented, simply because it influences people's arguments and strategies.

My analysis shows that within the Nicaraguan context many land tenure problems are related to this absence of enforcement, especially in relation to the unequal functioning of both the legal and the administrative systems. Results from the fieldwork in Nicaragua show that in practice, the functioning of the legal system often depends on the resources that the actors are able to draw upon. This not only *reflects* the unequal opportunities, but it also *creates* (even more) unequal outcomes, thus creating a vicious circle. My findings from Condega in this regard are supported by other studies. From Nicaragua, Merlet and Pommier (2000c) also discuss the impact of the inequality that the population faces regarding access to enforcement. In their studies from Honduras, where large-scale titling projects have been carried out during the 1980s and 1990s, Coles-Coghi (1993), Jansen and Roquas (1998), and Roquas (2002) have also shown how the lack of equal access to enforcement affects tenure security, as well as access to land. Thus, as mentioned in Chapter 1, these problems should not be considered as 'system errors', but rather as the very way the system works – namely, it works to the benefit of some and at a cost to others. As a Nicaraguan and Honduran saying goes: *"The jaws of justice only bite the barefoot"*.

The regulatory framework for property rights to land is voluminous, confusing and often contradictory. My qualitative analysis shows that it is not just confusing for rural farmers, who are frequently illiterate, but also for lawyers, judges and policy makers. Some actors may consciously omit some elements and use old, outdated laws, whereas others do not actually know or understand current laws. This includes practicing law professionals. Thus, these attorneys may give their clients bad advice due to their lack of an overview of the legal framework. As mentioned before, there are also many different local interpretations of the legal framework, which many people actually consider to be the law. For example, in some case stories, documentation of land transfers that followed local norms was considered to be secure, although it did not live up to formal (legal)

standards for proving ownership rights and rights transfers. In other cases, however, norms and practices were challenged through the formation of coalitions between wealthy landowners, court personnel and political leaders, all of whom are willing to abuse their privileged position and power. This was for example the case in the case story from Laguna de Santa Rosa regarding demands for compensation of crop-damage that did not respect local norms. The situation in Condega and the rest of Nicaragua is well described by the expression, 'stacked laws and norms', introduced by Roquas (2002) in a Honduran context. The stack contains contradictory elements, and the different layers in the stack can be pulled out and used whenever it is opportune.

The stacked laws and norms, as well as the existence of multiple, competing authorities, allow for forum shopping, as for example shown in the above-mentioned case-story from Laguna de Santa Rosa. This means that actors with sufficient resources (whether economic, social or political) are able to pick and choose the forum or conflict-handling authority, which is most receptive to their argument and most willing to use an interpretation of the law and the situation that most favours their case. However, 'forum shopping' does not happen without cost, it requires resources. The critical importance of resources for access to both village council, municipal government and the court system was shown in case-stories and in the qualitative data reflecting the high costs of accessing and using formal institutions, thus making them inaccessible for most rural people. As a result, forum shopping and access to local, municipal and state institutions are mostly available to the wealthier and better connected actors. This in effect reinforces the uneven slope of the playing field.

Competition over resources, as well as challenges and conflicts about land rights not only take place between households, but also within households. This underscores the importance of paying attention to the gender aspects associated with the challenges and conflicts of land rights. However, having the household as the unit of analysis in my quantitative data, my analysis of the gendered face of inequality with respect to land tenure issues is limited. My qualitative analysis shows that, in addition to the same sources of tenure insecurity and potential land conflicts that apply to men, women in rural Nicaragua face additional sources of contestation.

Thus, multiple competing authorities exist for recognizing and enforcing property rights and for handling land tenure conflicts. Access to these authorities is so dependent on economic resources and social and political contacts in addition to formal property rights that it makes little practical sense to consider formal property rights in isolation, without also looking at the other resources available for a landowner to defend his or

her property rights. Inequality of economic wealth, as well as in social and political contacts, defines one's access to property rights recognition and enforcement.

### **Titles and access to formal credit**

Regarding credit, I conclude that formal land titles do not significantly improve the frequency with which credit is obtained in the case study area. Although property rights to economically important assets are necessary for obtaining formal credit, they do not necessarily have to be property rights to land. In those years that I carried out my fieldwork, micro-finance institutions in Condega preferred to use consumer goods (such as cars, stereos, refrigerators, televisions) as collateral rather than a house or land, because they were socially less costly to foreclose. These findings are supported by findings from previous studies on credit access in Nicaragua, demonstrating that the credit effect of titles is only observable in large-scale farms (Carter and Chamorro 2000; Boucher, Barham *et al.* 2005). Nonetheless, it is an important finding given that the credit effect of titling is a key aspect of the argument that land titling and registration projects can be expected to increase the level of investment and productivity, partly through credit access. One explanation why the possession of a land title does not significantly help increase access to credit is the high level of poverty and the associated vulnerability of the poor, which restricts credit offers to them and makes people reluctant to ask for credit. Furthermore, the norm about a 'social function of property rights' makes it socially costly for a bank or micro-finance organization to foreclose on the land.

However, some small-scale farmers do go through the many bureaucratic steps and economic costs to (try to) title their land. Great expectations are expressed about the titles' ability to open for access to credit. Examples of individuals who are able to title their land and climb the agricultural ladder to become farm owners (*finqueros*) pave the way for maintaining positive expectations to titles. However, in practice these expectations are rarely met. For example, only six percent of households in the rural sample obtained credit from bank or credit-cooperative during the past five years, and no statistically significant relationship was found between formal titles and increased access to formal credit.

### **The embedded land market: A sloping playing field**

My fieldwork shows that the way the land market works in a rural municipality in the northern part of Nicaragua systematically impoverishes the rural poor through

land market transactions. Land sales are often ‘irreversible’. It is especially in times of hardship (for example in this case, Hurricane Mitch, or personal disasters such as disease) that poor people lose their land through land market transactions. Given that this process of concentrating land does *not* reverse in times of growth, it actually serves to concentrate the land in the hands of a few. Only the wealthier landowners in Condega sell land as part of an investment strategy to allow them to buy land elsewhere. However, half of the rural land sellers (49 percent) sold land in situations best described as distress sales, because they are closely related to extreme poverty, as well as to income shocks due to family emergencies or climatic disasters. Furthermore, land sales are also often (in 13 percent of the cases of reported sales) made as part of a conflict-avoidance strategy that emerges as a result of threats and pressures from wealthier, often neighbouring landowners. The land market transactions lead to the concentration of land among the wealthy, thereby leaving more small-scale farmers landless or nearly landless.

I can conclude that after almost two decades of structural adjustment programmes and one decade of policy reforms to stimulate the land market, the land market – as it is currently allowed to function – fails to develop toward an increasingly level playing field, as predicted by the proponents of land market liberalization (through the effect of the inverse relationship between size and area productivity) under the condition of abolition of price distortions. Although obvious price distortions do continue to exist in Nicaragua (e.g. regarding access to credit, access to protection of property rights and access to sales markets for produce), the mainstream policy package is repeatedly proposed as a pro-poor policy that will help alleviate poverty. What I observed in Condega regarding the functioning of the land market and the differential effects of land titles depending on economic wealth suggests that the outcomes of an implementation of the mainstream policy package are likely to have the opposite effect, namely that the land market works in a way that is conditioned by existing high levels of inequality, and further exacerbates the unequal distribution of wealth through its outcomes. It is governed by (or, embedded in, as Polanyi (1944/2001) would express it) power relations and differences in economic wealth and social hierarchies. Case studies showed examples of how poverty and inequality are the conditions that create the ‘market’ (the need or the pressure to sell). This strongly contradicts the theoretical argument of the market forces and their outcomes presented by the neo-classical economics.

I also conclude that market forces are *not* the primary regulating force for the acquisition and sale of land in the case study area. In the era of neo-liberal reforms,

structural adjustment programmes and land titling programmes to strengthen the development of the land market, land buyers in Condega and Estelí often turn to power and influence to obtain and consolidate their property rights, as shown in several of my case-stories. They also take advantage of the fact that the difficulties in enforcement of contracts and filing court cases prevent many poorer people from defending their rights legally. The structures of power that govern class relations in the countryside rest on economic dominance (as illustrated for example through the pressures to sell and the high level of distress sales), political dominance (as shown in the cases of forum shopping), as well as extra-economic compulsion and direct coercion (illustrated through case-stories as well as the quite high frequency of ‘pressures to sell’ reported in the questionnaire survey).

While I have shown this to be the case for Condega, it is also reflected in all the municipalities where I have done fieldwork in Nicaragua (Villanueva, Las Sabanas, Santa Teresa, El Castillo) (Broegaard 2005b; Broegaard 2005c; Broegaard 2009). Actually, power abuses are more limited in Condega than anywhere else that I have worked previously, probably because of a lesser degree of inequality regarding wealth distribution. A long tradition for, and a high level of, organization within communities and at the municipal level may also influence the relatively lower levels of power abuse in Condega. Furthermore, due to exceptionally good road infrastructure, it can be assumed that Condega is well integrated into the market economy when compared with other parts of Nicaragua. This makes the finding that the land market does not function in accordance with the mainstream policy package considerably more interesting.

### **Land titles, markets and security in the context of poverty and inequality – further perspectives**

This report has analysed the mechanisms through which property rights to land are gained, maintained and lost in a concrete empirical setting. This analysis serves as a tool for understanding the broader processes of production and reproduction of inequality. I find that the initial inequality in the distribution of wealth is high (here measured in land ownership and ownership of cattle, but Ravnborg (2002) found similar results about inequality through a multifaceted measure of ‘well being’), although it is in no way extreme within a Nicaraguan or a Latin American context. The high level of inequality regarding the distribution of wealth, literacy, influence and access to influencing decision making shapes the very way the land market functions, as well as the uneven slope of the playing field. As shown, sometimes it even is the main force *creating* the ‘market’.

Despite the general use of outdated or informal land tenure documents, the land market is active and it results in the concentration of land. However, providing titles and registration in order to stimulate the land market on a sloping playing field *increases* the potential area of land that can be bought and concentrated more easily by those who are already wealthy (cf. Carter and Barham 1996). This especially has implications for development policies (including Payment for Environmental Services (PES) and Reductions of Emissions through avoided Deforestation and forest Degradation (REDD)). Titling and modernization of the registry system cannot be called pro-poor under the existing high level of inequality and a playing field that slopes to the disadvantage of the poor, *unless* supplemented with wide access to legal advice, legal literacy campaigns and a reform of the judicial system. Through my empirical analysis, I find that although land titles and registry data are important for perceived tenure security, on a broad scale the real barriers to people's perception of tenure security lie with the lack of access to legal advice, as well as the unequal access to justice for rich and poor, for both the well-connected and those who are not well-connected. The high level of corruption and the ongoing 'forum shopping' mainly work to the benefit of the wealthy and well-connected. This way, barriers for perceived tenure security are a consequence of the high levels of inequality.

Some aspects of the uneven character of the playing field can be addressed through legal reforms, which include reforming the fees attached to titling and inscription of land titles and closing some of the existing loopholes in the legal framework. This has been addressed by PRODEP.<sup>2</sup> However, what characterizes the uneven playing field has more to do with the way the administration and judicial system functions: The corruption that is allowed to influence access to 'justice', the political character for the judicial system, as well as the political influence in administrative positions, all of which influence the ease with which people can be heard by and gain the attention of civil servants at different levels.

While research on the land tenure conflicts in Central America seems to suggest that the *types* of conflicts about property rights change character with land titles, empirical evidence does not support the property rights school's expectation that the *frequency* of land conflicts diminishes with land titles (see also Roquas 2002; Gould 2006). Land titling does not in itself change the basic and uneven system of unequal access to justice. As a consequence of the unequal functioning in the judicial system for rich and poor, poor households (which are the vast majority of the rural households I have interviewed in my fieldwork) tend to try to find local and lower-cost alternatives, rather than to involve the court system in their handling of



land-tenure-related conflicts. However, paradoxically, in the hope or expectation that justice will be carried out and the law will protect their just claims and recognize their rights, people turn to the state, the law, the courts, to seek protection of their rights when a violation has been sufficiently severe. The system of appointing judges at all levels, as well as the law-bending practices of many lawyers have *de facto* resulted in interweaving the juridical system with the political system. This is largely responsible for maintaining the unequal judicial system (what Roquas (2002) calls 'class justice'). However, sometimes even the government and the president are defeated in the courtroom, and this is what maintains some remaining legitimacy in the judicial system (cf. Thompson 1987).

The analysis shows that it is not possible to understand the mechanisms that drive the way the land market functions or the way different institutions work in practice, without paying full attention to the implications of inequality. Nor is it possible to understand the implications of these mechanisms in producing and reproducing poverty and inequality without such attention. This is especially relevant for the legal system, where unintended outcomes of the law and the highly unequal positions of citizens are rarely dealt with when discussing legal reforms to the laws regulating property rights. The highly uneven distribution of wealth in Nicaragua also makes access to having one's property rights defended highly uneven due to a strong dependence on economic wealth and other resources that include social contacts and political influence. Despite claims to the contrary, it is unrealistic to expect that the mainstream policy proposals of market liberalization land titling will reduce poverty and inequality meaningfully.

The 'Inverse Relationship' between farm size and area productivity is an important argument in favour of the economic efficiency of investments in larger-scale land administration projects and titling activities. The PRODEP project appraisal document (World Bank 2002:30) refers to previous studies that show that small Nicaraguan farms are 10 times higher in their area-productivity than are large farms, and that efficiency gains thus can be expected if PRODEP can activate the land market and thereby achieve an "efficient distribution" of land towards the smaller (and more efficient) farms. However, my results show the opposite effect of the land market in Condega, even though the land market is active. This is an important finding because the 'equalizing' effect of the land market is a key argument for the expected gains in efficiency from PRODEP. This shows that given the actual functioning of the land market in Condega, the implementation of market-oriented policies leads to the concentration of land, which based on the

above-mentioned findings regarding area-productivity (referred in World Bank 2002) can be expected to be inefficient.

As recent experience from PRODEP shows, cadastral surveying, titling and modernization of the property registry are challenging activities and costly tasks. My findings suggest that these three elements do not fundamentally increase perceived tenure security nor do they reduce inequality, as long as the land market is allowed to work as it does and in conjunction with a judicial system that is characterized by unequal access to justice. Furthermore, large public investments in titling and registration are sure to be eroded within a few years as new land transactions and sub-divisions are carried out and go unrecorded, due to the lack of updating of the registry system and the lack of establishment of mechanisms and incentives for updating. The findings by Barnes and Griffith-Charles (2007) from St. Lucia show that this problem is not limited to Nicaragua.

Using my empirical findings from Condega, and applying their implications to the wider discussion about approaches to obtain pro-poor development and more equal distribution of wealth and of opportunities, I conclude that increased land market activity does *not* lead to greater access to land for the small-scale farmers, nor does titling seem to lead to improved access to credit in the current economic and institutional setting in Nicaragua. Considering that small farms have a much higher area-productivity than do larger farms (Deininger and Chamorro 2001, referred in World Bank 2002c:30), the concentration of land that is the observed outcome of land market transactions in a setting characterized by high levels of inequality (in wealth and in opportunities) is neither pro-poor nor efficient. The land market does not work according to the neoclassical economic model because social pressures, power abuses and the high initial levels of inequality strongly influence price formation, to the degree that one could say that it is the inequality that creates the 'market'.

Due to the unevenly sloping playing field and the unequal access to institutions and enforcement of property rights, land titles may in themselves not be sufficient to create perceived tenure security when other resources (such as economic wealth and social and political connections) are not present to allow for putting the formal rights into practice. It is not land titles that are required to strengthen tenure security for the rural poor, but the sloping playing field and the unequal access to justice that must mainly be targeted. This involves working towards ensuring more access to legal advice for the poor; improving legal literacy as well as working to enhance equal opportunities

as for example equal access to institutions and equal access to education. A profound reform of the legal system is also important.

Formal titles are important for creating perceived tenure security. But they are not alone in doing it. They only create tenure security in combination with other resources. Based on my empirical analysis, I conclude that titling does not benefit the poor and non-poor to the same extent, mainly because of the existence of structural inequalities that are not overcome by titling. This situation allows the non-poor to use their land titles to obtain benefits that are not within reach of the poor, even if they obtain a formal land title.

I find that the land market is active, with or without formal land titles, and that the functioning of the market and state-supported institutions lead to impoverishment of the already rural poor. Although I have documented a concrete and specific case of the land market and land tenure security in a small Central American municipality, the implications of these findings are relevant beyond Nicaragua, and they transcend the issue of land tenure and property rights to land. The manoeuvring room for power abuse is immense in countries like Nicaragua and many other Latin American countries where access to justice is dependent on economic resources, as well as social or political contacts, and where the judicial system is an interwoven part of the political system. Under these circumstances, the mainstream policy package and its proposal to provide poor people with access to land and improve their ability to make effective use of the land they occupy as a means to reducing poverty and empowering poor people, does not live up to its promises. Fundamentally, this is because the neo-classical description of the market exchange and price formation fails to provide an analytical framework capable of explaining the way that the land market functions in settings with high levels of inequality and poverty, because it excludes elements of power and inequality from its analytical lens. As the prerequisites for obtaining reduction in poverty and inequality through the mainstream policy package are not fulfilled, the continued implementation of these kinds of policies will most likely lead to increased polarization that will result in deepening poverty for some and economic growth for others.

This means that not only do the neo-liberally inspired land policies risk failing to produce their expected pro-poor results, but they may even work to the detriment of the poor and also increase inequality. No matter how well-intended large-scale land administration interventions may be, they run the risk of overlooking some of the social complexities that shape their actual outcomes.

### Notes

<sup>1</sup> Interestingly, sufficient tenure security is considered to be conferred when a plot of land is titled and/or inscribed in the property registry in the name of a *relative* of the current owner – whether alive or deceased and whether current property boundaries coincide with the tenure document or not.

<sup>2</sup> PRODEP has invested much time and money in the analysis and preparation of legal reforms, as well as in designing a new cadastral and registry system as well as the interface, which for example allows geo-referencing of plots of land inscribed in the registry, the Integrated Cadastral and Registration Information System (SIICAR). However, the legal passage of a new registry law, required for the SICAAR to become reality, has been troublesome. The proposed new public registry law was expected passed by September 2006 but only passed in 2009, after more than 5 years of debates, and much resistance from the national elite of large-scale landowners. Some experts interpret the stalling of the registry law as a result of opposition by politicians, military persons and others from the political and economic elite of Nicaragua to the SIICAR and its potential, as SIICAR would be a powerful tool if fully implemented (pers. comm. D. Pommier). Over time, SIICAR would be able to trace land transactions, processes of land concentration and the like. Therefore, concentration of land and wealth, increasing inequality as well as irregularities in property rights transactions may become more obvious and much more easily documentable than they have been so far. PRODEP finally obtained permission from the government to test the SIICAR in a pilot project in the departments of León and Chinandega. It is hoped that positive experiences here can give further weight to the arguments in favour of the SIICAR in the future.

## List of abbreviations

ACH	Acción Contra el Hambre, International NGO
ASOEXCOPADE	Ex-combatants Pro-Development Association, local NGO
CAS	Country Assistance Strategy
CEI	Centro de Estudios Internacionales, local NGO
CENAGRO III	Censo Nacional Agrario
CENIDH	Human rights organisation
CIERA	Land reform centre for research and statistics.
CJP	Justice and Peace Commission
CNCR	National Commission for Revision of Confiscations
CORNAP	Corporación Nacional del Sector Público, privatization agency
DCTF	Danish Consultant Trust Funds
DGTRA	Land politics section of Ministry of Agriculture
DIRAC	Alternative Conflicts Directorate
FENACOOOP	National Federation of Cooperatives
FSLN	Frente Sandinista de Liberación Nacional, Sandinist party
GTZ	German Organization for Technical Cooperation
IBI	Property tax (Impuesto de Bienes Inmuebles)
IDR	Institute for Rural Development
INEC	Nicaraguan Institute for Statistics and Census data
INETER	National Institute for Territorial Studies
INIFOM	Institute for Municipal Strengthening
INRA	Nicaraguan Agrarian Reform Institute
IP	Intendancy of Property
IR	Inverse Relationship
LRT	Land reform title
MAGFOR	Ministry of Agriculture and Forestry
MARENA	Ministry of Natural Resources and Environment
MCC	Millennium Challenge Corporation
MHyCP	Ministry of Finance and Public Credit
MIFIC	Ministry of Growth, Industry and Commerce
MIDEF	Ministry of Defence
MINGO	Ministry of Internal Affairs

NDF	Nordic Development Fund
NGO	Non governmental organization
OCI	Office for Quantification of Compensation
OOT	Office for Territorial Ordering
OTR	Rural Titling Office
OTU	Urban Titling Office
PAD	Project Appraisal Document
PLC	Partido Liberal Cristiano, Christian-liberal political party
PNUD	United Nations Development Program
POSAF	Project for sustainable agro-forestry
PRODEP	Proyecto de Ordenamiento de la Propiedad
PTC	Peruvian Telephone Company
PTS	Perceived tenure security
SIICAR	Integrated Cadastre and Registration Information System
SISCAT	Fiscal Cadastre System, Software from INIFOM to municipalities
TS	Título Supletório, supplementary title
UNAG	Union for small- and medium-scale farmers
UNO	Unión Nacional Opositora, Coalition of parties, won elections in 1990
UPE	Unidad Propiedad del Pueblo, State farm
USAID	United States Agency for International Development
USD	American Dollars
WB	World Bank
WDR	World Development Report

## List of measures and of currency

### Measures:

1 *manzana* (mz) = 0.7 hectares (ha)

1 *manzana* = 18 *tareas*

### Exchange rate:

1 Córdoba = 0.063 USD (Early 2004).

## Map of Nicaragua



Source: EIU Country profile, 2007; with added location of Condega.



## **Annex I. Fieldwork methods**

The conceptual exploration was carried out using qualitative methods, mainly in-depth interviews and well-being rankings. A small group of informants was selected in such a way that they represent a wide array of possible situations, i.e. maximum variation sampling (Ravnborg 1999). Focus group discussions were used to further deepen the discussion of central concepts and mechanisms. The informants included both women and men of different ages who lived in different parts of the community and represented different economic well-being levels (*ibid.*). For the in-depth interviews during the rural fieldwork, matrices with hypotheses and their corresponding research questions were prepared, as well as matrices with the specific questions that had been prepared for each institution and/or person based on the information obtained during the pilot visits. Furthermore, an interview-guide for in-depth interviews was prepared.

The tenure security rankings were carried out with a small number of informants in each location, until the ranking results became repetitive (between three and four rankings per location/community). The rankings identify people's own perceptions of tenure security in their community. The choice of this method is inspired by Ravnborg's work on poverty and natural resource management in Condega and adjacent areas (e.g. Ravnborg 2002; Ravnborg 2003). The choice of this ranking method, with its focus on self-perceived tenure security, follows directly from the conceptual understanding of land tenure security as a perceived phenomenon, being multi-dimensional in the sense that it is influenced by legal status of the land, past experiences of land conflicts, trust in the government and the legal system, possible land use, and other resources available (such as political contacts, economic wealth etc. (Coles-Coghi 1993; Place, Roth *et al.* 1994; Jansen and Roquas 1998; Pagiola 1999; Sjaastad and Bromley 2000; Benda-Beckmann 2001b; Roquas 2002).<sup>1</sup>

During my prolonged stays with families in several of the villages, a large number of informal talks or more formal interviews were had with village leaders, leaders of cooperatives, founders of communities, schoolteachers, influential local farmers, as well as small-holders and landless. Furthermore, the local court was visited and the judge's secretary interviewed (being more accessible and having far more local knowledge and experience than the newly arrived judge) about land conflicts. Court cases regarding land conflicts since 1990 were summarized in tables (according to types of conflicts) in order to present an overview of the kinds of conflicts that involved the

court system (as opposed to those not presented in court), as well as the changes in level and kinds of conflicts over time. In addition, the local and regional offices of the Justice and Peace Commission (*Comisión de Justicia y Paz*) of the Catholic Church were visited, interviews conducted, and the cases attended were attempted to be reconstructed. Other local institutions, such as the municipality, the local union of small- and medium-size farmers (UNAG), the ex-combatants' association (ASOEX-COPADE), OCTUPAN, Mujer y Comunidad, Centro de Estudios Internacionales, CENIDH, and the regional representatives and technicians from the land reform office (*Oficina de Titulación Rural*, OTR, renamed to *Delegación de la Intendencia de la Propiedad* (DIP)) were also visited, a number of interviews conducted and land conflict cases attended. The aim was to understand the interests of each organization and obtain an overview of the types of cases attended, the type of attention given, the type of "client" attended, the outcomes of the activities, and the changes in land conflicts over time.

The final phase of the fieldwork focused on a small number of households selected from the larger sample in a few villages in order to obtain maximum variation, but with special focus on poor households. These households were chosen for their capacity to illustrate certain mechanisms or dilemmas rather than for their representativity. However, the selection included households (based on the survey in phase two) that perceive their tenure situation as insecure (some with land titles and some without), as well as households *without* land titles that perceive their tenure situation as *secure*. The latter group was included to illustrate successful use of alternative mechanisms to secure land claims or create perceived tenure security. The in-depth interviews and field visits were carried out in order to gain a deeper understanding of the situation of these households, their perceptions, their actions and rationales. Their perception of their tenure situation, the different mechanisms used to strengthen land claims as well as the capacity to negotiate and enforce land rights were also explored in greater detail, as well as the historic changes in the involvement of different organizations and institutions in land matters. Furthermore, based on concrete cases about land conflicts, interviews were carried out with the involved organizations and institutions in order to develop a better understanding of the interests of each institution, its ability to assert authority in relation to the ever-contested land matters, and the basis upon which such authority is asserted. All interviews were transcribed and subsequently coded and analysed using a software for qualitative analysis, N-vivo. Using this programme for handling qualitative data facilitated structure and systematization when coding and analysing the data.

### Questionnaire sample

It was determined that the size of the sample in the study area of Condega Municipality, based on the estimated size of the rural population, should be 351 families in order to permit the desired confidence interval of five percent (Krejcie and Morgan, 1970, cited in Bernard (1994:77)).

The selection of the sample was carried out in two stages. The first stage was the selection of one-third of the 63 communities in Condega, which meant that 21 villages were to be selected. They were selected randomly, however, making sure that each of the 11 micro-regions of the municipality was represented with a more or less equal number

**Table A. Sampling per village, Condega, Estelí**

<i>Micro-region</i>	<i>Village</i>	<i>Number of households per village</i>	<i>% of total number of households</i>	<i>Number of households needed for the sample</i>	<i>Actual number of questionnaire formats accepted</i>
2	Culce	42	2.54	11	11
	Santa Lucía	84	5.08	20	19
3	El Nispero	50	3.02	12	12
	Potrerrillos	185	11.19	47	45
	Santa Teresa	125	7.56	29	28
4	Rodeo del Pire	56	3.39	12	12
	La Naranjita	64	3.87	16	16
5	Ducuale Grande	165	9.98	36	36
	San Diego	83	5.02	20	20
6	Arenales	63	3.81	15	15
7	Los Corralitos	79	4.78	18	18
8	El Tule	65	3.93	15	15
9	Rodeo (Bramad.)	49	2.96	10	10
	Baronesa	31	1.87	8	8
	Daraylí	50	3.02	12	12
	Bramadero	84	5.08	18	18
10	Gualiqueme	89	5.38	23	23
	Santa Rosa	87	5.26	19	19
	El Hato	43	2.60	11	11
11	Los Planes	43	2.60	10	10
	San Jerónimo	117	7.07	26	26
	<i>Total</i>	<i>1611</i>	<i>100</i>	<i>351</i>	<i>384</i>

of villages. In the second stage, a determined number of families were selected within each of these villages. The number of selected families in each selected village was calculated proportionally, based on the total population in the village and according to the total desired size of the sample (351 households in this case), as well as a small surplus in order to allow some questionnaires to be discarded in case of any problems regarding validity etc. In each village in the survey, the families to be selected were identified on the basis of a complete list of all of the families in the village (sampling frame). This list was either obtained from or elaborated with the help of the mayor's office, NGOs and communal leaders, as well as a list of random numbers.

**Note**

<sup>1</sup> It should be noted that the exercise was carried out with households as the unit of analysis, because many of the resources that form part of creating tenure security or insecurity are characteristic for a household (or rather: the household head). However, it is acknowledged that the degree of tenure security or insecurity may and in practice often does differ from one plot to another belonging to the same or different members of a household.

## References

- Acción Contra el Hambre (2003). *Estudio sobre tenencia y mercado de tierras en el departamento de Madriz*. Acción Contra el Hambre: 165.
- Acemoglu, D., S. Johnson, *et al.* (2002). *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*. NBER Working Paper Series, WP 8460, Cambridge, Massachusetts, National Bureau of Economic Research, 1-84.
- Agarwal, B. (2003). "Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market." *Journal of Agrarian Change* 3(1 and 2): 184-224.
- Agurto, S., A. Guido, *et al.* (2008). *Mujeres nicaragüenses, cimienta económico familiar: Estadísticas e investigaciones de FIDEG, 1998-2006*. Managua, FIDEG.
- Alston, L. J., G. D. Libecap, *et al.* (1996). *The Determinants and Impact of Property Rights: Land Titles on the Brazilian Frontier*. NBER Working Paper Series, WP 5405, Cambridge, Massachusetts, National Bureau of Economic Research.
- Alston, L. J., G. D. Libecap, *et al.* (1999). *Titles, Conflicts and Land Use. The Development of Property Rights and Land Reform on the Brazilian Amazon Frontier*. Michigan, University of Michigan Press.
- Atwood, D. A. (1990). "Land Registration in Africa: The Impact on Agricultural Production." *World Development* 18(5): 659-671.
- Baland, J.-M. and J.-P. Platteau (1999). "The Ambiguous Impact of Inequality on Local Resource Management." *World Development* 27(5): 773-788.
- Bardhan, P. (1989). "The New Institutional Economics and Development Theory: A Brief Critical Assessment." *World Development* 17(9): 1389-1395.
- Bardhan, P. K. (1993). "Analytics of the Institutions of Informal Cooperation in Rural Development." *World Development* 21(4): 633-639.
- Barnes, G. and C. Griffith-Charles (2007). "Assessing the Formal Land Market and Deformalization of Property in St. Lucia." *Land Use Policy* 24: 494-501.
- Barracrough, S. L. (2005). *In Quest of Sustainable Development*. Geneva, UNRISD: i-xii, 1-59.
- Barrios, M. and R. Broegaard (2007). "Dilemas de los funcionarios punta de lanza en la gestión ambiental en Río San Juan, Nicaragua." *Encuentro* (77): 9-28.
- Barrows, R. and M. Roth (1989). *Land Tenure and Investment in African Agriculture. Theory and Evidence*. Madison, Land Tenure Center, University of Wisconsin: 29.

- Bastiaensen, J., B. d'Excelle, *et al.* (2006). *Political Arenas around Access to Land: A Diagnosis of Property Rights Practices in the Nicaraguan Interior*. Antwerpen, Institute of Development Policy and Management, University of Antwerp and Nitlapán: 48.
- Baumeister, E. (1999). *Iniciativas campesinas y la sostenibilidad de los resultados de las reformas agrarias en América Central*. Geneva, UNRISD, United Nations Research Institute for Social Development: 40.
- Baumeister, E. and E. Fernandez (2005). *Análisis de la tenencia de la tierra en Nicaragua a partir del censo agropecuario 2001*. Managua, FAO, INEC and MAG: 100.
- Bebbington, A. (1999). *Capitals and Capabilities. A Framework for Analysing Peasant Viability, Rural Livelihoods and Poverty in the Andes*. London, DFID & IIED.
- Beck, U. (2002). "The Terrorist Threat: World Risk Society Revisited." *Theory, Culture & Society* 19(4): 39-55.
- Benda-Beckmann, F. v. (1995). "Anthropological Approaches to Property Law and Economics." *European Journal of Law and Economics* 2: 309-336.
- Benda-Beckmann, F. v. (2001a). "Between Free Riders and Free Raiders: Property Rights and Soil Degradation in Context." In Heerink, N., H. v. Keulen and m. Kuiper (eds). *Economic Policy and Sustainable Land Use. Recent Advances in Quantitative Analysis for Developing Countries*, Heidelberg, New York: Physica-Verlag: 293-316.
- Benda-Beckmann, F. v. (2001b). "Legal Pluralism and Social Justice in Economic and Political Development." *IDS Bulletin* 32(1): 46-56.
- Benda-Beckmann, F. v. (2003). "Mysteries of Capital or Mystification of Legal Property?" *Focaal - European Journal of Anthropology* 41: 187-191.
- Benda-Beckmann, F. v. and K. v. Benda-Beckmann (1994). "Property, Politics and Conflict: Ambon and Minangkabau Compared." *Law and Society Review* 28(3): 589-607.
- Benda-Beckmann, K. v. (1991). "Forum Shopping and Shopping Forums, Dispute Processing in a Minangkabau Village in West Sumatra." *Journal of Legal Pluralism* 19: 117-162.
- Benda-Beckmann, K. v. *et al.* (1997). *Rights of Women to the Natural Resources Land and Water*. The Hague, NEDA Netherlands Development Assistance, Development Cooperation Information Department, Ministry of Foreign Affairs: 59.
- Berkes, F., Ed. (1989). *Common Property Resources. Ecology and Community-Based Sustainable Development*. London, Belhaven Press.

- Bernard, H. R. (1994). *Research Methods in Anthropology. Quantitative and Qualitative Approaches*. Thousand Oaks, London, Sage Publications.
- Berry, S. (1988). Concentration without Privatization? Some Consequences of Changing Patterns of Rural Land Control in Africa. *Land and Society in Contemporary Society*. R. E. Downs and S. P. Reyna. Hanover and London, University Press of New England: 53-75.
- Berry, S. (1993). *No Condition is Permanent. The Social Dynamics of Agrarian Change in Sub-Saharan Africa*. Madison, The University of Wisconsin Press.
- Binswanger, H., K. Deininger, *et al.* (1995). Power, Distortions, Revolt and Reform in Agricultural Land Relations. *Handbook of Development Economics*. J. Behrman and T. N. Srinivasan. Amsterdam, Elsevier. III: 2659-2772.
- Boholm, Å. (2003). "The Cultural Nature of risk: Can There Be an Anthropology of Uncertainty?" *Ethnos* 68(2): 159-178.
- Boserup, E. (1965). *The Conditions of Agricultural Growth. The Economics of Agrarian Change under Population Pressure*. London, George Allen & Unwin Ltd.
- Boucher, S. R., B. L. Barham, *et al.* (2005). "The Impact of "Market-Friendly" Reforms on Credit and Land Markets in Honduras and Nicaragua." *World Development* 33(1): 107-128.
- Braselle, A.-S., F. Gaspart, *et al.* (2002). "Land Tenure Security and Investment Incentives: Puzzling Evidence from Burkina Faso." *Journal of Development Economics* 67: 373-418.
- Broegaard, R. B. (2008). *Struggles for Land and Security in Nicaragua: Moulding the Slope of the Playing Field*. International Development Studies, Institute for Society and Globalization and Danish Institute for International Studies. Roskilde, Roskilde University. PhD: 254 plus annexes.
- Broegaard, R. B. (2009). "Land Access and Titling in Nicaragua." *Development and Change* 40(1): 149-169.
- Broegaard, R. J. (2000). *Land Titles, Tenure Security and Land Improvements. A Case Study in Nicaragua*. Copenhagen, Institute of Geography, University of Copenhagen.
- Broegaard, R. J. (2005a). *Inseguridad de tenencia y conflictos de propiedad en Nicaragua*. Managua, World Bank: 157.
- Broegaard, R. J. (2005b). "Land Tenure Insecurity and Inequality: A Case Study from Nicaragua." *Development and Change* 36(5): 845-864.
- Broegaard, R. J. (2005c). *Posibles impactos ambientales de titulación y altos niveles de seguridad de tenencia de tierra en Nicaragua*. Managua, World Bank: 98.
- Broegaard, R. J. and F. Mendoza (2004). *Capacidad municipal en servicios de regularización de tierra en Nicaragua*. Managua, World Bank: 66.



- Bromley, D. W. (1989). *Economic Interests and Institutions. The conceptual foundations of public policy*. Oxford, Blackwell: 3.
- Bromley, D. W. (1991). *Environment and Economy. Property Rights and Public Policy*. Oxford, Blackwell.
- Bromley, D. W. (1997). "Rethinking Markets." *American Journal of Agricultural Economics* 79(5): 1383-1393.
- Bromley, D. W. (2008). "Formalizing Property Rights in the Developing World: The Wrong Prescription for the Wrong Malady." *Land Use Policy* 26: 20-27.
- Bruce, J. W. and S. E. Migot-Adholla, Eds. (1994). *Searching for Land Tenure Security in Africa*. Dubuque, Kendall/Hunt Publishing Company.
- Byamugisha, F. (2013). *Securing Africa's Land for Shared Prosperity. A Program to Scale Up Reforms and Investments*. Africa Development Forum. Washington, World Bank and Agence Française de Développement: 231.
- Carter, M. (2006). *Land Market and Pro-Poor Growth: From Neo-Structural Scepticism to Policy Innovation*. Land, Poverty, Social Justice and Development, ISS, The Hague.
- Carter, M. R. (2001). *Land Access and Class Mobility through Three Decades of Agrarian Reform and Liberalization in Nicaragua*. Paper presented to the XXIII International Congress of the Latin American Studies Association, Washington D. C., September 7th, 2011. Madison, Land Tenure Center, 19.
- Carter, M. R. and B. L. Barham (1996). "Level Playing Fields and Laissez Faire: Postliberal Development Strategy in Inegalitarian Agrarian Economies." *World Development* 24(7): 1133-1149.
- Carter, M. R. and J. S. Chamorro (2000). *Estudio de las dinamicas de la economia rural. Impacto de proyectos de legalización de la propiedad en Nicaragua*. Madison, Departamento de Economía Agrícola y Aplicada, Universidad de Wisconsin-Madison: 88.
- Carter, M. R. and P. Olinto (2003). "Getting Institutions "Right" for Whom? Credit Constraints and the Impact of Property Rights on the Quantity and Composition of Investment." *Am J Agricultural Economics* 85(1): 173-186.
- Ceci, S. (2005). Women's Access to Land in Nicaragua. *Gender and Land Compendium of Country Studies*. Rome, FAO: 81-103.
- Chalmers, A. F. (1995). *Hvad er videnskab?* Copenhagen, Gyldendal.
- Childress, M. D. (1991). *Land Tenure, Credit Access and Agricultural Productivity in Honduras*. Mimeo, Document number PN-ABQ-644, [http://pdf.usaid.gov/pdf\\_docs/PNABQ644.pdf](http://pdf.usaid.gov/pdf_docs/PNABQ644.pdf).
- Childress, M. D. and K. Deininger (2006). *Land Policies for Growth and Poverty Reduction: Recent Experiences with Policies to Improve Land Access and Land Distribution*. Land, Poverty, Social Justice and Development, ISS; The Hague.

- Cleaver, F. (2003). "Reinventing Institutions: Bricolage and the Social Embeddedness of Natural Resource Management." *Securing Land Rights in Africa*. T. A. Benjaminsen and C. Lund. London, Portland, Or., Frank Cass: 11-30.
- Coles-Coghi, A. (1993). *Agricultural Land Rights and Title Security in Honduras*. Ann Arbor, Mich:UMI Dissertations Services, University of Wisconsin-Madison: 195.
- Condega (2003). *Diagnóstico Agrosocioeconómico*. Condega, Alcaldia de Condega.
- Corral, L. and T. Reardon (2001). "Rural Nonfarm Incomes in Nicaragua." *World Development* 29(3): 427-442.
- de Groot, J. P. and M. Spoor, Eds. (1994). *Ajuste Estructural y Economía Campesina*. Managua, Escuela de Economía Agrícola (ESECA)-UNAN.
- de Janvry, A. and E. Sadoulet (1989). "A Study in Resistance to Institutional Change: The Lost Game of Latin American Land Reform." *World Development* 17(9): 1397-1407.
- de Janvry, A. and E. Sadoulet (2000a). *Property Rights and Land Conflicts in Nicaragua. A Synthesis*. University of California at Berkeley: 29p.
- de Janvry, A. and E. Sadoulet (2000b). "Rural Poverty in Latin America. Determinants and Exit Paths." *Food Policy* 25: 389-409.
- de Janvry, A. and E. Sadoulet (2001). "Income Strategies among Rural Households in Mexico: The Role of Off-farm Activities." *World Development* 29(3): 467-480.
- de Janvry, A. and E. Sadoulet (2002). "World Poverty and the Role of Agricultural Technology: Direct and Indirect Effects." *The Journal of Development Studies* 38(4): 1-26.
- de Janvry, A., E. Sadoulet, *et al.* (2001). The Changing Role of the State in Latin American Land Reforms. *Access to Land, Rural Poverty, and Public Action*. A. de Janvry, G. Gordillo, J.-P. Platteau and E. Sadoulet: 279-303.
- de Laiglesia, J. R. (2004). *Investment and Credit Effects of Land Titling and Registration: Evidence from Nicaragua*. London, London School of Economics: 1-47.
- de Soto, H. (2000). *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else*. London, Bantam Press.
- de Soto, H. (2002). "Listening to the Barking Dogs: Property Law against Poverty in the non-West." *Focaal - European Journal of Anthropology* 41.
- de Soto, H. (2004). *The Mystery of Capital: The Role of Property Rights in Creating Wealth and Alleviating Poverty*. Sir John Crawford Memorial Lecture. Consultative Group on International Agricultural Research, Mexico, DF.
- Deere, C. D. and M. León (2001). "Who Owns the Land? Gender and Land-Titling Programmes in Latin America." *Journal of Agrarian Change* 1(3): 440-467.

- Deere, C. D. and M. León (2003). "The Gender Asset Gap: Land in Latin America." *World Development* 31(6): 925-947.
- Deininger, K. (1999). "Making Negotiated Land Reform Work: Initial Experience from Colombia, Brazil and South Africa." *World Development* 27(4): 651-672.
- Deininger, K. (2003a). "Land Markets in Developing and Transition Economies: Impact of Liberalization and Implications for Future Reform." *American Journal of Agricultural Economics* 85(5): 1217-1222.
- Deininger, K. (2003b). *Land Policies for Growth and Poverty Reduction*. Oxford, World Bank and Oxford University Press.
- Deininger, K. and H. Binswanger (2001). "The Evolution of the World Bank's Land Policy." *Access to Land, Rural Poverty, and Public Action*. (UNU/WIDER). A. de Janvry, G. Gordillo, J.-P. Platteau and E. Sadoulet, Oxford University Press: 406-440.
- Deininger, K. and J. S. Chamorro (2002). *Investment and Income Effects of Land Regularization. The Case of Nicaragua*, The World Bank and University of Wisconsin, Madison: 29p.
- Deininger, K., E. Zegarra, et al. (2003). "Determinants and Impacts of Rural Land Market Activity: Evidence from Nicaragua." *World Development* 31(8): 1385-1404.
- Demsetz, H. (1967). "Toward a Theory of Property Rights." *The American Economic Review* 57(2): 347-359.
- Dorner, P. (1992). *Latin American Land Reforms in Theory and Practice. A Retrospective Analysis*. Madison, University of Wisconsin Press.
- Dorner, P. and D. Kanel (1971). *Reforma agraria. Colonizacion y cooperativas*. Roma, FAO.
- DRN (2009). *Evaluation of European Commission Cooperation with Nicaragua 1998-2008*. Rome, DRN. 1: 144 pages plus annexes.
- Easterly, W. (2007). "Inequality Does Cause Underdevelopment: Insights from a New Instrument." *Journal of Development Economics* 84: 755-776.
- Eggertsson, T. (1997). "The Old Theory of Economic Policy and the New Institutionalism." *World Development* 25(8): 1187-1203.
- EIU (2001). *Country Profile. Nicaragua 2001*. London, The Economist Intelligence Unit.
- El-Ghonemy, M. R. (1999). *The Political Economy of Market-Based Land Reform*. Geneva, UNRIDS, United Nations Research Institute for Social Development: 31.
- European Union (2004). *EU Land Policy Guidelines*, EU Task Force on Land Tenure. [http://ec.europa.eu/development/icenter/repository/EU\\_Land\\_Guidelines\\_Final\\_12\\_2004\\_en.pdf](http://ec.europa.eu/development/icenter/repository/EU_Land_Guidelines_Final_12_2004_en.pdf).

- FAO (2002). *Gender and Access to Land*. Rome, FAO: 44p.
- Feder, G. (1999). *Access to Land and Poverty Reduction*. Presentation at the International Colloquium for Agrarian Reform and Rural Development in the 21st Century. Puebla, Mexico.
- Feder, G. and D. Feeny (1991). "Land Tenure and Property Rights: Theory and Implications for Development Policy." *The World Bank Economic Review* 5(1): 135-153.
- Feder, G. and A. Nishio (1996). *The Benefits of Land Registration and Titling. Economic and Social Perspectives*. (World Bank). International Conference of Land Tenure and Administration, Florida.
- Feder, G. and A. Nishio (1998). "The Benefits of Land Registration and Titling: Economic and Social Perspectives." *Land Use Policy* 15(1): 25-43.
- Feder, G., T. Onchan, et al. (1988). *Land Politics and Farm Productivity in Thailand*. Baltimore and London, The Johns Hopkins University Press.
- Flyvbjerg, B. (1991). *Rationalitet og magt*. Århus, Akademisk Forlag.
- Foltz, J., B. A. Larson, et al. (2000). *Land Tenure, Investment, and Agricultural Production in Nicaragua*, Harvard Institute for International Development, Harvard University: 28p.
- Foster-Carter, A. (1978). "The Modes of Production Controversy." *New Left Review* 107: 47-78.
- Freedden, M. (1991). *Rights*. Buckingham, Open University Press.
- Galán, B. B. (1998). *Aspectos jurídicos en el acceso de la mujer rural a la tierra en Cuba, Honduras, Nicaragua y República Dominicana*. Género y manejo de recursos naturales. Rome, FAO: 70.
- Ghimire, K. B. (1999). *Peasants' Pursuit of Outside Alliances in the Process of Land Reform. A Discussion of Legal Assistance Programmes in Bangladesh and the Philippines*. Geneva, UNRISD.
- Giddens (1984). *The Constitution of Society: Outline of the Theory of Structuration*. Cambridge; Cambridgeshire, Polity Press.
- Gilbert, A. (2001). *On the Mystery of Capital and the Myths of Hernando de Soto: What Difference Does Legal Title Make?* Workshop paper, <http://www.n-aerus.net/web/workshops/2001/papers/gilbert.pdf>
- Glade, W. (1996). "Institutions and Inequality in Latin America: Text and Subtext." *Journal of Interamerican Studies and World Affairs*: 159-179.
- Gobierno de Nicaragua (2008). *Plan nacional de desarrollo humano 2008-2012*. Managua, Gobierno de Nicaragua: 177.
- Gomez, L., B. Martínez, et al. (2008). *Mapecto de cambios en municipios de Nicaragua: Consumo de los hogares, pobreza y equidad 1998 - 2005*. Managua, RIM-ISP: 22.

- Gould, J. L. (1997). *El mito de "La Nicaragua Mestiza" y la resistencia indígena, 1880-1980*. San José, Editorial de la Universidad de Costa Rica.
- Gould, K. A. (2006). "Land Regularization on Agricultural Frontiers: The Case of Northwestern Petén, Guatemala." *Land Use Policy* 23: 395-407.
- Hardin, G. (1968). "The Tragedy of the Commons." *Science* 162:1243-1248.
- Harriss, J., J. Hunter, *et al.*, Eds. (1995). *The New Institutional Economics and Third World Development*. London, Routledge.
- Hendrix, S. E. (1992). "The Crisis of Land Law and Policy in Nicaragua." *Comparative Juridical Review* 29: 3-24.
- Hendrix, S. E. (1993). *Property Law Innovation in Latin America with Recommendations*. Madison, Land Tenure Center, University of Wisconsin-Madison: 65p.
- HLPE (2011). *Land Tenure and International Investments in Agriculture*. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security. Rome, HLPE - FAO: 56.
- Hoffmann, K. and M. A. Centeno (2003). "The Lopsided Continent: Inequality in Latin America." *Annual Review of Sociology* 29(2): 363-390.
- Hoffmann, K. and M. A. Centeno (2004). "El Continente Invertido. Desigualdades en America Latina." *Nueva Sociedad* 193: 97-111.
- INEC (2001). CENAGRO: Censo Nacional Agropecuario 2001. Retrieved June 26, 2008 from <http://www.inec.gob.ni/cenagro/portaltabulados.htm>.
- INIFOM (2001). *Diagnóstico sociodemográfico: Condega*. Instituto Nicaragüense de Fomento Municipal. 1.
- IOB (2011). *Improving Food Security. A Systematic Review of the Impact of Interventions in Agricultural Production, Value Chains, Market Regulation, and Land Security*. IOB Study. Den Haag, Ministry of Foreign Affairs of the Netherlands: 188.
- Jansen, K. and E. Roquas (1998). "Modernizing Insecurity: The Land Titling Project in Honduras." *Development and Change* 29(1): 81-106.
- Johnson, O. (1972). "Economic Analysis, the Legal Framework and Land Tenure Systems." *Journal of Law and Economics* 15(1): 259-276.
- Jonakin, J. and L. J. Enríquez (1999). "The Non-Traditional Financial Sector in Nicaragua: A Response to Rural Market Exclusion." *Development Policy Review* 17(2): 141-169.
- Katz, E. and J. S. Chamorro (2002). *Gender, Land Rights and the Household Economy in Rural Nicaragua and Honduras*. Unpublished, St. Mary's College of California: 20.
- Kay, C. (2006). "Survey Article: Rural Poverty and Development Strategies in Latin America." *Journal of Agrarian Change* 6(4): 455-508.

- Kirk, M. (1999). *Land Tenure, Technological Change and Resource Use. Transformation Processes in African Agrarian Systems*. Frankfurt, Peter Land GmbH.
- Laclau, E. (1971). "Feudalism and Capitalism in Latin America." *New Left Review* 67(May-June): 19-38.
- Larson, A. M. (2001). *Recursos forestales y gobiernos municipales en Nicaragua hacia una gestión efectiva*. Managua, Nitlapán-UCA.
- Larson, B. A. and D. W. Bromley (1990). "Property Rights, Externalities, and Resource Degradation. Locating the Tragedy." *Journal of Development Economics* 33: 235-262.
- Larson, J. B. M., T. Palaskas, *et al.* (1999). "Land Titling and Technical Efficiency Among Small Coffee Producers in Honduras." *Canadian Journal of Development Studies* XX(2): 361-382.
- Lastarria-Cornhiel, S., S. Agurto, *et al.* (2003). *Joint Titling in Nicaragua, Indonesia, and Honduras: Rapid Appraisal Synthesis*. Land Tenure Center, University of Wisconsin-Madison: 70p.
- Lavadenz, I. and K. Deininger (2001). *Land Access and Tenure Insecurity in Nicaragua. Policy and Operational Implications*. Briefing Note, World Bank: 11p.
- Lemel, H. (1988). "Land Titling: Conceptual, Empirical and Policy Issues." *Land Use Policy* 5(3): 273-290.
- Li, T. M. (1996). "Images of Community: Discourse and Strategy in Property Relations." *Development and Change* 27: 501-527.
- Li, T. M. (2001). "Agrarian Differentiation and the Limits of Natural Resource Management in Upland Southeast Asia." *IDS Bulletin* 32(4): 88-94.
- Lipton, M. (1993). "Land Reform as Commenced Business: The Evidence against Stopping." *World Development* 21(4): 641-657.
- Long, N. (2001). *Development Sociology. Actor Perspectives*. London and New York, Routledge.
- Lukes, S. (1974). *Power: A Radical View*. London, Macmillian Press Ltd.
- Lund, C. (2000). *African Land Tenure: Questioning Basic Assumptions*. London, IIED, International Institute for Environment and Development: 1-25.
- Lund, C. (2001). "Seeking Certainty and Aggravating Ambiguity - On Property, Paper and Authority in Niger." *IDS Bulletin - Institute of Development Studies* 32(4): 47-53.
- Lund, C. (2002). Negotiating Property Institutions: On the Symbiosis of Property and Authority in Africa. In Juul, K. and C. Lund (eds) *Negotiating Property in Africa*. Portsmouth, Heinemann: 11-43.
- Lund, C. (2006). "Twilight Institutions: Public Authority and Local Politics in Africa." *Development and Change* 37(4): 685-705.



- Lund, C. (2009). "Recategorizing 'Public' and 'Private' Property in Ghana." *Development and Change* 40(1): 131-148.
- Lund, C., R. Odgaard, et al. (2006). *Land Rights and Land Conflicts in Africa: A Review of Issues and Experiences*. Copenhagen, DIIS (Danish Institute for International Studies): 46.
- Macours, K., M. Díaz, et al. (2002). *Legal and Institutional Impediments to the Development of Efficient Land Rental Markets in Latin America*: 1-22.
- Macpherson, C. B. (1978). *Property. Mainstream and Critical Positions*. Oxford, Basil Blackwell.
- MAGFOR (2002). *Estudio sobre costos y tiempos de legalización de propiedades rurales en algunos municipios de Nicaragua*. Proyecto de Asistencia Técnica al MAGFOR, BIDE-USIAD. Managua, MAGFOR-DGTRA & BIDE.
- MAGFOR (2006). *Informe de seguridad de tenencia de la tierra*. Managua, Ministerio Agropecuario y Forestal (MAGFOR): 26.
- MAGFOR and BIDE (2002). *Revisión del marco legal actual de la política de tierra. Managua, Nicaragua, Ministerio Agropecuario y Forestal (MAGFOR)*. Boston Institute for Developing Economies (BIDE): 60p.
- Maldidier, C. and P. S. Marchetti (1996). *El campesino-finquero y el potencial económico del campesinado nicaragüense*. Managua, Nitlapán-UCA.
- Maxwell, D. and K. Wiebe (1999). "Land Tenure and Food Security: Exploring Dynamic Linkages." *Development and Change* 30: 825-849.
- Mehta, L., M. Leach, et al. (1999). *Exploring Understandings of Institutions and Uncertainty: New Directions in Natural Resource Management*. Brighton, Institute of Development Studies, University of Sussex: 1-48.
- Meinzen-Dick, R. S., L. R. Brown, et al. (1997). "Gender, Property Rights, and Natural Resources." *World Development* 25(8): 1303-1315.
- Mendelsohn, R. (1994). "Property Rights and Tropical Deforestation." *Oxford Economic Papers* 46: 750-756.
- Merlet, M. (2001). *Evolución de la tenencia de tierra en Nicaragua. Del origen del llamado "problema de la propiedad"*. Mimeo, Paris: 9.
- Merlet, M. and D. Pommier (2000a). *Estudios sobre la tenencia de la tierra, Parte II. Inseguridad de tenencia y resolución de conflictos bajo los distintos regímenes de derechos sobre la tierra*. Paris, Institut de Recherches et d'Applications des Méthodes de Développement (IRAM).
- Merlet, M. and D. Pommier (2000b). *Estudios sobre la tenencia de la tierra. Parte I*. Paris, Institut de Recherches et d'Applications des Méthodes de Développement (IRAM): 158.



- Merlet, M. and D. Pommier (2000c). *Estudios sobre la tenencia de la tierra. Parte III: Conclusiones generales de los dos estudios sobre la tenencia de la tierra en Nicaragua*. Paris, Institut de Recherches et d'Applications des Méthodes de Développement (IRAM): 49p.
- Migot-Adholla, S., P. Hazell, *et al.* (1991). "Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity?" *The World Bank Economic Review* 5(1): 155-175.
- Mitchell, T. (2007). "The Properties of Markets." *Do Economists Make Markets? On the Performativity of Economics*. D. MacKenzie, F. Muniesa and L. Siu. Princeton, Princeton University Press: 244-275.
- Molina, J. (2000). "Derechos de propiedad, mercados de tierra y crédito rural." *Land Reform* (2): 63-70.
- Moore, S. F. (1998). "Changing African Land Tenure: Reflections on the Incapacities of the State." *The European Journal of Development Research* 10(2): 33-49.
- Muller, E. N., M. A. Seligson, *et al.* (1989). "Land Inequality and Political Violence." *The American Political Science Review* 83(2): 577-596.
- Nabli, M. K. and J. B. Nugent (1989). "The New Institutional Economics and Its Applicability to Development." *World Development* 17(9): 1333-1347.
- Nelson, R. T. (2003). *Honduras Country Brief: Property Rights and Land Markets*. Land Tenure Center, University of Wisconsin-Madison: 42p.
- North, D. C. (1991). "Institutions." *Journal of Economic Perspectives* 5(1): 97-112.
- North, D. C. (1995). "The New Institutional Economics and Third World Development." *The New Institutional Economics and Third World Development*. J. Harris, J. Hunter and C. M. Lewis. London, Routledge.
- Nugent, J. B. (1993). "Between State, Markets and Households: A Neoinstitutional Analysis of Local Organizations and Institutions." *World Development* 21(4): 623-632.
- Nuijten, M. (1998). *In the name of the Land. Organization, Transnationalism, and the Culture of the State in a Mexican Ejido*. Wageningen, Agricultural University.
- Nuijten, M. (2003a). "Family Property and the Limits of Intervention: The Article 27 Reforms and the PROCEDE Programme in Mexico." *Development and Change* 34(3): 475-497.
- Nuijten, M. (2003b). "Illegal Practices and the Re-Enchantment of Governmental Techniques: Land and the Law in Mexico." *Journal of Legal Pluralism* 48: 163-183.
- Nuijten, M. (2003c). *Power, Community and the State. The Political Anthropology of Organisation in Mexico*. London, Pluto Press.

- Nuijten, M. (2005). "Power in Practice. A Conceptual-Methodological Approach to Power in Natural Resource Management." *The Journal of Transdisciplinary Environmental Studies* 4 (2):14
- Olinto, P., M. D. Correia, *et al.* (1998). *Land Market Liberalization and the Land Access of the Rural Poor: Lessons from Recent Reforms in Central America*. Research Proposal submitted to The World Bank: 83p.
- Ortega, M. (2000). *La Función Social de la Propiedad. Parte I, II y Conclusiones*. Managua, Nicaragua: 58+52+11p.
- Ostrom, E. (1990). *Governing the Commons. The Evolution of Institutions for Collective Action*. Cambridge, Cambridge University Press.
- Pagiola, S. (1999). *Economic Analysis of Rural Land Administration Projects*?, Environment Department. Land Policy and Administration Thematic Team: 35p.
- Peters, P. E. (2002). The Limits of Negotiability: Security, Equity and Class Formation in Africa's Land Systems. *Negotiating Property in Africa*. K. Juul and C. Lund. Portsmouth, Heinemann: 45-66.
- Peters, P. E. (2004). "Inequality and Social Conflict Over Land in Africa." *Journal of Agrarian Change* 4(3): 269-314.
- Place, F. and P. Hazell (1993). "Productivity Effects of Indigenous Land Tenure Systems in Sub-Saharan Africa." *American Journal of Agricultural Economics* 75: 10-19.
- Place, F., M. Roth, *et al.* (1994). "Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology." *Searching for Land Tenure Security in Africa*. J. Bruce and S. E. Migot-Adholla. Dubuque, Kendall/Hunt Publishing Company: 15-39.
- Platteau, J.-P. (1996). "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment." *Development and Change* 27(1): 29-86.
- Polanyi, K. (1944/2001). *The Great Transformation: Political and Economic Origins of Our Time*. New York, Farrar and Rinehart.
- Proenza, F. J. (2006). *Information Systems and Land Administration*. Rome, FAO: 61.
- Prosterman, R. L. and J. M. Reidinger (1987). *Land Reform and Democratic Development*. Baltimore, The Johns Hopkins University Press.
- Ramos, J. R. (1996). "Poverty and Inequality in Latin America: A Neostructural Perspective." *Journal of Interamerican Studies and World Affairs* 38: 141-157.
- Ravnborg, H. M. (1999). *Developing Regional Poverty Profiles Based on Local Perceptions*. Cali, CIAT (International Center for Tropical Agriculture).

- Ravnborg, H. M. (2002). *Perfiles de pobreza para la Reserva Natural Miraflores-Moropotente, Municipio de Esteli, y el Municipio de Condega, Región I, Las Segovias, Nicaragua*. Copenhagen, Centre for Development Research.
- Ravnborg, H. M. (2003). "Poverty and Environmental Degradation in the Nicaraguan Hillsides." *World Development* 31(11): 1933-1946.
- Reardon, T., J. Berdegue, et al. (2001). "Rural Nonfarm Employment and Incomes in Latin America: Overview and Policy Implications." *World Development* 29(3): 395-409.
- Ribot, J. C. (1998). "Theorizing Access: Forest Profits along Senegal's Charcoal Commodity Chain." *Development and Change* 29: 307-341.
- Ribot, J. C. and N. L. Peluso (2003). "A Theory of Access." *Rural Sociology* 68(2): 153-181.
- Rivas, A. and R. Broegaard (2006). *Demarcación territorial de la propiedad comunal en la Costa Caribe de Nicaragua*. Managua, CIDCA-UCA.
- Roemer, J. E. (2005). *Equality of opportunity*. Manuscript for the New Palgrave Dictionary. <http://faculty.ccer.edu.cn/lingli/pf/jr/1EqualityOpportunityDefinition.pdf>
- Roquas, E. (2002). *Stacked Law. Land, Property and Conflict in Honduras*. Amsterdam, Rosenberg Publishers.
- Rose, C. M. (1994). *Property & Persuasion. Essays on the History, Theory, and Rhetoric of Ownership*. Boulder, Westview Press.
- Rose, H. J. (2011). *Mercado de tierras y seguridad de su tenencia. Serie de estudios especiales*. Managua, FUNIDES: 97.
- Ruben, R. and E. Masset (2003). "Land Markets, Risk and Distress Sales in Nicaragua: The Impact of Income Shocks on Rural Differentiation." *Journal of Agrarian Change* 3(4): 481-499.
- Ruben, R. and M. van der Berg (2001). "Nonfarm Employment and Poverty Alleviation of Rural Farm Households in Honduras." *World Development* 29(3): 549-560.
- Schiff, M. (2004). *On the Inefficiency of Inequality*. Washington D.C., The World Bank.
- Scott, J. C. (1985). *Weapons of the Weak. Everyday Forms of Peasant Resistance*. New Haven and London, Yale University Press.
- Sjaastad, E. and D. W. Bromley (1997). "Indigenous Land Rights in Sub-Saharan Africa: Appropriation, Security and Investment Demand." *World Development* 25(4): 549-562.
- Sjaastad, E. and D. W. Bromley (2000). "The Prejudices of Property Rights: On Individualism, Specificity, and Security in Property Regimes." *Development Policy Review* 18(4): 365-389.

- Stadthagen, M. (2004). Programa de Ordenamiento de la Propiedad (PRODEP). Conferencia: Mejorando el Acceso a la Tierra. Powerpoint presentation, <http://www.learningace.com/doc/4427098/8d0ce4ef76a211643d74322bf1fba74e/stadthagen>
- Stanfield, D., M. Molina, *et al.* (1994). *An Analysis of the Current Situation Regarding Land Tenure in Nicaragua*. Terra Institute, Mt. Horeb, Wisconsin and The Land Tenure Center, University of Wisconsin, Madison: ES5, 32p.
- Stanfield, D. J. (1990). *Rural Land Titling and Registration in Latin America and the Caribbean: Implications for Rural Development Programs*. Madison, Land Tenure Center, University of Wisconsin: 42.
- Stanfield, D. J. (1995). *Insecurity of Land Tenure in Nicaragua*. Wisconsin, Land Tenure Center, University of Wisconsin-Madison: 50.
- Thiesenhusen, W. C. (1995). *Broken Promises. Agrarian Reform and the Latin American Campesino*. Boulder, Westview Press, Inc.
- Thiesenhusen, W. C. (1996). "Trends in Land Tenure Issues in Latin America." In GTZ (1998) *Land Tenure in Development Cooperation*. Berlin, GTZ.
- Thompson, E. P. (1987). Capitalism and the Rule of Law. *The Political Economy of Law. A Third World Reader*. Y. Ghai, R. Luckham and F. Snyder. New Delhi, Oxford University Press: 57-69.
- Thomsen, J. P. F. (1994). "Ny-institutionalismen." *GRUS* 43: 3-21.
- UN-HABITAT (2003). *Handbook on Best Practices, Security of Tenure and Access to Land. Implementation of the Habitat Agenda*. Nairobi, UN-HABITAT.
- UN-HABITAT (2005). *Land Tenure, Housing Rights and Gender - National and Urban Frameworks*. Nairobi, UN-HABITAT.
- Varley, A. (2007). "Gender and Property Formalization: Conventional and Alternative Approaches." *World Development* 35(10): 1739-1753.
- Vogelgesang, F. (1998). "After Land Reform, the Market?" *Land Reform* 1: 21-34.
- Wachter, D. (1996). *Land Tenure and Sustainable Management of Agricultural Soils*. Berne, Centre for Development and Environment (CDE), Institutue of Geograh, University of Berne: 39.
- Wallace, J. and I. Williamson (2006). "Building Land Markets." *Land Use Policy* 23: 123-135.
- Williamson, O. E. (1984). "The Economics of Governance: Framework and Implications." *Journal of Institutional and Theoretical Economics* 140: 195-223.
- World Bank (2002a). Documento de Evaluación del Proyecto Bajo un Crédito Propuesto por la Cantidad de SDR 26.2 Millones (\$ 32.6 Millones en su Equivalente). A la República de Nicaragua para el Proyecto de Administración de Tierra (PRODEP), Unidad de Manejo del Sector en Desarrollo Sostenible Am-

- biental y Socialmente, Unidad de Manejo del País de Centro América, Región Latino Americana y del Caribe: 221.
- World Bank (2002b). *Nicaragua - Country Assistance Strategy*. Washington, DC, World Bank.
- World Bank (2002c). *Project Appraisal document PRODEP*. Washington, DC, World Bank: 178.
- World Bank (2003a). *Nicaragua Poverty Assessment. Raising Welfare and Reducing Vulnerability*. Washington, DC, World Bank: 63.
- World Bank (2003b). *Política y administración de tierras en Nicaragua: Una década de incertidumbre y la necesidad de estabilizar el régimen de propiedad*. Unidad de Desarrollo Rural Región de América Latina, Banco Mundial: 69.
- World Bank (2005). *World Development Report 2006: Equity and Development*. New York, The World Bank and Oxford University Press.
- World Bank (2006). *World Development Report: Equity and Development*. New York, The World Bank and Oxford University Press.
- World Bank (2008). *Nicaragua. Institutional and Governance Review*. Washington DC, The World Bank: 138.
- Yin, R. K. (1988). *Case Study Research. Design and Methods*. Newbury Park, Sage Publications.
- Zimmerman, F. and M. Carter (2003). "Asset Smoothing, Consumption Smoothing and the Reproduction of Inequality under Risk and Subsistence Constraints." *Journal of Development Economics* 71: 233-260.

