

Will Formalizing Property Rights Reduce Poverty in South Africa’s “Second Economy”? Questioning the Mythologies of Hernando de Soto

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We must build a better understanding of the complexity of multiple, informal tenures within the extra-legal sector and acknowledge that they are fundamentally different from the individualized, exclusive, private property systems of Western capitalism.

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Introduction

South Africa has among the world’s highest levels of inequality, and the gap between rich and poor is widening. According to some analysts, a key contributor is the absence of formal property rights to assets owned by the poor. According to economist Hernando de Soto, capitalism can be made to work for the poor through formalizing their property rights in houses, land, and small businesses. This approach resonates strongly in South Africa, where private property is dominant and works well for those who inhabit the “first economy.” Yet there is strong opposition from NGOs, social movements, and others to de Soto’s single-minded focus on individual title, formalization, and credit as solutions to poverty. This brief uses evidence from South Africa to suggest that many of de Soto’s policy prescriptions may be inappropriate for—and even harmful to—the poorest and most vulnerable.

De Soto and His Critics

De Soto’s *The Mystery of Capital*, focuses on formal recognition of “extra-legal” property. He argues that the poor hold huge assets in the form of houses, buildings, land, and small businesses. The problem is that the holdings are not adequately documented and thus “cannot readily be turned into capital, cannot be traded outside of narrow local circles..., cannot be used as collateral for a loan and cannot be used as a share against an investment.” In the West, by contrast, every building, piece of land, and equipment is documented as part of a “vast hidden process” that endows them with the potential to act as capital and create additional value. What is required across the developing world, de Soto says, is a program to “capitalize the poor” by legalizing their extra-legal property.

While appealing to many, de Soto’s ideas and policy prescriptions, according to a significant body of scholars and land reform practitioners, oversimplify the informal economy and associated property relations: he assumes that “formal property” means individual, private property; he does not adequately acknowledge that numerous titling programs have failed to produce the results he predicts; he fails to acknowledge the different principles that often inform extralegal property systems in rural areas and informal settlements; and he skirts the challenges in adjusting legal systems to accommodate other property systems.

Securing Property Rights in Postapartheid South Africa

Joe Slovo Park, Cape Town

In 1990 a group of households occupied part of a well-located, vacant piece of land in Cape Town that was owned by a parastatal company. After years of negotiation, the Joe Slovo Park housing project was implemented, building 936 houses using a housing subsidy. In line with national policy, the form of tenure granted was individual ownership. However, ownership was registered in the name of only one household member and the allocation process was biased. New property owners became liable for paying rates and service charges that many were unable to afford. Despite the titling program, almost all property sales were informal, and some who legally owned houses were unable to occupy them, as street committees had decided who should be the occupier. Some socioeconomic impacts have been negative: informal economic activities have been displaced and social networks were disrupted as the allocation of plots ignored kinship ties and social networks. The case study reveals that individual ownership can sometimes result in a decrease in de facto security of tenure and a negative impact on socioeconomic status. It also provides clear evidence of processes of informal resale and “reversion” to informality.

Ekuthuleni, KwaZulu-Natal

In this rural community of 224 households, residents live on state-registered land that they wish to formally acquire through land reform and hold in collective ownership. Most households survive on welfare grants supplemented with subsistence agriculture and natural resources harvested from the commons. Community members say they want to hold land in common to “prevent strangers from coming in and causing conflicts” and because they cannot afford maintaining individual title.” Ekuthuleni clearly reveals the limitations of the dominant system of property rights, which requires that an individual rights holder be identified; describes the exclusive rights of the rights holder; and depicts the boundaries of land parcels through beaconing and geo-referencing. But in Ekuthuleni property ownership is never exclusive to one person and is always shared by

a changing number of family members. The closest current law can come to accommodating this would be a family trust, but even that would not capture the nature, content, or governance of family- and community-based land rights. The Ekuthuleni case reveals that there is often a fundamental incompatibility between property rights in community-based systems and the requirements of formal property. Formalization of property rights transforms and alters both the nature of the rights and the social relations and identities that underlie them.

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Alternative Approaches

Formalization via integration into the existing system of private property is not the answer for large numbers of people. Much more attention should be paid to supporting existing social practices that have widespread legitimacy rather than expensive solutions that try to replace them. Some features of

extra-legal property regimes found in South Africa’s informal settlements and communal areas provide a key to the solutions: their social embeddedness; the importance of land and housing as assets that help secure livelihoods; the layered and relative nature of rights; and the flexible character of boundaries. Approaches based on Western property regimes fail to acknowledge and respond to these features.

Second, more attention should be focused on the complex relationship between property rights, development, and state investment and administration. In many developing countries the state lacks the capacity to provide the poor with formal housing and associated infrastructure and services. Attempts to address the problem through one-off solutions involving high levels of state investment need to give way to a more nuanced, incremental, and integrated development approach that would extend infrastructure, services, and economic opportunity linked to legal recognition of diverse tenure forms.

Third, the enormous inequities in property ownership inherited from the apartheid era remain a fundamental constraint on the livelihoods of the poor. Poverty reduction policies must therefore include a central focus on large-scale redistribution programs.

Fourth, land reform laws that seek to secure the rights of occupiers without necessarily transferring full ownership to them remain important but are proving inadequate. Property rights of people on farms need to be strengthened, and government needs to allocate resources for their protection. Similar arguments can be made for people subject to evictions from urban and peri-urban land.

For these suggestions to take root, reform of the dominant legal and administrative frameworks for holding and regulating property are urgently required, so that the principles that govern extra-legal property in rural and urban informal settlements can receive legal recognition and practical support. This suggests that tenure reform requires a more rigorous and far-reaching approach than the term “formalization” implies.

Conclusion

Policy makers must resist the temptation to seek simplistic solutions to poverty. Poverty reduction efforts of the scale required in South Africa and elsewhere require a great deal more than the securing of property rights in the manner prescribed. Tenure reform remains necessary and important, but is far from sufficient. In addition, it must be recognized that restructuring the dominant frameworks of property law and administration, so that they work to support the interests of the poor, is no easy task. We must build a better understanding of the complexity of multiple, informal tenures within the extra-legal sector and acknowledge that they are fundamentally different from the individualized, exclusive, private property systems of Western capitalism.

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Further reading:

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Royston, Lauren. 2002. 'Security of Tenure in South Africa: Overview of Policy and Practice', in: Alain Durand-Lasserve and Lauren Royston, (eds) Holding Their Ground. Secure Land for the Urban Poor in Developing Countries, London: Earthscan.

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