

Land rights/ De Soto solution not for SA

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Renowned economist Hernando de Soto says he has found an answer to global poverty. “Let’s give poor people individual titles to land so they can access credit, loans, and investment, and transform it into live capital,” he once said. Powerful words by an expert whose ideas have been packaged and peddled all over the developing world by international development agencies.

In South Africa, where land ownership is a controversial issue, the notion of providing individual title to land – previously owned through customary or collective land rights – has become fashionable in development circles. This approach, trumpeted by de Soto, is intended to “capitalize the poor,” as in the West where every piece of land is documented as part of a vast legal process that endows owners with the potential to use it as collateral or capital.

Land titling in South Africa has engendered strong opposition from NGOs, social movements, and some land rights experts. Why aren’t they celebrating De Soto’s prescriptions?

Because his policy prescriptions oversimplify the complexities of informal economy and land rights. Research by the International Food Policy Research Institute (IFPRI) and collaborators has demonstrated that this approach can actually weaken land rights and marginalize vulnerable people.

While South Africa has made great progress in many aspects of development, the country has one of the world’s highest levels of inequality, and the gap between rich and

poor is widening. De Soto claims that this inequality is caused by the absence of formal rights to assets owned by the poor. He insists that capitalism can be made to work for the poor through formalizing their property rights in houses, land, and small businesses. Unfortunately, the reality on the ground is different.

In Ekuthuleni, a rural community of 224 households in KwaZulu-Natal, residents live on state-registered land that they wish to formally acquire through land reform and hold in collective ownership. Community members say they want to hold land in common to “prevent strangers from coming in and causing conflicts,” and because they cannot afford to procure individual titles. Most households survive on welfare grants supplemented with subsistence agriculture and natural resources harvested from the commons.

A study by the Association for Rural Advancement (AFRA) suggests that it is not possible to secure collective land rights in Ekuthuleni for these purposes within the current legal, technical and institutional frameworks that follow the Western model. This is because individual ownership doesn't make sense in this context. In Ekuthuleni, property ownership is never exclusive to one person and is always shared by a changing number of family members. The fields are used exclusively at some times, jointly at others, depending on the season. People borrow them from one another – sometimes for generations, until it's no longer clear whose field it actually is. Boundaries between properties are also not clear. Some household boundaries follow rivers, valleys, ridges and indigenous trees. There are few straight lines and access to plots is via footpaths that follow contours or cattle-made paths and criss-cross other people's land.

The experience of 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. This case reveals that there is often a fundamental incompatibility between property rights in community-based systems and the requirements of individual, private property. Individualization of property rights transforms and alters both the nature of the rights and the social relations and identities that underlie 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. 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.

Further, 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.

Meaningful reform requires a rigorous and far-reaching approach. 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 by de Soto and his followers. Tenure reform remains necessary and important, but is far from sufficient. Much more attention should be paid to supporting existing social practices that have widespread legitimacy rather than expensive Western solutions that try to replace them.

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