Breathing life into dead theories about property rights: de Soto and land relations in rural Africa

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Abstract
Presumption of a direct causal link between formalisation of property rights and economic productivity is back on the international development agenda. Belief in such a direct causal relationship had been abandoned in the early 1990s, following four decades of land tenure reform experiments that failed to produce the anticipated efficiency results. The work of Hernando de Soto has provided the springboard for this revival. De Soto argues that formal property rights hold the key to poverty reduction by unlocking the capital potential of assets held informally by poor people. De Soto’s justifications of formal title do not differ much from justifications that were advanced for ambitious land tenure reforms in various sub-Saharan African countries, starting with Kenya in the 1950s. Introduction of formal title in the African areas was seen as the key to solving problems of land degradation and improving agriculture by providing farmers with security of tenure that would create incentives for further investment in the land. This paper argues that there are five shortcomings in both the old and contemporary arguments for formalisation of land title. First, legality is constructed narrowly to mean only formal legality. Therefore legal pluralism is equated with extra- legality. Second, there is an underlying social evolutionist bias that presumes inevitability of the transition to private (conflated with individual) ownership as the destiny of all societies. Third, the presumed link between formal title and access to credit facilities has not been borne out by empirical evidence. Fourth, markets in land are understood narrowly to refer only to ‘formal markets’. Fifth, the arguments in favour of formalisation of title as the means to secure tenure ignore the fact that formal title could also generate insecurity. Keywords: property rights; land relations; agriculture; poverty reduction; land tenure; Africa.

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By then, South Africa had dismantled apartheid for good. Mandela and de Klerk won the Nobel Peace Prize in 1993 for their cooperation, and a truth and reconciliation commission began investigating human rights abuses and memorializing those abuses. The transition was not entirely non-violent. But by its end, South Africa had forged a new reality: one that owed its existence to the continued resistance of an oppressed racial majority. FACT CHECK: We strive for accuracy and fairness. But if you see something that doesn't look right, click here to contact us! HISTORY reviews and updates its content regularly to ensure it is complete and accurate. Sign up for more history! Nyamu-Musembi C (2006) Breathing life into dead theories about property rights: de Soto and land relations in rural Africa. Institute of Development Studies, Working Paper 272Google Scholar. Okoth-Ogendo (2014) Legislative approaches to customary tenure and tenure reform in East AfricaGoogle Scholar. Ouedraogo H, Toulmin C (1999) Land tenure, poverty and sustainable development in West Africa: a regional overview. Cite this chapter as: Munyuki-Hungwe M., Rukuni M. (2020) Overview of Main Challenges with Regards to Land Tenure in Africa: Factual and Legal Aspects. In: Yahyah H., Ginzky H., Kasimba E., Kibugi R., Ruppel O. (eds) Legal Instruments for Sustainable Soil Management in Africa. International Yearbook of Soil Law and Policy. Partly inspired by Mr de Soto, over the past two decades there has been a flurry of attempts to map and parcel land in the developing world. Between 2004 and 2009 the World Bank committed to 34 land-titling and registration projects worth more than $1bn, compared with three between 1990 and 1994. Yet the potential of property rights remains largely unrealised, especially in Africa. Urban elites replaced white colonists in state institutions. Customary systems in rural areas endured. Only towards the end of the 20th century did the notion of formalising more of the land take off. Despite state landlordism, promising reforms continue. Land-rights lawyers are campaigning for governments to obey their own laws. Rwanda is trying to reverse the slide into informalisation.

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