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**MYSTERIES AND MYTHS:
DE SOTO, PROPERTY AND
POVERTY IN SOUTH AFRICA**

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EXECUTIVE SUMMARY

Hernando De Soto's influential book *The Mystery of Capital* offers a simple yet beguiling message: capitalism can be made to work for the poor through formalising their property rights in houses, land and small businesses. Yet this paper presents evidence from South Africa to suggest that many of de Soto's policy prescriptions may be inappropriate for the poorest and most vulnerable, and could have negative impacts on their security and well-being. The authors draw on case studies and the literature to show that:

- Titling does not necessarily increase tenure security or certainty; in many cases it does the opposite.
- Formalisation of property rights does not promote lending to the poor. Rather than turning their property into 'capital', formalisation could increase the rate of homelessness.
- Formalisation through registered title deeds creates unaffordable costs for many poor people.
- Informal property systems currently support a vibrant rental market; formalisation could undermine this, producing unintended negative consequences for the poor.
- 'The poor' are not homogeneous and those in the extra-legal sector should be differentiated according to income and vulnerability status.
- Such an approach does not mesh with rural common property resources which are never exclusive to one person, and which have fluid boundaries and flexible rules.

Policy makers must resist the temptation to seek simplistic solutions to poverty of the kind offered by de Soto. Poverty reduction efforts of the scale required in South Africa and elsewhere require a great deal more than securing property rights in the manner prescribed. Tenure reform remains necessary and important, but is far from sufficient. In addition, it must be recognised 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, in all their diversity, and acknowledge at the outset that they are fundamentally different to the individualised, exclusive, private property systems of Western capitalism.

MYSTERIES AND MYTHS: DE SOTO, PROPERTY AND POVERTY IN SOUTH AFRICA

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INTRODUCTION

High levels of poverty and inequality persist in democratic South Africa. This is despite a decade of government policies and budgetary realignments designed to address the legacies of apartheid and promote steady economic growth. Some policies have been relatively successful: access by the poor to clean water, electricity and sanitation has improved dramatically, and more people now receive social grants. But South Africa has the second highest level of inequality in the world after Brazil, and the gap between the rich and the poor appears to be widening.

It is increasingly clear that growth alone will not reduce poverty and inequality, and that improved social services and grants do not address the fundamental problem: entrenched structural features of the economy. The South African Presidency has described the country as having 'two economies'. The first is an advanced, sophisticated economy, based on skilled labour, which is becoming more globally competitive. The second is an informal, marginalised and unskilled economy, populated by the unemployed. The government is now focusing on transferring resources to 'the marginalised', through expanded public works programmes, micro-credit for entrepreneurs, skills development and agrarian reform.

For some analysts a key problem is the absence of formal property rights to the assets owned by the poor. A recent African National Congress discussion document suggests that failure to provide title deeds to land and houses 'sterilises the enormous value of these existing assets, which could so easily be turned into collateral to secure access to capital' (ANC, 2005). Government's new housing policy document *Breaking New Ground* (Dept of Housing, 2004) complains that the 1.6 million new houses funded by the state since 1994 have not become 'valuable assets' for the poor, and suggests that improved access to title deeds will help the poor participate in residential property markets.

These examples demonstrate the increasing influence of Peruvian economist Hernando de Soto and his book *The Mystery of Capital* (2000). De Soto offers a simple yet beguiling message: capitalism can be made to work for the poor by formalising their property rights in houses, land and small businesses. This approach resonates strongly in the South African context, where private property is dominant and works well for those who inhabit the ‘first economy’. At the same time, international support for de Soto’s ideas appears to be increasing. A High-level Commission on the Legal Empowerment of the Poor was launched this month, hosted by the United Nations Development Programme, and co-chaired by de Soto.

However this initiative is generating strong opposition from NGOs, social movements and bodies such as the International Land Coalition, which contest the single-minded focus on individual title, formalisation and credit as solutions to poverty (www.desotowatch.net). In this paper we analyse evidence from South Africa which suggests that many of de Soto’s policy prescriptions may be inappropriate for the poorest and most vulnerable in our society, and could have negative rather than positive impacts on their security and well-being. We then offer some alternative approaches to securing tenure and property rights.

BRINGING ‘DEAD CAPITAL’ BACK TO LIFE

The Mystery of Capital is a call for a global reform to overcome poverty and underdevelopment. Its focus is the formal recognition of ‘extra-legal’ property. De Soto argues that the poor of the world living in shantytowns and backward rural areas hold assets worth trillions of dollars in the form of houses, buildings, land and small businesses. The problem is that their rights are not adequately documented, and hence ‘these assets 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’. Existing legal and administrative systems to register property or set up a business are bureaucratic and time-consuming and create insuperable barriers to the formal recognition of property rights. As a result the assets of the poor are ‘dead capital’.

In the West, by contrast, ‘the mysteries of capital’ have been solved; every building and every piece of land and equipment is documented and is part of a ‘vast hidden process that connects all these assets to the rest of the economy’. This allows these assets to become *capital*, with the potential to create additional value. Assets are used as collateral for credit and to create securities and secondary markets.

They also provide an ‘accountable address’ for collecting debts and taxes (thus forming a firm basis for public services utilities). De Soto argues that what is required across the developing world is a programme to ‘capitalise the poor’ by legalising their extra-legal property.

Extra-legal property systems, says de Soto, are not chaotic. Rather, they are based on local agreements and detailed understandings of who owns what; a localised ‘social contract’. But these rules are not codified or standardised and cannot be applied outside their area of origin. Local systems must therefore be ‘re-engineered’ into one national, formal property social contract. This involves the reform of existing legal and administrative systems to accommodate ‘extra-legal’ property, and the creation of a single, integrated regulatory framework.

What de Soto’s critics say

De Soto’s ideas have mesmerised high-ranking policy makers and politicians. But a significant body of scholars and land reform practitioners is concerned that his analyses and policy prescriptions are highly misleading.

Critics question his over-simplification and mystification of capitalism, the informal economy and associated property and power relations. His primary argument, that economic growth is fuelled by property rights which enable the release of credit, is not seen as a plausible response to global poverty.

For some critics, rather than ‘empowering the poor’, the formalisation of property is instead ‘machinery for transferring property from small owners and concentrating it into larger and larger hands’ (Mitchell, 2004). Durand-Lasserve (2005) describes how titling programmes in informal urban contexts become ‘market-driven displacements’; and in rural areas such programmes allow traditional elites to get richer by selling land for development. Durand-Lasserve suggests that these processes of land attrition have very negative effects on the poor, forcing them evermore towards urban squatter settlements. Other critics provide evidence that converting property into capital encourages speculation in poor housing and encourages a renting class. This undermines the use of property for investment by smallholders in productive activities, such as crops or livestock (Mitchell, 2004).

Thus many of de Soto’s critics stress the importance of property’s non-market functions, such as securing livelihoods and reinforcing social identity, social continuity and social security. Numerous studies in Africa have found no positive correlation

between title and investment, and if anything, investment in insecure tenure is often a means to securing the land (Chimhowu and Woodhouse, 2005). In these situations, critics argue, other types of tenure than exclusive private property remain more secure and certain.

Although de Soto rightly advocates the ‘adjustment’ of legal frameworks to accommodate ‘extra-legal’ property, in reality his policies boil down to converting informal property into private property through systematic titling. While he acknowledges the failure of previous titling programmes in the developing world, he does not convince us that these failures will be avoided in future formalisation programmes. De Soto’s work almost completely ignores scores of studies on African customary property regimes showing their diverse responses to current pressures on land. These responses may include individualisation, privatisation and marketability, but not necessarily along the linear path suggested by de Soto.

Neither is it clear how de Soto’s policy prescriptions could be applied to rural common property resources (which are often governed not by informal rules but by highly formalised practices), since his focus is on individual land parcels. By portraying the poor or ‘extra legal’ constituency as homogenous and undifferentiated, he also misses the implications of market reforms for those who spontaneously engage with local markets¹ already, albeit without formal title or credit, and those who own virtually no assets at all.

However, the biggest problem for critics is that de Soto’s main claims rest, not on ‘security’ of tenure, but on the capitalisation of property to allow its exchange value to be realised in the form of credit. A number of empirical studies show that even where property and credit markets do emerge, the credit effect in most cases fails to materialise. Even where a positive correlation between titling and credit was found (e.g. Thailand), land was not being used as collateral (Woodruff, 2001). The limiting factor is that poor people’s property is seldom collateralised and informal credit is the poor’s first choice. Mortgage finance has been found to be far too risky for banks (e.g. when prices are too low and insurance and enforcement mechanisms too weak to justify the risk) as well as for the property holders who, even if they do seek title, will not risk it in taking out loans (Mitchell, 2004).

1. Chimhowu and Woodhouse (2005) call these local markets ‘vernacular’ or ‘disguised’ markets and stress the importance of understanding their operation for market and land tenure reforms.

De Soto rightly suggests that land administration institutions should evolve to accommodate informal property rights, but his assumptions about how formal institutions can accommodate property systems other than individual private property are over-simplistic. Hunt (2004) showed the unforeseen institutional consequences of state intervention in customary land tenure regimes in Africa when the institutional complexities of land tenure reform were not fully grasped.² Von Benda Beckmann (2003) reminds us that converting rights through formalisation ‘changes’ the nature of the rights and can exclude weaker rights (e.g. women’s rights) under customary laws. It is not at all clear how formal private property systems can be designed to avoid this problem.

Most critics agree that titling probably is useful to elite and middle-income groups who can afford financial leverage, risk and real estate markets. For the poor, whose concerns are more about day-to-day survival, direct access to livelihood and keeping costs down (Gravois, 2005), de Soto’s prescriptions, far from being empowering, may provoke their further descent into poverty.

DE SOTO AND THE SOUTH AFRICAN CONTEXT

Although de Soto correctly identifies weaknesses in the way current legal and ‘extra-legal’ systems limit poor people’s access to resources in South Africa, experience and evidence indicate that many of his proposals would not work here.

Property rights in post-apartheid South Africa

A key legacy of apartheid was weak and insecure property rights for black South Africans in both urban and rural areas. Many new policies have been put in place since 1994 to address the problem, including the abolition of all racially based legislation, amendments to existing laws, and ambitious land reform and housing laws and programmes. About two million households live in informal settlements or in backyard shacks, and in rural areas at least 2.5 million households hold land as part of ‘communal tenure’ regimes.

Two contrasting approaches to securing property rights underlie these new policies and laws. The first is to open up the world of private property for those denied access to it under the discriminatory regimes of the past. Thus beneficiaries of state-funded housing are entitled to full private ownership and registered title deeds, and

2. These included the failure to anticipate impacts on public authority budgets, especially *urban* local authorities; failure of commercial bank lending to agriculture; conflict of interests between banks, potential borrowers and protected dependants; gender equity conflicts; and the scale of direct implementation costs.

land reform beneficiaries can own land individually or collectively. The second approach is to secure people's rights of occupation and use *without* conferring ownership, including occupation of land owned by others (for example, commercial farms, or state land). This qualifies and constrains the 'absolute' rights of private ownership.

However, according to current state policy, the securest form of tenure is private property recognised via the system of national registration, whether it is individually owned or group owned. The formal property system in South Africa requires compulsory national registration of all land parcels in order to recognise full ownership rights. Policies, laws and institutional frameworks relating to land use, land management, development planning and service delivery generally assume that surveyed land parcels will be privately used, owned and registered.

The act of registration is the culmination of a number of specialised technical and administrative processes (among the most rigorous in the world) that feed into the registration system. These include formal planning, surveying and conveyancing to prepare property for registration and maintain its technical and legal integrity. This enables the formal property system to be linked to, and embedded in, multiple institutions including the regulation of land use, the delivery of and payment for state services and recourse to a range of private services. The formal cadastre has thus become a multi-purpose instrument serving many purposes. The coherence of the formal land management system as a whole is sustained by the concept and practice of land parcellisation, i.e. the notion that for each delineated property there is a corresponding and current owner (individual, corporate or state) (Kingwill, 2005).

This inter-connected system of property recognition via a national land registry linked to surveyed land parcels does not mesh well with property that is governed by customary or adapted local institutions. Such property is not based on surveyed boundaries, single estate ownership and registration. Instead it involves social membership and multiple layers of rights where several users may have access to different resources on the land simultaneously according to different social and generational cycles (Cousins, 2005). These features create social and territorial boundaries that are somewhat dynamic and which tend to be inclusive rather than exclusive. This older pattern of landholding, though adaptive, is seldom abandoned when registration drives are introduced, even with group titling. Private transfers do not entirely replace customary practices, and the overlapping tenure systems lead to considerable institutional uncertainty with regard to authority. This has

been evident in studies of land reform communities (Cousins and Hornby, 2000). Even in situations where titling does ‘stick’, out of date titles (more the norm than the exception) create legal and administrative confusion and social tension (King-will, 2005).

It is clear that South Africa’s new land policies, while making important inroads into the way in which property rights were formerly constructed, continue to face serious challenges. The two case studies below illustrate the limitations faced by new legal frameworks in providing meaningful tenure security for the poor. One of the unsolved problems is that the formal legal construct of ownership in South Africa, which has been shown to disadvantage the poor, still remains.

Joe Slovo Park, Cape Town

In 1990 a group of households occupied part of Marconi Beam, a well-located vacant piece of land in Cape Town owned by a parastatal company. The area was then declared a temporary ‘transit’ area. After years of negotiation, the Joe Slovo Park housing project was implemented in 1997–1998, next to the informal settlement. The project built 936 houses, using a housing subsidy worth R15,000 per beneficiary (Smit, 2000).

In line with national policy, the form of tenure granted was individual ownership. However, for many people this meant a decrease in security of tenure. Whereas previously family members had tenure rights linked to kinship and responsibilities, ownership was now registered in the name of only one member of each household. This reduced security for women and members of the extended family, as the ‘owner’ could claim new legal rights to use and dispose of the property. Also, the allocation process was biased: some long-standing residents were never allocated houses, while community leaders allegedly received more than one house.

The new property owners also became liable to pay rates and service charges, then around R200 per month. Many were unable to afford this, although the situation has subsequently improved with the introduction of rebates. Five years after the project was completed, about 30% of the new houses had been sold (Jacobsen, 2003). But almost all sales of properties were informal, and the formal land registration system had broken down. People who legally owned houses were sometimes unable to occupy them, as street committees had decided who should be the occupier, and in some cases houses had been rented out by people who did not own them.

Some socio-economic impacts have also been negative. Informal economic activities have been displaced (and sometimes relocated to nearby informal settlements). Social networks were disrupted as the allocation of plots ignored kinship ties and social networks. The small size of the houses also meant that landlords were unable to accommodate extended family members or tenants, upon whom the landlords had relied for rental income (Yose, 1999).

This case reveals that individual ownership can sometimes reduce *de facto* security of tenure and undermine socio-economic status. It provides clear evidence of how such settings often ‘revert’ to informality. From a policy perspective, it shows that intervention must differentiate ‘the poor’ in terms of affordability/income and vulnerability; allocation processes must be fair and transparent; and livelihood strategies must be accommodated.

Ekuthuleni, KwaZulu-Natal³

Ekuthuleni is a rural community of 224 households in KwaZulu-Natal. Residents currently live on state-registered land that they wish to formally acquire through land reform and hold in collective ownership, in order to secure their property rights and also receive the benefits of public and private services. The community includes farmers engaged in small-scale fruit and crop production on a hectare or less, to forestry farmers on 5–10 hectares. Most families, however, survive on welfare grants, and supplement these with subsistence agriculture and natural resources harvested from common land. Elderly women head many of these families. Community members say they want to hold land in common because ‘we must have some group control here to prevent strangers from coming in and causing conflicts’, and because ‘we cannot afford the costs of maintaining individual title’.

These characteristics highlight the limitations of the formal system of property rights. This requires three criteria to be met before rights can be registered: an individual rights holder must be identified; the exclusive rights of this rights holder must be precisely described; and the boundaries of land parcels must be accurately depicted through beaconing and geo-referencing. In Ekuthuleni, property ownership is never exclusive to one person. It is always shared by a number of family members: those living now, some who are deceased and some yet to be born. This is a concept that South African property law cannot easily accommodate. The closest current law can come to doing so is through establishing a family trust. But

3. Documented in Hornby, 2004

this option is inappropriate to Ekuthuleni's inhabitants: it does not capture the nature, content and governance of family and community-based land rights. There are many nuanced layers of rights in Ekuthuleni (of access, use, transactions and decision-making) and it would be extremely difficult to precisely describe these in title deeds.

In relation to boundaries, people continuously adapt their land boundaries to fit social needs, such as to temporarily accommodate a relative in distress or to resolve conflicts over rights. Boundaries are flexible and adaptable in the interests of social harmony, in a context where land provides access to vitally important livelihood resources.

The Ekuthuleni case reveals that there is often a fundamental incompatibility between property rights in community-based systems and the requirements of formal property. In both urban settlements and rural communities there is the additional problem that their 'extra-legal' property rights do not fit the assumptions of mainstream systems of planning, service delivery and land management. This makes it difficult for them to benefit from planned development.

EVIDENCE FROM OTHER STUDIES

A growing number of studies suggest that the key features and processes found in Joe Slovo Park and Ekuthuleni are typical of wider realities in urban and rural South Africa (Mongwe, 2004; Cross, 1994). A recent study of township property (Finmark Trust, 2004) found a weak secondary market for houses. Most homeowners were not interested in a formal sale because their incomes were too low to move up the housing ladder, and most viewed their homes as a family asset rather than as 'capital'. Over 90% of respondents felt reasonably secure, even without title deeds. None of those who operated enterprises from their homes had a mortgage in the name of the business. Tomlinson (2005) suggests that a strong focus on title deeds is inappropriate, given the real constraints of affordability and the limited availability of housing stock.

Studies in rural areas show that shared and relative rights are characteristic of most communal areas (Alcock & Hornby, 2004; Cousins, 2005). Most people enjoy *de facto* security of tenure, but their rights can be vulnerable to abuse by both traditional authorities and elected bodies. Access to services and infrastructure is constrained by lack of formal recognition of property rights. The strongest demand on the ground is for security of rights of families and individuals, but within a system that secures access to shared resources (Claassens, 2003).

To summarise, our analysis suggests that key elements of de Soto's arguments have limited use in South Africa:

- *Titling does not necessarily promote increased tenure security or certainty* and in many cases does the opposite.
- *Formalisation of property rights does not promote lending to the poor*: banks do not lend to the poor because of the high risk of non-repayment, the low value of their assets, and relatively high transaction costs. Households earning less than around R3,500 per month are unlikely to get access to formal credit using land or housing as collateral, whether or not they hold title deeds to their homes and land.
- *Rather than turning their property into 'capital', formalisation could increase the rate of homelessness*: if banks were persuaded to lend to the poor using their assets as collateral, foreclosure of loans would result in repossession. Poor households understand this.
- *The urban and rural poor already have some access to credit*, through informal mechanisms such as loans from family members. They try to avoid creating a long-term debt burden, and are averse to forms of borrowing that might lead to loss of important assets. Entrepreneurs do, however, want improved access to medium-sized loans for which informal credit is unsatisfactory.
- *Formalisation through registered title deeds creates unaffordable costs for many poor people*: registered properties become subject to building regulations, boundaries must be surveyed, services must be paid for, and rates must be paid to local government.
- *Informal property systems currently support a vibrant rental market*. It is estimated that 78% of tenants in informal rental units earn less than R1,500 per month (Shisaka, 2003). While lack of regulation of this sector might have some negative consequences for economic mobility and the protection of rights (see Chimhowu and Woodhouse, 2005), formalisation, by pushing up costs, could undermine this market.
- *Formalisation via title deeds for individual property can very quickly become inaccurate*. Many 'extra-legal' land tenures defy division into individual estates governed by principles of exclusive access and control. Registers based on these assumptions quickly become outdated; similarly, land-use plans that do not reflect

practice on the ground become meaningless.

- *‘The poor’ are not homogeneous and those in the extra-legal sector should be differentiated according to income and vulnerability status.* Formalisation via title deeds may be affordable and appropriate for some, especially those who are upwardly mobile, but can have negative impacts on the security and well-being of the unemployed and other marginalised groupings.

Rather than being a ‘silver bullet’ for poverty reduction, formalisation of property rights within dominant legal and administrative frameworks is relevant only for those already on the way out of poverty. Innovations by government and the private sector in relation to low-cost methods of property titling and microcredit schemes are welcome and should be encouraged, but these have clear limits.

ALTERNATIVE APPROACHES

For many rural and urban households, the lack of legal recognition of their property rights can result in insecurity of tenure and can also hamper development. Laws and policies to increase tenure security and promote investment and development are thus required. If formalisation via integration into the existing system of private property is not the answer for large numbers of people, then what is?

There are many interesting and important innovations in tenure reform underway across the developing world. These can provide pointers for the future. Box 1 contains some examples from South Africa. Underlying these multi-faceted attempts to pilot innovative approaches in South Africa has been a singularly successful legal intervention: the *Interim Protection of Informal Land Rights Act* (IPILRA, Act No 31 of 1996). This law was intended as a short-term measure to arrest dispossession of rights of customary-type occupation on state-owned land in the former homelands. It has also protected existing rights in a manner that recognises and legalises informal land occupation. While IPILRA does not provide for a new land tenure and administration system, the concept of ‘adverse possession’ has helped to shape a new understanding of land rights not covered by the common law concept of ownership. Rights holders cannot be deprived of their land rights without their consent other than by formal expropriation, an action that requires the quantification of their rights and in effect means these rights achieve a value previously unrecognised in law. These laws have provided a base for developing a concept of ownership through possession that diverges from the dominant common law concept of ownership in South Africa.

Box 1: Some South African innovations in tenure reform

The New Rest site is an informal settlement in Cape Town whose residents, after lengthy negotiations, are working with the local authority to upgrade their services. The City of Cape Town and representatives of the New Rest community decided to explore a new approach to tenure upgrading. A phased approach to ownership was advocated. This involves property rights which are very close to formal ownership, but where the City retains the nominal formal ownership. Rights holders receive substantive tenure rights, although not quite full ownership. This land administration system is more flexible and cheaper than formal ownership. Rather than registration in the central Deeds Registry, the City holds and maintains records, which are also locally managed and controlled by street committees and neighbours. The community thus monitors new admissions and departures. It is user friendly, flexible, affordable and incorporates local tenure practices. Contracts between the Council and the rights holders reflect both the local reality and local practices, and fulfil the needs of the formal system (Walker, 2005). The legal arrangements for this tenure system are currently being prepared.

In Ekuthuleni, the case study discussed above, a land rights NGO, AFRA, has been helping the community to develop legal, affordable and accessible records as an alternative to the inflexible registration system offered by current state policy. Working at multiple levels (social, technical and legal), and with diverse stakeholders (government, private sector and NGOs), some important milestones have been achieved. Land holdings were demarcated on colour orthophotos showing existing local tenure arrangements. A recording system was built around local practice and knowledge. Spatial data was digitised using modern geo-spatial technology to produce mapped layouts of land rights and land use. However, without an appropriate legal framework to provide state support to local land administration systems, it is difficult to achieve the community's desired goal of legally recognised land rights. Thus AFRA and the community are seeking to pilot their approach under the government's *Communal Land Rights Act* (Act No 11 of 2004); agreement has yet to be reached.

LESSONS AND CONCLUSIONS

Much more attention should be paid to supporting existing social practices that have widespread legitimacy, rather than to developing expensive solutions to replace them. Some features of 'extra-legal' property regimes found in South Africa's informal settlements and communal areas provide the keys to the solution. These include: their social embeddedness; the importance of land and housing as assets that help to secure livelihoods; the layered and relative nature of rights; and, in some rural contexts, the flexible character of boundaries. Approaches based on Western property regimes fail to acknowledge and respond to these features, and can lead to distortions that negatively affect the poor—even when this occurs within streamlined, more efficient and lower cost administrative systems. The risks of damage are thus as important as the risks of failure.

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, and indications are that the problem is increasing exponentially. Attempts to address the problem through ‘one-off’ solutions involving high levels of state investment, such as systematic formalisation of property rights, need to give way to a more nuanced, incremental and integrated development approach. This would help extend infrastructure, services and economic opportunity—linked to legal recognition of diverse tenure forms—but without having to impose a country-wide property register.

The enormous inequities in property ownership inherited from the apartheid era remain a fundamental constraint to the poor. Poverty reduction policies must therefore centre on large-scale redistribution programmes. The snail’s pace of current land redistribution efforts is not politically sustainable; new policies are urgently needed and may now be in the pipeline. Land reform laws such as the *Extension of Security of Tenure Act* and the *Land Reform (Labour Tenants) Act* that seek to secure the rights of occupiers without necessarily transferring full ownership to them, remain important but are proving inadequate in their present form. Research indicates that nearly one million farm dwellers have been evicted in the decade since 1994 despite these Acts (Wegerif *et al.*, 2005). Property rights of people on farms thus need to be strengthened and the government needs to allocate resources for their protection. Similar arguments can be made for people continuing to be evicted 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 is urgently required, so that the principles that govern ‘extra-legal’ property in rural and urban informal settlements, and which often emerge within land reform projects, can receive legal recognition and practical support. This is the major focus of tenure reform initiatives currently being undertaken across Africa, Latin America and Asia. South Africans can learn from these.

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