

The land formalisation process and the peri-urban zone of Dar es Salaam, Tanzania

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Land formalisation

Formalising landholding through the issue of legal land titles has proved to be a seductive proposition for a number of governments in the global south during the first decade of the 21st century. Much of this thinking, and indeed policy development, has been based on Hernando De Soto's conceptualisation of dead capital, perhaps most accessibly captured in *The Mystery of Capital* (De Soto, 2001). The argument has been very persuasive in some influential quarters, and not least in the World Bank, where land titling is seen particularly as having the potential to promote increased private investment within the poor countries of the global south (Keivani, Mattingly and Majedi, 2008).

In essence, De Soto's argument is that most of the property in the global south is extralegal – not illegal, but outside the legal sector in the sense that it is not formally registered and/or titled to identifiable owners with written documentary evidence as proof of ownership. This does not necessarily mean that land is not 'owned', as ownership of plots of land by individuals may well be recognised by a range of local bodies such as village councils, chiefs or other locally-based authorities. However, such types of ownership are rarely documented through formally written, or even electronically stored, documents that unequivocally attribute that land by law to a particular individual. Even if written records exist, these are rarely seen to be valid in the legal sense of the word. This is a challenging problem because, without such titles, De Soto argues, people cannot realise the full value of their land or property. Land titles not only provide security for loans, but also a proof of existence of wealth which, along with a formal address, serves to strengthen business trust and social capital more generally. Consequently, following De Soto's argument, formal land titles provide the means of unlocking domestic capital for development.

The problem with informal landholding systems is that although there may exist a thriving land market, the value of a piece of land can be realised only on the occasion when it is sold. At this point, the existing owner loses access to the value of the land, and therefore he or she can only receive a monetary reward for the land on that one solitary occasion. However, a formal land title can be deployed as security against a loan, and hence the value of the property can be realised several times over the lifetime of the ownership, as long as, of

course, each of the loans is repaid on time. Extralegal property, therefore, is not fungible – it cannot be split up in various ways to generate funds for investment, as can be done with legally-recognised property. In De Soto's view, this is vital for economic development because, as he puts it: 'Legal property thus gave the West the tools to produce surplus value over and above its physical assets' (De Soto 2001, 49). Hence, property assets enable the generation of capital for investment through legally titled land being used as security or collateral.

Land formalisation and titling in Tanzania

It is this liberalisation of domestic assets that has proved to be attractive to many governments in the global south, anxious to delink themselves from aid dependency, but at the same time rightly concerned that foreign direct investment, which might move into the space created by the reduction in development assistance flows, may pass them by. The Government of Tanzania, in particular, has been especially keen to embrace De Soto's ideas, although it has been by no means the only government to do so: see, for example, Peru (Calderon, 2004), and Botswana (Nkwae and Dumba, 2010). The formalisation policy in Tanzania has been encapsulated within the Property and Business Formalisation Programme (going by the Kiswahili acronym of MKURABITA – Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge) which started operation in 2005. It is worth noting that, embedded in the programme's title, there is a very clear and strong link between property and business, thus underlining the Government of Tanzania's desire to liberate funds from legal property rights to finance business expansion. Hence, MKURABITA was given the aim of transforming property and businesses held in the informal sector into legal entities, rooted firmly within the formal sector.

There have, inevitably, been tensions in this process, not least because Tanzania's constitution still recognises that all land title is invested in the state, which is at odds with the current government's pursuance of a neoliberal, market-based approach to economic development. These tensions play out therefore between the desire for legal security of tenure for individuals and businesses, and the fact that all land is vested with the state. Kulaba (2007) also notes that the proposed formalisation programme was essentially an imported foreign strategy which, in his view, failed to engage sufficiently well with the full range of actors and government departments in Tanzania. Hence, a large amount of local material and understanding has not been gathered, much of which would have been of critical importance

in shaping the subsequent programme itself.

It was envisaged that MKURABITA would comprise four phases, these being: Diagnosis; Reform Design; Implementation; and Capital Formation (Kulaba, 2007). The first phase has been relatively straightforward, and in the *Diagnosis Report of the Property and Business Formalization Program*, the total of what De Soto describes as dead capital in Tanzania was calculated to be in the order of \$US29 billion. To put this in perspective, this figure exceeds the total value of official development assistance, or aid, which Tanzania has received since independence in 1961. There are serious methodological issues about how this figure was derived (as indeed there is around the figure of \$US9.3 trillion which De Soto (2001) calculates as being the total value of extralegal land in the entire global south). It was, however, estimated from land sales' figures available from a vibrant land market in Tanzania, and especially Dar es Salaam. The figure of \$US29 billion is, of course, a seductive sum to be released by the legal formalisation of land and property, and, unsurprisingly, the Government of Tanzania has committed itself to a programme of formalisation.

In Dar es Salaam alone, the value of extralegal property was put at \$9.4 billion and 97% of businesses in the city were estimated to be extralegal with an additional value of \$US2.2 billion. Hence, MKURABITA calculated that the value of dead capital in Dar es Salaam is \$US11.6 billion, which is about 50 times the total foreign direct investment which has come into Tanzania since 2002. Consequently, given that about 40% of Tanzania's dead capital is seemingly located in Dar es Salaam, plus the fact that Dar es Salaam has the most vibrant land market in Tanzania, this has led to the city becoming the immediate focus of the formalisation programme.

To encourage people to register their property, the Government of Tanzania launched the Residential Licence programme in May 2005 which was aimed at existing owners in areas that have not been formally surveyed by the Government of Tanzania, but on which people are living with secure tenancy/ownership rights. A good number of people in these areas migrated to Dar es Salaam and settled as squatters, but as they have lived in these locations in excess of 10 years, and, in some cases, considerably longer, it is now accepted that they have residential rights. For them, the Residential Licence programme is designed to shorten the length of the registration process, which, before MKURABITA, required a minimum of 68 bureaucratic steps taking an average of 8 years at an average cost of \$2250 to see through to

finalisation (Property and Business Formalisation Program, no date). It is hardly surprising that this process in itself was a major disincentive for anyone wishing to register their property formally and legally. However, despite the truncated process introduced in 2005, uptake has been slow with only 52,000 applications made by November 2005, and, of these, only about 38,000 actually approved by 2008.

The Government of Tanzania also launched the so-called 20,000 plots programme which had the ambitious aim of formally surveying that number of plots for future urban expansion. By May 2006, the target had been exceeded with over 30,000 plots being formally surveyed and put up for sale. These were located mainly in the peri-urban zones of the city, but they have often been controversial in that compensation levels paid to existing users of this land have been relatively low (sometimes as low as \$US60), and the subsequent sale price of the surveyed land has been significantly higher, thus benefiting better-off households in the land market.

The reality of land formalisation and titling

The prospect of having a formal legal land title would seem to be a very attractive proposition, both providing security of tenure and collateral to release capital for investment along the lines envisaged by De Soto. If people can demonstrate that they already 'own' a piece of land through usufructary land rights, or by having their land 'purchase' already recognised by the village or ward authority, then it is essentially a formality, although perhaps a time-consuming one, to have a formal land title issued. To this extent, it would seem to be a rational decision to register the land formally. However, preliminary research in the peri-urban zone of Dar es Salaam suggests that the response by many people in this area has not been wholly favourable towards these new opportunities, and there exists an ambivalent attitude due to a range of clear and rational reasons for resisting formalisation.

It became clear from interviews and focus group discussions that many people do not see the benefit

of formalisation and land titling. Not only is it seen to be a long and expensive process, many are unconvinced that they would gain any stronger security rights than they already enjoy. If they have already registered their land purchase with the village or ward, they already have *de facto* security of tenure, something which is reinforced further once house construction is

started on the plot. There is little more to be gained by obtaining a legal land title. Significantly, it tended to be poorer landowners who expressed this view more strongly, as the expense of the formal registration process is a proportionately greater drain on their financial resources than for wealthier households. There was also a concern that corrupt officials would have to be 'looked after', increasing the financial costs of registration. Similar observations have been made in Accra where views were expressed that the extra transaction costs of a more formal system were unattractive (Gough and Yankson, 2000; Antwi and Adams, 2003). Nkurunziza (2008) draws similar conclusions in Kampala where the local context, separate from the state, remains strong and attractive to many.

But it is more than just a financial constraint. Many of the poorer landowners have little or no formal education and therefore the type of legal language used in formal land registration can be opaque and confusing. There was a widespread fear expressed that they could be signing up for something that they do not fully understand and could end up being tricked into losing their land. The process of formal land registration is seen to be complex, disembodied and abstract, unlike registration with the ward council, for example, which is seen to be real, grounded, experienced and relatively easily understood, with officials who are easily contactable on a daily basis.

There is a further dimension to this resistance which is particular to Tanzania. When Tanzania went through a strong socialist phase of its national development after the 1967 Arusha Declaration, a key element of this programme was the creation of *ujamaa* villages throughout rural Tanzania (see, for example, Hyden, 1980; Coulson, 1982). This involved moving people from a largely dispersed rural population distribution pattern into about 8000 nucleated villages spread across the geographic space of Tanzania, with each village engaging in communal production by pooling labour and capital resources. In the event, very few of the 8000 villages ever became such fully-fledged *ujamaa* communities, but there was nonetheless a sense at that time that they had somehow 'lost' their land to the state, even though in practice this was rarely, if ever, the case. Nonetheless, among those older people who experienced the *ujamaa* 'operations', the memory remains – the state had once before tried to take land, and, for them, land formalisation was yet another attempt to do so, albeit in a neoliberal rather than socialist framework. Interviewees indicated this was a powerful negative narrative for those with long memories.

Central to De Soto's argument is the way in which having access to land title will apparently unlock capital for investment in business, whether it be in agriculture, industry, trading or petty business. Indeed, this is a key driver for promoting formalisation and land titling. Whilst it is the case that a few landowners who had formal land titles had used them to secure loans, this was by no means a widespread practice. As with the formal land registration process itself, it tended to be poorer landowners who were more suspicious and less likely to take up the opportunities. A key reason was that they failed to see how, even with a formal land title, they could access credit anyway. Because the Tanzanian banking and lending system is imbued with the values and practices of a globalised banking system, the application process for a loan can seem very daunting for poorer people with relatively little formal education. Indeed, the very factors which militate against applying for a formal land title in the first place are repeated. As one farmer in the peri-urban zone north of Dar es Salaam put it: "How can I prepare a business plan when I can't read or write properly?" But even for those lenders who are a little more accommodating, there are still problems associated with the creditworthiness of potential borrowers, as well as their likely ability to repay on a regular monthly basis. For some banks, lending at this scale offers only a small profit margin, which may be outweighed by the risk they take in making the loan in the first place. In the same way that the land titling process appears to favour the better-off, at the expense of the poorer groups, so does the opportunity to borrow money from banks, even if land is available to be put up as legal collateral. The experience of some of our respondents suggests that being in possession of a formal land title is not necessarily enough in itself to unlock credit.

In addition to this, a commonly expressed view was that many are reluctant to use their land as collateral anyway due to the risk that they could lose their land if they default on payments. Especially for the poor, land represents their only security. Land can fulfil the function of a social welfare or support system if all else fails – as a last resort, food can be grown on the land to survive. Allied to this, there remains a strong cultural and economic affinity to land, reinforced by a strong element of risk averse behaviour. Research elsewhere indicates that risk aversion is even stronger for poorer than better-off groups (Home and Lin, 2004), and the findings in Dar es Salaam support this view. As one respondent put it: "The risk of losing to the bank what little land I have is too much". Although MKURABITA may recognise a strong entrepreneurial spirit among many in the urban and peri-urban areas of Dar es Salaam, this entrepreneurial spirit is firmly grounded in

informal economic activities where cash transactions are the rule, and where credit, and loans are not generally part of daily practice. The very different, even alien, ways of operating in the formal sector are not attractive. Hence, if there exists a wariness, or downright unwillingness, to engage in the formal economic sector, where is the incentive to engage in the first place in the expensive process of formalising land title?

Thus far, the discussion has focused on the perceived opportunities which follow on from formal land titling, but there are also potential costs. Significantly, the Property and Business Formalisation Program public information document sets out one of the key drivers of the formalisation programme as being to integrate extralegal property into the formal legal system “to boost economic growth, reduce poverty and *eventually expand the tax base* (my emphasis)” (Property and Business Formalisation Program, no date). The existence of a database of formal ownership which accurately records exact location and size of holding means that people are easily traceable and hence accountable to the state. This may have the benefit of generating a sense of business trust for formal economic activity, but it also has the cost of generating a geographically-specific tax framework. If the MKURABITA report is even just reasonably accurate, then an informal business sector valued at \$2.2 billion represents a very attractive taxable sum into which the state can tap. For people balancing the advantages and disadvantages of applying for a formal land title, entering the tax system is an unattractive consequence.

In some countries where land titling has been introduced, there has been an increase in rents subsequent to formalisation. In parts of Cairo, for example, the land titling programme has resulted in the displacement of 21% of low-income tenants who could no longer afford the rents being levied (Payne, 2001). Payne, Durand-Lesserve and Rakodi (2007) also point generally to the significant risks of rent rises taking place after formal titling, thus actually reducing security of tenure for some residents in these areas, most of whom are poor. Until now, rent rises following titling in Dar es Salaam appear to be less of an issue, but there is still the need for much more careful and systematic research to confirm this.

However, in Dar es Salaam, there has been a variation on this theme in that a land market for titled property has started to emerge, although this is seen less in the peri-urban areas of the city at the moment, and rather more in some of the more established urban areas. In Manzese and Hannan Asif, for example, two former squatter areas, a land titling programme has led to

an initial urban upgrading by the residents of these areas, similar to what was reported to have happened in Peru following formalisation (Canturias and Delgado 2004 cited in Payne, Durand-Lesserve and Rakodi, 2007,) and in Rio de Janeiro (Handzic, 2010), reflecting the residents' greater confidence in having improved security of tenure. However, both Manzese and Hannan Asif, because of their relatively close location to the city centre of Dar es Salaam along the transport artery of Morogoro Road, have started to become attractive locations for property speculators, safe in the knowledge that these properties now have formal, legal titles. The germ of a process of nascent gentrification of these former squatter areas has begun.

As with the surveyed plots scheme in the peri-urban zone, it is wealthier groups who are able to take advantage and it is yet again poorer people who are being squeezed. There is, though, an interesting twist to this. Some have actively taken the opportunity to register their plots formally, but rather as a business opportunity, despite the expense and bureaucracy involved, and they have done so with the explicit intention of selling the land once formal titles have been gained. There is evidence that the proceeds of these land sales are then invested in purchasing informal land located further out from the city centre in the peri-urban zone, often at distances of 40km or more, where land is cheaper. This land is registered with the local village authority and the new owner waits for land values to rise. This strategy is possible in Dar es Salaam, as there is still relative land abundance in the area surrounding the city, a state of affairs which does not exist around other cities in the region, such as Kampala and Nairobi.

Final comments

What is manifestly clear from Dar es Salaam is that despite what might seem to be the obvious attractions of possessing a legal land title, many people are still very wary of getting involved. Land formalisation appears to be having different outcomes for different population groups - the opportunities afforded by formalisation appear to be of greater benefit to wealthier people. Many of this latter group are already embedded within the tax system because of the jobs they hold in the government and public sectors, and increasingly the formal private sector: being identifiable to the state holds less fear than it does for those who are currently invisible to the state. They also have access to greater amounts of capital, either through savings or access to credit, to allow them to participate as active buyers in the land market. Mwamfupe (2007) has noted the tendency for poorer people to become increasingly marginalised as the land market develops and they choose to sell their land. He has also

noted that people tend to be forced to engage in economic activities such as charcoal making, sand mining and vegetable vending, more or less as a survival strategy, whilst those with land tend to engage in activities such as petty trading, tailoring, carpentry, metalworking and electronic repairs, all of which become possible with secure tenancy. Ironically, therefore, it would appear that the land titling system, as it plays out in Dar es Salaam, tends to be of greater medium- and long-term benefit to the already wealthier urban residents, so reinforcing economic inequalities within the city.

Acknowledgements

I am grateful to *Urban Studies* for making funds available to conduct the fieldwork for this study.

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