

## BOOK REVIEW

Janine Ubink, André J. Hoekema and Willem J. Assies (eds.), *Legalising Land Rights. Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*. Leiden: Leiden University Press. 2009. 618 pp.

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Millions of people live and work on land they do not legally own. This often puts them in a precarious situation. However, waves of land reforms in Africa, Asia and Latin America intended to make property more secure have often had the perverse effect of undermining whatever tenure security poorer people experience. *Legalising Land Rights* is a welcome effort to take stock of recent policies and developments.

Two general trends in legalisation of land rights have dominated the scene over the past decades. On the one hand, state-led individual titling and registration characterised efforts to legalise possession and create property. Such policies have been based on assumptions that individual property rights are crucial to insure that landholders have incentives to invest in improvement of their production, crucial to create collateral for credit, and crucial to make sure that the most productive agents have access to the means of production, most importantly: land. Policies inspired by these ideas often intended to 'replace' customary ownership with modern property. While policies of individual titling enjoyed some success (a few famous studies (from Thailand and China) are always put forth as evidence), a long list of disappointing experiences also saw the light of day. Registration programmes have often proved slow, expensive, difficult to keep up-to-date and hard for poor people to access, and access to credit has not simply resulted from formalisation of landed property (Shipton 2009). Moreover, research began to show that some customary forms of tenure actually provided tenure security, even if it was not formalised and individualised according to the conventional index of the 'Western World'. This fuelled contrasting and more recent efforts from the 1980s onwards to think in terms of formalising customary forms of possession, not replacing custom, but elevating it to law. However, custom is rarely equitable or fair, and formalisation often meant consolidation of the position of the already powerful in society. A third movement took hold in the early 2000s with the

backing of multiple diverse international donor agencies. It attempted to reconcile a national legal framework with local land rights and allocation processes. *Legalising Land Rights* is an analysis of some of the experiences of these policies. The policies were propelled by the idea that land reform should be decentralised and if possible avoid the active involvement of a removed and corrupt central government, and it generally favoured the idea that land transactions should ideally be private and not involve the public (Borras and Franco 2009; Sikor and Müller 2009). One of the most policy-influential books on property and land in recent years arguing in this vein is *The Mystery of Capital* (de Soto 2000). The author drives a very forceful argument that the state should secure and guarantee and formalise as private property the land that the small in society already possess under customary arrangements in order to enable them to produce, have, and control capital. De Soto's work has incurred praise as well as criticism for its simplicity. However, whereas de Soto's idea works from the confident assumption that the state exists as a set of congruent and hegemonic institutions capable of enforcing one particular interpretation of property, *Legalising Land Rights* takes a path less travelled where catchy statements are not purchased at the expense of nuance and where such assumptions are questioned rather than taken as 'principles true in every country'. This is the major strength of the book. Property is not dissociated from governance, nor law from power, nor rights from politics.

The book consists of some nineteen case studies from Ethiopia, Ghana, Namibia, Senegal, Bolivia, Mexico, China and Indonesia. Each country forms the context for two or three chapters. This permits a more than usually thorough discussion of the individual country-cases. The many cases offer opportunities to analyse the different configurations of 'extra-legal' ownership and the challenges these produce for legalisation. It is not a simple affair. If a silver bullet existed, it almost certainly would have been fired by now. Frustration with the complexity of land related problems may render decision-makers susceptible to 'clear-cut', 'once-and-for-all', seemingly 'obvious solutions'. Their enthusiasm for simple directives is understandable. But simplistic policies have a truly poor record in Africa, Asia and Latin America. However, inaction and refusal to deal with land issues politically is not a real option. 'Autonomous' land dynamics have significant socio-economic and political effects, not all of which are benign. There is no 'natural evolution' of land tenure systems; they are integral parts of social and political processes, and it is in this respect that the case studies demonstrate their power of illumination. A sobering observation stemming from the series of case studies is that efforts to reconcile the pluralism of custom with more uniform principles of governance are not new. Colonialism, as a project of state formation, signalled the

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first efforts to legalise and homogenize. Principles of legal integration - even in areas with putative indirect rule - have been given effect in many different ways ranging from subtle to violent. The case chapters seem to suggest that it is only if current policy efforts to legalise land rights are understood in an historical perspective that they can be conducted with the modesty that the immensity of such a task demands. Another inference drawn from the cases is that while the legal status of land is important, it is not the only - and sometimes not even the most - important factor in securing people's livelihood. Simple things such as the quality and quantity of the resources secured by law are not trivial. The cases also demonstrate how legal innovation (in China) with small incremental steps may change, and legalise, the terms of tenure. This raises the question of whose interests are served in this process and what happens in situations where formalisation and legalisation improves government actors' possibilities for acquisition of ordinary people's land. The question of legalisation is not merely - sometimes not even primarily - a legal question (Hsing, 2010).

Legal pluralism is more than an omnipresent societal phenomenon; it is also its epistemological consequence, namely a dogged insistence on the empirical data even - or maybe especially - if it does not conform to ideational models or ply neatly into policy. The editors, all scholars who have contributed substantially to the development and consolidation of the field of legal pluralism in their own right, have collected and edited a bundle of highly readable sticks of scholarship. It displays immense variety, not only in circumstance, but also in people's and governments' responses to the challenge of legislation in diversity. It might easily have belied this richness had the editors been tempted to draw general substantive conclusions on the basis of the contributions. Grounded reasoning is the salt of the analysis of legal pluralism. Nonetheless, it seems that the collection could have provided an underpinning for the identification some generic areas of contention - politico-legal pressure points, if you will - in a fluid and variegated world engaging in the stickiness of legalisation. Such efforts could serve to establish systematic analytical approaches for scholars and practitioners alike. However, to do that might have been in conflict with the general pressure to go into publication as rapidly as possible - a regrettable trend, which unfortunately it seems impossible to stem. This said however, the collection is inspirational in its ambition to display some of the challenges in fostering legislative strategies that may arbitrate between state perspectives and local land rights.

## References

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