

Lifting the bell jar for poverty reduction

A clarification on the discussion around the development theory of
De Soto



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Bachelor Thesis Human Geography

Nijmegen School of Management

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Colophon

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Summary

Over the years socio economic progress in developing countries obtained a lot of attention. Several theories appeared with the aim to explain why Third World countries were lagging behind and how poverty best should be solved.

Hernando de Soto, a Peruvian economist, developed a theory which suggests that poverty is a matter of integrating the poor into a capitalistic system. This could be done by means of giving them legal property rights which will bring their 'dead assets' to life. Registering capital is believed by De Soto to bring forward increased production, investments, access to credits and economic progress. This in turn will lead to poverty alleviation.

The theory of De Soto has been welcomed with applause, but the effectiveness also has been seriously questioned by several researchers. A lot of literature is available on the theory of De Soto but no overview exists of the different critiques and comments within the debate. While De Soto is nowadays still involved with the implementation of property systems in several countries, there is no clear view whether his theory should be falsified or verified.

The main goal of this research is to contribute to the clarification of the scientific discussions around the development theory of De Soto by examining the comments and corresponding evidence that has been given on the assumptions of the theory. The main question which has been dealt with is: "To what extent contributes the discussion around the development theory of De Soto to the verification or falsification of the theory?" The outcomes of this research may help to overcome problems and mistakes at the level of implementation by showing the difficulties, advantages and disadvantages of the theory.

The research is a qualitative research which mainly exists of desk research, because secondary literature on the theory of De Soto had to be studied. Texts have been analyzed by means of a conceptual content analysis. The study is initially not an empirical study, but empirical elements have been implemented as additional information by means of qualitative interviews with experts.

The results of the study showed that the theory of De Soto became popular due to the fact that it supported existing development approaches and strategies. Besides, it seemed to provide an easy solution for poverty alleviation. De Soto advocated for power for the people and showed the opportunity for people to develop themselves without the help of development aid. However, this research shows that his theory did not work out in practice as was expected by De Soto.

First, the fundament of the theory has been disputed. Critiques were pointed at the way De Soto compared the current position of developing countries with the history of the U.S. He suggested that developing countries should follow the way in which the U.S. implemented their property system. Within this statement crucial differences between the governmental and legal situation of developing countries compared with the U.S. have been ignored. It has been shown that for developing countries implementing property systems is far more difficult than was the case in the history of the U.S. De Soto did not take notice of the way in which the U.S. brutally implemented their property rights, without paying attention to environmental issues or human rights. The way they did it, should never be allowed nowadays.

A second point which weakens the theory of De Soto, is that he ignored to differentiate 'the poor', while differences between them can be enormous. De Soto does not pay attention to the consequences such as inequality caused by unequal gender relations with respect to property rights. The role of women and children becomes marginalized when individual property becomes registered. They can be restricted by unequal formal national laws, in which women have got a weaker position than men, or by informal laws embedded in culture which restricts them in receiving inheritances, access and control

over land.

Moreover, De Soto does not mention diseases such as HIV/ AIDS as having impact on poverty because of landlessness and income depletion. He also does not offer a solution for the people who do not have access to land. These people are excluded from his theory which means that the most vulnerable people in society become even more vulnerable.

The theory mentioned several problems which can occur during the implementation of property rights. De Soto's assumption of creating a good climate for property rights is highly agreed on and several criteria have to be met before the system is able to work properly.

First of all, psychological barriers should be overcome to make the theory work in practice. Implementations should have a wider support from the people involved and often require the realization of changing people's mindset. People should in first instance be willing to receive property rights and besides should have a feeling of individuality and competition to make the theory work. Cultural aspects have to be taken into account.

De Soto argues that the major aspect of development is law. This is probably also the most complex aspect which can be mentioned. The study shows that property systems are fragile, because of their exceptional complexities, and could easily be broken down. Before laws and property systems are able to work, a mass of criteria have to be with respect to property systems, such as controlling lawyers and technicians, the reduction of corruption, having a clear and structured data system for the allocation of land, which is maintained, surveyed and regulated by well trained personnel.

Moreover, the system should be accessible for everyone. Costs for registration and additional taxes should be low and every person in the country should be able to reach for example a registration office. Governments should question themselves whether they should be able to fulfill all these requirements and if all efforts and money involved are a worthwhile investment.

The study showed that in practice most property titling projects did not lead to improved access to credits because banks and people often distrust each other. People are often not willing to have a loan because of fear for debts and losing ownership over their property. Even if they are willing to receive a loan, people are often not able to secure their income on paper, which restricted them from receiving loans.

From a case study from Peru it could be that people were heavily depending on public banks for construction materials, with which they could improve their housing. No loans were given for new enterprises. And so investments in housing increased but economic activity did not. Whether it regards a one-time investment or improvement is not clear and should therefore be evidenced by future studies. If it concerns a one-time investment, property titling does not seem to have a sustainable impact on poverty reduction. Registered capital value did besides not increase housing mobility. For most people titling is in first instance not about obtaining possibilities for development, but the main reason is about securing their property against land grab.

Whether individual titled property right is preferable above communal rights, is an issue which depends on the context, situation, way of living and people's mind-set. Often statutory rights are preferred above customary by people themselves because of their apparent security.

In the end, it has been stated that there is no such thing as a magic bullet to solve property and there is no pre-set path for development. The theory of De Soto will not be the universal solution for poverty reduction and has proved to be less effective as assumed by De Soto himself. A critical view is necessary to use the theory of De Soto and contextuality of the situation should never be overlooked.

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1 Introduction

1.1 Background

Over the years, socio economic progress in developing countries has obtained more and more attention. In the 1955-1960 period it was believed that poor countries were only lagging behind in their development trajectory as compared to wealthy countries. Only with a little help from these foreign countries, it was believed they would easily catch up with the rich economies (Reitsma & Kleinpenning, 1989). But the problems were much more complicated than expected in first instance.

In the following years, several development theories appeared with the aim to explain the reasons for lagging behind in development in what was then called the Third World. These grant theories, however seemed to be lacking an answer how best poverty could be overcome.

More recently a new theory has been suggested by Hernando De Soto. In 2000 De Soto, a famous Peruvian economist, published his book '*The mystery of capital, why capitalism triumphs in the West and fails everywhere else*'. This seemed to provide the pragmatic answer that other grant theories had failed to provide. The book had a lot of influence on discussions about development in Third World countries and raised a lot of media attention. The main contribution of the book concerns the argument that a legal property system is necessary for a well-functioning market economy, which in the long run will reduce poverty. The pragmatic influence of Hernando De Soto can be derived from the fact that a number of countries over the world have introduced policies based on his ideas (Edesio, 2002).

In short, De Soto's theory argues that no country can have a strong market driven economy without committing the people living in the state. Exclusion of certain communities and people in society shall lead to the existence of two different economies, 'the legal' and 'extra legal economy'. The distinction between these economies, according to De Soto, is the difference in protection of assets and rights by the state.

People involved in the legal economy are protected by the law, because they received 'statutory' rights over their properties. The people living in the extra-legal economy have no statutory rights and rely on 'customary rights', which often are not officially recognized and not protected by the state. Customary property rights have often a long history in the country and are used by for example, nomadic pastoralists. Both statutory and customary law may work next to each other in the same society. People living in the informal economy are often addressed to be poor and helpless, living in the shadows of the law, without any rights.

De Soto recognizes that poor people often have assets held in informal systems. He calls these assets 'dead capital', because it cannot be sold or converted into money. According to De Soto this is the main cause of poverty. He explains poverty by wrong regulations and governance in a society (De Soto, 2000). Formalizing property rights, turning customary rights into (individual) statutory rights, would turn these assets into 'living capital'. This makes it easier and safer for people to obtain access to credits, invest in houses and businesses and thus support the economy. This in turn, is expected to create wealth. (His theory will be explained in detail in chapter 4)

De Soto did not only develop this theory, but is also involved in the practical implementation of property systems via the Institute for Liberty and Democracy, which carries out land titling programs. The Institute for Liberty and Democracy [ILD] is currently cooperating with for example the governments of Honduras, Egypt and the Philippines to reform their land regulations and already worked in 23 countries around the world.

De Soto was also chairman of the Commission on Legal Empowerment of the Poor, which is one of the commissions of the United Nations Development Program (Assies, 2009; ILD, n.d.).

Although the theory of De Soto does sound very plausible and his theory has been praised by several institutions and researchers, the theory has also been criticized for several reasons. In the years after the publication of his book, several articles appeared which seriously questioned the assumptions of De Soto. Critique was pointed at being over generalizing, being vague, lacking specifications and evidences and exaggerating benefits. Opponents doubt the positive effects privatization of property will have on community, economic growth, equality, poverty reduction etc.

After ten years, the discussions on the theory still seem to continue and despite all critiques, Hernando De Soto is still active in several countries with the implementation of individual property rights based on his own theory.

1.2 Research objective

The theory of De Soto has been published in 2000 and has been welcomed with applause. Ten years later, De Soto still has got a lot of influence on the international policymaking platforms and is, as mentioned earlier, still advising several governments about the implementation of statutory property rights in trying to trigger economic growth. But during these ten years his theory has been critically analyzed by different researchers.

These critics also appeared in the media and several researchers have responded on each other's thoughts about the development theory of De Soto. However, a good overview of these different critiques and comments can not be found in the literature. Neither, an overview can be found on evidence to falsify or verify the theory.

Therefore, there is need for a systematic overview of this critique on De Soto's theory. This overview should provide the most important evidences for or against assumptions and will put advantages and disadvantages against each other. Understanding the different positions in this debate requires an extensive analysis of the literature dealing with the theory of De Soto.

In the end, the main research goal of the thesis is:

'Contributing to the clarification of the scientific discussions around the development theory of De Soto by examining the comments and corresponding evidence that has been given on the assumptions of the theory'.

1.2.1 Social relevance

The theory of Hernando de Soto attracted much attention because it seemed to provide an easy answer on development and poverty reduction: Securing property rights, although propagated by other scholars earlier on (e.g. Hardin, 1968) was now presented as the magic solution to trigger development based on a neo-liberal capitalistic system considered the key in creating wealth in the rich countries. Now all world citizens were near to that state of material well-being. It only needed a change in the recording of assets. After the book of De Soto was published the subject and the effectiveness have been discussed by several institutions, governments and other organizations. A lot of research has been done and dozens of recommendations have been given about creating policies with respect to property rights, economic growth and the reduction of poverty. This already gives an indication of the relevance of his theory.

What makes the issue so important is the fact that a lot of people in the world are involved in the subject of this research. Approximately four billion people in the world do have access to land which has not been legally recognized to them (Meinzen-Dick, 2009). All these people are in fact a target group for De Soto. They are mostly citizens of Third World countries seeking for a way to progress. Some of them are involved in the implementation of property rights in their country. These people are the ones who bear the positive and negative consequences when legal property rights are going to be stimulated in their country.

Because reforms have already been applied in practice via the method of De Soto and the help of the ILD, it is very important to understand the critique that has been given on the theory and the implementation in practice.

By analyzing the debates, those parties interested in applying De Soto's recommendations will better be able to judge if the use of the theory of De Soto will make sense in their situation. This in turn may in the end help to overcome unintended consequences of the implementation of the theory, which may have negative outcomes for the people involved.

1.2.2 Scientific relevance

The scientific relevance of this research can be found in the contribution to the academic debate around the development theory of De Soto. The research aims at contributing to the research goal of understanding and examining the different positions of various researchers to verify or falsify the theory.

Insights will be given in the theory and the way it has been put forward by De Soto. Moreover, it will show the results of the effectiveness of the theory in practice and the applicability on several situations within different contexts in the world. It also shows the different approaches and complexities with respect to property rights and the alleviation of poverty in the world.

With the knowledge obtained from this study, researchers will be better equipped to accept or reject the development theory of De Soto. The study will encourage them to further study some of the (counter) claims made and understand the theory in all its aspects.

To create the bridge between the scientific and social relevance, the outcomes of this research may be relevant for several parties involved in land rights, poverty and economic growth. When evidence has been found in different studies, it may help to overcome problems and mistakes at the level of implementation. When necessary, it may encourage examining ways the theory would be reshaped, refined, verified or falsified. Moreover, by knowing and recognizing the advantages and disadvantages of the theory researchers may be able to choose and apply the best development theory for a specific situation. Besides, for all actors such as non-governmental organizations, companies and local communities, but especially for governments it will be easier to agree on well-argued and grounded policies when they are based on a reliable theory. In the end this will lead to better implementations of the theory and positive effects in practice.

1.3 **Research model**

In figure 1 a schematic overview is presented, showing the steps that had to be taken to reach the goal of this research, which is *'contributing to the clarification of the scientific discussions around the development theory of De Soto by examining the comments and corresponding evidence that has been given on the assumptions of the theory of De Soto'*.

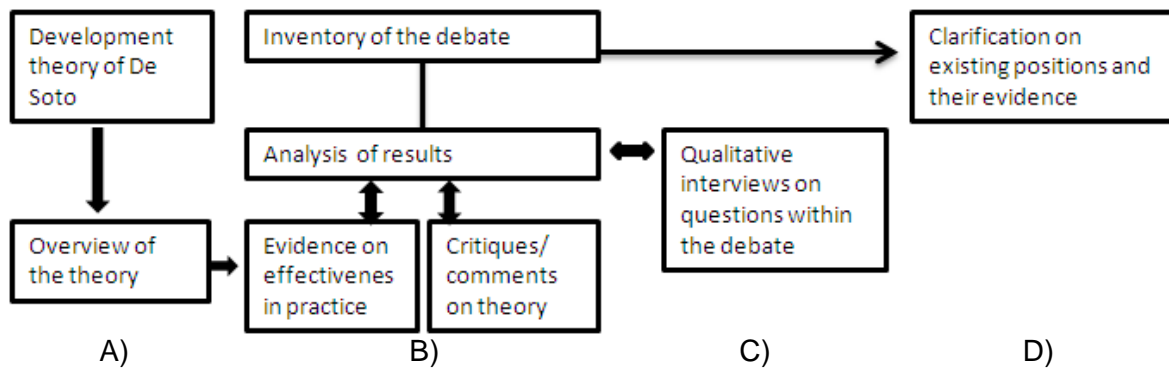


Figure 1: Research model

First, an overview had been provided on the most important aspects of the theory of De Soto (A). Second, critiques, comments and evidence had been gathered with respect to the theory. This resulted in an inventory of the different positions, advantages and disadvantages found within the debate (B). Subsequently, gaps on evidence or argumentation of critiques with respect to the existing positions have been covered by qualitative interviews with authors and/or experts responding on the theory (C). In the end, an overview is given about the existing positions and their evidence that can be found with respect to the subject (D).

1.4 Research question

Based on the above mentioned research goal- and research model, the study addresses the following main research question:

“To what extent contributes the discussion around the development theory of De Soto to the verification or falsification of the theory?”

The main question of this research will be answered by the following sub-questions.

1. What are the central ideas and assumptions of the development theory of De Soto?
2. What evidence can be found which underpins and supports the theory?
3. What criticism has been expressed concerning the development theory of De Soto?
4. What evidence can be found which underpins the critique that has been expressed to undermine the theory?

2 Theoretical framework

2.1 Theoretical framework

The theory of De Soto is one of many theories on the solution of poverty problems in the world. The theory will extensively be explained in the chapter 4 but beforehand other existing theories on poverty will be discussed to show the different approaches which can be used towards the problems which cause poverty.

Within the existing development theories five subcategories may be distinguished with respect to the causes that can be appointed (Bradshaw, 2006).

These causes may roughly be categorized in the following five types:

1. caused by individual deficiencies
2. caused by cultural belief systems that support sub-cultures of poverty
3. caused by political, economic and social distortions and discrimination
4. caused by geographical disparities
5. caused by cumulative and cyclical interdependencies.

1. Poverty caused by individual deficiencies

This theory stems from the belief that people are self responsible for their poverty situation. This conservative point of view blames individuals for creating their own problems. According to this theory, the solution for poverty reduction lies in motivation and initiatives such as finding jobs, working hard and making the right choices in life. By doing this, people can maximize their own well-being (Bauer, 1977; Ryan, 1971; Noble & Potter, 1995).

Another variation on this individual deficiency perspective is the belief that poverty is caused by genetic qualities and the lack of, for example, intelligence.

The third variation stems from the belief in God in the sense that poverty has been used as 'moralizing perspective'. This means that people believe, that there is a reason to be poor and that the poor are meant to suffer. This is, for example, the belief among Hindus in India. The policy approach for poverty as individual deficiency is in fact simple, because governments can not be held responsible for poverty situations. Key initiatives today are to help people to get a job, with the emphasis on 'helping yourself'. Another approach is to help people to make the right choices to create their own well-being.

2. Poverty caused by cultural belief systems that support sub-cultures of poverty

The second theory is about culture and argues the problem of poverty can be found in the transmission of sets of beliefs, skills and values from generation to generation. The theory assumes that culture is socially generated and maintained by people themselves. Poverty may thus be seen as a subculture which maintains itself. In this theory people are not necessarily to blame, rather they must be seen as victims of the functioning of their own culture. They are not able to change their culture or to take advantage of opportunities passing by. *"Once the culture of poverty has come into existence it tends to perpetuate itself"* (Bradshaw, 2006).

Efforts to solve poverty have to be taken in changing the existing culture into a more functional culture. The focus should be on youth to stop the recreation of the culture by educational programs (Chamberlin & Chamberlin, 2000; Wilson, 1996; Lewis, 1966).

3. Poverty caused by political, economic and social distortions and discrimination

The central idea in the third theory is that poverty is not caused by the individual. To the contrary, the cause can be found in the economic, political and social systems which enables or limits people to take part in society. Nowadays, most literature suggests that poverty is caused by the structures of the economic system. A part of the problems may be found

according to Jencks (1996) in minimum wages which makes it impossible for people to be financially independent.

In this, a parallel exists between the political system, power and the participation of the poor. Interests of poor are often more vulnerable than interests of other more powerful people. Another category is the relation of power and minority groups, in which discrimination limits their possibilities. The process of obtaining improved rights for minorities is also an issue within poverty (Schiller, 1989).

According to this approach, changes in the political system are the solution to the problem. It's not about changing people's mind, culture etcetera, but barriers for the poor have to be broken down.

This can be done in three ways:

1. First, by putting pressure on vulnerable parts of the system to force a desired change. This can, for example, be done by social movements.
2. Second, by creating alternative institutions which have an open attitude towards poor and are willing to help them.
3. Third, changes can be made by legal changes in national policies (Page & Simmons, 2000).

4. Poverty caused by geographical disparities

According to this theory poverty is a result of the organization of space and is thus caused by geographical disparities. The theory pays attention to the fact that *"people, institutions, and cultures in certain areas lack the objective resources needed to generate well being and income, and that they lack the power to claim redistribution"* (Bradshaw, 2006).

Explanations for poverty can be found in density, isolation, diffusion of innovations and so on. In this theory poverty, enforces itself. The conditions leading to poverty and their consequences generate more poverty. Low housing prices in poor areas can, for example, attract more poor persons, which may lead to disinvestments in the area.

Another assumption in this approach is that knowledge and capital are related. The place where most knowledge can be found, attracts most capital and vice versa.

"In a world in which the criteria for investment is 'location, location, location,' it is not unreasonable to track investment going to neighborhoods, communities and regions in which there is already substantial investment, while leaving less attractive areas" (Bradshaw, 2006).

The solution for poverty problems can be found in solving the dynamics and process that lead to decline in certain areas. Processes have to be changes so that areas can become self-sustaining (Bradshaw, 2006).

5. Poverty caused by cumulative and cyclical interdependencies.

The last theory is also the most complex one and involves aspects of the four other theories. The theory looks at individual levels as well as that of the wider community as part of a system with opportunities and problems. Once problems dominate over opportunities they create a growing number of problems.

Within this approach individuals and communities are interdependent. An example of a poverty cycle are low numbers of schooling, which will result in low- income and well-being at the community level and not having sufficient money to send your children to school. This may also lead to low self-confidence, bad health and security. The problems with these cycles are that they are not easy to break down because it repeats itself and are again reinforced by other factors.

The solution to this problem also has to cover a multi faceted approach and therefore has to involve all kinds of approaches to solve poverty mentioned before. The key is to see the interrelation between problems (Tobin, 1994; Bradshaw, 2006).

The theory of De Soto within the framework

The theory of De Soto may be placed within the third approach in which the cause of poverty lies in political, economic and social distortions and discrimination. De Soto argues that

poverty exist because the poor do not have access to capital as a result of not having property rights. They are not able to benefit from the legal system and are therefore excluded from society. According to De Soto, the economical and legal systems are to be blamed for the bad conditions in which people have to live. De Soto's solution may be found in changes in policies and institutions with respect to national property systems.

During the research, this theoretical framework will be a handhold for the different existing approaches towards poverty. With the help of the framework, statements, comments and arguments may be explained within different perspectives and approaches towards poverty.

In the next section a definition will be given on the most important concepts and research objectives within the research.

2.2 Definition concepts and research objects

The theory of De Soto will be explained in the chapter 4 in detail. Now we will discuss some of the most important variables and concepts in his theory, i.e., 'property rights', 'poverty', 'capital' and 'development'.

The conceptual model will be presented subsequently and shall provide a quick overview of the concepts and variables of the theory of De Soto, and the focus of this study.

2.2.1 Defining and measuring poverty.

Poverty can also be defined in a relative form, which means poverty may be the result of a comparison with a set standard within society.

The last one is subjective poverty, which means that poverty is a value that can be added to a person by a subjective meaning or feeling. In this way feeling poor, means you are poor. It is has not been set by standards (Spagnoli, 2010).

Wagle (2002) has made a classification on different definitions on poverty in absolute forms using three different dimensions: 1. economic welfare, 2. capability and 3. social exclusion. The types of measurement to define poverty differ per dimension.

When measuring economic welfare, data is needed about income of the population, which is often available at governmental institutions. This way of measuring poverty is relatively easy, because data is often already available. However, a disadvantage of this method of measuring economic poverty is that indirect income from the informal sector and revenues from own land are not included in these data. This can distort the image of the measured poverty. An organization which uses this economic method is World Bank (2001), however they do not use statistics of governments but measure poverty themselves.

The second dimension is about capability. This measurement involves more than just measuring income, but focuses on the possibilities 'to function' and 'to achieve'. This means also attention has to be paid to factors as sufficient food and clothing, literacy, life expectancy, poor maternal health and illness from preventable diseases. This approach is for example used by the United Nations Development Programme (UNDP) for the Human Development Index (UNDP, 2000).

The third dimension is a way to define poverty in the sense of social exclusion. Factors that may define social exclusion are for example not being able to benefit from the market economy, being denied human rights, social alienation etc. Again, social exclusion isn't something that can be defined within a few forms and several methods exists for examining this phenomenon (used by the International Labour Organization) (ILO, 2004). This third method is probably the most time-consuming method.

Table 1: Absolute measurements of poverty

	Definition of poverty	Defining poverty in terms of	Used by
1st dimension	Economic welfare	Direct income: A fixed income borderline determines when someone lives in poverty	E.g. World Bank database, Eurostat.
2nd dimension	Lack of income and productive resources to ensure sustainable livelihoods;	Direct income + other conditions such as food, clothing, access to resources and services such as schooling, medical care, etc.	E.g. United Nations Development Programs.
3rd dimension	Social exclusion: the ability to be part of a society	Direct income + other conditions + The ability to take part in political, cultural and other activities in society	E.g. International Institute for Labour Studies

From: Wagle 2002

According to De Soto poverty can be measured in terms of economic welfare. He argues that if people turn their assets into 'capital value', they will be able to increase their living standards because they become able to produce, invest and increase economic activities. De Soto expects economic welfare to improve the other living conditions such as food, cloths etc.

Social exclusions (via legal institutions) forms according to his ideas the threshold for people to create welfare. Social exclusion has to be solved before poverty can be solved.

In this research, it might be possible that different definitions of poverty will be used. The reason for this is the fact that different reports, books and articles are going to be discussed. It is possible that the researchers of these articles use different methods or definitions to recognize poverty.

Therefore, attention has to be paid, towards the use of different definitions of poverty. If necessary, the used method will be clarified in the report.

2.2.2 Definition of property (rights)

Another term which needs to be discussed is 'property', which is intertwined with 'property rights'. Property is a very broad and abstract term which can mean several things. Therefore, a short introduction shall be given in the terminology.

In this research the explanation of Elinor Ostrom will be used with respect to property rights. Ostrom won the Nobel Prize in 2009 for her studies on property. Her definitions are clear, comprehensive and used in many other studies.

According to Ostrom (1996) a property right is an enforceable authority which gives the right to undertake action within a specific domain. The term 'property rights' is directly linked to 'rules', because property rights are the product of rules. For every right an individual owns, rules exist which gives the permission to undertake a certain action with respect to your (property) right.

Because rights define actions that individuals can take in relation to other individuals as regard some 'thing' if one individual has a right, someone else has a commensurate duty to observe that right. The duty that an individual owes another define the actions the individual may, must, or must not take in relation to another and the other's property (Ostrom,1996).

To specify what Ostrom means with 'actions' with respect to property, the definition of 'property' from the business dictionary (2011) will be outlined. According to them property is: "An item or thing owned with the rights of possession, use, and enjoyment, and which the owner can bestow, collateralize, encumber, mortgage, sell, or transfer, and can exclude everyone else from it" (The business dictionary, 2011).

Now it is defined what property is, the question is how property may be owned and what law provides the rights to property.

Property may be owned under two types of law: statutory law and customary law.

Statutory rights are obtained when title deeds have been given over land or other property by the state. When land is ruled by traditional laws, it is called ownership under customary law.

People then have customary rights over their land.

Statutory law divides land in two categories:

- *Private- : Land which is owned, held or occupied under a freehold title, a leasehold title, a certificate or claim, or that is registered as private land under a Registered Land Act.*
- *Public- : land that is occupied, used or acquired by the government and any other land that his not customary land or private land.*

Land held under customary law can be communally used or individually used or maybe reserve land (that has not yet been located)

It should be stressed that 'private' and 'individual' are often used synonymously. This is not correct, as private land can be held communally (e.g. group ranch), while individual property exists under customary law (e.g. ownership of a well) (Rutten, 2009).

According to De Soto, customary rights are related to the extra-legal economy. Statutory law relates to the legal economy.

2.2.3 Definition of capital and the link with development

In this research the definition of 'capital' and 'development' will be defined in the way De Soto did. To know what De Soto meant with 'development' makes it easier to understand whether his theory is able to create development in practice.

In his book De Soto (2000) expands on what capital is and how it can be established. He builds on the definitions made by other important economists such as Adam Smith and Karl Marx.

In fact, capital is in the first instance an abstract concept and must be given a physical form in which the value can be detached from the product.

De Soto argues that capital does two jobs at the same time. First, it captures the physical dimension of assets, while it also generates surplus value. De Soto explains this by giving an illustrative metaphor of capital.

To unravel the mystery of capital, we have to go back to the seminal meaning of the word. In Medieval Latin 'capital' appears to have denoted head of cattle or other livestock, which have always been important sources of wealth beyond the basic meat they provide. Livestock are low-maintenance possessions; they are mobile and can be moved away from danger; they are also easy to count and measure. But most important, from livestock you can obtain additional wealth- or surplus value, by setting in motion other industries, including milk, hides, wool, meat and fuel. Livestock also have the useful attribute of being able to reproduce themselves (De Soto, 2000, p.38).

The cattle in this case is the capital. In this, De Soto follows the ideas of Adam Smith. Smith argues that the more capital is accumulated, the more specialization is needed and the higher productivity would become. In this description capital indirectly leads thus to more capital. This way of producing also forms the way in which development can be found.

Development is seen by De Soto as the production of surplus and new capital.

However, the problem with capital is, that it is not easy to grasp, what it is or what it should be worth. Smith argues that before assets can become active capital, it must be fixed in a particular 'subject', after labour is past. Smith does not define what that 'subject' must be. For De Soto, the solution lies in the registration of capital, which makes it 'touchable' instead of a mental and invisible thing.

This concretization can be done with the help of a property system, in which the assets can be written down and thus 'stored' as capital.

Capital is according to De Soto often confused with money. In fact, money is the form in which capital travels in our society, while it also could have been caught in other ways. Because money is tangible, people are more likely to think in terms of money, than in terms of capital. But money only expresses the value of capital but is not able to fix capital.

2.3 Conceptual model

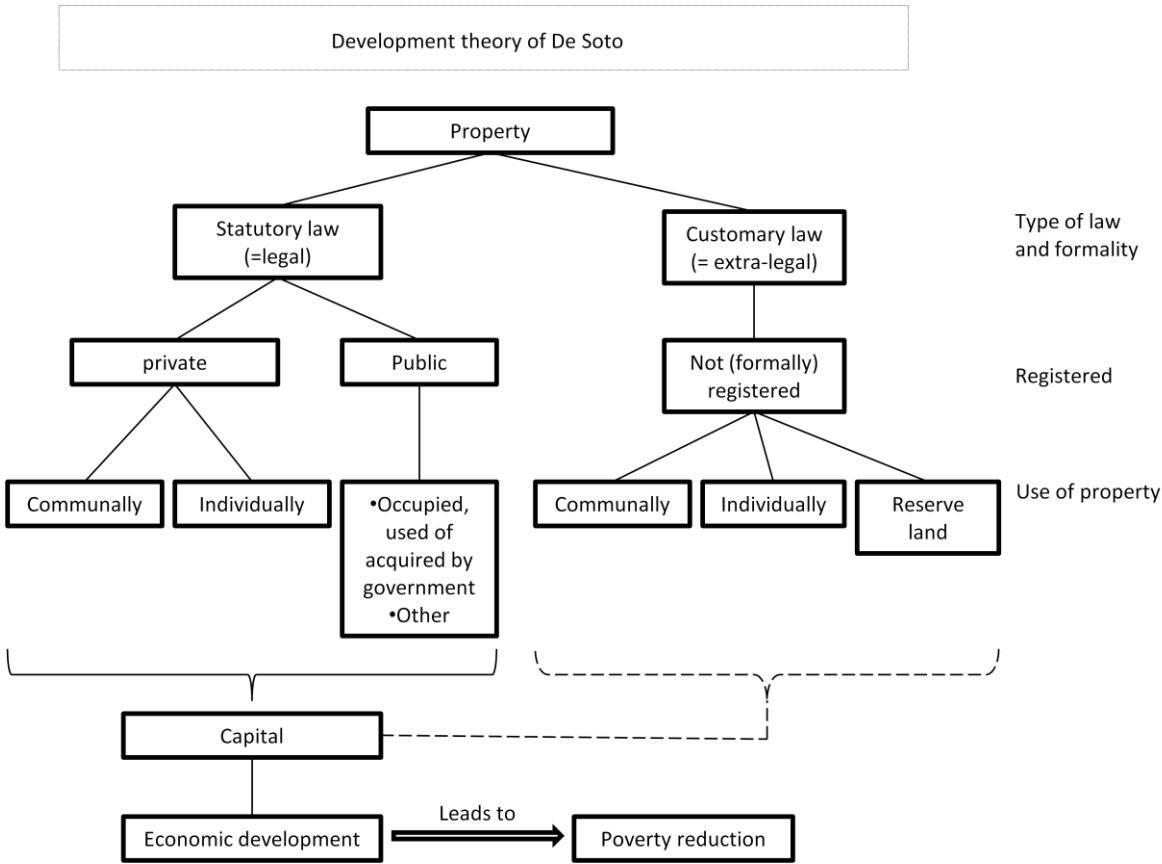


Figure 2: Conceptual model

The most important concepts, which appear in the theory of De Soto and logically also in this research are displayed in the figure above.

The scheme shows the relations between the mentioned concepts and will now shortly be explained.

The first box with the word 'property' forms according to De Soto the umbrella on which all the other following concepts depend.

The following boxes show the difference in formality between official legal property under statutory law and extralegal property under customary law.

In the boxes beneath, it is explained how property can be registered, which again divides into different types about how property under different laws can be used. Property under

customary law is not officially registered at state institutions, but can sometimes be registered within informal agreements or at customary institutions.

According to De Soto, capital value can best be obtained from legal property under statutory law. Capital can also be obtained under customary law, but this is often more restricted. According to De Soto therefore statutory law offers better opportunities for economic development which in turn leads to poverty reduction.

3 Methodology

In this chapter the methodology of the research will be outlined. It shows the strategy of the research, the kind of data used and the data disclosure.

3.1 Qualitative research

In order to answer the research question of this study, a qualitative research is conducted. The study is qualitative from nature, as literature forms the most important resource used in this study. The qualitative character comes to the fore in trying to 'understand' the comments, critiques and support directed towards the theory of De Soto.

The research gives in-depth insights in the theory of De Soto and the literature that appeared during the last ten years in response to the theory. Because there is a lot of literature available on this subject, the analysis concentrated on the most important and detailed literature available. More shallow reviews and comments have been ignored. Articles have been chosen after extensive reading sessions within the subject. By searching for frequently mentioned authors in for example literature lists, an estimation could be made about which authors would be relevant in the debate on De Soto's theory.

3.2 Desk research

The study conducted is a desk research. A characteristic of desk research is that it summarizes, collects and collates information from existing literature from other researchers. In this research reflections are given on viewpoints, opinions and evidence of different studies. Literature has been compared with each other to create an analysis and summary of the available literature on the theory of De Soto.

This form of research has been chosen because data had to be collected in a relatively short time period, without having the opportunity to explore the (dis)advantages, inconsistencies or omissions of the theory within the research field. Besides, material of different researchers has been gathered which is likely to provide a diverse and multidimensional view on the theory of De Soto.

A disadvantage of desk research is that the research depends on the availability of research material. Literature on the theory of De Soto was nevertheless numerous and provided enough information to deal with this subject.

Within desk research two variants exist, namely literature research and secondary research. A literature research only involves the examination and comparison of literature.

In this case literature research was very useful because the study aims at giving an overview of the debate around the theory of De Soto, which requires extensive analysis of different resources.

Secondary research involves the readjustment and reinterpretation of existing data (Verschuren & Doorewaard, 2007). This might involve material from survey interviews, experiments or case studies. You can think, for example, of interviews or databases with quantitative data (Verschuren & Doorewaard, 2007).

During this research no secondary data or official statistics have been used, because empirical data and statistics often only describe a situation within a specific context, for example of specific persons, countries or areas. Therefore, secondary data is expected to be less useful for this research because this research tries to generate a holistic view on the debate and effectiveness of the theory of De Soto. Statistical and secondary data will only be used to explain or support comments and arguments given by authors.

This way of examining does not involve direct contact with the research subject, but eventually missing information will be sought for by interviews with experts and authors.

Thus, the research is not an empirical study, but empirical aspects may be implemented when information in the literature to be examined is not sufficient.

3.2.1 Used data

In this desk research the main object of study is the discussions that have emerged in response to the theory of De Soto. Information needed can be found in the form of knowledge presented by De Soto less so in the form of raw data.

Within this desk research four data sources have been used to analyze this process (see figure 3). The first source in this research is literature, and especially books. Books are especially relevant because they often give an extensive and profound insight in the subject. This is the same with documents such as research reports. They are specifically addressed to one subject. Both sources have the advantage of being specific and the scientific level is expected to be high.

Subsequently, media was a good source to search for information and discussions, giving a quick overview of the information available. Information with respect to the research object has been found in journals, magazines, internet and in a TV programme.

A disadvantage of some types of media, such as TV, newspapers and other magazines, was that they could have a relative informal character, which means that the content was not scientifically agreed on. Therefore, attention has been paid to the scientific level of media and preference went to scientific journals and magazines.

This desk research indirectly involved persons as object. Indirectly, individuals were involved because their opinions, arguments and experiences played an important role in the debate. Persons were also directly involved in the study by Interviews, but this was not part of the desk research. Further explanations will be found in paragraph 3.4.

The primary preferred sources of the desk research were literature such as books, research reports, scientific journals and magazines.

Data triangulation is used because different independent reports and researches have been used, besides also views from opponents and proponents of the theory have been used, which is also a form of data triangulation. Both methods contribute to the versatility and internal validity of the study.

Figure 3 pictures the various sources used during the study.

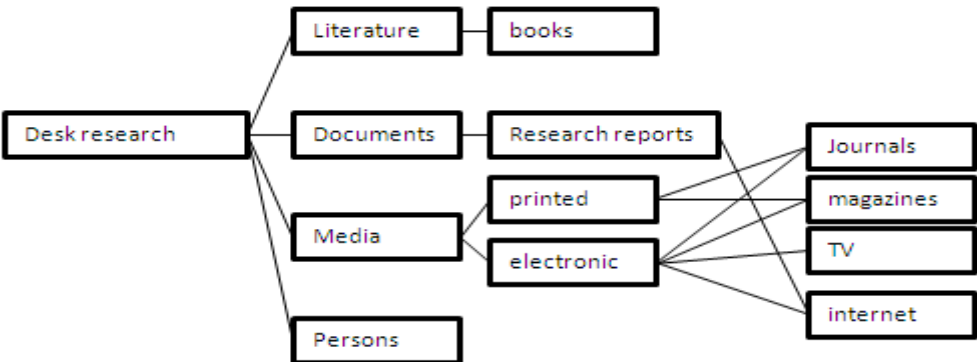


Figure 3: Data use

3.3 Content analysis

Because numerous and diverse material is available on the theory of De Soto, a deductive approach for the analysis of the sources is used in the form of a content analysis. A content analysis is a technique to generate data by counting aspects of the content from, for example, documents, literature, media and reality.

Because it is a systematic exercise, the objectivity has been assured when analyzing the sources.

A specific approach, i.e. content analysis, has been conducted for a conceptual analysis. This means that words or groups of words in the text that relate to a specific subject/ concept have been sought for. Also contradictions, arguments and ideas within the text have been taken into account. The importance of concepts has been distracted from the frequency of the concepts mentioned. This already started at the point of the literature selection.

Frequently mentioned authors, relevant quotes and subjects in text, formed the base to search for a particular article, author or subject.

Systematically, every article available has been analyzed. Assumptions, opinions, viewpoints etcetera has been coded for each article, book or chapter to define the most important concepts. Also attention has been paid to the tone of voice of the articles which could give additional information on the strength of arguments and positions within the debate.

Afterwards, to create broader categories, the different codes of all articles have been analyzed and compared. From this categorization, the most important issues and subjects within the debate on the theory of De Soto were distracted. In the end, also the chapters of this research have been based on these broader categories.

A disadvantage was that this strategy made it more difficult to find equal numbers of articles of proponents and opponents within the debate. Articles referring to each other often shared the same views and strengthened each other. This has been balanced by searching for additional articles of proponents.

3.4 Qualitative interviews

The main strategy of this research did not involve direct contact with the research subject. The debate and the implementations of the theory in practice could not be directly examined, because of time and distance constraints. Missing and additional information is sought for by interviews with relevant authors and/or experts.

Thus, initially the research is not an empirical study, but empirical aspects have been implemented trying to fill the gaps within literature.

Qualitative interviews were conducted, because information was needed about points of view, opinions and clarifications on specific themes and subjects.

Interviews were held individually, the advantage of individual interviews, is that it delivers better quality of information because the main focus could be concentrated on the opinion of one person. This led to better in-depth insights in the motivation of the interviewees.

The interviews conducted were semi-standardized interviews. This approach supports the research goal of understanding the perspective of the interviewee on the subject put forward by the interviewer. Questions had been prepared in advance. Steering was necessary because specific information was asked for. Open-ended questions and the use of statements had been useful to understand the opinion and vision of the respondent.

A first interviewee was chosen because of her practical experience within the field of property rights. After writing the thesis, the need was felt for more practical examples within the field of property rights from other continents than Africa and South-America. I had the idea that most research with respect to land rights has been done in these continents. Therefore I wanted to search for more examples from, for example, Asia or Eastern Europe to provide a broader view on the subject. On the internet I found a blog of a woman working for a small

NGO on 'culture identity and resource use management' in Vietnam, a country of which I hadn't read any articles. Her stories made me curious and raised questions on the specific situation of Vietnam with respect to subjects within my research. I expected her to have the expertise to answer my questions. Her answers could provide me more visual examples and viewpoints of an expert on the subject from another angle.

Another Interviewee was Professor Gilbert, who did a lot of research in slums in South America. His articles provided me a lot of information and I expected him to be an expert, because of his numerous researches and articles he wrote within this subject.

The best way of interviewing these people depended on their home country and the possibility of having internet calls, chat conversations etc. The interview had been send to the interviewees by email, because it was the fastest way and left the possibility to ask for additional information, after the respondent filled in the survey. It also gave the respondents the opportunity to think about the answers on the questions and to fill in the survey when they were able to do this. This was also useful because of oncoming holidays. Also time-differences with the respondent from Vietnam and her busy job as fieldworker were worth the decision of sending an interview by email. It increased the chance to response and her willingness to co-operate.

Afterwards, the interviews were analyzed and information has been included as additional information and insights from these people.

4 The development theory of De Soto: The essence of his work

“Opening up capitalism to the poor will not be as simple as running a bulldozer through garbage. It is more like rearranging the thousands of branches and twigs of a huge eagle’s nest- without irritating the eagle”.

(De Soto, 2000, p. 200)

4.1 Introduction

In this chapter, the theory of De Soto will be explained in detail and his thoughts and views on development will be clarified. Critical comments on his theory will not be given in this chapter, but will be dealt with in following chapters.

4.2 The theory in general

In 2000 Hernando De Soto published his book *‘The Mystery of capital: Why capitalism Triumphs in the West and fails Everywhere else’*. The book is the summary of 19 years of research by the Institute for Liberty and Democracy, of which Hernando De Soto is the founder and president. The study examined the economic situation in countries like Egypt, Mexico, Haiti, Peru and the Philippines. From this research, conclusions are distracted which explain why a lot of Third World countries failed to implement the capitalistic structure, as is adopted by western countries. De Soto explains this failure by using the five mysteries of capital.

These five mysteries of capital point in short at legal, political and capitalistic challenges which have to be overcome to create a working market economy. According to De Soto, the cause for poverty can be found in the economical and political situation of a country. In the book, De Soto suggests that capitalism has to deal with a current crisis in Third World countries, because they have not been able to ‘globalize’ capital in their countries.

The major barrier to wealth has been explained by the inability to create capital. De Soto insists in the assumption that increasing capital is the only way to reduce poverty.

“Capital is the force that raises the productivity of labour and creates the wealth of nations. It is the lifeblood of the capitalist system [...]” (De Soto, 2000, p. 5).

In addition, he argues that the value of this capital can be found in the savings and material objects of the ‘poor’, which he calls ‘immense’. Because most poor people haven’t registered their belongings in a formal statutory system, they do not have official capital value and therefore can not make money with it. The research of the Institute for Liberty and Democracy estimated the total value of unregistered real estate in Third World and former communist countries at least at a 9.3 trillion dollars. This capital value can be released by giving title to it.

But still, the mystery of capital lies in the question why third world countries have been able to adapt to all the Western inventions *“[...] from the paper clip to the nuclear reactor [...]”* (p. 7), except for adapting to a process to create capital and to make their domestic market workable.

A strange thing for De Soto is the way in which the Western countries over the years have successfully integrated their poor into their economies, but simply have forgotten in which way this has been done and how capital became important. Paradoxically, the most essential invention has been neglected and therefore ended in ‘the mystery of capital’.

In the next section the five ‘mysteries of capital’ according to the model of De Soto will be explained.

4.3 The five mysteries of capital

4.3.1 Mystery 1: The mystery of missing information

The first mystery, the mystery of information, points at the lack of information on owned assets in Third World countries. De Soto assumes that one of the causes for this problem can be found in the urbanization of cities. In the 1950s migrants went to the cities because the industrialization decreased jobs in rural areas. The population of cities began to rise and cities were no longer able to legally house the uncontrollable stream of jobseekers. The migrants faced numerous rules and difficulties which kept them from legal and economic activities and pushed them into the 'extra-legal sector'.

Another example of the research of the ILD shows that obstacles for gaining official titles can also limit property titling and thus increase the informal sector. According to the ILD research it took 289 days to register a business in Lima, while at the same time the costs were 31 times the monthly Peruvian minimal wage. It took almost seven years and 207 administrative steps in 52 governmental offices to build a house on state-owned land. Even more examples of obstacles of this kind can be found in his book.

Because of the urbanization, the illegal sectors grew. Alternative systems appeared to live and work outside the law, held together by social contracts. These extralegal contracts created an undercapitalized sector, but also entire illegal industries which operated on clandestine connections of street vendors and even doctors. People became masters in circumventing the law. Extra-legality is according to De Soto not a marginal phenomenon, but has become the norm in several countries.

Since, in De Soto's view, extra-legality misses a lot of information, it is difficult to trace, to describe and to organize it in such way that development is possible. Generally, no official ownership of assets exists and the unfixed nature leaves space for misunderstanding and reversal of agreements, which makes life unsecure.

The 9,3 trillion dollar of unregistered 'dead assets', should be brought to life to support development. Governments of third world countries should not search for a solution for development in attracting international investment and capital, but instead should open their eyes for the unregistered capital that can be found in their own countries.

4.3.2 Mystery 2: The Mystery of capital

The second mystery can be seen as the key mystery in the theory. This key mystery questions why only Western countries are able to produce capital? What is capital and how can the concept be made visible? De Soto finds the key to this in the six effects caused by the registration of capital.

- *Effect nr 1: fixing the economic potential of assets*
Capital arises only when property becomes fixed on paper. This invisible 'dimension' added on the physical object can produce surplus value over and above the material object. Legal property is the base of capital and creates the economic use value of material.
- *Effect nr 2: Integrating dispersed information into one system*
Subsequently, when property has been fixed on paper, it needs a representational and standardized system to be functional. There needs to be a central database where information about property is stored. This representational system gives insights in what assets are available and the existing opportunities to create surplus.

- *Effect nr 3: making people accountable*
When people do not have property rights, they are not able to have contracts with strangers, do not have access to credits, insurances and so on, because they do not have something tangible to lose. Contracts within the extra-legal sector are based on trust and are therefore often agreed on with relatives. Property rights give them the opportunity to have official commitments and agreements with strangers. Trust becomes less important, because things have been assured on paper.
- *Effect nr 4: making assets fungible*
Capital makes assets fungible in the sense, that it is replaceable for money, which makes it more accessible. People become able to split assets into shares and property can be owned by several people, because of its added dimension. Without this dimension people remain stuck in the tangible physical world.
- *Effect nr 5: networking people*
By combining the previous effects, a wider network arises in which information, ownership and assets can move freely between people, organizations and governmental institutions.
- *Effect nr 6: protecting transactions*
In the end, the network is tracked and protected by law during time.
“Security is principally focused on producing trust in transactions so that people can more easily make their assets lead a parallel life as capital” (De Soto, 2000, p. 61).

All these effects ensure the working of a market economy. The marginalization of developing countries stems from the inability to profit from the six effects of property. The majority of the people living in these countries lives outside the ‘bell jar’ of legal institutions. *“The bell jar makes capitalism a private club, open only to a privileged few, and enrages the billions standing outside looking in” (De Soto, 2000, p. 68).*

4.3.3 Mystery 3: The mystery of political awareness

Developing countries are according to De Soto likely to face the same industrial revolution as has been faced in Europe and the United States two centuries ago. This also goes along with urbanization and migration flows. Because of the failures in the legal system, nations are not able to absorb them into the legal system, which supports the creation of extra-legal arrangements. The third mystery is facing the question why nobody foresaw the existing problems.

De Soto thinks there are two blind spots, which have to be recognized by politicians before a good working legal system may arise:

1. The first blind spot is the thought that the extralegal sector is a marginal one. According to the research of ILD, the extra-legal is an enormous sector which is going to grow very fast in the coming years, because cities and especially suburbs are still growing. The dead capital that can be found in the extralegal sector is therefore highly underestimated. According to De Soto, the extralegal sector is taking over, or has already taken over the legal sectors. Both sectors are competing with each other.
2. The second blind spot is that also Europe and the United States had the same problems in times of industrialization. The fundamental problem that had to be solved was not that extra-legal activities had to be reduced, but instead the activities had to be recognized and accepted before they could be integrated. This is a forgotten lesson for Third World countries.

4.3.4 Mystery 4: The mystery of the missing lessons of U.S. history

What is going on in these countries has happened before in Europe and the U.S. The process that these countries experienced seems to be lost to our minds and therefore we are not able to help Third World countries with the solution for their problems. This is the mystery of the missing lessons of history. De Soto takes the example of the United States to explain its history and compare it with what is currently happening in Third World countries. He argues that the process of property rights in the U.S. was more an unconscious evolution, rather than a planned process. It was taken for granted and therefore difficult to grasp in words. His final conclusion is that the U.S. has gone to a similar process and the lesson that can be learned from history, is that it took a long time and a lot of struggles before the extra-legal sector was integrated into the legal system. By recognizing the extra-legal property and the creation of new laws based on the expectations of the ordinary people, they were able to integrate the extra-legal sector. De Soto does emphasize that the example of the U.S. cannot be used as a template for all countries, but the general lesson that has to be learned is that government must not ignore extralegal arrangements or try to quell them. The challenge is to integrate the social property contracts into the law and create a political strategy which supports the reforms.

4.3.5 Mystery 5: The mystery of legal failure

The last mystery remains why developing countries have failed to 'lift the bell jar' for the extra-legal sectors. De Soto argues this is based on five misconceptions about these extra-legals:

1. *All people who take cover in the extralegal or underground sectors do so to avoid paying taxes;*
2. *Real estate assets are not held legally because they have not been properly surveyed, mapped and recorded;*
3. *Enacting mandatory law on property is sufficient, and governments can ignore the costs of compliance with the law;*
4. *Existing extralegal arrangements or 'social contracts' can be ignored;*
5. *You can change something as fundamental as people's conventions on how they can hold their assets, both legal and extralegal, without high-level political leadership (De Soto, p.161).*

To overcome the challenge, there are two indispensable components of the process which have to be attuned, the legal challenge and the political challenge.

- The legal challenge

The legal challenge is about integrating the many social contracts in one all encompassing social contract. De Soto says that a property system has to support the opinions and needs of the people involved. His metaphor about the barking dogs in Bali which will tell you where property ownership ends, became a well-known one and has to be kept in mind, because it will return several times in the discussions on his theory:

As I strolled through the rice fields, I had no idea where the property boundaries were. But the dogs knew. Every time I crossed from one farm to another, a different dog barked' (De Soto, 2000 p. 170). [...] What governments elsewhere have to do is listening to the barking dogs in their own countries and find out what their law should say. Only then will people stop living outside it (De Soto, 2000, p. 178).

However, De Soto mentioned that there are already existing informal contracts which are documented. These extra legal contracts have to be gathered and deconstructed to find a property and formation system that is recognized and enforced by the people

themselves. Law has to express what society wants, and not the adverse. No blueprint exists in what way to form a property system.

- The political challenge

The political challenge is to emancipate the poor, which is the responsibility of the government. Politicians have to take the perspective of the people living outside the bell jar to see the problems which appear in their life worlds. Subsequently, also the elites have to be involved and the gap between the social classes has to be bridged. By doing this, also the elite will profit from the integration of the poor into the system.

Afterwards, when elites have chosen to support the reforms, there will still be a problem with the 'custodians of the bell jar', who are according to De Soto often the lawyers and technicians who try to change on behalf of their own favour. Lawyers in developing countries have often been trained to defend the law instead of expanding the law. Other defenders of the bell jar are generally the technicians, because they are involved in mapping land rights. De Soto argues that they make governments forget that there needs to more than a GIS system, which maps the property of the people. GIS does not tell which rules and rights are at work within the network of property. Their interest distracts the attention from the real problem that has to be solved.

4.4 Conclusion

Solving poverty is a matter of integrating the poor into the capitalist system by giving them individual statutory property rights. Only by registering property titles, peoples capital becomes registered which can help them to increase production, investments and access to credits, which in the end will help to improve wealth for both the legal and extra-legal economies. To reach this goal, governments have to listen to the voices of the poor and integrate their needs into the legal system. Also political challenges, such as clear titling registration, have to be overcome and unequal economical benefits for a small group and corruption have to be reduced. When all this has been done, it will help people to develop and to reduce poverty.

4.5 Preview on the debate

Now, the theory of de Soto has briefly been explained, it is time to see to what extent the theory of De Soto is believed to be effective.

In the following chapters, the assumptions of De Soto will be discussed in detail. Every chapter will discuss a specific issue concerning the ideas of De Soto and will provide an overview of different points of views from several researchers. An intensive study on the literature addressing the theory of De Soto, revealed a tremendous amount of articles and books deliberating on De Soto's assumptions and claims. Therefore, only the most important and most heavily discussed assumptions will be analyzed. Other smaller commentaries and accusations will be left out of the discussion.

In the end, a discussion will give a final analysis on the theory of De Soto, which will be followed by conclusions and recommendations distracted from the discussion.

5 The denial of inequality

5.1 Introduction

The first general accusation addressing De Soto's work, is the accusation for his deficiency with respect to existing differences and inequality between people. His book has often been argued to be 'over generalizing', 'oversimplifying' and even 'vague' (Bourbeau, 2001; Culpepper, 2000; Home & Lim, 2004; Gilbert, 2001; Manders, 2004).

To begin with, the most important distinction De Soto makes in his theory between people, is the distinction between 'the legal' and 'extra-legal' persons. De Soto mentions the extra-legal as generally being 'poor' and therefore uses the term 'poor' as it is an equivalent for 'extralegal'. By doing this "*De Soto tends to call the potential beneficiaries of his ideas 'the poor', as if they are a homogeneous and undifferentiated mass*" (New York Review, in Home & Lim, 2004). Although 'the poor' form the core of his theory, he does not further differentiate them, while in fact, huge differences exist between these people. Some of the poor are businessmen in the city with a relative high income, while others may be landless persons working in rural agriculture having difficulties to earn enough to meet their life needs (Cousins, Cousins, Hornby, Kingwill, Royston & Smit, 2005). According to Cousins et al (2005, p. 2) there are even extra-legal persons that "*make fortunes from the exploitation of workers because they operate outside the law*".

This overgeneralization of the practice causes other missing aspects in De Soto's theory as mentioned by different researchers. In the next section the missing link with gender relations will be discussed. Subsequently the ignorance of health issues and social exclusion will be dealt with in detail. Arguments are provided why De Soto should not have overlooked these aspects in his theory.

5.2 The missing link with gender relations

Critique has been given on the absence of issues with gender relations in the theory of De Soto. Gender relations play an important role in shaping society and are embedded in everyday interactions between men, women and social groups.

As can be expected, also poverty is heavily gendered and international development organizations and governments try to pay attention to this by supporting the same rights for men and women.

According to Manji (2006) the focus of development with respect to gender has been too much on female employment and she emphasizes the importance of land ownership for women. According to her, this focus of gender is already a missing point within the existing development strategies.

Several organizations argue that women have got a significant weaker position than men, when it comes to ownership of land (Food and Agricultural Organization [FAO], 2010, p. 1; OECD Development Centre, 2011; Gender In Development Division [GIDD], 2005). In recent years, many studies have been conducted to explore the field of gender relations with respect to land access for women (FAO, 2010; GIDD, 2005; OECD Development Centre, 2011; Bosire, Mwangi & Kiai, 2002; Act!onaid, 2010; USAID, 2011). Figure 4 shows the outcomes of a research of FAO (2010) which underlines the importance of gender all over the world in the ownership of land. The figure shows the highest and lowest percentages of land ownership by women over the continents. It should be noted that nowhere in the world an equal share in ownership by men and women can be found.

Especially in parts of Africa the situation seems to be pressing. In every North-eastern or Northern African country less than 10% of the land is owned by women. The research from FAO (2010) showed that even if women possessed their own land, it was often of smaller size and lower quality compared to the land of men.

Problems with the imbalances in ownership came heavily to the fore, after the food prices rose in 2007 and 2008. FAO (2010, p.1) saw a worsened economic position of women and female run households. Women's low access to land and the increasing income spend on food, decreased the welfare of single and widowed women and their households.

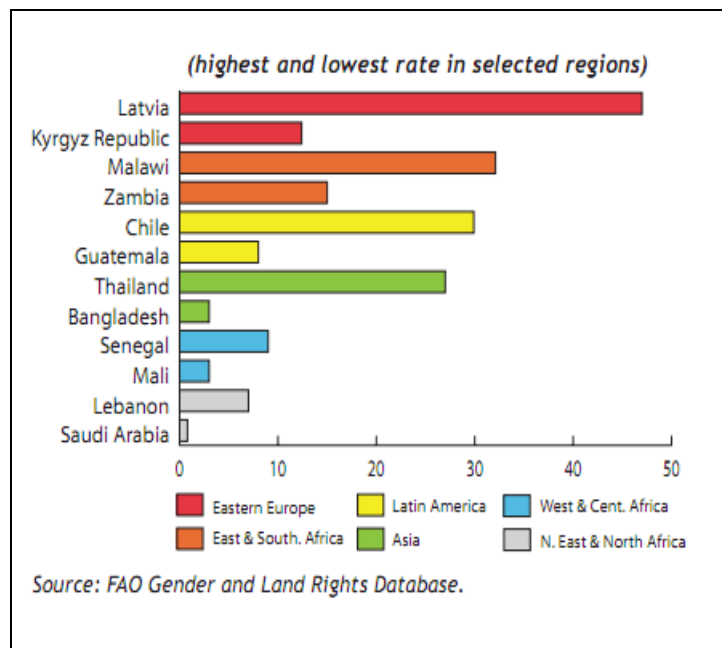


Figure 4: Women's access to land worldwide

The reason why women often have to a lesser extent access to land is because they are often restricted by both informal and formal laws to own or access land. An example of both will be given.

5.2.1 Restrictions by formal law

Formal rules can make it difficult for women to be the owner or controller of a piece of land. There are still countries in the world with national laws which are discriminative in nature. In, for example, Nepal the law on property rights favours men in their position in land tenure, inheritance and family property. Besides, in Botswana and in some other African countries, laws and legislation do not permit a married woman to register a piece of land alongside that of her husband.

Saudi Arabia, mentioned in figure 4 as having the lowest percentage of female-owned land in the world, does not directly prohibit women to obtain land rights. However, their rights are restricted by another law which requires "physical separation of unrelated men and women in all public areas, which restricts the ability of women to own and control any assets independent from men and places them under guardianship of men" (Social Institutions & Gender Index [SIGI], 2011).

Another legal restriction on women's ability to own land, which can be found in many countries, is the restriction for women to borrow money from official institutions without permission of her husband (Lim in Home & Lim, 2004, p. 62; Act!onaid, 2010), which in some case makes it also more difficult to buy a piece of land.

5.2.2 Restrictions by informal law

Besides restrictions in formal law also informal rules can restrict women's ability to own land. In many African countries, cultural norms only permit women to receive 'secondary land rights', which means that they can only possess land in preservation for other family members (FAO, 2010; GIDD, 2005). In this case it could happen that a woman receives access to land after her husband dies, but on a temporary basis. Often, when the oldest son, becomes old enough to own it, the land will be transferred to her son (Lim, in Home & Lim, 2004, p. 148; GIDD, 2005).

As in the case of Zambia (see case I, appendix I) according to cultural norms it was not social desirable for a woman to own land. Owning land was a task of men and women became therefore dependent on men to receive access to land. Often they have no say in

issues with respect to the land because it officially does not belong to them (GIDD, 2005). Most studies indicated that the best way for women to receive access to land was by means of marriage or inheritance (FAO, 2010, p. 2; Actlonaid, 2010; GIDD, 2005). However, in case of divorce or widowhood they are likely to lose access to the land and often return to the land of their parents (FAO, 2010; GIDD, 2005).

Also people's belief plays an important role in the relation between men and women. In many Muslim countries, it is the task of men to take care of the financial position of the family and they are therefore preferred to be the owner of the land (SIGI, 2011)

If titling is the solution for property, a lot has to be done to abandon the cultural and legislative discrimination of women within society. Land law should provide at least equal rights to men and women, which already forms an enormous challenge, before poverty can be reduced. Then, the second challenge is to change the relationship between men and women within all its cultural aspects. Without these changes, the theory of De Soto will probably not be sufficient to end poverty, at least not for women. Titling without structural changes within gender relations is likely to increase inequality, because women and their families will not be able to benefit from land administration and development (FAO, 2002) Females (and their children) will become the victims of poverty because of discriminative laws (Manji, 2006) and weakened positions within society.

5.3 Scope of HIV/ AIDS and access to land rights

Something which is highly underestimated, but also affects poverty and the ability of gaining access to land, is the HIV and AIDS pandemic. This is especially the case in Africa, where rates of HIV-infected persons are higher than elsewhere in the world. For example, over a third of the adult population of Botswana and Uganda is infected with HIV. The high percentages of infected people have got significant consequences for the employed population of the country and the depletion of savings of the people. In Botswana it is expected that one-income earner has to care for about four persons in his family. Besides, almost half of the families in Botswana take also care of at least one orphan (Lim, in Home & Lim, 2004).

That HIV and Aids has got great consequences on the income of families shows an example from Zambia, where when the main-salary receiver dies, the income decreases by almost 80% in two-third of the cases. The study of Lim (Home & Lim, 2004) and Bosire, et al (2002) (see case I, appendix I) shows that most households with AIDS and HIV-infected persons suffer from 'financial ruin' when one of the parents is sick or dies. Things as care for the ill, loss of income and costs for funerals may lead to fallow land and reduced food security for the ones left behind (Bosire et al, 2002). As a result, children have been send to work, to earn extra money and are denied access to school.

Another problem which is related to gender inequality is the problem that orphans and widows sometimes have been chased from their land especially by relatives interested in their inherited property. When men are supposed to control the land, women are often not informed about procedures and rights with respect to ownership and are therefore not able to fight against dispossession and suppression (Bosire, Kiai & Mwangi, 2002). The same applies to orphans who are not old enough to take case of the land they inherited (Bosire et al, 2002; US Aid, 2011).

Together all these problems can have great impacts on poverty levels in areas with high amounts of HIV-infected persons. Again, women and their children will suffer most. This is also because women become more easily affected with the virus than men (Lim, in Home & Lim, 2004). Although, AIDS seems to increase levels of poverty worldwide, a positive development worth mentioning is that 2009 was the first year in which a decline could be seen in the number of people suffering from HIV or AIDS. This trend will probably continue in the future (Worldwide Aids and HIV Statistics, 2011).

Of course, it has to be kept in mind that not only AIDS contributes to poverty, but also other aspects such as hunger and diseases like malaria and tuberculosis contribute to poverty in the same way as AIDS does. These factors have not been mentioned by De Soto, while they do have a critical role in keeping poverty rates high. Titling property will in these cases not directly form the solution for their problems (Lim, in Home & Lim, 2004)

5.4 Social exclusion

Beyond the problems with gender relations and AIDS, there is another problem, which partly overlaps with, and might be caused by the previous two factors. This is the issue about social exclusion. Social exclusion has often been mentioned as one of the major stumbling blocks of the theory of De Soto (Harrison, 2000; Culpepper, 2000; Home & Lim, 2004; Manders, 2004). The opponents argue that formalizing property rights will exclude the people without land, the non-owners, of profiting from benefits obtained by private owners (Culpepper, 2002, p. 2). As Harrison (2000, p. 3) states: *“This is curious, for the author is dedicated to the task of ameliorating the large-scale deprivation that is the norm, rather than the marginal exception”*.

Although, De Soto already mentions himself the numerous slum dwellers who live on the pavement of the streets and the people who are renting informally (De Soto, p. 92), he does not give a solution for these people. He does not mention if there's a place for them to benefit from formal law and legislations and above all how these people can be involved in the process of titling or creating capital.

From this perspective, it seems like there is no future for these non-owners when we follow the theory of De Soto. These people have to stay outside the law, cannot have official capital and will thus not be able to enter the capitalistic market. According to Manders (2004, p.187) these people are forced to live in dilapidated tenement houses.

In view of the growing migration to the cities and the expansion of the informal market, mentioned by De Soto himself (De Soto, 2000, p. 86), the future prospects becomes sad for the excluded. Combined with excluded persons caused by gender relations and diseases such as AIDS, the most vulnerable of the society become even more vulnerable when others receive property titles. Greater inequality will be a result.

6 Do property titles lead to access to credits, increased investments and capital mobility?

6.1 Introduction

One of the main issues that has been heavily criticized by different researchers is the question whether access to a formal title raises the potential to gain access to credit in order to realize further development. Titles should according to De Soto bring capital to life, which makes it possible to obtain access to credits to invest, to increase capital mobility and in the end to make money. When all parts of society should have legally recognized their property within law, they can enter the capitalistic economy and benefit from welfare (De Soto, pp.36-70).

[..] They hold these resources in defective forms: houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with undefined liability, industries located where financiers cannot see them. Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded [...], cannot be used for collateral for a loan and cannot be used as share against an investment (De Soto, 2000, p. 6).

As a nuance, De Soto does not suggest that people without property rights never have access to credits. However, he does suggest that investment costs for people without official property titles are higher. In the TV-program 'Tegenlicht' he said: "*Who is going to come and take shares of what you got, if you don't have a piece of paper whereby you can guarantee it*" (De Soto, in Van Veelen, 2001).

While it sounds as a quite obvious statement, researchers gave a lot of critique. The accusation focuses on the practical implementations of the theory because reality does not offer a lot of evidence on this assumption (Bourbeau, 2001, p.78). Case studies from Colombia, Chile, Peru, Turkey, Mexico and South Africa show that titling does not make any difference for the accession of loans for private lenders (Gonzalez, 2009, p. 246) but somehow does seem to increase investments with own savings.

6.2 Access to credits for poor individuals

The first point of critique is that credit markets in Third World countries, cannot be compared with credits in Western countries. De Soto has been accused for making too easily the comparison between the situation in developed and underdeveloped countries. Culpepper (2002, p. 3) stated that taking credits in developing countries should rather be seen as a dangerous risk for people, because of 'notoriously imperfections' in the system such as overlending and the risk of losing property (Culpepper, 2002, p. 3).

On the other hand, financial institutions are often also reluctant to give loans to poor people, because of lack of confidence in the poor repaying their credits. Their low income and low value of land, makes banks reluctant to provide any credits at all (Gilbert, 2001, p.10; Home & Lim, 2004, p. 148; Gonzalez, 2009, p. 246; Sanga, 2009).

The titling programme in Peru, mentioned in the book of De Soto and in case II (appendix I), distributed over 1.2 million property titles. But even the results of De Soto's own programme do not support the crucial link between tiling and access to credits (Nyamu-Musembi, 2006). As can be seen from case II, property titling did seem to have a small impact on access to credits for the purchase of construction materials for housing investment. Nevertheless, still 34% of all households were not able to access any credit.

Moreover, almost all loans to the poor came from one public bank with relatively good conditions for loans. During the implementation of the new property law, which provided better legal security over personal property, private lenders expanded the requirements for

obtaining loans. Because of this, households stood stronger in their rights over property but were still not reduced in credit rationing by private lending institutions (Field & Torero, 2003).

Another major critique is pointed to De Soto's statement that people become part of the formal sector when they receive their property titles. In fact, receiving property rights does not necessarily mean that people enter the formal system as a whole. Two studies from Santiago de Chile and Bogotá (Gonzalez, 2009; Gilbert, 2001) proved that people living on informal land also often work in the extralegal sector, which means that these people do not have official registered jobs, but work, for example, as an illegal street vendor. As a consequence, this means that even if their property becomes titled, they still do not always get access to credits because their income is not assured on paper and fluctuates on a monthly basis (Gilbert, 2001, p. 10; Gonzalez, 2009, p. 246). This makes people less reliable in paying their loans back and it is a reason for banks to be reluctant in giving loans. It might be doubted that a man as De Soto, who spend lots of years examining informal sectors, overlooked this problem.

In the case of Peru, no credits were given to households who would like to start an enterprise. But in several cases also no loans were given to existing enterprises with formal ownership. The main reason for this was that these enterprises weren't considered wealthy enough to be profitable (De Laiglesia, 2004, p.20; Manji, 2006).

In this case, the benefits of property titling will only serve the already wealthier people and even seems to widen the gap between the rich and poor (Payne, 2008), instead of the adverse as has been claimed by De Soto.

Another additional problem appeared in the previous example of Columbia and Chile. In Bogotá, access to credits will only be given to people who do not live in the so called 'risk zones' of the city. Living in a 'risk zone' implies that land and housing value is not high enough to receive a loan. In this case, a great part of the poor will never have access to credits, because the rules of the bank do not allow it (Gilbert, 2001, p. 10). A legal property paper will not have any effect, because they are just not living on the right location.

The conclusion distracted from the many examples, is that the self-help construction of 'titling-renting-investing-developing' invented by De Soto, does not apply to all situations. It highly depends on the willingness of banks to provide loans for a reasonable price.

6.3 Willingness of having loans

But even if banks are willing to lend to the poor and people have the chance to receive a loan, it seems in some cases more the question if the poor are willing to borrow. In Lima out of the 300,000 families who received a title, 45,000 had taken a loan (Gilbert, p.11). This seems a quite positive result, although it is still only 15% of the households who received title deeds.

The general outcome of a number of studies is that people are rather reluctant in taking loans. The World Bank (2000) admits that poor families are often discouraged by other examples of people who did not get access to loans, and think they cannot fulfil the requirements of the bank. This feeling also stems from studies in Botswana, Trinidad and Zimbabwe. *"Land tenure is proposed to facilitate access to finance, but we found poor plot-holders in all three countries [Botswana, Trinidad and Zimbabwe] understandably risk averse, reluctant to pledge title deeds in case they lost their land"* (Home & Lim, 2004, p.147). Home and Lim (2004) and Gonzalez (2009, p. 246) found that people were fearing debt and loss of their property and distrusted financial institutions. Also the study of Nyamu-Musembi (2006) in Kenya showed that people would not risk losing their family land for credits. As a result, it has been found that preferences went to loans given by family, friends and relatives or through informal financiers (Home & Lim, 2004; Gilbert, 2001, p.10).

What can be seen in the case of Peru is that titling did lead to higher willingness of households to receive a loan, but still this was in general not the main reason for people to obtain official title. The most frequently mentioned reason to title land was about receiving 'real' security. In a lot of places around the world people are afraid to lose their informal property and are therefore willing to have a title. Studies found out that people often highly value their land. Their plots are often seen as their security for the future and next generations, rather than a marketable asset (Home & Lim, 2004; De Laiglesia, 2004). For this reason they are often not willing to sell their land, because they would like to pass it to their children.

However, there are also examples of people living in informal settlement who do not fear eviction and therefore do not feel the urgency to title their land. They already live at the same place for years or their whole life and are not afraid to be chased from their lands and sometimes even get support of the government in providing facilities such as electricity or water (Payne, 2004; Kangwa in Home & Lim, 2004). As Gilbert said titling can help to secure people, but does not always make a difference. He states:

Look at how few settlements in Latin America have ever been demolished and you will see that the vast majority remain. Legal title helps but if a government is determined to remove a settlement it will do so, some with compensation but not always (Gilbert, 2011).

A last, but not less important point that has to be kept in mind, is that also certain religious rules can act as a restriction for the willingness of people to take a loan. According to the Muslim law, Muslims are not permitted to be involved in payment or receipt of interests. They are, besides, not allowed to do business with banks who invest in 'unethical activities' such as gambling or the production of alcohol (Williams, Meth & Willis, 2009). This makes the path for development as proposed by De Soto not suitable for Muslims as credits form an important part of his theory.

If titling does not directly increase access to credits, would there be a link between titling property and investment in property, either with or without the help of credits?

6.4 Property rights and housing investments

De Soto believes that land titles would stimulate land markets and capital mobility. Also the World Bank (1993, p.117) believed that property titling in squatter settlements was "[...] *important in making land and house transactions possible and giving occupants' legal protection. It encourages the buying and selling of housing and makes it possible for households to move to a dwelling that suits their needs and their budget. It also increases the choice of tenure available to households, allowing them to own or rent [...]*".

But as already shown, capital mobility in form of loans did not crucially increase and also the assumption that housing transactions increases has been invalidated by several studies (Gonzales, 2009, Gilbert, 2001, Payne, 2008). In low-income settlements in, for example, Bogotá, Santiago and settlements in South Africa and Senegal the residential mobility of home-owners is indeed very low, but this did not change after titling (Gonzales, 2009; Gilbert, 2001; Payne, 2008). Even after the implementation of titling programs, there is little buying and selling of homes within communities. People are often used to live in the same place with their family 'for ever' in the same house, like their forefathers did and therefore often feel attached to their plots. They are not willing to leave because many years have been invested in these self-help-houses and social contacts.

For these people it is very difficult to move, because buying and selling is not a usual thing to do. When credits are not accessible and salaries are low, the only possibility to get rid of your house is by selling it below the market value (Gonzalez, 2009, p. 247; Gilbert 2001, p. 9; Payne, 2004), which was exactly what happened in, for example, South Africa. The few people who would like to move weren't able to sell their house for a reasonable price. Many sales were at lower value than the invested improvements by the owners and service costs

to register the new owner were relatively high. As a result, people again began to sell their houses informally which broke down the land registration system (Payne, 2008; Peters, 2006).

Atuahene (2004) explains these problems with housing transactions foremost through geographical reasons. She argues that titling in settlements can adversely affect problems with poverty. Self-help-settlements are often located in the periphery, lacking mostly infrastructure, or access to electricity and water and these areas are far located from the places with job opportunities. According to her titling programmes in these areas, only strengthens the difficult situation of these people and concentrates poverty in and around these areas, because the only ones who are likely to buy houses in these areas are again poor people. Atuahene (2004) argues that titling programmes should support spatial integration and should give the poor better access to well-located land which might enable them to create wealth.

Although it remained apparently difficult for the poor to access credits or make housing transactions, studies showed that people were able to invest after they received a title deed. In Nicaragua land-attached investments increased by 35% among people who did receive an official title (De Laiglesia, 2004). In Peru housing investments rose by 10% (Torero & Field, 2004). This was the same in South Africa, Senegal and Argentina (Payne, 2004). It has to be noted that in all the countries mentioned no crucial link could be found between property titling and access to credits. The obtained feeling of security was in all studies one of the most important factors for them to invest.

While investments increased, little evidence could be found on increased household income and job opportunities for titled families (Payne, 2004; Griffith-Charles in Home & Lim, 2004). Evidence from Trinidad showed that titling plots did not lead to a dramatic growth of land markets and economic activity (Griffith-Charles in Home & Lim, 2004).

With some caution, it can be suggested that the importance of titling lies in the improvement of security increasing peoples well being and their likelihood to invest in personal property with their own savings.

By way of conclusion it can be said that the process of tiling does not seem to have the expected positive effects on poverty reduction. No articles or evidence were found which fully support the theory of De Soto.

A positive aspect of titling is that it can secure people, but even this is not always the case as governments use their power to dispossess people if they feel the need to do so.

De Soto expected his theory to raise the production of surplus and new capital, what in his eyes was related to development. However, from the evidence of several studies can be distracted that it did not directly generate surplus, but it did generate new capital by means of personal investments in housing.

An additional reason, in my opinion, to doubt the effects of the theory, is the fact that De Soto scarcely provides factual evidence on the many assumptions mentioned in his book. This seems strange, because De Soto and the ILD have worked for many years on this research. Moreover, no information and evidence on the effectiveness of their work can be found on the website of the ILD. Only extensive information is given about their projects, but not even a tiny result of their projects is published.

7 Historical comparisons

7.1 Introduction

An accusation which stands more or less outside the debate about land rights itself, and has not directly to do with the effects of the theory of De Soto in practice, is the accusation on the historical part of his theory.

In his book, De Soto compares the history of the United States with the history and present state of affairs of developing countries, to explain why they did not succeed in creating capital themselves.

According to his opponents, the situation of developing countries cannot be explained with the comparison he makes between both developed and underdeveloped countries. The history, which forms in fact the fundament of his theory, is accused to be weak or even incorrect.

7.2 Historical misinterpretations

In his book De Soto draws lessons from European and American history. He explains that Europe and the U.S.A. have gone through the transition from customary to statutory property regimes and he argued that all developing countries are likely to face the same industrial revolution as Europe and the United States.

In order to make progress, just as Western countries did, Third World countries should learn from the European and American historical experiences during the time the latter implemented their formal property systems. De Soto, emphasizes that the implementation of this process should not be literally imitated from the process in the United States, but he leaves no doubt that the transition to formal property titling is the universal way to create capital (Nyamu-Musembi, 2006). As De Soto says:

The only real choice for the governments of these nations is whether they are going to integrate those resources into an orderly and coherent legal framework or continue to live in anarchy (De Soto, 2000, p. 27).

This citation suggests that there are, simply said, two options: the choice of integrating property rights to become a developed country or doing nothing and staying underdeveloped. By making the divide between pre-capitalist and capitalist, De Soto places himself in line with the modernization theory of Rostow, which suggest that societies have to go through an evolutionary process (from a primitive society to a modern society). For De Soto, the transition from informal to formal property is a step forward in the modernization process. But this way of thinking is problematic. It is too simplistic to say that development can only be achieved by following a pre-set path, the path from pre-capitalistic to capitalistic country (Nyamu-Musembi, 2006). There are lots of ways in which countries should be able to develop besides capitalism. Countries such as China, which is already communistic since 1921, where individual private property is not allowed by the state, to some extent also have been able to develop (McEvoy, 2001). At this moment, their economy is about to grow with 10% each year (World Bank, 2011).

Secondly, De Soto is accused for being too simplistic in comparing the situation of American history with the current position of developing countries.

Several researchers (Manders, 2004, p. 190; Home in Home & Lim, 2004; Culpepper, 2000; Chang, 2002) argue that De Soto cannot compare history of Europe and America of more than 150 years ago with the current situation in developing countries.

To understand the accusations, the American history with respect to property rights will first shortly be outlined.

The United States were colonized by Europe from 1492 until independence in 1776. For

Europeans America was the country of opportunities. People could easily become the owner of a piece of land by using it because no formal property system was existing. Europe in these times was depending on feudal systems (Jacobs, 2009) and people could escape from these property lending systems in the United States. The country was overwhelmed by migrant squatters and at the end of the 18th century, the idea existed that property rights had to be secured by an institution. Some people argued that the constitution of the United States in 1787 was based on the idea of protecting property rights. It was supposed to be a main task of the government to manage a national property system (Jacobs, 2009). During these times, the population density was very low. The United States counted around 5.3 million inhabitants (U.S. census Bureau, n.d.)

According to De Soto (De Soto, 2000, p. 123) the breakthrough in registering land, was the introduction of the Pre-emption and Homestead Act mid 1800s which made it possible for all people without registered land, to buy the piece of land they lived on for a low price. This piece of land could moreover, not be bigger than 160 acres and governments could earn money by charging people for the registration of their land. If people had lived for five years on the land they could become the owner of every piece of land on which they build something physical such as a house, a well or fenced area (Home in Home & Lim, 2004). It was the ideal situation for governments to earn money with registering title deeds and profitable for the owners of the land as well.

By keeping this in mind, it is not correct to compare the situation of developing countries nowadays, with the history of the United States. The difference can, first of all, be found in the fact that America did not have a government and no official law till the U. S. Constitution in 1787. The situation in developing countries nowadays is very different from this. In the United States the government and legal system were created around property rights, while in developing countries already law and governance exist. A crucial difference is that their law and governance should be adjusted to the implementation of private property rights, which is a much more complex process.

Besides, De Soto forgets to mention that in North-America power was distributed among white Europeans willing to receive property rights. During these times, there was suppression of indigenous people and slavery, and rights of these people over land were just not taken into account (Jacobs, 2009). European migrants were allowed to take the land of these people, because the indigenous people did not use their land according to the European 'standards' of agricultural and forest management. They had been expropriated by settlers, backed by the government (Culpepper, 2002, p. 2) and their land had not been recorded in the system (Home in Home & Lim, 2004). Also, slavery was supported by the population, because people feared competition for land, when the black people would be freed from slavery (Cincotta, 2007).

It is argued that countries such as the U.S.A., U.K. and other countries in Europe, reached their current levels of wealth and development, with the help of 'bad' policies. Not only slavery, but also child labour and strongly polluting industries during times of industrial revolution have led to the modernization process of these countries. Polanyi (1944) and Bryceson (2002) stated that such policies, in which development is only about making money, will destroy social relations, societies and nature. Nowadays, such modernization strategies would highly be resisted by the Bretton Woods institutions and other international agencies (Chang, 2002). De Soto's statement about going through a same (industrial) revolution is therefore highly contested (Chang, 2002; Jacobs, 2009, Bryceson, 2002).

De Soto takes the history of the United States as a perfect example of distribution of property rights, but in his book, he advocates for a bottom-up approach of governments in distributing property rights. It must be said, though, that the Americans definitely did not use a bottom-up approach, but instead a top-down structure which rejected the voices of the indigenous and slaves.

Finally, modern metropolitan cities in developing countries are densely populated already. For example, Santiago has a population of 5 million people, the same number of people living in the whole of the United States in the 1800s (Manders, 2004). These high population densities mean that implementing property rights will be much more complex; more people are involved and more struggles are likely to appear.

8 Discussions with respect to policy making and governance

8.1 Introduction

This chapter gives an overview of policy issues within the debate on the theory of De Soto. De Soto assumes that developing countries have got problems with managing their institutions. This is according to him partly caused by differences in personal intentions of the people working within these sectors. Moreover, lack of know-how, money and materials are also part of the problem and form an important part of his theory.

8.2 The problem with weak institutions and legal systems

De Soto advocates in his book for releasing the top-down structure of governments and instead listen to the voices of the poor. He advises governments to adapt policies to their needs and wishes, because acceptance is necessary to integrate the informal economy and to make law work (De Soto, p.171).

This assumption of De Soto sounds very logical, easy and socially desirable. To some extent his assumptions might be true. Legitimacy of property rights depends on social recognition and acceptance. It has to fit within the social dynamics of people's everyday-life, their way of doing business and their norms and values towards property. If this is not the case, the role of law and institutions becomes transformed by the informal rules people made themselves (Nyamu-Musembi, 2006). Listening to these people can help to understand their way of life and to make law fit into it.

However, this is not as easy as it sounds. De Soto's statements have been critiqued by several researchers as if his advices are irrelevant to any extent.

Bourbeau (2001), for example, argues that property rights will not help people to develop, because in most third world countries, there is a lack of support beyond allocation of land. She states that land titling does not improve anything as long as the institutional structures of these countries are not prepared for this kind of structural changes in the allocation of land. She presents her arguments in a way, which negatively addresses De Soto's theory. But in fact, De Soto did not say anything different from Bourbeau because De Soto also advocates for better governance of land registration. In his book De Soto specifically devotes a whole chapter on 'the legal and political challenge' of the implementation of property rights. He definitely is aware of the challenges and writes about governments who tried several times to create a good working property titling program, without having success (De Soto, 2000, chapter 6):

Implementing a property system that creates capital is a political challenge because it involves getting in touch with people, grasping the social contract and overhauling the legal system (De Soto, 2000, p. 241).

The political and legal challenges are recognized by all researchers and they highly agree on De Soto's statement that preparing governments to create a good working property system is a very challenging task. Procedures of land management are time-consuming and require specialists "to survey, examine plans, prepare legal documents, keep records, update valuation and rating lists, manage tenancies, execute enforcements and evictions, correct errors in past records, and resolve land appeals and disputes" (Fourie in Home & Lim, 2004).

To give an example, Manji (2006, p. 44-45) tells in her book about the government of Tanzania which prepared land reforms in 1998. The Tanzanian government was willing to listen to the voices of the citizens, but during the implementations their voices got lost in the process and in the end, the new law was far from delivering security and access to productive law, offering more insecurity and risks. Her clarification for this is the fact that

lawyers, elites and other powerful persons have got their own interests in the land processes and fear losing title to land or reduction of their might. During the implementation process individual interests led to changes in law. As it began with good intentions, it ended up in a worsened situation for peasants and strengthened positions of elites.

Manji (2006) and also Home and Lim (2004) clearly agree with De Soto that the role of lawyers and technical legal consultants should not be overlooked. They both believe that attention has to be paid to the intentions of the ones who create and transform the legal system. Home and Lim (2004) confirm the burdens and irrelevance of state bureaucracy and their failure to listen to the people. It also has to be mentioned that by giving private property rights to individuals, the might of the state over these pieces of land becomes weaker. This is also a critical point which should be kept in mind and which can result to some extent to resistance of governments to give property rights to people (Nyamu-Musembi, 2006).

Both studies (Home & Lim, 2004; Manji, 2006) show that countries do have regulations of how land should be managed. However, the problem is that although they do have trained personnel, they have problems with building and running the record systems. They often lack the money to survey and record changes.

Besides, they both argue that training of planners and surveyors should provide techniques of what Home and Lim (2004) calls 'deliberative and discursive democracy', in which they learn how to deal with common interests.

Ozay, who is a researcher and field worker for a small organization for 'culture identity and resource use management' in Vietnam, stated that land administration was one of the most corrupt sectors of the government. While laws were relatively well put on paper, local governments often lacked the capacity and knowledge to reclaim land for their people from big companies who bought the land via corrupt affairs. No compensations were given, media wasn't allowed to write about it and people who protested were sent to prison (personal communication, June 22, 2011).

In short, at this point of De Soto's theory, there is general agreement on his statement that there is need for good institutions regulating and managing open and clear land administration, which is not influenced by individual interests and corruption. As Ozay says:

Partly, answers should be found on technological and administrative improvements, but a large part of the solution lies in the strengthening of democratic mechanisms, good distributions of power and transparent institutions, tackling corruption, free media and a good informed population that dares to speak out (..) but the most important point of all is integrity and the right mentality among powerful leaders (..) as long as this is not present... forget about the rest... (Ozay, 2011).

According to Home and Lim (2004), De Soto's theory led to awareness and changed attitudes of governments towards the vulnerable persons living in squatter settlements. In their opinion the theory reached both the poor and governments, which is of course a good point.

Although governments might no longer ignore the settlements, sometimes they might be helping the poor for the wrong reasons. Gilbert (2011) stated: "It [titling] can earn money for governments, it can alleviate poverty but its most important function is to win votes among the poor and improve the government's image". This is exactly what a tour guide in South Africa told me about the settlements in Cape Town. All visible informal settlements directly along the highway were replaced by good quality housing in the year before the FIFA's World Cup 2010. The government believed this would improve the image of Cape Town and South Africa during times when thousands of tourists and supporters would visit the city. After the World Cup, none of the improvements in the settlements continued and people were left with the promise of receiving new houses.

Although De Soto is right about his statement that there are a lot of political and legal challenges he does not provide a specific solution about how to solve these political and structural problems and does not tell what the best way should be to implement these property rights. He only mentions the challenges that have to be overcome. As Manders (2004, p.190) says:

While De Soto's historical examples do underscore the role that property rights can play in development, they hardly offer any insight in terms of how a developing nation should go about implementing such rights within their borders.

In my opinion, it would have taken another book to elaborate on these specific problems and changes with regard to land property. De Soto (2000, p.173) already wrote that no blue print can be given on how to reach the goal of preparing governments for these big changes in land administration, which I believe is true. By advising governments, also contexts such as historical aspects, existing laws, structures and institutions in the country have to be taken into account to create a good working system. It is not possible to present this in one single book, and therefore it is not strange he did not involve this kind of information in his book. Moreover, it has been tried twice by Japan and the United States to create a blue print, but it never succeeded (Nyamu-Musembi, 2006).

De Soto thus let it open for interpretation, which led to an accusation of having created a 'one-size-fits-all'-model. It was said to be vague and inefficient (Culpepper, 2000, p. 4; Gilbert, 2009; Manders, 2004).

Although De Soto says that context is important, he does not elaborate on the contextual effects of culture in his book, because he states that culture does not affect workings of the implementation of property rights because culture can be changed. He states: *"One day these cultural arguments will peel away as the hard evidence of good political institutions and property law sink in"* (De Soto, 2000, p. 239). Therefore he insists that his theory can be applied to different countries and cultures, which created the ability for the ILD to inform and advice several countries around the world.

In my opinion, De Soto contradicts his own statements by saying that culture does not matter. This statement seems to be strange for a man who fights for grassroots approaches and 'the voices of the poor to be heard', which are for sure attached with personal values influenced by culture. As could be seen from the example of the Muslim law in paragraph 6.3 the success of development by means of property titling and credit access also depends on religious beliefs, norms and values.

9 Individual versus communal property rights.

9.1 Introduction

The debate about the preference of communal property versus individual property is something that already exists since decennia ago. The issue is very complex and voluminous and therefore already worthwhile a thesis. In this chapter a short overview will be given on the two existing positions in the debate.

In short, this debate counter poses two positions. The first position advocates for individual property rights (whether statutory or customary). This viewpoint suggests that communally used property is or can easily be misused, because responsibility is in a lesser extent appointed to individuals. It suggests that it is in human's nature to take into account only its own interest, rather than caring about common interest and equal benefits for everyone. In this point of view, individual property rights offers better solutions for responsibility and gives certainties about rights to a single person.

The alternative and opposite position to individual property rights is communal property (Fourie in Home & Lim, 2004, p. 45). This position, argues that ensuring individual ownership can lead to alienation of land and ineffective land use. Communal property depends on a feeling of community by the people involved and suggests that equal benefits and development shall be received by this collective approach (James, 2006, p. 244). It should be noted that this approach should not be confused with the theory of 'the tragedy of the commons', in which land is not controlled or regulated, but open accessible for everyone. The term 'communal property' relates to a common resource, from which non-members can be excluded. Communal property is managed and regulated by a particular group of users and institutions that authorize and secure the use of the resource. Communal property can be regulated by customary as well as statutory law. It provides members with collectively organized services and leaves room for negotiations with the state and external institutions.

9.2 Critique on individual property theory

The dominant view in Western countries is that common ownership institutions have a longer history than private property institutions. In these countries economic growth has been explained as the result of the transition from common property to individual (statutory) property. Individual property is therefore often seen as the 'magic bullet' for economic growth and became to be seen as belonging to a modern development approach (Ostrom & Hess, 2007 p. 2). Communally (especially customary) property was besides presumed to be ineffective and outdated or used by uncivilized communities.

One of the most famous proponents of common property is Elinor Ostrom, Nobel Prize winner of 2009. She spent several years on studying the theory of common property and argues that collective associations have evolved to be more efficient in governing use of common resources. Her book advocates for collective action to overcome 'the tragedy of the commons' with mis- and overuse of natural resources such as water, forests, fisheries etc. Ostrom believes that economic productivity will be low "*If everybody tends to free ride on the work of others*" (Ostrom & Hess, p 4). According to Ostrom, communal ownership can be made efficient by providing management and regulations, to make efficient use of resources. This does not necessarily mean land has to be formally registered, but can also be regulated within own rules and informal laws.

In short, the advantage of common property is the assumption that development will be equal for every person living on communal land, because benefits and losses will be shared by the people living in the communal area. Besides, it should stimulate people to engage with each

other and collective approval of the rules will help to create a climate that ensures people's rights and sustainability of their lifestyle (Ostrom & Hess, 2007). Communal property would thus in the end help to reach a stage of sustainable and equal development within societies, which is assumed to provide a better way of development.

Communal property is argued to solve a lot of problems which come to the fore with the individualization of land rights in practice. Individualization of land under freehold is expected to increase the number of landless people according to several researchers (as written in chapter 5). (Culpepper, 2002; Home & Lim, 2004; Manders, 2004; Harrisson, 2000). When governments and other institutions push people into individual (often statutory) property policies, there is the possibility for people losing their informal and/or secondary rights, and thus their access to land (Molebatsi in Home & Lim, 2004). Individualization is thus likely to increase the inequality between people. Less powerful persons become more vulnerable, which in turn may increase poverty among those who lose their common or customary property rights (Home and Lim, 2004, p. 40). As already shown, especially women and children are vulnerable for losing such rights.

More individual titles can also have consequences on both people's way of life and the natural environment. This shows for example of the Masaai in Kenya, who are used to roam the land with their cattle. Increased fencing and subdivision of the land, such as for cultivation, game reserves and mineral exploitation, limits their possibility to continue their livestock economy and welfare may decrease because there is no longer enough grazing land available for their cattle. Fencing also has consequences for the habitats and natural environment of animals and their movements and thus also for people who live a nomadic life (Rutten, 1992). Land reforms therefore not always led to increased security but in contrary led for some people to greater insecurity, risks and inequality (Manji, 2006).

That also the people can be the threshold for the success of privatization can be shown from the example of Russia in which economy decreased because a vast majority of the Russians in 2003 still did not want to become an individual land owner, but preferred to live in communes (Kingston-Mann, 2006). This shows that giving private property rights to individuals, who are used to live with communal property, forms another threshold for the workings of an individual property system. If people never had to work and live as individuals, it can be difficult for them to make their own decisions, to be productive, competitive and self-sustaining. The effects of structural changes within their daily life and social networks are tremendous for those who are not used to live with individual property, because their culture was just not build on this idea (Home & Lim, 2004, p. 45).

Communal property is said to be more likely to solve these problems because it gives better protection and social security to the most vulnerable people in society because communal property in theory relies on the principle of sharing profits and losses (Ostrom & Hess, 2007; Home in Home & Lim, 2004). Communal land can not be taken from people personally and old and disabled persons, when they are no longer able to work, often receive better protection within a community. Communal property can especially be useful for farmers who have to rely on natural resources and land. In some areas single farmers are more vulnerable to drought and productivity might be higher for communal farmers (Kingston-Mann, 2006).

Communal property is said to create a collective feeling of identity and security (Home in Home & Lim, 2004, pp. 22-23), can be a hide-away for the landless who are searching for protection (Home in Home & Lim, 2004) and protects individuals to some extent from competitive consumptive pressures of globalization.

9.3 Critique on the communal property

Although communal property might solve some of the problems which may occur at the individualization processes, communal property does also have its disadvantages and also this approach received a lot of critique.

Opponents argue that the communal approach does not necessarily solve the problems with respect to inequality as Ostrom stated (Cousins, 2009, p. 5; Bourbeau, 2001; Eidson, 2006). According to Cousins (2009), Ozay (personal communication, June 22, 2011) and Bourbeau (2001) it is not true that people living in communal areas have got the same rights and receive equal benefits as the rest of their community. They insist in the assumption that ownership, whether common or not, always leads to certain power relations. By managing a communal system, also different social classes exist such as chiefs, elites and workers. Although, the principle of communal areas is to share advantages and disadvantages, women and members of other certain classes, while included in the system are often excluded as individuals from using or managing 'their' property.

"Also communal systems can be highly inequitable in relation to status, age, and gender, and that local elites are often able to steer processes of social change in their own interest" (Cousins, 2009, p. 6).

Another argument, regarding communal property which can be invalidated, is the assumption that communal areas would provide a better opportunity to develop. This stems from the idea that greater productivity and efficiency can be achieved. In this sense, you can think for example of one person living on a big piece of fertile land who does not cultivate more than he needs, while others have problems with growing enough food to feed their families. For Ostrom communal use of the land should be able to meet the needs of both.

However, De Soto suggests the opposite. He assumes that there is no visible relation between property, investment, productivity and profits on the long-run in communal areas. Working harder does in communal areas not necessarily lead to higher personal profits, which discourages people to be productive (De Soto, 2000). This is not the case with individual property and this should thus lead to higher production and revenues. The communal approach is, just like individual property systems, accused for underutilization of land and hampering the development of the community because often no maximal advantage has been taken from the land (PLAAS, 2006, p. 17-18).

According to Manji (2006, p. 54) a condition for communal areas to be productive was that the market economy of the area was more fully developed. De Soto believed individual property systems were able to overcome these problems.

10 Customary versus statutory rights

10.1 Introduction

Within the discussion about individual versus communal property rights, there is also the discussion about whether statutory rights or customary rights should be preferred in creating the best climate for development. Of course, De Soto argues that statutory ownership is a crucial aspect of development. As already discussed in other chapters the advantages of having customary rights are according to De Soto; being able to create capital, better chances for credits and thus better chances for development. Besides, it has been shown by other researchers that it often gives people a better feeling of security with respect to their properties.

Proponents argue that statutory rights do not offer better security than customary rights and that statutory rights do not lead to an increased welfare and economic position.

10.2 Critique on customary rights

According to the proponents of statutory rights, the need for statutory ownership of land is something which cannot simply be ignored. In a globalizing world, with a fast growing population, land becomes scarcer and at the same time more valuable (Peters, 2004; Cousins, 2009). Therefore, the need for private property rights can easily be explained by securing a place of your own. In line with growing numbers of registered parcels of land, rising food prices, scarcity of water and new technologies for water drainage, commodification, structural adjustments and market liberalization (Cousins, 2009, p. 5) people may not feel secure anymore in a world where everything becomes a possession of someone. As a reaction to these trends, people feel the pressure to secure their belongings and investments (Lahiff, 2008; Ostrom & Hess, 2007). Several studies (Griffith-Charles, Molebatsi & Fourie in Home & Lim, 2004; Jacoby & Minten, 2007; Manders, 2004) show that titling property rights is especially relevant for people who face the fear of their land being grabbed by someone who captures untitled land. There are many examples of people being chased from their informal lands, because others had claimed the official rights over it. According to Cousins (2009, p. 4) these trends will inevitably lead to privatization.

Another problem which should be mentioned, referring to communal property under customary law, is that in Bourbeau (2004) and Cousins' (2009) view, living within a customary property system brings along the difficulty of being unable to secure human rights, because rules within areas with customary rights are informal and not always visible for outsiders. Problems with, for example, gender issues have got free reign.

In addition, areas with customary rights often lack clear criteria for membership, rights and responsibilities. Often there is no democratic system, no data about labour input and no clear procedures for the distribution of obtained benefits for members. As a consequence equal access to land, benefits from resources and protection of property can not be secured (Lahiff, 2008, p. 6). Sometimes this leads to the existence of a powerful elite group which profits most of the use of the land.

Such problems are moreover argued to be caused by weak governance in the area. The capacities of people regulating these pieces of land are often not sufficient to deal with land administration and commercial arrangements with external bodies (Lahiff, 2008, p. 2). Communities generally exist of relative poor educated people and therefore there is not always sufficient information about how customary property has to be ruled.

10.3 Critique on statutory rights

As always in a debate, there is also another side of the coin. Statutory property is not always the suggested solution for development. Already in the 1970s and 1980s the World Bank

began to portray a property regime, which gave strong preference to statutory property ownership, based on the assumption that customary property could not assure agricultural investment and effective land use. This idea relied on views of the colonial administration in the 1950s and western experiences that this was part of modernization and economic development.

In these years the World Bank started the structural adjustment programmes in the sub-Saharan region for public, common and socially controlled resources with the aim of developing the region (Peters, 2006). The policies with respect to private ownership had to generate higher productivity in land use and thus higher revenues. But in the case of the project of the World Bank in the sub-Saharan region in countries such as Ghana, Kenya, Mozambique, Tanzania and Uganda, development programs did not work out. Instead economies decreased with almost 30% in the 1980s and income per capita in 1990 stood at 80% of the 1980s level (Kingston-Mann, 2006).

Moreover, it led to conflicts and competition over land and resources, greater exclusion and expropriation, stricter definitions of 'group' boundaries and class definition depending on cultural differences (Peters, 2006). Besides, the problem was that elite groups favoured themselves with the high revenues of companies who did well during the reforms, which led to highly unequal benefits in the subjected areas. Peters (2006) says about these development programmes:

[...] field research documenting how programmes of land registration and land titling actually performed from the 1970s to the late 1980s showed that the fallacy of assuming that land title would improve tenure security and lead to increased agricultural investment and productivity. Not only did the programmes fail to achieve those ends, but they also encouraged speculation and fraudulent land claims in land by outsiders, thus displacing the very people- the local users of land- who were supposed to acquire increased security through land title.

After the post-colonial time, with several attempts to make a success of titling programmes, it became recognized that property titling was less effective than had been expected (Home & Lim, 2004 p. 21; Kingston-Mann, 2006, p. 147; Peters, 2006). The main goal of increasing capital had not been reached and the failures left a division between different views and opinions among members of the World Bank, some even began to advocate for communal property systems as the best way to govern certain areas (Peters, 2006).

De Soto says he is aware of the problems which may occur at the first stage of the implementation of property rights:

Almost every Third World country or ex-communist state has a formal property system. The problem is in some cases citizens cannot gain access to it [...]. Before we can lift the bell jar, it is important to know that we will not be the first to try [...] governments in developing countries have tried for 180 years to open up their property systems to the poor (De Soto, 2000, p. 160).

With respect to this, De Soto mentions the malfunctions in the system, such as long registration times and high costs, which made it impossible for people to register their property. These problems are important and legitimate reasons for people to hold their property outside the formal legal system. It has been stated that poor people are often not likely to have money to register their plots and pay the taxes afterwards (Manji, 2004).

An intensive research on agricultural investment in Madagascar showed this was especially the case for individual titling. Economic benefits from land titling projects were marginal and in particular would not exceed the costs that had to be made to receive a title. Costs had to decrease in six-fold to make titling worthwhile for individuals.

Land registration on a community base was more effective and provided as much security as formal individual titles. Besides, it was much cheaper (Jacoby & Minten, 2007). The problems

with these high costs, long and vague procedures and corruption, led in Zambia, Botswana and Trinidad, to resistance against titling policies (Home and Lim, p.147).

But even if people would like to secure their property, titling is not always as easy and straightforward as it seems. If people would like, for example, to change their communal lives into individual titled ownership, they can become the victims of unfair distribution and corruption by community members. Also in Kenya, it happened that elites were able to distribute the land in their own favour. The local people did not have the knowledge about the value of their land and the rights that were given, elites were able to keep their privileged position over these people. Lack of knowledge in the society is thus also a difficulty in providing property rights (Rutten, 1992; Gibbon, 1993).

Also the assumption that statutory rights should provide better security, as had been stated by the World Bank, is questioned by Gilbert (Interview II, appendix II). He states that formal property does not assure people from being expropriated by the government. If the government would like to remove houses, it will do so. From another angle, Lund (2001) states that titling also does not assure peoples security, because in some customary areas formal papers do not have social legitimacy, when people do not recognize formal law. So on both sides, the legitimacy of received security from statutory rights might be doubted.

Despite the foregoing failures of World Bank in the 1970s, it did not keep De Soto from arguing that statutory rights can create capital. For him it is just a case of good governance and management. But as already mentioned in chapter 6, De Soto's assumption that statutory rights will help to increase capital by means of access to credits, is overstated and contributions are minimal.

Over the years, and after several other failed attempts to introduce (individual) statutory property rights, the contributions of statutory rights to development can be doubted.

11 What raised the popularity of the theory of De Soto?

11.1 Introduction

In this last chapter it will be explained why the theory of De Soto was so successful among policymakers and politicians while the effective results were not (yet) visible. It was claimed that his theory raised a lot of enthusiasm because his theory seemed to be an easy solution for both governments and people to trigger development.

11.2 The success

In the last decades there had been several approaches for development. From the 1970s until 1990 the approach was focused on developing societies with the help of NGOs. In the 1990s the development approach shifted and gave a more active role for individuals and civil societies in development, instead of passively receiving development aid. Development aimed at creating the capabilities for people to develop themselves (Williams et al, 2009).

In the 1990s the World Bank recommended a new strategy to alleviate poverty. It consisted of three main goals, namely accelerating economic growth, the provision of social services for the poor and the creation of social safety nets (Birdsall & Londoño, 1997).

It was not surprising for many that the theory of De Soto became popular. De Soto's theory fits precisely the strategy of the World Bank. It puts in place an important role to legal regulations which should provide capacities to individuals to develop themselves with the help of property titles. This should subsequently lead to economic growth. It claims that Third World countries do not lack capital, but only lack the legal title to turn it into living capital, which made it a relatively easy solution for the complex problems surrounding poverty.

His approach won enthusiasm from many world leaders, such as Bill Clinton and Vladimir Putin, Fujimori, Thai Prime Minister Thaksin Shinawatra, Mexican President Fox and Afghan President Karzai. USAID and the Clinton administration backed him strongly because they highly supported free trade measures.

What worked in the advantage of De Soto was his broad experience and his links with politics. De Soto comes from a family of international diplomats. His father worked as a lawyer at the International Labour Organization, his brother was an Under-Secretary-General at the United Nations. De Soto himself worked for the General Agreement on Tariffs and Trade (GATT), the World Trade Organization and the International Council for Copper Exporting Countries. Because of his broad knowledge and experience he was seen as a reliable partner and was often asked for advice by political leaders and institutions (Clift, 2003).

His "*brilliant marketing of the concept*" (Gilbert, 2009) made it possible to sell his idea to these high-level decision makers. They liked his ideas and were willing to fund his programme, because it would help the poor, without changing existing economic systems (Gilbert, 2009).

Bourbeau (2001, p. 2) claims that his success can be dedicated to the fact that De Soto "*[...] has become a preacher for weary- or cynical- politicians in the advanced economies who have lost their faith in traditional antipoverty programs in the Third World*".

However, his theory was not only successful among policymakers, but also raised enthusiasm among the ordinary people. According to Bourbeau (2004) and Home (in Home & Lim, 2004) this is a result of the 'vagueness' of his theory and the ignorance of the consequences of his theory for different social identities. It only highlights the positive sides and shows how people in a relatively easy way, independently of development aid, should be able to develop themselves. Besides, his theory argues continuously that governments have

to listen to the voices of the poor. Nobody in an impoverished situation would reject such a statement.

Especially the recognition for the informal economy has raised the popularity of his theory. His approach thus gives power to politicians and policymakers and at the same time created empathy for the people.

As Gilbert (2001, p. 2) stated: *“His policy was a vote-winner with electorates [...] It [his theory] is an apparent unchallengeable recipe for popularity”*.

But according to some, De Soto repeated what had been said by others Home (in Home & Lim, 2004), Bourbeau (2001) and Gilbert (2009) argued that De Soto is breathing ‘popular discourse’ and also Manji (2006) stated that De Soto is populist in tone and that he promotes the American values of ownership.

12 Discussion

12.1 Introduction

The aim of this research was to contribute to the clarification of the scientific discussions around the development theory of De Soto by examining the comments and corresponding evidence that has been given on the assumptions of the theory. This has been done in order to create a well-based opinion about whether, or to what extent, the theory of De Soto should be verified or falsified.

In this section, I shortly summarize the most important results from this study and I will give my personal view on the theory of De Soto.

First I will give my opinion on the legitimacy of the fundament of the theory of De Soto. Subsequently, I will show the physical and psychological challenges for the implementation of property tiling, and afterwards I will give evidence on the working and effects of the theory in practice.

12.2 The fundament of the theory

The theory of De Soto is based on the assumption that development can be obtained by giving individual statutory property rights to the extra-legals. By doing this, their capital value becomes registered which gives them the opportunity to access credits, increase production and investments, which in the end will lead to development.

De Soto based his theory on practices in history of the United States and Europe, which implemented property rights in earlier stages and were able to develop. Implementing property systems in developing countries in the way the U.S.A. did, is believed to be the solution according to De Soto.

This suggests that De Soto, believes in an evolutionary theory and a pre-set path for capitalistic development which applies to every country. This does not necessarily mean that titling is the only solution for development, but according to De Soto, it is the main trigger. From the example of China, which is developing very fast and where private property is prohibited, is shown that it is too straight-forward to say there is only one way for development.

Apart from this, the fundament of his theory has been doubted by several researchers because critique was pointed at the way De Soto compared the current situation of developing countries with the history of the U.S. The crucial difference with American history was that government and law in early America were build around issues with respect to property rights. In developing countries nowadays the situation is the adverse, governments and laws already exist and property systems have to be implemented within the existing structures, which is a much more complex process.

Besides, in American history there were no limitations on development, no attention was paid to issues with human rights and environment which are nowadays the norm. Also the population density of the U.S.A. was much less, which made it quite easy to register property without any conflicts.

Another aspect which weakens the legitimacy of the theory is the fact that De Soto does not pay attention to differentiations and inequality between 'the poor'.

First, he ignores to mention problems which can appear when gender relations are heavily imbalanced. Often women in developing countries are restricted by informal cultural law and even formal law to own land. The case of Zambia showed that women and their children are in a weaker position for obtaining titles and this can lead to unequal benefits and even a higher impoverished situation for females and their children.

Other problems which will slow down the process of development and even will worsen the poverty rates, and definitely cannot be solved by property titling are the problems of HIV/ Aids and other diseases. These diseases led to income depletion, and a more vulnerable position of women and children with respect to land rights because they often lose the rights to their inherited land due to grabbing by relatives.

Besides, De Soto does not offer a solution for these people without land, who are not able to title anything. He does not tell how these people should be involved in the formalization process. His theory makes the most vulnerable persons in society, even more vulnerable.

The issue about inequality plays an important role in development theories, but creating equality is not the main goal of De Soto. However, it is remarkable to see that in every discussion around the assumptions of the theory of De Soto, the issue of inequality comes to the fore. De Soto's approach has been criticized for bringing inequality and therefore received a lot of resistance. For me this is obvious because rights give privileges to certain people favouring them over people who do not have these rights. Rights are thus somehow always related to inequality. Property titling will at most lead to a shift in the division of beneficiaries or disadvantages for different groups within society, but will never lead to equality.

Although, the fundament of the theory seems to be weak and his theory has been disputed for not giving benefits for everyone, this should not directly mean that the theory cannot lead to benefits in practice. But first, I would like to discuss the implementation process of property rights.

12.3 The implementation process

In his book, De Soto mentioned the problems which can occur during the structural change towards private property systems. These problems are likely to slow down the process of development because before the system can work at its best numerous psychological and physical barriers should be overcome.

12.3.1 Psychological barriers

De Soto is a fervent supporter of bottom-up approaches and he advocates in his book many times for 'the voices of the poor to be heard'. I agree with him at the point that property titling should have wider support to find its way in the social- and land relations within everyday- life of people. If law does not support peoples' ways of life, the informal sector will not be integrated into the formal system.

I do not agree on De Soto's assumption that culture does not have an impact on the implementation and workings of a property system. By saying this, De Soto contradicts his own words. His grassroots approach is supposed to include the wishes and voices of the poor, but does not take into account their culture. This is in my opinion impossible, because people's wishes, experiences and opinions are inseparable from their culture, which includes aspects such as norms and values, religion, traditions, politics etc.

In my view, implementing property rights is besides just not only a case of changing the rights of land, but sometimes also involves the realization of a change in peoples' mind, which again relates to cultural aspects. When for example, people change from communal to individual property, a natural feeling of competition and individual mentality has to exist, to make an individual property system workable. The example of Russia showed that Russians were not willing to become the owner of a piece of land because they were not used to work outside communes.

In my opinion, people should first of all, be willing to have their property titled, otherwise the results of titling will never be positive. If people are not willing to have property rights, for example because they don't feel the need to secure their property, or to take part in a market economy, these structural changes will only lead to protest and infraction of their culture, the infringements of human rights and high costs for governments.

However, if people are willing to receive individual title, this still needs to be regulated by a governmental institutions which monitors and assures them of a good value of their land and the official papers for which they subscribed.

12.3.2 Physical barriers

Besides these psychological barriers, there are also physical barriers which limit the workings of a property system. Whether there is need for property rights or not, if property rights are going to be registered, it should happen under good conditions.

While De Soto argues that the major aspect of development is law, it is probably also the most complex aspect. Before this law can work well within a country, several other conditions have to be met.

In his theory, De Soto argues for better control over technicians and lawyers, the reduction of corruption and clear and structured data systems for the allocation of land. This point is highly agreed on by several researchers and institutions. The implementation process involves continuous cadastral proceedings such as maintaining, controlling and surveying the system, which should be regulated well by good trained personnel. Governments should be able and willing to spend a lot of money to set up and maintain an expensive registration.

Besides, corruption has to be banned and human rights have also to be taken into account.

If this is the case, it still needs to fulfil other practical conditions people should be able to register their land. Thus there needs to be an office to register which is reachable for every person and costs for registration and additional taxes for people have to be low.

The fragility of the system is illustrated from the example of South Africa, where property became registered and was sold again in informality by the owners because of high costs for registering the new owners. If one aspect of this complex and comprehensive system does not work properly the whole system is doomed to fail. The way towards a well functioning property system is exceptionally complex and there is a long way to go, before property systems will work at their best. It is therefore, in my opinion, a very hard and exceptionally slow process for poor countries to develop through the tool of property titling.

Although, De Soto does not provide any information in his book about how to implement property systems or how to prepare governments for these changes, this should not be seen as a weakness of his book. Maybe it is a strong point. As he mentions himself, there is no blue-print on how to implement the theory, people should think for themselves about what impact politics, institutions and structures will have in their specific situation and what things need to be done to change or solve political and institutional problems within their own context. And according to me, this context also includes cultural aspects.

While lots of efforts and costs have to be made to create a good working property system, the practice does not provide much evidence on the effectiveness and benefits of the theory of De Soto.

12.4 **The theory in practice**

I showed the advantages and disadvantages of individual versus common property and the discussion about whether customary or statutory rights should be best in creating possibilities for development. The effects of De Soto's theory in practice have also been examined. It has been tested if individual titling led to increased access to credits, increased investments, markets and housing mobility.

12.4.1 Communal versus individual property

If we look at the debate around individual versus communal property, we can see that both types have their advantages and disadvantages.

According to De Soto, by means of individual titling people become responsible for themselves and their properties. De Soto argues individual property will increase productivity because the personal efforts will be rewarded by personal profits. This visible relation is very important in De Soto's arguments for development. This is not directly the case with communal property.

On the other hand, communal property is assumed to provide a more social and environmental-friendly way of development. Communal property creates development, not in terms of money and capital, but in the sense of long term sustainability of natural resources, which makes development more sustainable for the future. Communal property besides, can give better protection and security for excluded persons, non-owners and elderly people, for whom De Soto does not give a solution. After all, in communal areas property can not be expropriated from anyone personally.

Communal property can give advantage for people because natural resources can be shared and can create a collective identity and feeling of security, while individualization and fencing of land can lead to worsened positions for people who live a nomadic live and face a decreased area for roaming.

But while the communal approach says to provide equal rights for everyone, this has been disputed by several people. For many researchers it is not true that people will receive the same rights, because it is argued that in all places unequal power relations exist, although rights have been assured on paper. This in some cases led to corruption and a benefitting elite group, and thus not to a general reduction of poverty.

12.4.2 Customary rights versus statutory rights.

According to De Soto titling programmes would lead to economic development, but hard evidence is difficult to find. Studies have shown that benefits are minimal and even no evidence on economic benefits can be found on the research of De Soto himself, which is of course a good reason to doubt his theory.

Proponents of statutory rights argue this is the only way in which people can secure their ownership over land. In combination with growing numbers of registered plots, rising food prices and scarcity of resources, the pressure on land becomes stronger, which is argued to lead to a higher number of people willing to register their land. Several examples exist of people being chased from their land, because they didn't have a legal title over it.

Studies have shown that securing property is generally the main reason why people would register their land. Improving development opportunities are not a dominant factor in the decision about whether to title or not.

Although, statutory rights give official recognition of the state over property, the level of security has been doubted, because the state in some cases is also able to expropriate people without compensation. On the other way around, if official titles are not recognized by the community you live in, security is still not assured. Despite titling, security still remains a relative definition.

Another disadvantage of customary rights is that they often are not visible for outsiders, which makes it difficult to ensure people's rights and access to land within communities. Lack of knowledge under society about for example rights, is a problem which appears under both laws.

For property titling the following conclusions can be distracted with respect to the effects of the theory in practice.

12.4.3 Access to credits

First of all, the study shows, that titling does not necessarily have impact on the access to credits. A major threshold to this is that banks and the poor distrust each other. Banks are often reluctant to give loans to poor people, because their income often cannot be assured. The case of Peru showed that even in countries where De Soto set up the property titling

programme, effects were minimal. With the implementation of new property regulations, banks secured themselves by expanding their requirements for obtaining a loan so the poor should still not be able to receive a loan. No improvements could be found at approval rates of loans at private banks for both titled and non-titled households. People were heavily dependent on micro-loans of the public bank, which provided them with loans for construction materials.

Another threshold for people to apply for a loan is the fear for losing their (family) land for which they currently own a title. This fear for losing their property outweighs the advantages they might have when receiving a loan. Some people are willing to start a business, or to improve their house, by means of a loan, on the conditions that they are sure to be able to pay back the interest rates. This is in most cases not possible because credits are not available for the poorest of the society so their chances to develop are smaller. Besides, sometimes national regulations make it impossible for poor people to lend for all kind of reasons. Again can be seen that the extremely poor will not be the first to benefit from all policies.

12.4.4 Increased personal investments

Neither, evidence could be found for increased market economies, which is off course partly caused by the restrictions on credits, but also housing mobility did not seem to increase because people were not able to sell their house at a reasonable price.

However, a positive effect to mention is that property titling, led to a better feeling of security. This was at the same time the main reason, why people choose to register their land. Not because of market opportunities or loans, but in particular because of security. This feeling of security is probably the most important characteristic of property titling because it increases peoples well-being, which is in my opinion more worth than capital value and money. Although security is still a relative definition, it led to noticeable investments in especially housing improvements particularly funded by personal savings. This still means that property titling would have a small impact on poverty reduction in general. Whether this concerns a one-time investments or improvements is worthwhile another investigation. If it concerns a one-time investment, property titling does not seem to have a sustainable impact on people's development.

Although the theory did not seem to have as much positive results as expected, De Soto's theory was popular among many world leaders. This was due to the fact that De Soto presented his theory as an easy solution for poverty alleviation. He presented his theory with passion and dedication and his theory fitted within popular strategies of development. It raised enthusiasm among people because it gave them the opportunity to develop independently of development aid. The theory gave power to politics and created empathy for the poor.

12.5 Final remarks

It has become clear that there is no such thing as a magic bullet to solve the problem of poverty that still affects at least one billion people in this world. Almost all authors agree that more factors than just law play a crucial role in the process of poverty alleviation. Even if law was 'the magic bullet' no one-size-fits-all-model can be used in practice, because every country, area and even region has to be viewed within its own conditions and context. Every country has got different laws, governments, different geographical climates, other cultures and differences in economic challenges. Where one implementation might turn out to be positive in one situation, it may have negative effects in another. Contexts may never be overlooked and a critical view is necessary to use the theory of De Soto in practice. Development is therefore not a pre-set capitalistic path or process of increasing someone's income, but it is a unique mix of solutions and adaptations to make one's life better. It's not only about the money, but also about wellbeing and sustainability. Therefore, I would like to stick to the definition of Ozay (2011) in which she states that development is related to a

process of continuous change, caused by people themselves and external factors. These changes sometimes lead to violation of fundamental principles (rights) like freedom, self-preservation, justice, democracy and equal use of power. 'Development' looks at violated principles and tries to balance changes and rights for the ones who lost the struggle.

13 Conclusions and recommendations

The theory of De Soto, contributes at a minimal level to development and poverty reduction in a sense that it creates a small increase in personal investments such as housing improvements.

Further research is necessary to clarify whether personal investments after titling are a one-time spending or a start of a series of new improvements in the future. Future studies would shed light on the sustainability of the developments resulting from titling processes. Besides, it is clear that titling does not necessarily lead to better access to credits.

A possible negative consequence of property titling is that titling may restrict women's ability to own land and to earn money with it. They are more vulnerable for dispossession and suppression, and so are children and orphans. This can lead to higher poverty levels for women. Titling can also lead to dispossession of people and can increase the number of landless people. This makes the most vulnerable people in society even more vulnerable.

A positive aspect is that titling can offer people better (feelings of) security, because they are supported by an official law. However, when governments do not stick to their promises, they still can be dispossessed by the state with or without compensation.

Although the theory of De Soto seemed quite simple, the problem is that there are just too many conditions which have to be met before the system is able to work as it was intended. If criteria are met and people are able to develop, governments have to be aware of the fact that costs are very high and minimal beneficiaries are noticed after a very long period.

Before governments decide to use the development approach of De Soto they should question themselves whether they are able to meet the following conditions:

- The state must have stable institutions with a minimized level of corruption, in which money, knowhow and workforce is available to develop, maintain and sustain a property system with all its complexities.
- Governments have to provide equal rights for all people in the nation. For example, reducing unequal gender relations, banish discrimination and preserve the rights of the landless people (who have been chased from their land), whether by relatives or government itself.
People need to abide to the law and juridical assistance should be given to the people who are not able to draw on their rights themselves.
- Governments have to be able to support banks to issue micro loans against low interest rates provided at reasonable payback times for the poor for all kind of purposes, such as housing improvements and developing enterprises or should provide loans via the government. Creating trust in the institution by the applicants is thereby a crucial aspect.
- Governments have to think about whether this capitalistic theory fits into the culture, habits, needs and ways of living of the different groups, ethnicities and beliefs in their society.
- It should be measured whether the costs that have to be made, outweighed the benefits that are expected to appear.

If they cannot fulfil these requirements, they rather should think of another development approach, which probably should fit better into their financial, social, cultural or political situation.

14 Reflection

The subject of the research provided lots of information which made it relatively easy for me to find information on the subjects I was searching for. Sometimes it was difficult to find evidence on the theory of De Soto and I found that articles were relatively one-sided. Almost all articles were opposed towards the theory of De Soto.

This could have been the case because the studies conducted already examined the imperfections and inefficiency of the theory of De Soto. Or it could have been the result of the fact that criticism is often easier expressed than complements. Especially in the early stage of my research, I found it sometimes hard to balance the critiques and comments in my report.

The theory involved a lot of information on different subjects and so does my research report. The disadvantage of dealing with so many subjects, often left me with a feeling of being too shallow in the analysis of the subjects and especially the examples I gave. It felt like I was never finished with a subject, by more reading I would have found ever again new evidences for some statements. Time restrictions made me choose to leave some subjects with a short analysis. Probably it would have been better to deepen only one subject which would have made my research more explicit.

Another point of critique is that it would have been useful to interview more people. They should have given me more in-depth insights in subject and motivations of researchers and experts. Unfortunately, the interviews had to wait until the end of the research, because I wanted to ask questions on underexposed subjects of the research. I wanted the interviews to be a substantial addition on the desk research and not a repetition of what also could be found in the literature. In the end this meant, I had not so much time to prepare personal interviews and to wait for response on my interviews.

I could have chosen for a more general approach by sending the same interview to all persons, but this would have diminished the change of receiving response and should have led to less extensive answers. If I had more time, I would have sent probably more interviews. A next time I would start earlier with preparing the interviews.

In the end, I would like to say that I found the subject of my research very interesting. The research definitely raised my interest for development and land issues. I believe I received good insights of the problems and complexities with respect property rights and its implementations, by analyzing the numerous articles. I think the discussion and conclusion of this research report clearly show my thoughts and views about the subject and provide a good overview of my obtained knowledge during this research.

15 Literature

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Appendix I: Case studies

Case I: Women's access to land, Zambia

Introduction

Zambia is one of the poorest countries of Sub-Saharan Africa. Women in Zambia provide for 70% of all agricultural revenues in food production. Land is thus an important resource for both women and men in the participation in development. The majority of agricultural households depend on land for their family's livelihood. Only 19.2% of these households are female-headed against 80.8% male-headed households. Zambian government supports the view that both women and men should have the right to possess property and laws are equal for both men and women.

Aim of the study

The study was undertaken to study women's access to land, ownership and control over land. The findings were used by the government to reduce imbalances in gender relations with respect to land ownership.

The research

The 'Gender In Development Division' (GIDD) commissioned a research focusing on woman's land tenure security including access to land, ownership and control over land. The study was conducted in 2004 in six districts of three different provinces namely, Eastern, Lusaka and Southern Zambia, selected on their high agricultural activity. It was expected that in these areas more problems would appear with women's tenure security and livelihoods.

Information was obtained by a literature review, by semi-structured interviews, focus group discussions and ranking exercises. A total of 469 people, men and women, participated in the focus group discussion. The questionnaire was filled in by 357 households and 45 semi-structured interviews were conducted among 14 females and 31 males.

The study in general collected more information from woman, because their experiences were more important for the study.

For almost all respondents (97,7%) farming was their highest source of income and access to land was therefore crucial.

Results

• Access to land for women

The majority (91%) of the women in the research, said they had access to land. The three main ways of accessing land was via the head person/ chief, via an inheritance from parents or through their husband. Other important ways to access land was through the scheme management or via relatives or friends.

The main part (16.2%) of the married woman accessed land through their husband. Most single women had accessed land by their relatives (0.9%) or used their parent's land (0.9%). Divorced women were expected to return to their parents/family and were therefore often not allowed to access their ex-husbands land. Divorced women mostly inherited their land from their parents (3.4%). Widows accessed land generally through headpersons (6.8%) or could use the land of their deceased husband in case there is no elder son to whom land rights could be transferred. (see table 2)

In both villages and (re)settlement areas married woman were more likely to have access to land (through their husbands), than woman of female-headed households.

The respondents were asked what the best way was for them to access land. 15% of the respondents said a marriage would give them access to land, followed by an inheritance from parents (14.7%). The third option was receiving access to land via the headperson (14%).

It was shown that women in rural areas were more likely to access land by marriages.

Women's access to land in villages was often based on a recommendation letters of their husbands or other male-relatives, in which they said they wished a piece of land for the woman. Nevertheless, this is still a limiting factor for women to access land themselves, without the help of a male.

The separated, divorced and widowed women had chances of accessing some land through inheritance

from former husbands as well as from their parents and male relatives.

Although, theoretically rights for access to land for men and women were equal, in practice it wasn't so. In male-headed households men applied for the titles of their land, which leaves their married women completely out of it.

- Owning and controlling land

The surveys among households revealed that 52.9% of the women did not own or control land because this was the task of the men. Especially married women did not own and control land, because it was the property of their husband and besides culture did not allow women to control land.

It was stated that men wouldn't like women to control land because they would receive power and become 'rebellious'. 84.9% of the women indicated to have a say in decision making processes about the use of the land. Among the married women the percentage was only 65%. However, it was still argued that in the end the man would make the final decision.

- Necessity of having land

On the question whether it was necessary for women to possess land, 91.6% indicated that it was important to have land for themselves. The main reasons were to make independent decisions (39.7%), to enable themselves to produce more food (23.7%) and in order to raise money (11.1%).

Respondents were asked about the quality of the land they could access. 34% said it was of good quality, against 38% being not good. 27% said quality wasn't good because of low fertility. 48.7% of the respondents indicated that they experienced land shortage.

- Official Title Deeds

The research revealed that 91.3% of the women did not possess title deeds. Only 30 out of 357 women said to possess Title Deeds. Besides, it was shown that women were generally marginalized in ownership because they didn't have the know-how about how to access the process of land registration. They would like to have title deeds because of own security (51%), and their children's security (9.5%) Reasons for not wanting Title Deeds were not having own land (25.5%) and that it was too expensive to receive titles (21,6%). 19,6% said they were not allowed to receive titles.

Table 2 : Women's access to land in Eastern, Lusaka and Southern Zambia

Source of land being accessed	Married	Widowed	Separated	Single	Divorced	Total
Using husband's land	16.2	0.6	-	-	0.3	17.1
Inherited from parents	11.7	3.4	-	-	3.4	18.5
Inherited from husband	1.1	2.6	-	-	0.3	4.0
Applied through scheme management	6.8	3.7	0.6	0.3	1.4	12.8
Renting the land	1.1	-	-	-	-	1.1
Using parents/ relatives/ family land	2.3	1.1	0.6	0.9	1.7	6.6
Bought the land	0.9	0.6	-	0.3	-	1.7
Borrowed land	0.9	0.3	-	-	-	1.1
Obtained from headman	14.5	6.8	0.6	0.6	0.6	23.1
Obtained from forestry department	2.8	0.3	-	-	0.3	3.4
Using land for the school	0.3	-	-	-	-	0.3
By mere clearing of idle/free land	0.6	0.3	-	-	0.3	1.1
Given by relative/ parent/friend	4.8	1.4	0.3	0.9	0.6	8.0
Not stated	1.1	-	-	-	-	1.1
Total	65.2	21.1	2.0	2.8	8.0	100

Source: Field Data 2004

Conclusions

The study indicated that women are vulnerable members of society and are likely to lose land and tenure security in case of a divorce, or death of their husband. Women are still heavily dependent on decisions of male to access or obtain land. A good point was that almost all women in the study had access to land.

The main ways for accessing land was by husbands, headpersons and inheritance from parents. In general woman do not own or control land in the areas of study because firstly, traditional rules do not allow it and secondly, because men fear women's power when they receive control over land.

If woman possess a piece of land for themselves they often received it via relatives. Single women obtain

land via their parents. Married women access land often via their husband and benefit of higher income from agricultural activities than other women. This is the case because they benefit from labour, skills and investments of their husbands.

Rural women farmers experience land shortages, infertility of land, land grabbing and exclusion of resources. All women expressed the need to obtain own land to make independent decisions and to grow food.

Reasons for women not to register for a title, was because of the lack of knowledge to enter a process and because of the costs.

Women were besides, not represented in land administration institutions and therefore interest of women farmers are often not addressed. Except for a few NGO's there are no initiatives to improve land security for woman. To conclude, women need protection in accessing, owning and control over land to improve their living conditions.

By GIDD, 2005

Case II: Access to credits after titling, evidence from Peru

Introduction

In 1996, the Peruvian government set in motion new reforms with respect to a series of legal, administrative and regulatory changes with the aim of facilitating the property market in urban self help settlements. During the process over a 1,2 million title deeds had been distributed.

The study

Field and Torero (2004) studied the effects of property titling, with the aim to examine the effects on credit access. In order to reach this goal a survey was conducted to obtain data about 2750 households, in urban Peru randomly sampled from the target population of the program in 2001. Because almost 60% of the surveyed households lived in neighbourhoods in which the programme not yet started, the treatment group included 536 households already participating in the titling program. Besides, the control group existed of people not (yet) participating and consisted of 1180 household.

Results

The results of the study showed that titled household were 10% more likely to have undertaken housing improvement in the two year prior to the survey and 8% more likely to have ever undertaken improvements of their houses.

Besides, there was a 14 percentage point higher willingness to receive loans and an 18 percentage point higher demand for formal credits among titled households, compared to non-titled households.

For both non-titled and titled households who applied for a loan, the percentage of rejected loans was 34%. These 34% were totally rejected from any loans, also no lower amounts could be received.

Moreover, the study showed that 73% of the titled families would accept a loan, compared to 60% for non-titled families. In contrary, a smaller percentage of these households would actually apply for a loan. This percentage was 47% for titled households and 40% for non-titled households.

The general result was that titled household are less risk-rationed in the credit market as was predicted.

The reforms led to changes in property institutions and greater protection of home-owners for collateral loss. This reduced the willingness of banks to provide loans based on property value.

An interesting result is that the most important source for credits was the public Materials Bank of Peru, which received 45% of all formal loan applications. The bank provided loans for construction materials on a maximum amount of \$5000 for a relatively long period (up to 15 years) on an annual interest rate between 7% and 9%. Households were clearly dependent on this bank for their construction materials. 73% of all loans for housing improvements were from the Materials Bank.

There was no better access to loans of private banks for both titled- and untitled households.

Conclusions

It can be concluded from this study that people still have been rationed on micro-credits in urban Peru.

Although, a small part of the titled families received better access to credits, still 34% remains totally rationed and can not enter the formal credit market.

The results suggest that the small reduction of credit rationing was depending on one lending institution, the public Materials Bank, which gave loans for construction materials.

Private lending institutions did not seem to reduce their credit rationing for the ones who titled their land.

The result that loans were given for construction materials, is important in the sense that it helps to meet the increased demand for housing investments and could improve tenure security.

However, there is still no improvement in the access to credits for other purposes than for construction materials for both families with- or without titles. Liquidity constraints are besides, still binding on the entrepreneurial loans for households with titles. Given that collateralizable wealth is an important characteristic for the formation of small businesses, property titling will have no effect on business activities across the country. As a result, it has been stated by Field and Torero (2004) that improvements of access to loans are highly overstated.

By Torero and Field, 2004

Appendix II: Interviews

Vragenlijst

Naam:	Leyla Ozay
Leeftijd:	30
Werkzaam bij:	CIRUM
Functie:	Adviseur Onderzoek & Organisatie versterking
Geeft u toestemming voor het publiceren van uw naam/ organisatie in de scriptie?	Ja

Introductie:

Mijn onderzoek toetst de ontwikkelingstheorie van Hernando de Soto. Deze theorie gaat er vanuit dat private landrechten een cruciale rol spelen in de ontwikkeling van derde wereldlanden
De vragen die hieronder beschreven staan, gaan met name over beweringen die zijn gedaan in de literatuur die ik onderzocht heb. Mijn vraag is of u daarop zou willen reageren, liefst zo uitgebreid mogelijk vanuit eigen ervaringen in de praktijk. Voorbeelden van situaties zijn daarbij meer dan welkom.

Vragenlijst:

Vraag 1:

Op uw blog las ik onderstaande tekst:

"Dan lees ik dat het Nederlandse ontwikkelingsbeleid zich voornamelijk wil beperken tot economische ontwikkeling en groei. Ik weet het fijne er nog niet van af maar mijn eerste gevoel en indruk is: jammer. Jammer dat Nederland (die bekend staat als het land met een vooruitstrevend ontwikkelingsbeleid) zo een beperkte zicht en begrip toont van wat 'ontwikkeling' is. Economische groei in Khe Vap stimuleren? Dat zou totaal misplaatst zijn en meer kwaad doen dan goed."

U schrijft hierin dat economische groei een zeer beperkte definitie is van ontwikkeling. Zou u uw definitie van ontwikkeling hieronder kunnen omschrijven? Kunt u aangeven welke factoren volgens u een belangrijke rol spelen in ontwikkeling?

Pfew, ik heb niet direct een definitie van 'ontwikkeling' maar het is meer mijn kijk op wat het is in een maatschappij. Voor mij is ontwikkeling een continue proces dat onafscheidelijk is van verandering... Elk samenleving verandert continue; zowel van binnenuit vanuit de mensen als door externe factoren waar het op moet reageren of waarop het zich moet aanpassen.....Maar 'verandering' is niet per definitie goed. Voor mij gaat het, als je het hebt over ontwikkeling, dat de richting, inhoud of proces van verandering plaats vindt in t kader van een aantal fundamentele principes (of noem het rechten als je wilt) zoals gelijkheid, recht op zelfbeschikking, vrijheid, en zelfbehoud, rechtvaardigheid, democratie / rechtvaardige gebruik van macht etc. Als je dit concreter vertaalt naar 'ontwikkeling' in een land betekent het dat je kijkt naar welke van deze fundamentele principes worden geschonden en op die wijze kom je concreter toe tot de doelgroepen, sectoren en onderwerpen die aandacht nodig hebben, bijvoorbeeld landrechten van etnische minderheden. Om maar weer het voorbeeld van Khe Vap te nemen: dit is een redelijk afgelegen dorpje in de bergen waarin mensen tussen en middenin het bos leven. Eerder waren de dorpelingen zeer afhankelijk van het bos en bosgrond voor hun bestaan en dat is voor een deel nog steeds het geval. Het zijn gronden waaraan ze gehecht zijn, waar hun voorouderen en zij zelf leven uit putten. Tegelijkertijd verandert het dorpje ook door politieke en socio-economische veranderingen en doordat ze hebben ze steeds meer links en toegang hebben tot informatie en lokale markten. Verandering is neutraal maar waar het om gaat is dat in het proces verandering, geen grote verliezers zijn en basis principes niet worden geschonden. Bijvoorbeeld dat de dorpelingen het recht hebben om te beslissen over hun eigen gronden en bossen, naar eigen inzicht, wensen en cultuur. Of dat er niet groot ongelijkheid ontstaat tussen grootland bezitters met veel macht terwijl dorpelingen in grote armoede leven. Als je het hebt over welke factoren belangrijk zijn dat verandering ook 'positieve ontwikkeling' is.... Ik denk dat de aanwezigheid van sterke en legitieme instituties de belangrijkste factor is; wijd geaccepteerde instituties waarin de machthebbers achter bepaalde basis principes staan en waarin er een goede deling en toezicht op hun macht is.... In westerse landen hebben we relatief sterk instituties en de voorwaarden maar ook wij moeten continue kritisch zijn of we aan de basis principes voldoen (ook op internationaal / wereld niveau)...

Vraag 2:

Wellicht bent u bekend met de ontwikkelingstheorie van Hernando de Soto. Deze theorie beweert dat private landrechten ervoor zorgen dat men beschikking krijgt over kapitaal omdat de marktwaarde van land en eigendommen vastgelegd wordt. Dit kapitaal maakt het mogelijk, toegang te krijgen tot kredieten, waarmee

mensen de mogelijkheid hebben te investeren **en uiteindelijk te ontwikkelen***. Tevens wordt verwacht dat registratie van landrechten bijdraagt aan een groter gevoel van veiligheid, waardoor personen eerder geneigd zouden zijn te investeren in hun land of huis.

* dit roept bij mij de vraag wat de Soto verstaat onder 'ontwikkeling'. Van dit verhaal krijg ik sterk de indruk dat hij refereert naar 'economische ontwikkeling' en dan met name richting kapitalistische markt economie. Als je mijn verhaal boven leest dan begrijp je misschien dat ik een andere bril op heb. Ik ben het met hem eens dat private (of communale) rechten belangrijk zijn want dat is de voorwaarde voor mensen om mogelijkheid te hebben tot zelfbeschikking en bepalen wat ze met het land doen (investeren met groot kapitaal en groot productie is mogelijk, maar het kan ook of investeren zijn met weinig kapitaal en voor eigen consumptie.....of dat ze liever ecologisch verbouwen in kleine hoeveelheden om de grond niet uit te putten en milieu te sparen). Groot kapitaal, intensieve investeringen en grotere inkomens is niet per definitie positieve ontwikkeling en kan ook negatieve consequenties hebben.

Daarentegen pleit de theorie van Elenor Ostrom voor communaal bezit van grond. Zij verwacht dat communaal bezit bij kan dragen aan efficiënter grondgebruik en gelijke opbrengsten en ontwikkeling voor personen in communes. Daarnaast verwacht zij dat communaal bezit, uitputting van natuur en hulpbronnen voorkomt omdat individuele belangen zoals geld en macht ondergeschikt raken.

2a) Denkt u dat private rechten de oplossing vormen voor armoedebestrijding? Of pleit u voor communale landrechten? En waarom?

Er bestaan geen eenduidige antwoord wat de oplossing is om armoede te bestrijden. Sterker nog, ik denk de toepassing van dergelijke dogma's deel van het probleem zelf is!! De wereld is niet zwart of wit en elk situatie heeft een unieke mix nodig van oplossingen (in verschillende thema's dus niet alleen landrechten). Veel is afhankelijk van de lokale situatie, bestaande instituties, de wensen van mensen etc.

In Vietnam was (en is er tot op zekere hoogte) in bepaalde etnische groepen het gemeenschapsrecht sterk en met geaccepteerde waarden, instituties en (sociale) regels. Daar waar dit soort tradities nog steeds aanwezig zijn, kan communale bezit en controle van land goed functioneren. Maar de positieve gevolgen zijn niet perse het mainstream denken over 'armoedebestrijding' (lees; economische ontwikkeling). In communale gronden zou je theoretisch kunnen investeren met kapitaal, produceren en opbrengsten kunnen verdelen wat leidt tot winst, alles is mogelijk als je het goed organiseert en duidelijke structuren en mechanismen neerzet.... hoewel ik moet zeggen dat ik twijfel hoe dit in de praktijk uitpakt. In Vietnam was in de jaren tussen 60-80 het collectief beheer van land in coöperatieven gangbaar (zou je als communal landbeheer kunnen zien maar hier was de overheidscontrole erg sterk) maar dit is desastreus geweest voor de mensen tot aan hongersnooden en extreme uitputting van bronnen.... Dat wil niet zeggen dat communale beheer niet functioneert of slecht is want het voorbeeld van coöperatieven heeft niet gewerkt omdat het van buitenaf opgelegde zeer rigide structuren waren.

In gevallen waarin gemeenschapsrecht en communal landbeheer traditie is, word het land niet gebruikt voor productie maar eerder voor het voorzien in dagelijkse behoefte en voor additionele inkomsten (door het verkopen van producten uit het bos bijvoorbeeld). De meerwaarde van communale landrechten in dit soort dorpen waarin het denken in individueel belang niet sterk is (of zelfs taboo) en waarin de 'groep' en groepsbelang voorop staat is beter voor behoud van cultuur, inheemse kennis, tradities sociale cohesie and stabiliteit etc. Maar in veel gevallen ook het duurzaam gebruiken van natuurlijke bronnen. Want als ik het goed benadrukt Ostrom (en dat is cruciaal om te noemen) dat het niet gaat om 'open resource' waarin iedereen onbeperkt toegang heeft tot de bronnen, maar dat er regels zijn waaraan iedereen zich moet houden. Als er geen traditie is in groepsdenken, en geen duidelijke, geaccepteerde regels en lokale instituties die de regels handhaven- dan leidt communale landbezit tot een soort anarchie waarin niemand zich verantwoordelijk voelt voor bescherming en iedereen (ook mensen die niet tot de commune behoren) de grond onbeperkt exploiteren.... Dit zie je hier in Vietnam in bossen waarvan het niet duidelijk is tot wie het behoort (of die behoren tot staatsbedrijven die geen duidelijke eigenaarschap nemen); daar is illegale ontbossing aan de orde van de dag.... Met andere woorden, communale rechten werken alleen als er al een traditie en basis daarvoor aanwezig is. Zoniet dan zijn individuele landrechten een betere oplossing

Soms is het een mix... in sommige dorpen hebben huishoudens een klein stukje bos, klein stuk landbouwgrond en een communale bos en elk stuk grond heeft eigen functies en rol in het leven van mensen. Veel hangt uiteindelijk ook af van de capaciteit kennis en technieken die er zijn om land te verbouwen -

2b) Verwacht u dat banken, zoals in de theorie van de Soto, een bijdrage kunnen leveren aan ontwikkeling door het vertrekken van leningen?

Nogmaals.... Dit hangt af wat je definieert als ontwikkeling.

Dus als je de vraagt: kunnen banken bijdragen aan ontwikkeling van een markt economie? Dan is mijn antwoord; ja.... En markt economie **kan** positieve gevolgen hebben zoals inkomsten genereren, voorzien in

levensonderhoud, verbeteren van technologieën, toegang tot diensten als onderwijs, ziekenhuizen etc...maar banken zijn helaas niet genoeg voor de andere voorwaarden voor ontwikkeling zoals transparante lokale overheid en instituties die lokale diensten aanbieden en reguleren....

2c) Denkt u dat er onder de bevolking van Vietnam behoefte is aan leningen?

Volgens mij zijn er in elke bevolking mensen die behoefte hebben aan leningen, en mensen die geld genoeg hebben dus geen behoefte hebben...Er zijn zeker weten veel mensen in Vietnam die een klein stukje kapitaal / micro krediet kunnen gebruiken om land te verbouwen en te linken aan lokale markten. Maar ook in Nederland heb je boeren die start kapitaal kunnen gebruiken om een boerenonderneming te starten... of mensen die een hypotheek moeten nemen om een huis te kunnen kopen....

2d) Denkt u dat het veiligheidsgevoel een belangrijke rol speelt in ontwikkeling? In welke mate zou deze veiligheid verkregen moeten worden?

Als je bedoelt 'veiligheid over het stukje grond' dus dat ze veilig gevoel hebben over rechten die ze hebben en long term bezit??...ja, ik denk dat dit zeker een belangrijke rol speelt in de vraag of mensen wel of niet investeren in het land (en de keuze voor investeringen).... Maar dit moet ons niet blind maken om te pleiten voor landrechten over te hele lange periode omdat je daarmee niet meer de flexibiliteit hebt om adequaat te reageren op de veranderingen in de context. Maar gevoel van zekerheid is zeker cruciaal en nodig

Vraag 3:

U schreef op één van uw blogs:

"De dorpsleider van Khe Vap is namelijk trots dat de aloude landconflicten in zijn dorp zijn opgelost, land en bosgronden terug zijn gegeven aan de dorpingen en dat zowel de bewoners als natuur profijt hebben van de wijze waarop land wordt beheerd".

Ik vroeg mij af of Khe Vap formele rechten heeft gekregen over het gebied en of dit communale rechten of private rechten zijn en op welke manier deze rechten opnieuw zijn verkregen?

Wordt het land nu beheerd met ondersteuning van de overheid?

Combinatie! Het hele landgebied is verdeeld onder huishoudens (stukken bos en landbouwgrond) en er zijn stukken bos gegeven aan lokale groepen/besturen die officieel erkend zijn onder de lokale overheid. Tot zover ik weet heeft de overheid geen steun voor beher van de bossen en bekomen ze zich niet zo voor bescherming ervan of de lokale besturen te ondersteunen. Overheid heeft wel nationale programmas om arme communes te helpen om land te verbouwen (support in vorm van technologie, kennis, zaden, etc) maar dat is meer op huishoud niveau en uitvoering erg twijfelachtig....

Vraag 4:

In verschillende artikelen heb ik gelezen dat de rol van de overheid met betrekking tot landrechten in vele landen nog grote problemen kent. Voorbeelden zijn corruptie, een zwak administratief systeem voor landrechten, ontbrekende know-how etcetera.

3a. Welke problemen heeft Vietnam, zowel structureel, politiek/ bestuurlijk als economisch met betrekking tot landrechten?

Land administratie staat bekend als een van de meest corrupte sectoren in Vietnam en uitvoeringscapaciteit van de overheid erg zwak.... Op papier zijn er relatief goede wetten, beleid en programma's, bijvoorbeeld om land her te verdelen (om ongelijkheid van vorige decennia recht te trekken) maar lokale overheden hebben vaak niet de kennis en inzicht in deze wetten om ze uit te voeren. Een voorbeeld is een wet die uitlegt dat onder bepaalde voorwaarden bosgronden van staatsbedrijven terug moet worden gegeven aan lokale bevolking. Vaak zien lokale overheden hoe nodig dat is maar ze hebben niet door welke wetten er zijn die hun de macht geeft om land op te eisen en terug te geven aan de mensen, of ze hebben niet de capaciteit om te onderhandelen met de staatsbedrijven... Ander probleem is dat lokale autoriteiten geen voldoende capaciteit hebben (geld, kennis, mankracht) om land administratie en verdeling adequaat uit te voeren. Het is namelijk een erg technisch verhaal waarvoor ze vaak (dure) expertise moeten inhuren....Het is ook algemeen bekend dat als landallocatie plaatsvindt, de kwaliteit vaak slecht is en niet goed in overleg plaatsvindt met lokale bevolking en daardoor niet toepasselijk of leidend tot conflicten.

Corruptie... aan de orde van de dag zowel in ruraal als urbane gronden (van dit laatste weet ik minder vanaf, maar absoluut zeker dat het een groot probleem is). Grote bedrijven die land opkopen via corrupte praktijken en exploiteren (met alle negatieve gevolgen van dien voor de lokale mensen)...of grote overheidsprogrammas voor mining / hydropower zonder lokale bevolking te betrekken in beslissingen en zonder compensatie beroven van hun land en bestaanszekerheid.... Grote conflicten tussen staatsbedrijven of private bedrijven die veel land bezitten terwijl boeren niets hebben. Er zijn vaak kleine protesten her en der maar daar hoor je absoluut niets over in de media, protesten worden onderdrukt. Laatst was er een protest dat groter was in schaal door Hmong minderheden dat liep uit de hand en 8 mensen waren neergeschoten.....doorsnee mensen hebben hier absoluut

geen weet van en media is verboden om er over te rapporteren....er zijn bloggers die over landrechten schrijven maar die riskeren om in de gevangenis te belanden (zoals vele anderen die al in de gevangenis zitten)...kortom corruptie, ongelijkheid, uiputting van land is aan de orde van de dag en duidelijk zichtbaar alom....maar dit aan de kaak stellen zeer gevoelig... ook de organisatie waar ik werk moet heel voorzichtig zijn in de wijze waarop ze dingen formuleert om niet in aandacht te komen of door de overheid in de gaten te worden gehouden.... Het woord 'landrechten' is hier een taboo... zeer sensitief

3b. Wat denkt u dat moet er gebeuren om deze problemen op te lossen?

Pfew.... Dat zijn grote nogal abstracte dingen....Deels zijn de antwoorden administratief technisch maar grotendeels ligt het antwoord (Ik herhaal mezelf) in aanwezigheid democratische mechanismen, goede verdeling van machten en transparante overheidsinstellingen, corruptie aanpakken, vrije media, geïnformeerde bevolking die durft uit te spreken...maar het Allerbelangrijkste: integerheid en juiste instelling en hart onder machthebbers..... zolang dit niet aanwezig is forget about the rest....

Vraag 5:

Uit mijn onderzoek komt naar voren dat landrechten vaak zorgen voor ongelijkheid onder de bevolking.

4a) Kunt u aangeven of er ongelijkheid bestaat in landbezit in Vietnam? Zo ja, waar komt deze ongelijkheid vandaan en waarin uit dit zich?

Voor een deel heeft Vietnam het goed voorelkaar..... gelijkheid is ingebed in wetten en beleid en in een korte tijd is er veel land herverdeeld onder de mensen. Dus in een korte tijd heeft de overheid best veel voor elkaar gekregen.

Maar ongelijkheid is er nog steeds; omdat die gevolg waren van eerdere landreforms en die zijn ondanks nieuwe wetten nooit goed rechtgezet (zoals ik al zei; deze wetten worden niet goed uitgevoerd door uitvoerigscapaciteit).... Bv.... staatsondernemingen en instituties bezitten meeste bosgronden; een lokale dorpling in de berg opent zijn deur en voor zijn huis is het bos van het staatsbedrijf...hij zit erbij en kijkt ernaar.... Terwijl het land wat de dorpling heeft (als die het heeft) heel ver is, weinig is en met grond wat neits waard is...totaal uitgeput en regenereren zou decennia en een hoop geld kosten wat de mensen niet kunnen betalen

4b) Kunt u aangeven of er verschil is tussen de positie van vrouwen en mannen met betrekking tot het bezit van land in Vietnam?

Officieel staan zowel de naam van de man als vrouw in het document dat het recht op land verzekert. Officieel zijn de rechten zoals bezit, overdragen erven etc dus gelijk... onder ethnische minderheden en waar gemeenschapsrecht geldt, zijn de regels verschillend per groep, soms ten gunste en soms ten nadele van de vrouwen.... Ik weet hier het fijne niet vanaf... En ik moet eerlijk toegeven dat mijn organisatie hier niet heel veel aandacht voor heeft (om gender analyse te integreren in alle activiteiten...al zullen ze dat niet toegeven)

4c) Zijn er voorbeelden van bepaalde groeperingen, personen, ethnische minderheden etc. die beperkt worden in hun landbezit (bijvoorbeeld door het bestaan van bepaalde wetten of culturele tradities)?

Over stedelijke gebieden weet ik niet zoveel, maar door snelle economische ontwikkelingen zijn randsteden / gebieden net buiten de stad, nu erg in trek bij ondernemingen (voor vastgoedontwikkeling bijvoorbeeld, om stad uit te breiden)... dit leidt tot verdrijven van mensen van hun grond en compensatie is niet altijd eerlijk

In bergachtige gebieden zijn de meeste bossen en dat is waar de ethnische minderheden wonen– bossen zijn economisch interessant voor de staat en bedrijven voor houtproductie (Vietnam is een groot exporter) en veel land is in handen van staatsbedrijven. Er is dus ongelijkheid voor deze groepen

Daar waar landverdelingsprogramma's worden uitgevoerd, zijn de wetten en beleid er wel op voorzien dat het gelijk is, daar zijn richtlijnen voor.... Als de richtlijnen dus goed worden toegepast. Ik heb geen inzicht in hoe culturele tradities mogelijk leiden tot ongelijke landverdeling....maar indruk van wat ik tot nu toe heb gehoord is dat het niet ongebruikelijk is dat machtige personen als dorpsleiders of bepaalde clans meer invloed hebben en land bezitten...

Tenslotte:

Wilt u nog iets kwijt/ heeft u nog suggesties of opmerkingen?

Ben benieuwd naar je scriptie! En benieuwd wie je begeleiders zijn....toevallig iemand van het CIDIN? Mocht je je verder willen verdiepen in Vietnam and landissues, Oskar Salemnik (aan de VU) heeft hier jaren gewoond en phd studie gedaan naar land & ethnische minderheden in centrale hooglanden.

Questionnaire

Name:	Alan Gilbert
Age:	-
Company/Organisation:	-
Function:	-
Do you give permission to publish your name and organization in the thesis?	Yes

Introduction:

The research for my Bachelor thesis is testing the theory of de Soto by examining the discussions, critiques and evidences around his theory. My questions are especially based on your articles and besides I would like to ask your opinion on a few statements. It would be very helpful if you would like to answer these questions as extended as possible, from your own experiences in practice. Examples of situations are besides very useful for me. For questions you can contact me via fleurvanderzandt@hotmail.com

Thank you very much in advance. I appreciate your cooperation!

Questions

Question 1:

In the past you have expressed doubts about the effects of property titling for the poor. In one article you wrote:

"In Peru, the new Commission to Formalise Informal Property (COFOPRI) managed to register some 500,000 urban land titles from 1996 to 1999 (Conger, 1999: 8). Such a policy is generally a vote winner with electorates."

Can you explain what it is, that makes people so enthusiastic about private property titles, if effects are hardly noticeable? Has it to do with nescience, feelings of security or something else?

PEOPLE WHO HAVE INVADED LAND OR WHO ARE POOR AND THEREFORE SENSITIVE ABOUT THEIR LACK OF POWER, LIKE TO HAVE ANY KIND OF PAPER THAT SHOWS THAT THEY ARE ENTITLED TO SOMETHING. IN ILLEGAL SUBDIVISIONS PEOPLE USED TO SHOW ME THEIR RECEIPTS FOR PAYMENT WHEN I ASKED ABOUT PAPERS.

Question 2:

You argue, that property titles do not make any sense in sites where squatters already live for several years and where the chance of eviction becomes smaller. I read in several articles that the main reason for most poor people to receive an individual property title is to secure their land. Access to credits seemed to be an subordinated argument. To what extend do you believe property titles offer security to the poor?

YOU NEED TO DISTINGUISH BETWEEN ILLEGAL SETTLEMENTS WHERE PEOPLE HAVE PAID FOR THEIR LAND AND SQUATTING WHERE PAYMENTS ARE NEGLIGIBLE. LOOK AT HOW FEW SETTLEMENTS IN LATIN AMERICA HAVE EVER BEEN DEMOLISHED AND YOU WILL SEE THAT THE VAST MAJORITY REMAIN. LEGAL TITLE HELPS BUT IF A GOVERNMENT IS DETERMINED TO REMOVE A SETTLEMENT IT WILL DO SO, SOMETIMES WITH COMPENSATION BUT NOT ALWAYS. IT IS ALSO IMPORTANT WHETHER THE GOVERNMENT IS AUTOCRATIC OR DEMOCRATIC.

Question 3:

I cannot derive from your articles what your opinion is about communal statutory property rights. Do you think this option might be a better solution than individual property titles? Or do you believe property titling in general will have no effect on poverty reduction?

IN LATIN AMERICA INDIVIDUAL PROPERTY TITLES ARE THE NORM. IN MEXICO THEY CHANGED COMMUNAL TITLING (EJIDOS) TO PRIVATE TITLING. I THINK IN LATIN AMERICA MOST PEOPLE PREFER THEIR OWN TITLE – THEY DON'T ALWAYS TRUST THEIR NEIGHBOURS!

Question 4:

In your article *'A home is for ever? Residential mobility and homeownership in self-help settlements'* I read about the case of Bogotá where housing mobility is another problem. It limits the opportunities of poor families, to move and increase upwards mobility.

Do you believe this is specifically the case of Bogotá or is it a general problem in self-help settlements? Do you know self-help settlements where this is not the case? And what is the crucial difference between these settlement what makes housing mobility possible?

THE STUDIES THAT I HAVE SEEN ALL SUGGEST THAT FEW OWNERS EVER MOVE HOME. SOME PEOPLE CLAIM THAT IS BECAUSE THEY ARE SO ATTACHED TO THE HOME THAT THEY HAVE BUILT THAT THEY NEVER WANT TO MOVE, BUT I THINK THE DIFFICULTIES OF TRANSACTION ARE THE KEY ISSUE.

Question 5:

In his book *"The mystery of Capital, why capitalism triumphs in the west and fails everywhere else"* Hernando de Soto, looks at the problem of informality in relation to poverty.

To what extend do you believe informality should be seen as a problem?

NOT ALL INFORMAL WORKERS ARE POOR AND IN PERIOD OF HIGH INFLATION IT IS OFTEN BETTER TO BE INFORMAL THAN HAVE SAY A GOVERNMENT JOB. GENERALLY HOWEVER FORMALITY WOULD SEEM TO BE PREFERABLE BOTH IN HOUSING AND WORK. YOU GAIN CERTAIN RIGHTS THAT YOU DON'T HAVE IN INFORMAL SITUATIONS. BUT BOTH FORMAL AND INFORMAL HOUSING AND WORK IS HIGHLY VARIABLE SO IT IS BETTER NOT TO GENERALISE OVERMUCH.

Question 6:

What are the most important thresholds for people to stay in the informal sector (living, working, building etc) instead of entering the formal sector?

MOST PEOPLE PROBABLY WOULD ENTER THE FORMAL SECTOR IF THEY COULD. THE BARRIERS ARE THE LACK OF FORMAL WORK AND THE UNAFFORDABILITY OF FORMAL HOUSING. HOWEVER SOMETIMES BOTH INFORMAL WORK AND HOUSING OFFERS SOME PEOPLE SOME ADVANTAGE.

Question 7:

Can you please react on the next statements:

- *Informality and self-help settlement are the result of governments lack of involvement.*
NO BECAUSE MOST GOVERNMENTS HAVE BEEN INVOLVED IN THE CREATION OF SELF-HELP SETTLEMENT E.G. LIMA AND IN EVERY CASE THE EXISTENCE OF INFORMALITY ACTS AS A SAFETY VALVE TO POPULAR PROTEST.
- *'Private property titling programs are a strategy of governments to earn money. It has nothing to do with poverty alleviation'*

IT CAN EARN MONEY FOR GOVERNMENTS, IT CAN ALLEVIATE POVERTY BUT ITS MOST IMPORTANT FUNCTION IS TO WIN VOTES AMONG THE POOR AND IMPROVE THE GOVERNMENT'S IMAGE.

- *'Providing good and low-price (rental) housing by governments should be the best solution to stop the formation of self-help settlements and informality'*
IT WON'T STOP IT BUT IT MIGHT SLOW THE PROCESS AND ACTUALLY STOP SOME OF THE PROBLEMS THAT SELF-HELP SETTLEMENT BRINGS ABOUT.

Question 8:

The articles you wrote were published in 1999 and 2001, which is already a long time ago. I can imagine you did

a lot of research within this field in the past ten years which increased your knowledge on the topic of land rights and development.

- A) Did you in the meantime face a situation in which property titling led to positive results for the poor? Can you give an example of this? What conditions form the basis for its success? I AM NOT AWARE OF MUCH. I ATTACH A RECENT UPDATE OF MY THINKING.
- B) Would you like to revise or nuance some of your opinions regarding your statements in your articles or in general on the subject of individual property titling? SEE THE ATTACHMENT

Final questions:

Over the last years you wrote a lot of articles about development.

- A) Can you please specify your personal definition of 'development'? NOT REALLY. HUMAN IMPROVEMENT, BUT THAT DOES NOT HELP MUCH.
- B) What factors play an important role in development? HONEST GOVERNMENT, EQUALITY, EDUCATION, HEALTH AND ANY NUMBER OF OTHER THINGS.
- C) What should, in your opinion, be the ideal policy of governments regarding land distribution?
- D) What, in the end, should according to you be the solution for poverty reduction? CHANGE HUMAN NATURE!

Do you like to add something/ do you have any suggestions or comments?

Thank you very much for your time and efforts!