



Land titling

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Abstract:	Land titling implies the assignment of real property rights over a certain portion of land, accredited with some public document that extends to its owner (s) the capacity of exclude others from their use and enjoyment. Within the plurality of possible forms of land tenure, massive titling policies have mainly conceived that the most effective way of ensure tenure security is through individual land titles. Ensuring property rights, developing markets and enhancing Access to credit have been part of the policy prescriptions in the framework of the poverty reduction agenda of development agencies and international credit agencies in the 1990s. However, the orientation of these titling policies generated multiple controversies and, at the present, there is some consensus at the international level to question the paradigm of individual titling as the only mechanism to provide security in land tenure.

Land Titling

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Abstract:

Land titling involves the transfer of real property rights over a certain portion of land, accredited through a public document that entitles the owner(s) to exclude others from their use and usufruct. Of the multiple available forms of land tenure, public policies have predominantly conceived the transfer of individual land titles as the most effective way to ensure the security of land tenure for its beneficiaries. In addition, since the 1990s, ensuring real property rights, developing markets, and enhancing credit access have consistently been part of the policy prescriptions within the poverty reduction agenda of development and international lending agencies. However, multiple controversies have surrounded land titling policies. There is a growing international consensus which questions the paradigm of transferring individual land titles as being the most effective mechanism to provide secure land tenure.

Keywords: Land titling, land tenure, property rights, poverty, secure tenure, land markets.

Main text

Land titling involves the transfer to individuals of real property rights over a certain portion of land, accredited through a public document that entitles the owner(s) (individuals, families, or communities) to exclude others from their use and usufruct.

The fact that vast areas of the earth's surface are not formally registered as property units, and that incongruities exist between those who live on the land and those who are formal owners, represent obstacles to the expansion of the capitalist economy. Furthermore, there are multiple problems related to limitations in land

tenure security, including: risk of forceful eviction against the will of families and local communities, restrictions to the access to basic services, constraints to subsistence strategies and food security in rural areas, displacement of population as a result of real estate valuation processes, accelerated urban growth in countries lacking appropriate land policies, limitations on governance of land conflicts, among others. Against this backdrop, land titling programmes have tended to homologate and secure land tenure with individual property titles (transferable, inheritable, and mortgageable).

However, the uniformity seen in titling policies across the globe is confronted with the specificities observed in different regional contexts. Deininger (2003) makes a substantial contribution to understanding the distinct situation of different regions in this respect. The author argues, for example, that the process of economic liberalisation experienced in Latin America has not been able to help different societies in this region to overcome poverty and destitution, which would require second generation reforms to tackle structural problems such as unequal land distribution, highly informal real property rights of the urban poor, and problems in the governance of legitimate access to land.

In the African case, on the other hand, policies from colonial times have been instrumental in inhibiting the legal recognition of customary real property systems, due to them being considered anachronistic, a situation subsequently inherited by the independent states. However, this lack of legal recognition has not meant that customary property systems were entirely uprooted. As a result of this contradiction, a significant proportion of rural, urban, and peri-urban lands have remained outside of the institutional arrangements recognised as legitimate by the state. This creating several negative economic consequences for the region and limits the ability of the authorities to govern conflicts over land tenure (op. cit.).

The South-East Asian case combines a number of economic and political conditions in relation to land policies: processes of fiscally-impactful modernisation of land administration, de-collectivisation of agricultural production (China), interventions to secure long-term tenancy rights over public lands, and actions to organise the post-conflict situation in countries that have recently experienced civil wars. Finally, Deininger's work exposes the difficulties experienced in the land privatisation processes that took place during the transition from centralised state economies to market economies in Eastern Europe, where the establishment of a market-centred institutionality has taken longer than initially expected (Deininger 2003).

Approaches and theoretical assumptions

At least three main areas can be identified in the theoretical debates around the question of land titling: one focuses on the real property rights that come into play, a second emphasises the need to distinguish between the right to land ownership and the security of land tenure, and a third discusses the association between land titling and economic development.

Private ownership of real estate is a social relationship and, as such, can exhibit varying forms, degrees of development, and intensity, depending on the specific characteristics of the society and the historical context in which said institution is embedded. "Property rights are social conventions backed up by the power of the state or the community (at various levels) that allow individuals or groups to lay 'a claim to a benefit or income stream that the state will agree to protect through the assignment of duty to others who may covet, or somehow interfere with, the benefit stream' (Sjaastad and Bromley 2000, 367). Governments play an important role by determining how property rights are defined, how they can be enforced, and how they evolve in line with changing economic conditions. This, in turn provides a basis for the level of tenure security enjoyed by individual landowners and their ability and willingness to exchange such rights with others. All this suggests that property rights are a social construct" (Deininger 2003, 22)

Individual lifetime private property is one of the many, socially-constructed forms that the right to land ownership can adopt. There are also different levels of property extension, depending on the set of powers that regulate the usufruct of the good in property and the degree of exclusion to others. The status of the owner of a given good is determinant in the extension of the property, but other economic and social factors can influence its configuration. Regulations may allow or forbid certain forms of construction, use, and transformations of real estate. Likewise, trading conditions may restrict the circulation of the good; mechanisms set in place to protect the rights of some and the exclusion of others may become too expensive (even unsustainable, given the conditions); and situations of social or ethnical discrimination may prevent the ability to enjoy legal recognition of property. On the other hand, the duration of the right is another component associated with the reach or intensity of the property. For example, under Anglo-Saxon common law, the right to enjoy the use of real property is time-limited, and the duration of that right (including an expiration date) is to be found in the legal documents related to the titling (Caria 2008).

Several dimensions mediate land ownership rights: use, access, development, and transference (Payne 2000). Additionally, the scope and relationships established between these dimensions is variable. This approach, which recognises the plurality of forms of land tenure, collides with the civilian approach that emphasises the absolute, exclusive, and perpetual condition of property.

The level of security of tenure or certainty over land rights is another key aspect to take into consideration. It acquires different meanings depending on whether only the title of the property provides the necessary security for investment and circulation, or if a plurality of forms of land tenure security are contemplated. Besley and Ghatak (2009) claim, for example, that the lack of certainty about property rights induces economic inefficiencies as a result of four assumptions: people dedicate efforts and resources to the defense of their property that could otherwise have had a productive destiny, risks restrict investment in asset improvements, uncertainty affects transactions (and prevents the most productive users from using it), and the property cannot be used as a financial guarantee.

Land titling as key to reducing poverty is another of the core aspects of the debate, and has had an important impact on the public treatment of habitat irregularity. In this field, the economic argument associated with the legalisation of land tenure has become more relevant than other dimensions of the irregularity (housing, town planning, environmental, socio-community, etc.).

The influence of De Soto (1992; 2000) has been decisive in establishing the association between land titling, economic development, and poverty reduction. The model proposed by this author focuses on the reduction of poverty from the valuation of physical assets: the huge amount of resources accumulated in irregular development projects (for example, self-built houses) could be transformed into active capital, which in turn could be used as a credit guarantee. According to De Soto, access to credit would be a fundamental source of leverage for businesses developed on the fringe of legality, allowing them to expand and improve the income of those involved. However, this “dead capital” does not enter into the formal circuits of the economy due to the absence of property titles, curtailing its ability to be underpinned with credits from an official bank. De Soto’s central hypothesis is that legal and institutional frameworks impose entry barriers and onerous costs of stay for those involved, restricting the productive and efficient use of resources, and inhibiting entrepreneurship.

This thesis has had a widespread influence in the design of land titling policies, which have also been inspired by the asset mobilisation and valuation approach. From Moser’s perspective (1998), the set of tangible and intangible goods controlled by a household are conceived as resources that the poor mobilise strategically to reduce their vulnerability to risk. The ways in which these assets are controlled and used can increase or decrease the ability of the household to overcome poverty (Narayan 2002). However, it has also been noticed that household strategies and their welfare are heavily influenced by opportunity structures, understood as probabilities of access to goods, services, or the performance of activities, that enable the use of its resources and the acquisition of new resources (Katzman 1999).

Prescription of titling policies

Titling policy refers to state actions tending to regularise precarious tenure forms through procedures that culminate in the granting of a formal property title, and its corresponding registration in the name of those who held it informally before. Within the plurality of possible forms of land rights — from perceived tenure to registered lifetime property — mass titling policies have mainly conceived the promotion of full registered domain in the individual property title as the most effective way to guarantee the security of land tenure.

In Latin America, diverse forms of titling policies go back to the 1960s. These are linked to the rapid growth in urban populations related to country-to-city migrations that converged with processes of demographic transition and auto-urbanisation. In addition, agrarian reform processes provide further background to these policies in Latin America, as well as in Asia and Africa. But, the decisive push for the formulation of land titling programs came from development agencies and

international credit agencies in the context of their *poverty reduction strategies*, in the 1990s.

On the agenda of habitat policies, the first international initiatives related to land titling approaches were part of a significant normative turn with regard to the attitude that governments are expected to have in tackling irregular popular habitats, going from intolerance and eradication to integration.

With significant differences between each other, the I and II UN-Habitat Conferences (Vancouver, 1976, and Istanbul, 1996, respectively) advanced the notion that the population subject to titling policies should be settled in the exact location/area where they were established beforehand, and their tenure secured. In 1999, the UN launched the Global Campaign for Secure Tenure to address the issue of forced evictions and promote secure tenure options, recognising that access to land is not restricted to ordinary market mechanisms, with conflicts emerging between property rights and human rights.

At the same time, the role of states in housing deficits was reconsidered, with a shift from the production and state provision models towards the facilitation of market access. The document "*Housing: enabling markets to work*" (World Bank 1993) influenced the lines of action to reform official policies and institutions, suggesting that governments leave their old roles as managers, financiers, and promoters of state-owned housing projects to become *facilitators* of mercantile allocation mechanisms. In a clear decision to promote the financing of housing access, demand financing and the expansion of mortgages for low-income sectors were encouraged, reserving subsidised attention only for the poorest sectors of society (Rolnik 2012a). In addition, the implementation of land registration and regularisation programs was recommended, especially to address irregular land tenure of the popular housing estates.

In spite of regional nuances and particularities of urban and rural land titling programs, a high degree of similarity can be found in the declared objectives of these titling policies, the most frequent being: alleviation of poverty, empowerment of the poor, provision of tenure security, encouragement of investment, streamlining of market operations, reduction of transaction costs, and improvement in land administration and management. Indirectly, titling policies have also been associated with aspects such as: increasing agricultural productivity, protection of the environment; preservation of biodiversity, land distribution, gender equality, recognition of the rights of indigenous and tribal peoples, access to services and housing improvement, improvements in land planning, progress towards land use policies consistent with the public interest, increasing fiscal resources, reduction of social conflicts, and improvements in terms of governance. As can be seen, there are a diversity of potential effects attributed to the titling programs and complementary policy guidelines.

Notwithstanding the number of benefits identified by the proponents of titling, the core of the policies aimed to guarantee property rights and develop markets. The orientation of the initiatives promoted by international organisations combine: legislative changes to ensure the security of property rights, regulatory reforms to

remove restrictions and boost the functioning of the land market, financing of registration and cadastral institutions, strengthening of technical capacities, and modernisation of registry systems to shorten times and reduce costs of formal transactions. The prevailing policy prescriptions also suggest that there is great potential in linking the land system to the financial system. For some agencies, for example USAID (Bloch, Lastarria-Cornhiel, and Stanfield 2003), the development of secondary mortgage markets could replenish liquidity to expand the source of credit and distribute risk.

Debates, criticisms and controversies

Debates around titling have been influenced by the individualist bias of policies, the results of their implementation, and the concerns about the potential risks of their application in different contexts. One of the most important discussions related to titling policies is linked to their ability to provide security of tenure to vulnerable families. Critics have challenged the notion of a universal right to property that accompanies titling policies, without considering specific historical and territorial contexts. It has been argued that the lack of individual titling does not itself equate with insecurity of tenure (Lemel 1988), and that it can be protected through mechanisms that may or may not include absolute ownership. Tensions have arisen between policies based on the recognition of individual rights and other forms of rights (collective, customary, confessional, etc.) that still remain as the majority of relational systems between communities and territory in much of the world, and which are beginning to fall back due to the introduction of measures of this nature, among other reasons.

This first node of the debate is linked to the evaluation of individual titling systems, perceived either as mechanisms that ensure tenure, or as mechanisms that may actually have the contrary effect. Paradoxically, the commodification of property rights — as products of the explicit objective of boosting land markets — can be a source of exclusion and decrease security of tenure (De Schutter 2015).

One of the effects of the market dynamisation is the valuation of land in securitised areas, resulting in higher risk of displacement of the expected beneficiary population. On the one hand, the "expulsion by the market" is a by-product of the general increase in the costs of life resulting from the payment of taxes and service fees (Cross 2002, Durand-Lasserve 2003). On the other hand, titling is denounced as a way of legitimising the greater concentration of land in the hands of elites; operators in the formal real estate sector are singled out as being most interested in spreading individual ownership in irregular areas (Durand-Lasserve 2003). In addition, in some cases there has been a gradual "colonisation" of irregular settlements subject to titling programs by segments of the middle class (Smolka 2003).

One of the dilemmas associated with these policies relates to the fate of the land subject to regularisation programs, whose inhabitants return to situations of irregularity. Critics have advanced the need to distinguish between strategies that seek to guarantee tenure security and those that aim for the creation of property

rights markets, which, with time, may not be advantageous for the poor or vulnerable groups (De Schutter 2015). However, the literature does not suggest that this issue is a primary concern of funding agencies or government departments that promote titling programs.

A large proportion of titling policies have been deployed in urban areas, reconfiguring habitat policies emphasising the proprietary dimension of housing. Titling has frequently been associated with improvements in the conditions of housing and urban environments, assuming that the security provided in writing is a pre-condition for investment. Furthermore, the association between titling and access to credit has also been presented as a mechanism for housing improvement. However, studies often recognise that there are other forms of financing available to poor families which do not involve mortgaging their homes (social networks, parental, etc.). In fact, research from different perspectives has yielded results that indicate that the percentage of cases in which families use their title to access a credit is low (Galiani and Schargrodsky 2009; Calderón 2006; Fernandes 2012). On the one hand, the formal credit supply for low and unstable incomes is very low (and, if it exists, it has requirements that prioritise the ability to prove that it will be paid). On the other hand, few families are willing to put their homes at risk, perceiving them in terms of their value of use rather than as capital. Investment in improvements is made when the perception of security of housing tenure is strong, and this can be based both on possession of the title and on the outcome of existing socio-political pacts (Payne 2001).

Titling conceived from a perspective that attends to the individual, and not to the community, collides with other proposals of regularisation and neighbourhood improvement that address the territory more integrally (Ramírez Corzo and Riofrío, 2006). This option subtracts resources from the promotion of social safety nets, cooperatives, state institutions, and public schemes, leading to extreme privatisation. It has been proven that titling can trigger processes of densification of urban settlements due to expectations of rights recognition (Menna Barreto 2000). This makes the environments in which irregular settlements tend to settle more fragile and unhealthy, rendering them unsustainable (urban and environmentally). The knowledge of the valorisation of the areas intervened by titling programs works as an incentive for the irregular markets, feeding back a perverse cycle of irregularity-regularisation-new irregularity; titling can become a "license to invade" of sorts (Smolka 2003).

These processes of densification and expansion of irregular habitats are also explained in certain contexts, such as in Latin America, by the clientelism in use of titling policies and the absence of land market regulation policies capable of influencing the causes of irregularity (Duhau and Cruz 2006). The Peruvian case illustrates the limitations of a massive individual titling approach, since efforts put into titling settlements have not been able to curb land invasions, nor have they delivered the expected indirect effects: housing and neighbourhood improvements (Calderón 2006).

In summary, there is some consensus in the international debate to question the individual titling paradigm as the only mechanism to provide security of tenure. More flexible and comprehensive approaches to recognising and protecting different forms of tenure and rights have also started to spread (Rolnik 2012b). However, the findings of the existing research, and the approaches advanced by new perspectives, have not yet succeeded in displacing the leading role of titling policies in the context of the global expansion of capitalism.

See also:

EURS0177

EURS0178

EURS0179

EURS0159

EURS0159

EURS0158

EURS0387

EURS0286

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