



Why De Soto's land-tenure ideas of formalized property rights are failing to benefit Africa's poor

The World Conference on Agrarian Reform and Rural Development noted in 1989 that "land availability was not a major problem in the context of most African countries" (WCARRD 1998: 17). Since then however, some of the continent's most serious conflicts (e.g. in Rwanda and Ivory Coast) have been linked to problems related to land availability and ownership. Access to land is becoming problematic in many African countries as land use and tenure frontiers shift. Three major land policies prevailed in Africa in the early 1980s. In some countries, there was a shift towards the socialization of land through cooperatives and state farms (e.g. in Mozambique). In others, privatization and individualization of land ownership was initiated or continued (e.g. in Malawi and Kenya). And yet other countries adapted existing tenures to modify relations between tribal chiefs and the state (e.g. in the Gambia and Lesotho). A move towards the second type (i.e. individualization and privatization) seems currently to be the most popular.

(natural) resources into productive capital. His claim has been welcomed by national and international policy makers struggling to improve developing countries' economies over the last fifty years.

The concept of land rights

Land tenure concepts define how individuals gain access to and acquire rights over land either temporarily or permanently. There are many ways in which rights to land are laid down. Title deeds may have been given (*statutory law*) or land may have been transferred by traditional laws of succession (*customary law*). Statutory law divides land into two categories:

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

Land held under customary law can be *communally* used, *individually* used or may be *reserve* land (that has not yet been allocated).

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. a group ranch), while individual property exists under customary law (e.g. ownership of a well).

This seems to be in line with recent statements by the Peruvian scholar, Hernando De Soto, who argues that a lack of easily understandable, formal property rights explains why people in developing countries have not been able to transform their



Map 1 Kajiado District, Kenya (Since 2007 split into Kajiado and Loitokitok districts)

This *Infosheet* is based on longitudinal research carried out among Maasai pastoralists in Kajiado District, Kenya since the late 1980s. The findings seriously question De Soto's claim that formalized property rights result in investment, the sustainable use of resources and, ultimately, wealth creation by new individual property holders.

The evolution of land ownership in the Maasai area in Kenya can be divided into five major periods.

1. The arrival of Europeans and the setting up of Maasai reserves: 1890-1920

British colonizers introduced formal land tenure in Kenya. The local administration wanted to attract as many white settlers as possible and called for a settler-friendly land policy and legislation. African

land rights were overruled and violated in every respect and, as a result, Maasai pastoralists lost their best grazing areas, something that is still being challenged today.

In 1904 the Maasai lost 35-40% of their land after signing a treaty with the British that divided Maasai territory into northern and southern reserves. In 1911 the Second Maasai Treaty was signed, making it possible to move the Maasai from the north to an extended southern reserve. However, some localities within this reserve were heavily infested with tsetse flies and/or lacked water.

2. The period of neglect: 1921-1944

The Colonial Office in London published a White Paper in 1923 that denied responsible government to the settlers and stated that the interests of the African population should be paramount. This declaration turned out to be hollow and the land policy was left unchanged. However, the Native Lands Trust Ordinance of 1930 stated that non-natives could only obtain leases or one-year licences for land in the reserves if it was not occupied or required by Africans.

The Maasai repeatedly protested the loss of their land to the Kenya Land Commission, which was set up in 1932 to review African land grievances. The KLC's report reaffirmed the administration's policy towards pastoralists by opposing any extension of their land.

3. Grazing scheme experiments: 1945-1963

After 1947, three grazing schemes were established with funds released through the African Land Development Programme. The idea of communal land ownership was unofficially dropped as early as 1950 by the Department of Agriculture.



Maasai hauling a weakened cow back onto her feet

Neither the Land Bank nor the commercial banks were interested in lending money to African farmers without individual security. Traditional land tenure had to be removed as it was thought to block the intensification of African agriculture. The creation of a landless class in the future was

predicted but considered a normal step in a country's evolution. By late 1952, drought had resulted in the deaths of a considerable proportion of the Maasai's stock, which ultimately changed the plan to divide the district into ranch units.

After 1954, local Maasai politicians started to illegally acquire 2000-acre individual ranches. Young politicians in particular created a political clientele by handing out title deeds to supporters and reducing the social and economic dominance exerted by elders who opposed this development. Colonial administrators expressed their concern but did not actively intervene.

4. The setting up of group ranches: 1964-1980

Support for the elders came from the 1965 Lawrence Mission that criticized the government's haphazard approach to the Maasai land question and the illegal granting of approval for individual ranches. The Maasai all accepted the group ranch concept in 1969, which was introduced by the World Bank and implemented as the Kenya Livestock Development Project.



Fences in Maasailand

The idea of a group ranch meant the setting aside of land for communal ownership by a group registered as the legal owners through membership of the ranch in question. Non-members would not be allowed to bring their animals to graze there. Through the provision of loans for infrastructural development and steer fattening, an attempt was made to radically transform the nomadic subsistence-oriented milk economy into a sedentary, market-oriented meat production system. This was to bring about a destocking of Maasai pastures while also providing meat for national and international markets.

In addition to welcoming the idea of water provision, veterinary care, improved livestock breeds and the like, a major rationale for accepting the group ranch proposal was to prevent elite Maasai from grabbing land and non-Maasai from settling in the district because the status of "closed districts" had been removed by the late 1960s. The group ranches fulfilled both these objectives.

Problems included delays in implementation; disappointing rates of investment and difficulties in loan repayments; a continued trespassing of group ranch boundaries; refusal to destock; no real transformation to market-oriented production; and corruption among ranch committees.

The group ranch concept, which was introduced by outsiders, was an artificial creation that lacked a firm traditional, sociological as well as ecological basis. Its implementation was over-ambitious in aiming to destock pastures and commercialize production while barely taking into account pastoralist strategies. The final outcome was a growing desire among many Maasai to subdivide the group ranch into individual shares.

5. The dissolution of group ranches and the individualization of land ownership

No clear position was taken by the government in the early 1980s on the subdivision of group ranches, apparently because the administration itself had some doubts about it and the individual departments were at odds with each other.

Supporters of group ranch subdivision said it would raise living standards, increase the chances of procuring loans using the freehold title deed as collateral, minimize the exploitation of the poor by rich households, promote Maasai engagement in agricultural and industrial enterprises, and facilitate better maintenance of existing infrastructure. In general, those opposing subdivision claimed that ultimately the result would be the loss of land to non-Maasai, severe erosion in areas where cultivation started, a loss of Maasai culture, and restrictions on the movement of wildlife and livestock to the detriment of the district's meat production and tourism.

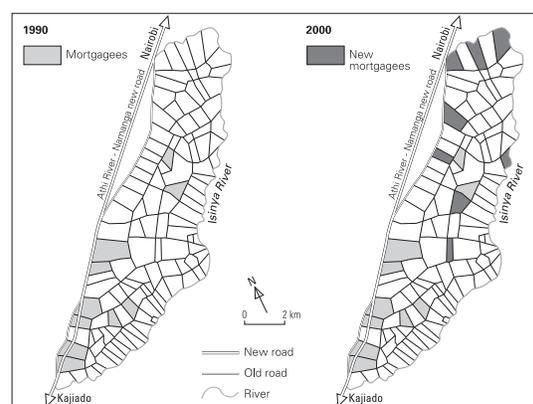


Map 2 Olkinos sales 1990 and 2000

These arguments have been researched in a group of 500 Maasai households using repeat surveys since 1989 but here only the monetary and

juridical effects of the individualization of land ownership are reviewed, namely the buying, selling and mortgaging of land. The survey addressed the pros and cons of the process of individual land titling within the context of De Soto's claims that formal property rights would increase household and individual incentives to invest and would provide them with better access to credit.

Experiences in Kenya during the subdivision of the Maasai group ranches in Kajiado District, however, challenge this bold claim. The formalization of individual land rights has not triggered a widespread run on financial institutions by local farm owners, nor has it benefited the majority economically.



Map 3 Olkinos mortgagees 1990 and 2000

In contrast, the formalization process has brought severe problems for many of the original landowners following the sale of (part of) their land. The beneficiaries have mainly been speculators and new immigrants, with the latter either having acquired a small piece of land for crop cultivation or having found a job on one of the new flower or tree farms or at an educational institution. This influx of new economic activity has to a certain extent been responsible for the overall heightened strain on natural resources, notably water, and has put pressure on the sustainability and resilience of livestock keeping, the area's main economic activity. As a result, severe forms of poverty of a more structural nature are creeping into Maasai society.

In short, the role property rights can play in benefiting less well-off members of society will in reality be less easy to achieve and might be more of a threat to these groups, leaving opportunities for a minority of foreigners, immigrants, the educated elite and well-informed politicians. Tables 1 and 2 summarize the positive and negative effects of the process of individual land titling.

The same arguments De Soto put forward in favour of formal land rights were used in the

1960s by the World Bank and the UNDP, and again in the 1980s by those in favour of subdividing group ranches. None fully realized or wanted to acknowledge the possible negative side effects for a large number of Maasai people, their children, the district's ecology, the livestock economy, wildlife and tourism. As a result, the process started without clear guidelines and amongst a group of people who were not yet ready to withstand the clamour for land within modern-day Kenya.

Table 1 Positive effects of individual land ownership

Direct

- Restricts the misuse of grazing by neighbouring ranchers
- Wealthy herders rent land from poor pastoralists
- The misuse of loans by corrupt committees is not possible
- Flexibility in pasture management is reintroduced

Indirect

- Job opportunities in the mining and flower industries
- The Maasai copy immigrants' activities, improvements in cultivation, modern houses, water facilities
- Extra fodder (Napier) is being grown
- Bartering of livestock (products) for maize/beans
- Informal self-help groups invest money and labour in steer fattening, breed improvements and wells

Table 2 Negative effects of individual land ownership

Direct

- The livestock system is undermined by removing (high-potential) land from the pastoral migration cycle
- There is reduced access to land (sales, fencing, fees)
- Several Maasai households are facing problems following land sales due to extreme poverty, hunger and court cases
- Only a few Maasai widows have a title deed; usually only non-Maasai women (groups, the rich) are able to buy land

Indirect

- Split households have less labour available for herding
- Land sellers are buying more livestock, resulting in higher densities on already overstocked farms
- Some new activities threaten the area's carrying capacity (e.g. flower production)
- Poverty has a detrimental effect on the environment (e.g. charcoal burning)
- Loss of land is pushing many Maasai into wage employment where they cannot compete due to a lack of education
- An influx of outsiders is creating tensions between ethnic groups; political patrons can easily instigate clashes
- Land sales can result in poverty of a more structural nature but herds – unlike land – can be rebuilt

International policy makers should understand that providing funds to establish a land titles register is only one side of the coin. The land register funds need to come with the understanding that some of the money is allocated to district-wide discussions concerning the consequences of the proposed new land-tenure setting. The Maasai experience shows that De Soto's claim that the hidden wealth of the poor can be brought to the surface by simply formalizing their property deeds

is rather short-sighted. A whole range of other arrangements need to be put in place too. For example, financial institutions need to be willing to lend money to (illiterate) landowners, and at reasonable interest rates.

Corrupt practices in formal land registration do not help to build confidence in the formal land-tenure system and a natural non-equilibrium environment makes economic activities such as livestock keeping risky and can quickly result in loan arrears. The failure of World Bank managers to run profitable businesses on Maasai ranches in the 1960s and 1970s is proof that formal property rights do not work well in semi-arid areas. As long as these risks create an uncertain business climate that undermines investments, the introduction of formal property rights will not be able to act as a panacea for wealth creation in these regions. On the contrary, the evidence presented here shows that the opposite, i.e. a loss of wealth, is more likely. For now, besides educating Maasai landowners about the value of land, the best the Maasai youngsters can hope for is that their parents will value the wealth they still own. As for De Soto's claim that formalized property rights will do the trick, let us hope that Kenya's experience is an exception to the rule.



Billboards warning Maasai not to sell their land

Relevant publications:

- Rutten, M. (1992), *Selling wealth to buy poverty. The process of the individualization of land ownership among the Maasai pastoralists of Kajiado District, Kenya, 1890-1990*, Saarbrücken & Fort Lauderdale: Verlag Breitenbach Publishers.
- Rutten, M. (2008), 'Why De Soto's ideas might triumph everywhere but in Kenya: A review of land-tenure policies among Maasai pastoralists', in: M. Rutten, A. Leliveld & D. Foeken (eds), *Inside poverty and development in Africa. Critical reflections on pro-poor policies*, Leiden: Brill.

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