

Regularisation by Land Title Adjustment in South Africa: An Inadequate remedy for Cloudy Titles

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SUMMARY

The article examines regularisation, land title adjustment, in South Africa using a land title suitability classification theory which we further develop here for post-conflict and poor governance situations. We report on two field studies in the Eastern Cape and Kwazulu-Natal and draw on research and consulting work in the Western Cape and Gauteng provinces. The latter adds a post-conflict dimension to the phenomenon. South Africa has diverse legacies of titling of land held by blacks due to different or evolving land policies prior to the transition to democracy under a Constitution that brought about changed land tenure dynamics. The characteristics of title follow different contours according to the varied historical contexts. Titling cannot be analysed as a monolithic question in South Africa. Attitudes to titling by the rural and urban poor have also evolved in response to changes in the political economy, land reform possibilities, greater competition for land, and concerns about tenure security in the light of elite capture of land, or the threat thereof. ‘Title’ tends to have nuanced meanings across a range of circumstances. Nonetheless, there are discernible patterns that run through most contexts where title has been introduced for black ownership. One of these is the prevalence (albeit differential) of ‘cloudy title’, a phenomenon where the de facto real rights holders are not the registered ones; title deeds do not reflect current status. Cloudy title is a problem for both the state system of registration and increasingly for the land owners. It has a deleterious effect on urban land administration where it intertwines with formal planning, housing, land markets and services; is becoming associated with corrupt practices in some communally owned land parcels in rural and peri-urban areas as well as family disputes regarding historic titles; and is blocking land development in historically black owned land in rural areas. The only legal strategy to clean cloudy titles is ‘land titles adjustment’ (LTA). LTA was first implemented in 1927 for black African titles and reframed in 1993 for a non-racial public administration. We gathered evidence from fieldwork including door-to-door interviews with residents; interviews with historians, officials, land professionals and LTA commissioners;

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documentary research including government commission and LTA reports; LTA project files; archival documents; ‘papers’ held by title holders; title deed examinations in Deeds Offices; and academic literature. We found that LTA works well in the short term and the process is generally well received, but there is frequent regression by title holders to former practices of inter-generational succession without registration and/or off-register sales. We conclude that LTA is inadequate given the magnitude of off-register transactions in the contexts discussed. Land titling should be carefully scrutinised for viability and where it is considered appropriate, support programmes should be in place to mitigate or minimise the off-register transaction phenomenon.

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