

DEVELOPMENT LAW & ECONOMIC REFORMS

DEVELOPMENT LAW - A CRITICAL TOOL FOR MODERN ECONOMIC REFORMS

Hernando De Soto's and the late professor Oslen Mansur have brought new perspectives to the influence of law to economic development. The sum of their findings is that development will not occur unless legal analysis is taken into account. A developed economy depends on vital legal frameworks and regulatory institutions. Consolidation as an economic policy may not, by itself, achieve its developmental objective to deepen banking and reach money locked away in the informal sector without fundamental legal institutional and regulatory reform. This will require breaking up the Central Bank and reallocating its three key functions to new regulatory agencies including a new Financial Services Authority. The regulatory objectives of

1. the financial service authority will include-
2. improving the efficiency of the market
3. market confidence;
4. public awareness;
5. the protection of consumers; and
6. the reduction of financial crime.

The Authority's general functions may include:

1. its function of making rules under its enabling law as a whole);
2. its function of preparing and issuing codes under its enabling law as a whole
3. its functions in relation to the giving of general guidance (considered as a whole); and
4. its function of determining the general policy and principles by reference to which it performs particular functions.

Again 70% of money circulates outside the banking system. So it is important to use new legal tools to integrate formal and informal banking. It is difficult to envisage how economic policy will do this all by itself.

De soto gives a very striking example of law as a key primer of development and used property law as illustration. Property consists of two values, physical and conceptual. The physical value may be fixed in say, a house. The abstract or conceptual value is fixed in property law systems. In developed nations, property law allows owners of housing, to represent their value in the conceptual realm. This possibility allows easy access to credit that in turn generates capital for development. In Nigeria with a very

weak legal regime, conceptual representation of property to create value is missing. Yet the housing assets inventory of Nigerian property exceeds six trillion Dollars. If the value of property is indexed to the banking system by massive legal reform of the property system, we can create an instant credit market in excess of our gross national domestic product multiplied by a thousand times – money will be then available to finance development. Thailand is an e.g. of how land administration reforms can add enormous value to capital creation especially for the poor.

In 1982 the Thai government began a 20- year project to title and register farmland throughout the kingdom. The aim? Enhancing farmers' access to institutional credit and increasing their productivity by giving them an incentive to make long-term investments. Just over 8.5 million titles were issued during the life of the project. Along with those issued outside the project, the number of registered titles increased from 4.5 million in 1984 to just over 18 million by September 2001. Studies conducted during the project show that it met both its objectives: titled farmers secured larger loans on better terms than untitled farmers, and productivity on titled parcels rose appreciably.

The success in Thailand is attributed to several factors.

- There was a clear vision for the project, a long-term plan to achieve it, and a commitment by the government and key stakeholders to project implementation.
- A strong policy, legal, and institutional framework was in place for land administration.
- The project built on earlier efforts to issue documents recognizing holders' rights to their land.
- Registration procedures developed by the Department of Lands were efficient and responsive to public demand.
- The public had confidence in the land administration system and actively participated in the reform process.
- The interests that can complicate projects in other countries—public notaries, private lawyers, and private surveyors—were not present.

Source: World Bank Report (2005).

But for this to occur and impact on the ongoing reform process, policy makers must, “consider that although macro policies are unquestionably important, there is a growing consensus that the quality of business regulation and the legal institutions that enforce it are a major determinant of development”. Our key constraints to development include poor security, extremely weak commercial judicial systems, a generally weak legal system, impunity, corruption and an unviable regulatory framework. These may be described as economic constraints. No economic policy will remove these constraints. But it is development law that can help remove constraints of no mortgage systems in Nigeria, by the repeal of the Land Use Act and erection of a new law on property. This should clearly identify owners of title deeds and allow easy transfers on property

exchanges – the so called notion of fungibility. De Soto's book on development law was published to critical acclaim and is widely viewed as one of the most important contributions to development issues of all time. Milton Friedman, Nobel Laureate in Economics says that De Soto has demonstrated in practice that titling hitherto untitled assets is an extremely effective way to promote economic development of society as a whole. A thriving market economy with an active role for the private sector is all that it takes for economies to develop. This is certainly the time to rethink our economy policy and include development law.