

BOOK REVIEW

Hornby D, Kingwill R, Royston L and Cousins B (eds)

Untitled: Securing Land Tenure in Urban and Rural

South Africa (2017 University of KwaZulu-Natal Press)

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Abstract

This contribution provides a review of the book edited by Donna Hornby, Rosalie Kingwill, Lauren Royston and Ben Cousins, *Untitled: Securing Land Tenure in Urban and Rural South Africa*. It deals with the topic of land tenure in urban and rural South Africa and challenges the requirement of title deeds to secure land tenure.

Keywords

Land tenure; land reform; communal property; customary law

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REVIEW

Untitled is a book of collective research that spans a decade and that had its origin in the Legal Entity Assessment Project (hereafter LEAP). LEAP was established to address the concerns in the land sector surrounding common property institutions (hereafter CPI's) established under land reform programmes. This led to a second phase in which LEAD concentrated on developing a conceptual framework to be used when "examining cases in the field, analysing underlying causes of dysfunction and possible solutions".¹ After the development of this conceptual framework has been dealt with, phase 3 looked at the role of CPI's in securing tenure and maps the components of common property tenure, developing indicators to assess the tenure security of groups and members of group in the context of common property situations.

With this study in mind, the book looks at the increasing drive to provide formal records of occupational rights to people living in communal property. What sets this book apart is that it does the same in urban settings. It sets out to use examples to demonstrate the relationship wherein many South Africans gain access to land and housing, calling it "messy, complex, multi-layered and poorly understood".² It does this in the context that most South-Africans (on the figures presented, almost 60%) live in off-register tenure arrangements, arguing that this reality is not adequately reflected in policies or laws.³

In the introduction the editors set out a range of factors that shape these relationships, such as social values, sets of norms, usage that is exclusive or shared, local institutional arrangements where rights are mediated, and the manner in which access and control are socially, politically and legally constructed.⁴ It is this complexity that the book sets out to address in its various chapters.

Chapter 2, for instance, deals with the policy context and discusses the development of policy from pre-1994. The discussion is thorough, with the most important cases being incorporated. This is not a purely legal discussion, but rather a broader discussion on how certain policies and laws

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¹ Legal resources centre, <http://lrc.org.za/lrcarchive/focus-areas/applied-research;Mdukatshani>, <http://www.mdukatshani.com/leap-home.php>

² At 3.

³ At 4.

⁴ At 3.

play out in the reality of off-registered tenure arrangements, and the difficulties surrounding the formalisation or legal recognition of these rights. It does, however, provide a helpful context in which the chapters that follow must be understood.

The strength of the book lies in the empirical work performed to see how this legal framework pans out in practice. For this reason, the next five chapters deal with the complexity of local rules and practices in the urban setting. These chapters highlight the difficulty of these kinds of tenures operating in the current system, such as the inability to operate in a system where ownership holds pre-eminence, the limitations of Communal Property Associations (hereafter CPAs), the costs involved in titling, the role of (living) customary law, the variety of land rights in a specific community, and the fact that the sustainability of natural resources seems not to be a concern. It also proposes solutions such as communal general plans and registers.

This flows nicely into a case study of the local registration practices in informal settlements, where local registration practices exist, and how this falls short of the official system. This then flows into a discussion of how legislation has tried to address these issues (not only in South Africa, but also on the rest of the continent) and what the challenges are. An interesting discussion, in chapter 10, includes a consideration of transitional residential settlement areas in cities.

All of this leads to a convincing conclusion that there are three approaches to securing tenure, namely conforming to the requirements of the registration system, recognising social tenures, and a radical legal and institutional overhaul of tenure. The book advocates the latter due to the disjunctions that exist between the two systems. It calls for a full and systematic recognition of and support for land and housing rights that do not correspond with the Western style of property ownership. These two styles require equal support, it is argued. How this is to be done is addressed in the book.

The weakness of the book lies in some of the case studies being fairly dated. It would have been interesting to see whether the concerns of the earlier years still remain. The other downside, from a legal point of view, is that as far as the second option is concerned (recognising social tenure), it could be useful to include a chapter on how the current concerns can possibly be overcome through creative legal wrangling, to at least ease the disjunction between the two systems until the overhaul takes place.

Taking it all in all, the book adds important discussions and case studies to the titling debate. No matter where one sits the titling debate, it is important that one constructively engages with the arguments and examples brought forward in the book.

Bibliography

Literature

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List of Abbreviation

LEAP

CPI

CPA

Legal Entity Assessment Project

Common property institutions

Communal property associations