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Question 1. The fundamental thesis of the de Soto book and its relevance to the post-Soviet reform activity.

The fundamental thesis of de Soto — that the poor already possess assets from which "capital" could be derived if improved legal and institutional mechanisms by which to "represent" those assets — is an important concept. Although the idea has been at the heart of a number of reform efforts in the post-Soviet states, including our urban development/urban land use reform projects, it has not been so well articulated. The book can make an important contribution both by its clear focus on the link of land and real property tenure to capital formation and by its shift of attention away from top-down institutional reform toward the poor urban population as an "engine" of development. Further, by its persuasive argument that it is an accumulation of small obstacles — multiplicity of administrative steps, petty corruption, etc. — that hinder capital formation, the book should have a positive effect on the way in which development assistance projects are designed. Rather than expecting broad systemic reform to emerge from demonstration projects and national legislative initiatives, the book suggests that efforts must be directed to painstaking adjustment of routine local processes and support for neighborhood-level political and social action.

Despite its overall relevance and importance to the post-Soviet reform activity, there are three limitations in the de Soto thesis, which arise as a result of its starting point in the experience of "third world" countries of Latin America, Africa and south Asia.

First, it appears that in the countries of Latin America, Africa and south Asia, which form the factual basis of de Soto's work, the assets under control of the poor have been kept outside of established legal and institutional structures, which are otherwise in existence. In Peru, India, South Africa, Egypt, Thailand and similar places, principles and systems of civil law, as well as banks, commodity and property exchange mechanisms and other financial intermediaries exist at an "upper level" of the national economy and society. These may not penetrate very deeply into society and they leave out large numbers of people, whose relationships remain defined by traditional concepts, customs and rituals, or by extra-legal or shadow rules in a "lower level" system. The "trick" of reform is to find ways to expand the reach of the existing "capital forming" institutions and integrate into them more elements of the traditional or customary mechanisms.

In contrast, the post-Soviet countries had no similar dual structure. There was no "upper level" of modern "capital forming" institutions (banks, commodity exchanges, etc.) and civil law and the institutes of "property" were all missing. Further, at the "lower level" traditional customary relations had been eradicated in almost all parts of the Soviet Union. Only sporadic extra-legal and shadow economy activities were established. Thus, the initial efforts at reform (beginning with perestroika were directed to introduce elements of civil law and market mechanisms. After independence in 1991, most of the new states have also attempted to revive some elements of traditional customs, or have

retained elements of the ideology of social protection in order to gain legitimacy among their dominant ethnic groups. The incomplete reforms in most sectors of law, administration and economic relations appears to be leading to a de facto bifurcation, similar to that of the third world. Nevertheless, the lack of established institutions at the higher level makes the practical tasks of reform very different than in the third world countries. Civil law and the market mechanisms must be constructed with little to build on (except foreign experience) at the same time that both resistant soviet structures and increasingly powerful extra-legal structures must be overcome.

Second, in the urban areas studied by de Soto, the accumulation of assets has occurred in the context of generally self-motivated migration of rural people to the urban periphery. This has given rise to the model of the "shanty town" which grows in incremental stages through labor and small investments, and gains a level of legal recognition as the result of local political activism.

By contrast, in the post-Soviet states, most urban migration in the past generation was controlled or forced — as labor cadres were mobilized for planned energy generating, resource-exploiting and industrial development projects. After 1990, a significant amount of reverse migration has occurred. People are leaving the most remote cities and settlements, and ethnic population movement has taken place from some of the newly independent states. Overall population decline has diminished the numbers of people in almost all urban areas. Only Moscow and a few of the new national capitals have experienced significant population growth. Because of the climate, this growth does not take the form of "self-generated" shanty towns but involves either the continuation of the soviet housing system (state built units) or the subdivision of existing occupancies with consequent overcrowding. This has caused a strain on housing stock and infrastructure, but there has been no corresponding "self-help" investment.

Third, the land and real property policies of the post-Soviet governments appear to contrast to the policies of the third world countries, described by de Soto. Those countries have sought to preserve the status quo in most cases — allowing the landholding oligarchies to retain legal title and keeping land on the urban peripheries classified in agricultural or other obsolete categories. The policy of the most of the post-Soviet states has been to promote the idea of small landholding and property holding by its citizens. The mass privatization of apartments and small houses took place in the early 1990's and through the decade, almost all the states have engaged in some form of land and productive property distribution. This has involved the following:

- "restitution" of land and property rights in the Baltic States,
- mass transfers of inheritable possession rights or ownership rights in suburban garden plots and small subsistence farms in Russia, Belarus, Ukraine and other states,
- mass transfers of ownership of family farm plots in Moldova, Armenia, Georgia and other states,
- agricultural land sharing and farm property (buildings and equipment) sharing, involving common ownership rights, in Russia, Ukraine and several Central Asian states;

- mass privatization (by vouchers or shareholding rights) of rights in enterprises to urban workers.

Thus, the official policy of the post-Soviet states has been to extend ownership or other civil law rights in property (leasehold, inheritable possession) to citizens widely and, in theory at least, to organize new institutions — land and property registries, market mechanisms — to help make these rights a reality. The failure of reform, so far, has been the inability to create the necessary institutions and make routine the processes of market exchange and civil law protections.

Thus, one can contrast the post-Soviet states with the third world states in the following way. In both groups of states, large numbers of people hold assets, which cannot be used to generate capital because of the lack of ability to "represent" these assets in a legally meaningful way. In the post-Soviet states the main obstacles are the lack of institutions and civil law principles, which give practical meaning to the "paper rights" held by citizens. In the third world countries, the institutions may exist but their reach downward to encompass the assets of most of the population is limited by the unwillingness of the government and controlling institutions to grant the "paper rights" and integrate these assets into the routine systems of law and market interaction.

Question 2. What are the practical challenges to achieving the "representation of assets" in legal property documents?

There are three practical problems. The first two are well covered in the de Soto study.

First, there is need to overcome resistance from established institutions, professions or classes of people in society who will lose political power, control over property and assets or control over administrative procedures in any meaningful reform. de Soto talks about the legal profession, the planning agencies, as well as the traditional land-holding interests, as the most significant opponents to change. In the post-Soviet states, institutional resistance to civil law and market reforms involving urban land and real property has been most prevalent in the municipal level and regional level land and property bureaucracies. These organizations were given control over the most important assets — urban land and buildings — with the authority to allocate rights of occupancy, use, ownership and leasehold and the corollary authority to collect rents and other fees. A parallel and overlapping planning bureaucracy, controlling the rights to develop land and reconstruct buildings, competes in the major center cities areas with the "historic preservation" bureaucracy. These are joined on the urban periphery by the rural nomenklatura (collective farm managers and village bosses).

Second, the mass privatization processes have not had the effect of creating political constituencies for civil law and market economic reforms that are sufficiently focused to overcome the bureaucratic obstacles. For example, for several years, Russia, Ukraine and other states have made numerous policy statements (in the form of presidential and governmental decrees and draft laws) expressing the need for and the intent to create

effective land rights registries and cadaster systems. In the technical literature, promoted by various ministries, and in the professional literature — real property trade journals and the like — there has also been fairly consistent discussion of the need for the registry. The donor organizations have assisted with numerous projects that have demonstrated how the registry can be organized, how its basic legislation and regulations can be written, and how it can function and pay for itself over time. Nevertheless, in almost all the post-Soviet capitals, the registry legislation has been stalled because several competing ministries will not give up their claims to control the system and compromise cannot be reached or imposed by superior political leadership. The debate has remained a technical fight among "experts" and agencies, without any interest group or constituency (other than the foreign donors) able to argue the overall common good in the economy.

The third and most important obstacle to reforms, which would allow creation of capital from land and real property assets, lies in the failure of the leadership and the public to understand, measure and accept the level of risk that will be associated with any mortgage or similar mechanism. While de Soto uses the term "representation" of assets, their transformation into capital, in reality, happens only by alienation (sale, exchange, lease) or pledge — with the right of the pledgee to take or foreclose on the asset. To make it work, one has to accept the possibility that both the capital and the asset will be lost if bad decisions are made or the conditions deteriorate.

In established "capitalist" countries, many people are willing to expose their assets to this risk to gain capital because, in weighing the potential for gain against the potential for loss, they can factor in various "safety" elements. These include, not only the formal "safety net" of social security, pensions and the like, but also the existence of opportunities to start over again in new ventures or new places. Similarly, in countries with strongly established traditional clans, families or other local community security systems, the acceptance of risk is possible.

The post-Soviet societies, however, lack both the formal and informal "safety net" systems. This, coupled with the lack of entrepreneurial training and the many decades of official ideology, which stigmatized independent economic actors, has made post-Soviet citizens extremely risk-averse. The small land holdings, apartments and real property rights are regarded by most people as their safety net. In very many cases, the family's garden plot provides a substantial part of its food supply and the family apartment, owned in Moscow, Kiev or other desirable city, carries with it the official residency permit. The permit, in turn ties into the system of medical care and other social support, as well as solidifies the opportunity to seek employment and stave off harassment by police. Pledging these assets for capital to support an entrepreneurial venture would rarely appear to be a rational act.

Official policy reflects this risk-aversity. In the parliamentary committees, in which the mortgage legislation has been debated, there are frequent references by legislators to the fact that they have seen on television American farm families being dispossessed of their land, livestock and household goods by unforgiving banks and capital institutions. This would not be tolerated in Russia or Ukraine — it is always said. Thus, the adopted

versions of Mortgage laws in these and other countries have attempted to create "foreclosure free" mortgage mechanisms. They are on the books, but are not used.

It must be noted that it is in this area that the de Soto study appears most inadequate. It takes the position that "cultural determinism" has no significant role in putting up obstacles to the "representation of assets" to create capital. It rests this idea on the observation that people everywhere in the world are willing to engage in trade and deal making. However, evidence that people in a society are willing to trade tangible goods in lively markets — does not necessarily mean that they will make the next step to trading intangible rights derived from land, premises and other "capital" goods. In the Soviet system, there was a well-developed structure of legal and ideological classification that separated household and personal goods from the "means of production" and the "basis of daily life activities" (housing premises, residential land, commercial service real property, etc.). The first category of goods could be owned and traded; the second could not. This distinction remains in the legislation, in the economic literature and in the minds of all people educated under the soviet system — even though the prohibition on ownership and trading of the latter is now removed.

Indeed, the experience of the first decade of privatization of "means of production" appears to have made the Marxist-Leninist distinction more clear. Soviet theory held that, if land, real property and essential equipment, needed for production were allowed into the hands of individuals and non-state institutions, they would seek ways to extort and monopolize their control, to the detriment of workers. The failure of "mass privatization" of industrial and resource enterprises — which have, in fact, come under the control of a small number of oligarchs and monopolistic banks and holding companies — appears to have proven the theory true.

Almost every Russian and Ukrainian family was scammed out of its privatization vouchers, and almost all of them lost their Soviet era savings accounts in the collapse of the ruble in 1990-91. Thus, today most people distrust both banks and intangible "capital." The most telling manifestation of this problem can be seen in the way in which most families invest any incremental surplus in their wages or profits from petty trading in making improvements to their dachas or rural houses. Thousands of half-finished houses stand on the outskirts of all cities. They show the strategy of transforming wealth into bricks and mortar as a way of protecting it from inflation and weak banks. It is the alternative to holding foreign currency under the mattress and the poor person's alternative to the off-shore bank account.

Solving the problem of legal and administrative obstacles to the "representation of assets" in order to create capital, will not overcome these more fundamental systemic problems.

Question 3. Extra-legal property systems.

It is inappropriate to speak about "extra-legal property systems" in the post-Soviet context, since the "legal property system" itself is largely un-formed. Instead, the key problems arise in the context of trying to introduce elements of civil law — involving

direct individual-to-individual (enterprise-to-enterprise) dealings — into what remains largely a system of administrative relationships.

In the context of the urban development and urban land use reform program — "zoning" — carried out under USAID sponsorship in several cities of Russia, the most important of the changes accomplished was a small adjustment in the timing of administrative decisions. Under the existing system, individuals or enterprises seeking a parcel of urban land on which to undertake construction, were subject to a three-stage procedure. The "applicant" for urban development (investor) would initially file a dual application, which requested from the city agencies both permission to undertake a particular construction project and allocation (by sale or lease) of a suitable parcel of land. At the first stage, the applicant would be granted a permit to undertake the design of the project (enabling him/her to deal with the appropriate infrastructure agencies and to obtain necessary information about site and infrastructure conditions. This "permit to plan" would be accompanied by a temporary (six month) permit to enter the particular land parcel for purposes of taking measurements and other preparatory planning work. Based on these permits, the construction plans would be prepared and then reviewed. At the second stage, the city agencies would issue the permit to begin construction, in accordance with the approved plans. This permit would be accompanied by a temporary permit to occupy the land for purposes of carrying out the construction (two years). Based on these, the applicant would purchase the building materials and labor and undertake the construction project. During this whole time, the applicant would not be considered an "owner" of real property under the civil law, but only the holder of discretionary administrative permits (and owner of some building materials). At the third stage, when the building was complete, the applicant would file for the certificate of building occupancy (recognizing that the building was complete in accordance with the approved plans). Upon receipt of this, he/she would register as "owner" of the building. Finally, with the building registry sheet in hand, he/she would be entitled to complete the final land transaction, acquiring the long-term lease, ownership or perpetual use right to the land.

As is obvious, under this system, the "applicant" holds very weak rights prior to the end of the planning and construction process. He/she is expected to carry the substantial cost of construction based only on these weak permits and cannot expect to finance any aspect of the project. There is no property right to pledge as security for a loan.

In three cities of Russia — Novgorod, Kazan and Khabarovsk — the adoption of "zoning" regulations included the small change in procedure in which the cities can now transfer the permanent right to the land — long-term lease in most cases — simultaneously with the construction permit (at stage two, rather than stage three). The land right would carry with it (in the definition of the land parcel) the parameters of construction, as defined in the approved plans. This simple procedural change resulted in the applicant becoming a civil law property owner (land leaseholder) prior to spending the money to construct the building. The change removes significant risk of loss and

makes it possible (in theory at least) to finance the project by pledging the land and building rights as security.

4. Micro-lending.

So far, micro-lending has not been a significant strategy for increasing productive investment in post-Soviet states. Some demonstration projects, funded by donor organizations have recently begun.

Home-grown, micro-credit has been far more important. Kiosk traders, small garment manufacturers, computer repair shops and similar small-scale entrepreneurs have set up shop in all urban areas of post-Soviet states. The financing is the result of pooled resources of family and friends. These operations face very strong resistance from municipal and regional administrations and tax inspectors, and political leaders generally take the position that such activity is illegal, or is "un-civilized" and only to be tolerated as a temporary measure until large industry revives. Thus, there is no official support. Municipal governments control the location of these activities — occupancy permits in city-owned buildings, kiosk licenses and trading licenses. These are given grudgingly, for very short terms and with frequent changes in terms and conditions.

5. Modern land administration systems.

Over the long term, the creation and maintenance of complex land administration systems — with integrated land registries, cadasters and GIS/planning systems, may be a desirable goal. However, in most post-Soviet countries, there has been an over emphasis on these systems — both from the national agencies hoping to preserve their control of land and property allocation and from the donor organizations. Numerous expensive "demonstration" registry system projects have been conducted in Russia, Ukraine and other states. Almost none of them has led to a continuing, routine system of land registry. The basic legislation has stalled, because the main agencies — the State Land Committees, Ministries of Urban Development, Ministries of Justice and Geodesy and Cadaster Institutes — all claim that the system must be under its control. This has stalled progress in most of the states. Unfortunately, by holding out the promise of millions of dollars and lots of computers to create the systems, the World Bank and other donors have hindered, rather than advanced the process.

6. Integrated perspective.

The quote is nonsense and reflects theoretical concepts that, while appealing to most professionals, have little relation to reality. In post-Soviet countries, where rural areas are becoming depopulated, where agriculture is largely reduced to subsistence, where "urban development" is in most cases the enlargement of kiosks and repair of crumbling infrastructure, the most simple systems of land rights registry are all that is needed and all that is economically feasible. By setting forth the vision of modern integrated land use decision making, and fun GIS activity, the donor organizations —

driven by surveyors and computer programmers — have played into the political agendas of the agencies most opposed to land reform and civil law.

In the longest range perspective, the post-Soviet states should be encouraged to pursue the "integrated" social/market vision of law and economic relations that much of their existing law reflects. At a practical level, however, the result of these laws and theories are the 154 stage procedures that de Soto describes as the major impediment to capital formation by the poor in Peru and Haiti.

7. Habitat

Previous Habitat research and policy has been largely absent in all my work in Russian and Ukrainian cities for the last eight years, except for a couple of professors at the University of Poltava, who seem to have learned all the buzzwords and make use of them in their scholarly articles. The lingo translates badly into Ukrainian.

8. Impact on donors.

Not likely to be much impact. Does anybody who works in the field read this stuff?

9. Planners' role

In the post-Soviet states the most pressing job for planners is to revive the profession in a way that moves its fundamental theory and tasks away from the idea of control to the idea of influence and support of individual and enterprise initiative. Perestroika properly abolished central planning, recognizing that new elements of civil law and market economic relations were essential if discipline and rationality in the use of resources and human capital were to be achieved. Perestroika did not posit a replacement of socialism as the basis for organization of the society with "free-market capitalism." Instead, it set out a framework for what it hoped would be a "balanced" system, in which property rights and individual initiative would be recognized, protected and encouraged with profit motivation; while at the same time, a strong state role of social protection would be maintained.

This ideal remains the basis of law and policy in virtually all the post-Soviet states, except Estonia. The planners role in this process remains largely undefined. To a great extent, the current model is one of strong oligarchic capitalism balanced by a strong regulatory state. It is increasingly being revealed to be a destructive combination.

Planners cannot transform "dead assets" into capital. They do not control capital or assets, and should not attempt to do so. Their work, however, does influence the systems in which capital formation should take place — that is, administrative processes, and related structures of law, regulation and economic transactions. Planners need to focus on the details of these structural systems; identifying the obstacles to productive activity and helping to formulate practical, small scale adjustments in them.

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