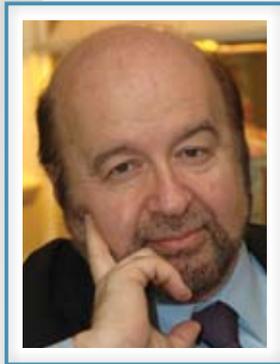


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Mr de Soto was named one of the leading innovators in the world by *Time* and *Forbes* magazines, and more than 20 000 readers of *Prospect* and *Foreign Policy* ranked him as one of the world's top 13 "public intellectuals".

He has served as President of the Executive Committee of the Copper Exporting Countries Organisation, as Chief Executive Officer of the Universal Engineering Corporation, as a Principal of the Swiss Bank Corporation Consultant Group and as a Governor of Peru's Central Reserve Bank. He has advised heads of state in several countries on property reform programmes and is the author of *The Other Path* (mid 1980s) and his seminal work, *The Mystery of Capital*.



Chapter 5

The Amazon is not Avatar

*Hernando de Soto*¹

Hernando de Soto argues that a series of myths and misconceptions continue to marginalise indigenous people and exclude them from integrating into the world economy. Yet in the Amazon, much like in the rest of the developing world and unlike in the fictional blockbuster Avatar, the story is much more complex. Millions of people living off natural resources face obstacles such as lack of property rights and legal recognition when seeking to participate in and benefit from the global economy. And while the concept of empowerment – giving excluded people the right to control their resources through the same property and business tools that wealthy people have – has guided discussions among international donors, they have found it difficult to put into practice.

De Soto challenges a series of myths that form the basis for disempowering attitudes towards indigenous populations, concluding with recommendations for governments and donors to enhance the ability of poor people to protect themselves from the drawbacks of globalisation, and benefit from its advantages.

In the much-celebrated science fiction film *Avatar*, a greedy mining company plots to drive the indigenous population of the moon Pandora away from their traditional forest homeland so as to exploit its precious resources. These plans are foiled when a former United States (US) marine, who is part of the mercenary unit hired to execute the mission, goes native and leads a popular counter-attack. Directed by the imaginative US filmmaker James Cameron, *Avatar* clearly struck a chord with movie audiences around the world. Many of us automatically supported the film's messages: that the world's indigenous peoples were content with their traditional lives; that they thrived in a Rousseau-like state of harmony with their environment; and that they certainly had no interest in participating in their nation's market economies, never mind globalisation.



*Hernando de Soto (centre) with Bora natives in San Andrés, Iquitos.
Photo courtesy of the Institute for Liberty and Democracy.*

For Peruvians, however, the movie also sparked a sense of *déjà vu*. Earlier in the year, in the midst of weeks of demonstrations against the government's unilateral decision to grant concessions to oil, gas and lumber companies in the Peruvian Amazon, we watched as indigenous groups took over oil and gas pumping stations to protect their property. On 5 June 2009, President Alan Garcia sent in armed national police to reclaim a pumping station near the town of Bagua in the northern jungle. The natives fought back, brandishing spears and machetes and leaving 34 dead, mostly police. The lethal violence stunned Peru, forcing the resignation of Garcia's entire cabinet.

But the conflict in the Peruvian Amazon was not *Avatar*; it was, in fact, a more nuanced and moving story about how thousands of poor people are gradually losing their sense of identity, but are not yet appreciating the benefits of globalisation. This risky face-off between traditional and new world orders is happening not only in Peru and other parts of Latin America; it is also underway in China, India and Africa, where aboriginals and local people are protesting "land grabs" by private investors. As a result, international organisations have added the issue of indigenous rights to the list of threats to political stability in the developing world.

Frankly, in 2009, I knew little about the indigenous communities of the Peruvian Amazon, which make up only a bit more than 1% of the country's total population. While I have devoted an important part of my career to helping the poor gain access to property and business rights – first in Peru and then in other developing countries – I was inclined to agree with the "experts" who argue that we should leave the indigenous peoples of the jungle to continue living their traditional lives. But as I followed the political debate in the days following the incident in Bagua, it became clear to me that no one in Peru seemed to have a clue as to what, in fact, had sparked the violence. To find hard evidence about what happened,

my colleagues from the Institute for Liberty and Democracy (ILD) and I travelled to the Amazon. We conducted eight months of fieldwork – including in-depth interviews with the leaders of all the principal tribes and the chiefs of some 200 indigenous communities – and spent weeks more analysing our findings and exploring alternatives for reforms that might help the people of the Amazon to benefit more fully from their resources. The result: I have come to share the fears of many Amazonians regarding globalisation.

Unlike the Hollywood-style solution, however, I do not believe that the best way to help indigenous peoples is to isolate them from globalisation (in the film, the US miners that invaded the Pandora were arrested and sent back home in their space ships). What the people of the Amazon really want is the same thing the poor are seeking throughout the developing world: to be legally empowered so that they are no longer marginalised politically, having a voice in their own economic futures without losing their customs or traditional identities. The following is, in brief, what our research revealed.

“What the people of the Amazon really want is the same thing the poor are seeking throughout the developing world ...”

Indigenous communities do not have control over their territories

The majority of Peruvians presumed that the state had long ago given the indigenous peoples of the Amazon property rights over their territories. But the fact is that of the 5 000 communities in the Peruvian Amazon, only about 5% have a property title that allows them to control their territory and manage their so-called communal resources efficiently and productively. Although the state has recognised 1 497 communities and given some sort of property title to 1 260 of these – progress to be sure – the titles are of little use or value to them for the following eight reasons:

1. The majority of the indigenous peoples' titles do not stipulate the precise location of the properties: 80% do not have clear boundaries, use universal co-ordinates or make reference to geographic features that would allow the properties to be identified with certainty within a standardised system. Furthermore, the few titles that have been granted are inscribed in registries that lack a geographic base.
2. Most of the titles cannot be readily used to protect holders from third-party claims because: they contain errors in the names of the holders; several people have titles over the same piece of property (because successive transfers have not been recorded); and/or the titles have overlapping boundaries with other properties belonging to other communities, community members, concessionaires, productive forests and protected natural areas.
3. The titling system is not easily accessible to jungle communities. The process is extremely long and expensive, requiring an average of 747 working days at a cost of USD 36 095, which is equivalent to 186 times Peru's average basic wage.
4. The entities charged with titling indigenous properties lack leadership, continuity and operational capacity. For instance, responsibility for titling has bounced from the regional agricultural headquarters to the national agricultural land titling organisation (PETT) and then to the incipient regional governments, limiting its scope and efficiency enormously.

5. Communities do not have a local official registry to document and publicise property rights, nor do they have the means to record and prove their various property transactions (rentals, sales, transfers etc.).
6. Ownership cannot be clearly determined because communal rules for acquiring and keeping status as a community member are not duly documented. Rules differ from one community to the next and the member rolls are not regularly updated.
7. Instead of creating a single law for the indigenous peoples of the Amazon, by giving each community the authority to create its own rules, the state has created some 5 000 sovereign legal systems that are not standardised.
8. As a result of all of the above, property rights are only recognised within a given community, which makes it very difficult to apply them outside that community. For instance, we found a case where a mahogany tree was sold within the community's miniscule market for a mere 3 kg of sugar, about USD 3. If the tree owner's rights were recognised outside the community – if he held a standardised title acknowledged by the national or global market economy – the value of that same tree would increase considerably: in Callao, Lima's port city, for example, it would be worth about USD 12 000; in California, it would fetch as much as USD 50 000; and transformed into beautifully designed furniture, that mahogany tree could be worth as much as USD 200 000.

“Because they do not share the same standards with other communities, let alone with the rest of Peru or the world, indigenous people live in a kind of sterile economic apartheid.”

The legal shortcomings of the current property rights situation in the Peruvian Amazon greatly hamper indigenous peoples' control over their territories and resources, and limit their possibilities for benefitting fairly and equitably from them. Because they do not share the same standards with other communities, let alone with the rest of Peru or the world, indigenous people live in a kind of sterile economic apartheid. Each community is imprisoned in its own tiny ghetto, incommunicado and unable to cooperate easily in economic terms with people from other communities or beyond. But the prosperity that they aspire to and depend on to pull themselves out of poverty – the health, education and other basic services they lack – is reachable only with the modern tools of a market economy.

Without public memory systems and mechanisms to connect with others and divide labour on a global scale, these communities are unable to create any significant added value, nor can they protect themselves from economic aggression or gain access to significant amounts of credit, capital or foreign technology. These are tools that have brought economic prosperity to the developed world and unless indigenous peoples are legally empowered in the same way, they will remain marginalised and poor; they will continue to lose their culture and identity, and will be swallowed up by the dominant society.

Indigenous people do not have control over their economic activities

For the majority of indigenous people in the Amazon, it is too expensive to start a business. It involves endless paperwork and the government offices that give the required authorisations are located days or weeks of travel away – by canoe, on foot or by bus. Obtaining a license to operate a partnership can take as many as 105 days and cost as much as USD 2 120. Enforcing a contract for a commitment worth USD 31 800 can translate into 580 days of paperwork and cost USD 7 420 – a price that is completely unaffordable for ordinary indigenous people.

Such obstacles keep even the most ambitious entrepreneurs from accessing the legal tools – namely, legal personhood (*i.e.* corporation), limited liability, transferable shares, business identity, guarantees and enforceable contracts – that are indispensable for organising a business, creating added value and protecting entrepreneurs against voracious predators while allowing them to connect to other markets.

Examples abound. Without the option of creating a legal business, for example, the native entrepreneur is unable to constitute a management hierarchy separate from the family or community, or to organise a group using purely economic criteria without influences of any other kind. This greatly restricts access to human capital and severely limits the capacity to combine resources with people that do not belong to the entrepreneur's own community. In cases like this, there is no way of knowing if one is dealing with an entrepreneur whose motives are economic, a warrior whose loyalty is to his military chief, a politician whose actions follow his ideology, a community member acting in compliance with an unidentified relative, or a parishioner enlightened by his faith.

Likewise, an indigenous entrepreneur without access to the benefits of limited liability cannot put a limit on the personal wealth he or she is willing to liquidate if the business fails. Any action taken will carry full personal responsibility, with the entrepreneur risking everything he or she possesses, becoming so indebted that he or she will have to spend the rest of their life working for the owner of their debt – in effect, being enslaved (a situation not unheard-of among Amazonians).

When an Amazonian owner of an enterprise is not able to divide the value of the business into transferable shares, every time he or she is unable to pay even part of a debt, the total value of the enterprise must be liquidated. Dividing the business into shares would enable the owner to liquidate only part of the business to cover the amount needed, or to exchange it for capital investment and perhaps keep some control over the enterprise.

An indigenous entrepreneur who does not have the official documents required to identify his or her business has no way of making the business' track record known, or of creating trust beyond the borders of the community.

Without a system of guarantees – over the production of lumber, for instance – a creditor's capacity to recover a loan is reduced; this, in turn, limits the ability of the indigenous person controlling the lumber to gain access to credit, except in very small amounts or at very high interest rates.

“Without the option of creating a legal business ... the native entrepreneur is unable to constitute a management hierarchy separate from the family or community ...”

In the disorder and the distances of the global economy, words can be easily swept away. Contracts and formal documents – written and properly registered – provide less abstract and more precise indicators than spoken words; and because they are devised according to international standards, they have a wider geographic reach. These are mechanisms that signal specific functions: promissory notes, bills of exchange and IOUs attest to commitments to pay; licenses and permits contain authorisations; stocks, shares or liens evidence values; statutes of incorporation attest to business identities; and double-entry accounting books record monies paid or received. If there is to be trust in savings and investment, if reputations are to be based on fact and if exploiters and swindlers are to be easily exposed, all of these signals must enter the public memory: through official registries, in title and risk insurance, under the custody of private parties, in stock exchanges or in other intermediary agencies, including notary publics.



Through the fictional blockbuster Avatar, de Soto highlights a series of myths that continue to marginalise the indigenous people of the Peruvian Amazon and exclude them from integrating into the world economy.

Photo courtesy of the Institute for Liberty and Democracy.

The Avatar myths

Why don't indigenous people have these legal tools to control their property and businesses? Because numerous myths encourage us to believe that native people don't want or don't need these controls, or that they are incapable of using them. My colleagues and I have compiled a list of these popular beliefs, along with our responses:

Myth 1: Indigenous people are communists.

On the contrary, they live in an economic regime dominated by family and the individual. Their own leaders and documents express this quite clearly. For example:

- The *National Development Proposal for the Amazon Region*, proposed by organisations of the indigenous people of the Amazon to the Peruvian government and approved in December 2009, states (PCM 2009): “Neither public institutions nor NGOs [non-governmental organisations] should insist on promoting models for communal aquaculture (communal fish farms) that have been proven to fail, given that the indigenous model of production is based on the family or extended family (interest groups).”
- The minutes of the first meeting of the Indigenous Organisations of the North-Eastern Block of the Marañón, held in April 2008 in San Lorenzo, capital of the Province of Datem del Marañón in Loreto (Indigenous Organisations of the North-Eastern Block of the Marañón 2008), state: “We must promote and provide incentives for economic development at the family, association and individual levels (communal enterprises do not work).” Also: “The economic program should draw up policies and strategies to facilitate the development of local, group, family and individual initiatives.”

Myth 2: The natives are wealthy in their own way.

The indigenous people of the Amazon are not wealthy – in fact, quite the opposite is true, as documented by official government and United Nations (UN) statistics:

- Seven out of every ten natives in Peru are poor (ILO 2005); five out of every ten live in extreme poverty.

- Five of the poorest districts in Peru (Balsapuerto, Cahuapanas, Alto Pastaza, and Morona-Loreto and Río Santiago-Amazonas) are located in indigenous areas of northern Peru's Amazon region (INEI 2007).
- In the Amazon, poverty is accompanied by other deficiencies, particularly in the area of health:
 - Life expectancy among indigenous populations is 20 years lower than in other social groups in the country (INEI 1996).²
 - Infant mortality among indigenous populations is nearly three times the national average: for every thousand children born, 16.96 infants die, compared to 6.1 nationwide (Fuentes and Revilla 2007).
 - Chronic malnutrition – which severely limits intellectual and physical development – affects 50% of indigenous children, resulting in serious learning disabilities.³
 - Pernicious anaemia affects 40% of the children and 58.3% of pregnant women in indigenous populations, endangering their lives (Huamán-Espino and Valladares 2006).
 - Malaria, Hepatitis B and D, leishmaniasis and other such illnesses, which are virtually non-existent in urban areas, are prevalent among indigenous communities (Cabezas *et al.* 2006).
- Some 20 000 indigenous men from the remotest communities – often with wives and children – fall victim to forced labour in illegal extractive activities (ILO 2005).

Today, indigenous people require a prosperous economy to satisfy their growing demand for outside goods, ranging from tools and clothing to food and services such as education and health. The little they have has frequently been obtained by transferring their natural capital – biodiversity, forests, land etc. – thereby mortgaging their future economic development.

Myth 3: Indigenous people don't need the rest of the world and prefer to live in isolation.

False. Today in virtually every indigenous community, goods can be found from the outside world – from matches, salt, ropes, machetes, axes, rifles and fishhooks to motors, radios and many other mechanical and electrical goods. High on indigenous communities' wish lists are modern communication systems, especially radios, telephones, televisions, Internet and motorboats.

Myth 4: Indigenous people want neither property nor businesses.

In virtually every community we visited, we found acts and maps documenting how communities themselves issue certificates of private possession over homes, farmland, hunting areas and business transactions. These acts also evidence the fact that almost all indigenous organisations prefer that their properties be titled as protection from frequent disputes over the use of resources between and among the different communities, as well as with third parties and invaders – whether settlers, concessionaires or loggers. According to research from Peru's Graduate School of Business (ESAN), all of the communities in the Amazon region have boundary disputes.

Myth 5: Awarding property rights promotes environmental degradation.

On the contrary: deforestation and environmental degradation both occur primarily in areas without solid property rights. The absence of property rights favours plundering and depletion of resources – along with the degradation of ecosystems inside as well as outside indigenous territories – thereby negatively affecting the biodiversity of the Amazon region. Documented property rights and legal businesses allow people to manage resources in a transparent manner; without these, it is impossible to identify the owners of resources or those responsible for them, and to punish plunderers.

Myth 6: The indigenous worldview is incompatible with globalisation.

This is absolutely unproven and is comparable to saying that certain nationalities are culturally unfit for playing soccer or surfing the Internet. Scarcely 30 years ago, some people were actually claiming that the worldviews of China, India and the former Soviet countries were incompatible with globalisation. Sixty years ago, “experts” were also arguing that the Japanese society would never work outside a feudal system and that Arabs and Eskimos could only organise tribally. Not only did these nationalities become globalised without losing their cultural identity, they have also adapted innovations borrowed from other cultures, allowing them to become important engines of globalisation.

What is certain is that without clear rights over their territories and business activities, people lack the resources they need to defend their culture, worldview, customs and traditions. Without these rights, Amazonians are in danger of being “assimilated” – and in such an alienating way that they may lose self-esteem and security as a people.

Transcending the myths through legal empowerment of the people

While I have not dedicated my life to indigenous issues – there is no doubting that – I can say with certainty that the hundreds of indigenous leaders I have spoken to have expressed no interest in being treated as pre-Columbian antiques residing in glass cases in Museums of Natural History or as invalids incapable of dealing with the rest of the world and modernity. Their cultures are alive and constantly adapting to new environments and circumstances. In my 30 years working in the developing world, I have found that when people excluded from the system finally obtain the legal, political and technical tools that allow them to organise and express themselves, they know perfectly well how to join the rest of the world and how to do so advantageously.

“It is time for all of us who want to help indigenous people everywhere to encourage governments to give them easy access to property- and business rights.”

Our findings confirm that the Amazon region, like the moon Pandora in *Avatar*, is inhabited by beautiful people. Unlike the fictional Pandora, however, the Amazon is not a solitary and self-sufficient territory. It is part of the real world, where the unstoppable and growing tide of globalisation has already arrived. It is time for all of us who want to help indigenous people everywhere to encourage governments to give them easy access to property- and business rights. Only then will they be in the position to exchange signals with each other and the outside world, to combine their resources productively and to create the diversity and wealth that will enable them to protect themselves from the dangers of globalisation and benefit from its advantages.

So what's stopping us?

International donor agencies have long recognised that empowering the poor – and ensuring their access to and control of assets, especially among indigenous populations – is central to poverty reduction and human development. Despite this recognition, however, the empowerment agenda – giving excluded people the right to control their resources through the same property and business tools that wealthy people have – has been hard to turn into action. And while the concept of empowerment has guided discussions among the OECD Development Assistance Committee (DAC) in recent years, donor agencies have found it difficult to put it into practice.

The challenge is pulling together into one or a few programmes what all developed nations have achieved through trial and error over the past 150 years and now take for granted. The fact is that few organisations are prepared to systematically and massively bring the extralegal economy into the formal economy in terms that developing and former Soviet nations can understand politically and culturally, and get their constituents to buy into. My organisation has learned much from our mistakes.

What has become clear to us is that any effective programme to spread legal empowerment must accomplish several things: understanding the gap between the formal legal and extralegal sectors, analysing how these two parallel economies operate, evaluating their problems and disconnections, quantifying their economic effects and figuring out how they might be integrated under one rule of law to create a modern, productive and inclusive economy. This is something few, if any, are prepared to do.

Why? Because it is not only about providing services related to engineering, project management, systems integration or information technology; or about hiring equipment vendors and support companies that provide property documentation services specialised in surveying, mapping, and modernising registries. Plenty of organisations can do that. But establishing a comprehensive programme of formalisation means moving a country from feudalism, patrimonialism, tribalism or mercantilism into a modern market economy. A programme for such a transition must consider:

- archetypes for the identification of people and organisations in the informal economy, including imprinting (signatures, fingerprints), marking, attachments etc.
- the fungibility and traceable liability of documents pertaining to the informal sector
- the magnitude of constituencies owning informal property, either real estate or businesses
- the magnitude of economic benefits that result from property formalisation
- the linkage between formalisation and macro-infrastructures that are required for the rights and responsibilities of suppliers and users of utility services to be individualised and the risk of non-repayment to be reduced
- the identification of the diverse kinds of informal businesses and their origins
- the location of the geographic areas and sectors where informal businesses are most active
- the creation of a legal registry system exclusively dedicated to translating into software and recording the archetypes of the informal sector of each different society

“... few organisations are prepared to systematically and massively bring the extralegal economy into the formal economy in terms that developing and former Soviet nations can understand politically and culturally ...”

- the realisation of massive titling of informal economic agents using their leaders as brigades – in other words, as part of the task forces gathering information *in situ* – so as to create unambiguous titles
- concrete plans to formalise extralegal take-overs and squatting.

“... the OECD and its partners are in an exceptional position to pull together all this dispersed knowledge required for any successful transition to modernity.”

Unlike the usual government consultants and suppliers, the OECD and its partners are in an exceptional position to pull together all this dispersed knowledge required for any successful transition to modernity. The task of legal empowerment is more urgent today than ever, as clearly manifested by the courageous demonstrations for change throughout the Middle East and North Africa, the social conflicts between indigenous people and investors – and the need to avoid more of these – and the continuing growth of informal economies in developing and former Soviet nations, where resentment and anger over poverty and legal exclusion are only likely to grow.

Notes

1. This article would not have been possible without the research and advice received from the Institute for Liberty and Democracy (ILD) team: Ana Lucía Camaïora, Bernardo Roca Rey, María del Carmen Delgado, Gustavo Marini, José Álvarez, Luis Triveño, Luis Aliaga, Jackeline Silva, Patricia Aparicio, Jorge Reátegui, Ramiro Rubio, Luis Morales Bayro, Mario Galantini and Gabriel Aguirre.
2. This figure is actually for indigenous people worldwide.
3. According to UNICEF 2009, p.1: “In Peru, a case study of Río Santiago, Condorcanqui Province, Amazon Region, finds 56% of chronic malnutrition among infants of less than three years of age.” (Translated from the original Spanish: *En Perú, un estudio de caso en el Río Santiago, provincia de Condorcanqui, región de Amazonas, registró un 56% de desnutrición crónica en menores de tres años.*)

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