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Law’s Enduring Infamy: Towards Re-Subjectification of the Customary Space in Land Reform for Development

We must re-subjectify the ‘customary’ space in land reform under a nation’s development agenda. The re-subjectification is critical for two reasons: First, what has become ‘custom’ or the ‘customary’ is rooted in colonial sovereignty. The conception of the ‘customary’ and its attendant ‘space’ is a compromise of the interpretation of the coloniser and a local, black male elite in the colonised territories. Second, the space that eventually emerges as the ‘customary’ space has a liberal tilt to its conception. This is the case because the ‘customary’ space is often viewed as the repository of residue which can be individualised or privatised under land reform. Hence, current land reform discourse in the South tends to automatically translate into land law reform without any meaningful engagement with the macro economy framework set – often – by the Bretton Woods institutions. This undermines the empowerment of the land deprived and perpetuates the social injustice prevailing in land relations in the South. This Paper proposes the engagement of land reform discourse and the development discourse as we re-subjectify the ‘customary’ space.