

THEORETICAL ASSESSMENT OF IMPACTS OF PROPERTY RIGHTS ON EXISTING RECONSTRUCTION AND DEVELOPMENT PROGRAM HOUSES

GLADNESS MAKGOBI¹, NOKULUNGA MASHWAMA¹, and CLINTON AIGBAVBOA²

¹*Department of Construction Management and Quantity Surveying, University of Johannesburg,
Johannesburg, South Africa*

²*Sustainable Human Settlement and Construction Research Centre, University of Johannesburg,
Johannesburg, South Africa*

The paper assesses the impacts of property right on low-cost housing and the solutions to address the challenges of property rights on low-cost housing. A literature review is the primary research method on the subject matter to find answers to impacts of property rights on affordable housing. The basis of the study is a general literature review (locally and internationally) published by other researchers on the similar study. The study indicated that enhanced political voice and political accountability has an impact on improving the prospects for secure property rights. Moreover, influence and supports the notion that the rule of law, in providing legal security for property rights, is an enabling condition for economic growth. Furthermore, if governments of developing countries provide real property ownership with clear titles and rights enforceable by law, then poor people will be able to use their assets to obtain credit which can be employed in productive activities, and countries could lever themselves and their poor inhabitants out of poverty. The research will make contribution to type of land reform, which lead to sustainable development through land titling, a reduction in the probability of being evicted, or otherwise losing land rights and provide land users with greater assurance that they will enjoy fruits of their labor and investment, thereby encouraging them to make long-term investments for sustainable use of their properties.

Keywords: Insecure tenure, Housing, Regulatory framework, Governance.

1 INTRODUCTION

The major cause of failure in land administration systems in many countries is poor management and a lack of good governance. Furthermore, land governance has been identified as an integral part of poverty reduction and the provision of tenure security (Zakout *et al.* 2009). Moreover, good governance in land administration aims to protect the property rights of individuals, enterprise as well as state, by introducing principles such as transparency, accountability, rule of law equity and participation into land related public sector.

Rights are described as socially or legally recognized entitlements to access, use, and control areas of land and related natural resources (Zakout *et al.* 2009). Formal improvement refers to a house that has a legitimate formal title, conforms with local planning regulations and building codes, structurally sound, and can be used as a security for a lengthy term home loan. Tenure security is defined as the preservation in conceptual contrast to eviction, the probability of

saleability of property, exchange of ownership through the estate, pledging as collateral for mortgage and access to a loan under a certain state of affairs (De Soto 2003). Household income, housing policies, legal ownership of property with correct title deeds and standards enacted by regulation are elements which have a direct impact on property rights of houses occupied by the poor (Mattingly 2013).

2 LITERATURE REVIEW

2.1 Notion of Reconstruction and Development Program Houses

The National Housing policy has an appropriate framework which provides free houses to poor household members who earns between R0 to R3500, 00 monthly (Department of Housing 2009). The Housing White Paper indicates that the free low-cost housing is secured by individuals who are not financially able to qualify to purchase a house in the open market. It was also determined that the housing subsidy assistance is once off capital sponsorship, which is registered in the name of the beneficiary, yet paid out to the developers responsible for developing the subsidized houses (RDP) (The National Department of Housing 1994).

2.2 Governance on Low-Cost Properties (Land and Buildings)

Poor governance, whether in the formal land administration or customary tenure arrangements, implies that the land rights are not protected (Olujimi and Iyanda 2013). The absence of reliable approaches to record ownership of land leaves all spheres of government with no answers as to who are the legal owners of the land, in which side and the purpose for which land has been utilized (Ghebru and Okumo 2016). The essence of honesty and accountability favorable to functional trading of land will be nonexistence due to lack of uncomplicated regulatory implementation, transparent legislation, affordable regulatory procedures, secure type of tenure, responsive potential departments (Burns 2007).

Governments must initiate processes which are much more positive and supportive to the poor community including the provision of land, upgrading shelter and services, and help with building sustainable livelihoods (Turok and McGanahan 2013). An enhanced political voice and political accountability have an impact on improving the prospects for secure property rights (Domingo 2013). This perspective draws on the assumption that the rule of law is necessary to secure property rights. As such, it focuses on understanding the enabling governance conditions needed for the rule of law to be strengthened as a precondition for stabilizing property rights (Domingo 2013).

2.3 Authenticating Security of Tenure System

The formalization of land ownership, Land Titling program were recommended by the World Bank, IMF, and USAID (UN-Habitat 2003). A land right is secured when the owner is free of all encumbrances on the title of such land (Ndukwe 2001). In many developing countries, poor people are essentially excluded from formalizing their land and property rights and, consequently, a black market exists outside of the formal economy (De Soto 2003). If the governments of developing countries provide real property ownership with clear titles and rights enforceable by law, then poor people will be able to use their assets to obtain credit which can be employed in productive activities, and countries could lever themselves and their poor inhabitants out of poverty (Fabiya 1990). The reasoning implies that more secure and well-defined property may lead individuals to substitute away from unproductive conflict over property towards productive activities (Trebilcock and Veel 2014).

Various researchers opposed the proposition that formal ownership to land occupied by the poor can bring about enhanced housing system. Evidence has been drawn up in Peru Land Titling program where immense land titling project presumed that land tenure formalization does not have a positive effect on household income or ability to obtain financial service including credit, but it may have a less effective impact on existing low-cost housing development (Kawaga 2001). It has been further discovered in Peru's Land Titling Program that acquiring formal property rights for land does not promote access to housing finance, but instead, the primary principle to obtain a mortgage is through family's labor remuneration (Cockburn 2001). Evidence from an impact evaluation study conducted on nationwide titling programme in Peru shows that titling led to a limited reduction of credit scoring. But the same analysis found that formal property ownership had no effect on approval rates for private sector loans (Rodrik 2000).

2.4 Government Intervention on Land Reform

Land reform as regulation requires appropriate capacity and the organizations to work feasibly and land sales have been politically deceived under the hands of disreputable workers, hence the poor have land outside the formal structure, yet don't have title deed (Cousins *et al.* 2005). Government financed units are regularly informally sold/exchanged, with no relating record being kept of the change in ownership. The underlying recipients would then not be able to further access to housing subsidy as they are registered on the National Housing Subsidy Database as a recipient (Umhlaba Consulting Group 2013).

Property holders are not allowed to apply for building plan or land use endorsement since they don't hold the lawful status of ownership (SPLUMA 2013). Adherents of this type of land reform justify their argument based on reduction in the probability of being evicted, or otherwise losing land rights, provides land users with greater assurance that they will enjoy the fruits of their labor and investment, thereby encouraging them to make long-term investments for sustainable use of properties (Kasimbazi 2017).

3 METHODOLOGY

The study was conducted with reference to the existing theoretical literature review. Published, unpublished, online journals and magazines by other researchers on similar research were critically examined to investigate the research problem. The qualitative approach provides perceptions to social components of the procedures amongst agencies (Denzin and Lincoln 1994). The qualitative technique is regarded as a suitable method to investigate impacts of property rights on existing low-cost housing. The approach will assist the manner on which role players (beneficiaries, land reform, government, and policy makers) better understand what is happening in their respective authorities with reference to property rights on existing low-cost housing.

4 FINDINGS FROM LITERATURE

The literature review showed that property rights are lawfully known entitlements to right to use and manage areas of land and related natural resources. Rights in the land are identified as an essential measure to poverty alleviation and establishment of tenure security (Zakout *et al.* 2009). Tenure security is the preservation in theoretical distinction to eviction, likelihood of selling the property, change of ownership by the estate, used as surety for a home loan and access to credit under a definite state of affairs (De Soto 2003). Preserving property rights of individuals, enterprise as well as state, by presenting standards such as transparency, accountability, rule of

law, equity and contribution into land related public sector is the primary objective of good regulation in land administration (Zakout *et al.* 2009).

Poor regulation in land administration or normal tenure provisions entails that the land rights are not secured. An economic regulator, which delays effectiveness and prevents private investment, originates from urban overcrowding (Olujimi and Iyanda 2013). Properties are sold illegally by the poor in many countries and they are not incorporated in formalizing land use and property rights (De Soto 2003). There is no record kept for a change of ownership of low-cost houses, which are frequently sold illegally (Umhlaba Consulting Group 2013). In order for institutes to function efficiently, land reform as a by-law needs proper expertise to deal with sales of land that has been politically deceived under the hands of dishonest employees, hence the poor have and use land informally, and are not in possession of title deeds (Cousins *et al.* 2005).

All levels of government have no solution as to who are the legitimate owners of land and which side and for what purpose the land has been used due to lack of consistent methods to record ownership (Ghebru and Okumo 2016). The poor reside on condition, which is harmful to their well-being (Turok and McGanahan 2013). Building plan applications of low-income residents cannot be processed because they are not legal owners of properties (SPLUMA 2013). It is the role of the government to develop measures to assist the poor to establish a maintainable standard of living and access to services and infrastructure (Turok and McGanahan 2013). The aim of Urban Land Management directive is to preserve, develop investments and prevent land use that negatively affects the value of the property (Kitchin and Ovens 2013). Moreover, the need of the poor must be directly addressed by the Land Use Management system through developments of appropriate systems (Görgens and Denoon-Stevens 2012). Conforming to this type of by law reduces the probability of eviction, losing the land right and reassure land and building users value for money on their investment (Kasimbazi 2017).

A case study drawn up from Peru Land Titling program recognized that strengthening land tenure does not yield a positive household income or guarantee a home loan or credit approval from financial institutions, but it can have a less effective influence on the construction of existing low-cost housing (Kawaga 2001). Furthermore, it has been revealed in Peru's Land Titling Program that formalizing property right does not stimulate access to housing finance, instead the key standard to acquire a home loan is through the household income (Cockburn 2001). An assessment conducted on Peru titling program indicated that titling led to an enormous decrease in credit scoring. But the similar investigation indicated that formal property ownership has no implications on loan approval rates by financial institutions (Rodrik 2000).

5 CONCLUSIONS AND RECOMMENDATIONS

The study investigated the impacts of property rights on existing low-cost housing. Governance on property right is the contributing factor to control the way and purpose, which land and buildings occupied by the poor can be used. There should be some point of accountability and intervention to reinforce formal property rights to existing low-cost houses in order to enhance the quality of life to beneficiaries and socio-economic development of the country. There is a need to find suitable standards for a land management system that react to methods of the urban land market that clearly address the need of the poor. The objective of the current legislative (Spatial Land Use Management) framework in South Africa is to protect and promote investment but the framework does otherwise for the poor. The Act prevents unauthorized land use that has a negative impact on property values.

A literature review revealed that in various developing countries, poor people are essentially excluded from formalizing their land and property rights and, consequently, a black market exists

outside of the formal economy. Moreover, if the government of developing countries provides real property ownership with clear titles and rights enforceable by law, then poor people will be able to use their assets to obtain credit, which can be employed in productive activities so that countries could get themselves and their poor inhabitants out of poverty. Other researchers found that acquiring formal property rights for land does not promote access to housing finance, but instead, the household income is the primary principle to obtain a mortgage. The study recommends a balanced socio-economic development for beneficiaries of low-cost housing holistically. It means the type of land reform that regulates low-cost housing should be interlinked. It must not only provide secure tenure without sustainable employment. Secure tenure can only give partial security, whereas a combination of security of tenure and employment make it possible to alleviate poverty and promote investment. Beneficiaries will be able to apply for building plans in the event they want to extend their properties, to formally sell properties in the open market, use the property as collateral to secure a mortgage, have properties registered in their names at deeds office and be able to formalize all property related transactions.

References

- Burns, T., *Land Administration Reform: Indicators of Success and Future Challenges*, 2007.
- Cockburn, J. A., *Official Registration (Formalization) of Property in Peru (1996-2000)*, ESF N AERUS International Workshop on Coping with Informality and Illegality in Human Settlements in Developing Cities, 2001.
- Cousins, B., Cousins, T., Hornby, D., Kingwill, R., Royston, L., and Smit, W., Will Formalizing Property Rights Reduce Poverty in South Africa's 'Second Economy'?, Questioning The Mythologies of Hernando De Soto, in Programme for Land and Agrarian Studies – PLAAS, Debating Land Reform, Natural Resources and Poverty, 2005.
- Denzin, N. K., and Lincoln, Y. S., *Handbook of Qualitative Research*. Sage Publications, Thousand Oaks, California, 1994.
- De Soto, H., *The Mystery of Capital: Why Capitalism Triumphs in The West and Fails Everywhere Else*, Basic Books, New York, 2003.
- Department of Housing, National Housing Code, 2009. Retrieved from <http://www.dhs.gov.za/Content/The%20Housing%20Code%202009/index.htm> in March 2019.
- Domingo, P., *Property Rights and Development: Property Rights and Social, Political and Economic Empowerment*, 2013.
- Fabiya, Y. L., Land Policy for Nigeria: Issues and Perspectives, An Inaugural Lecture, Obafemi Awolowo University, Ile-Ife, June, 1990.
- Ghebru, H., and Okumo, A., *Land Administration Service Delivery and Its Challenges in Nigeria*, 2016.
- Görgens, T., and Denoon-Stevens, S., Towards Facilitative and Pro-poor Land-Use Management in South African Urban Areas: Learning from International Experience, *Urban Forum*, 24, 85-103, 2012.
- Kagawa, A., Policy Effects and Tenure Security Perceptions of Peruvian Urban Land Tenure Regularization Policy in the 1990s, *ESF N AERUS International Workshop on Coping with Informality and Illegality in Human Settlements in Developing Cities*, 2001.
- Kasimbazi, E., *Land Tenure and Rights for Improved Land Management and Sustainable Development*, 2017.
- Kitchin, F., and Ovens, W., Land Governance in South Africa: Implementing the Land Governance Assessment Framework, *Urban Landmark*, 2013.
- Mattingly, M., *Briefing Paper Property Rights and Development: Property Rights and Urban Household Welfare*, 2013.
- Ndukwe, O. U., *Case and Commentaries on Land Use Act 1978*, Calabar: University of Calabar Press, 2001. North, D.C. *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press, 1990.
- Olujimi, J. A., and Iyanda, A., *Physical Planning Implications of Access to Residential Land and Legal Security of Tenure in Lagos Metropolis, Nigeria*, FIG Working Week 2013 Environment for Sustainability Abuja, Nigeria, 6 – 10 May 2013. TS04B - Planning and Development – 6438, 2013.

- Rodrik, D., *Trade Policy Reform as Institutional Reform in Handbook on Developing Countries and the Next Round of WTO Negotiations*, Bernard Hoekman, (ed.), 2000.
- SPLUMA, Spatial Land Use Management Act 16 of 2013. Retrieved from <https://www.customcontested.co.za/laws-and-policies-/the-spatial-planning-and-land-use-management-act-spluma/> on August 20, 2017.
- The National Department of Housing, *The Housing White Paper: A New Housing Policy and Strategy for South Africa*, 1994. Retrieved from <http://www.info.gov.za/whitepapers/1994/housing.htm> on March 2019.
- Trebilcock, M., and Veel, P. E., *Property Rights and Development: The Contingent Case for Formalisation*, 2014.
- Turok, I., and McGranahan, G., Urbanization and Economic Growth: The Arguments and Evidence for Africa and Asia, *Environment and Urbanization*, 25(2), 465-482. doi:10.1177/0956247813490908, 2013.
- Umhlaba Consulting Group, Housing Project Life Cycle, *Land Settlement Development Research*, 2013.
- UN-Habitat, *Handbook on Best Practices Security of Tenure and Access to Land: Implementation of the Habitat Agenda*, 2003.
- Zakout, W., Wehrmann, B., and Törhöne M. P., *Good Governance in Land Administration Principles and Good Practices*, 2009. Retrieved from <http://www.fao.org/docrep/011/i0830e/i0830e00.ht> in March 2019.