

From informality to formality to informality: Extralegal land transfers in an upgraded informal settlement of South Africa

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Abstract

The paper discusses the nature of extralegal land transfers in an upgraded informal settlement in South Africa. The paper investigates these extralegal transfers in terms of the notion of property and property law as a social construct. The paper researches two main but contradictory conclusions, namely that either extralegal transfers are the result of the current social construct of property (also related to the historic lack of formal property for black people in South Africa) and / or that they are the result of the excessively high transaction costs of a formal transfer process.

Keywords: land transfers, extralegal land transfers, property, De Soto, World Bank, economic sociology

Introduction

The relationship between land tenure upgrading and economic development is a common theme in development discourse and a key element in housing policy discourse. The work of Hernando De Soto (2000) suggests that the lack of appropriate land tenure systems inhibits the release of the economic value of such property – which in turn is a crucial generator of wealth, especially in the West. The World Bank (1993) also proposes land titling, and emphasises the importance of such titling for the creation of a secondary market, in order to increase the tax revenue of cities and ensure security of tenure for further housing investment. Although De Soto's work and the World Bank's ideas have been subjected to criticism (Gilbert, 2002; Royston, 2006; Campbell, 2013), very little work has been done in respect of longer-term evaluations of titling programmes, with most of the points of criticism being conceptually based. A recent special edition of *Urban Forum* focuses primarily on informal land markets in existing informal settlements (Kihato & Royston, 2013). However, longer-term evaluations of site and services programmes are emerging, suggesting that a range of extralegal (informal) land transfers are taking place in areas that received titling through the World Bank and other funded site and services programmes during the 1970s and 1980s (Ward et al., 2011; Marais & Ntema, 2013). One of the outcomes of these longer-term

evaluations is the queries concerning the legitimacy of the deeds register. In this regard, Peter Ward et al. (2011) argue "...that cities are experiencing a new wave of informality and property transfers which, if not fully understood, and if left unfettered, is likely to create further obstacles to home improvements and market performance. It is also likely to herald a new round of title regularization as property is sub-divided and inherited by second and third generation family members". In the South African context, Lani Roux (2013: ii) points out that: "If buyers decide not to register transactions, significant implications arise; for buyers, who may be vulnerable to eviction by the previous owner or the state, and for the integrity of the registration system which does not reflect the actual ownership of parcels" while a number of other papers have also tried to reflect on informal land markets (Gunter & Scheepers, 2012).

The paper aims to assess the nature of extralegal transfers against the background of the policy imperatives and ideas of the World Bank, as well as De Soto's thinking and the theoretical contributions from the field of economic sociology. The necessity for the research is reflected by Laura Royston's (2006: 166) comment that "[w]e need much greater attention in South Africa to describing these extralegal processes...". Essentially, we argue that these informal land tenure transfers reflect both social and economic attributes which complicate potential policy responses in this respect.

Methods

The paper developed from longitudinal research that we conducted in Freedom Square over a period of more than twenty years (Marais & Ntema, 2013). The research process over this period included four household surveys conducted in 1990, 1993, 1998 and 2008. One of the questions in the 2008 survey required the household respondents to indicate when they had settled in Freedom Square. Sixty-one of the 200 respondents indicated that they had settled there since 1995 (this date is important, as the initial settlement and upgrading programme was completed by 1994). At the same time, the deeds register information was obtained for Freedom Square. We then visited each stand in those cases where the respondent had indicated that the household had settled there since 1996, and compared the information with the available information from the deeds office. The outcomes of this survey suggested that of the 61 stands visited, 30 were indeed occupied by the original inhabitants. This can be attributed to the fact that in many cases, the 2008 questionnaire may have been completed by, for example, a spouse who was not present before 1995. In the remaining 31 cases, the current occupants did not correspond with the information on the deeds register. An original scan was conducted to determine the reason for the differences. Four main informal land transfer processes were identified during this process, namely transfers from parents to children (x 18) (no financial transaction), stand swapping (x three) (no financial transaction), the appointment of a caretaker to the stand (x one) (no financial transaction), and finally, transfers which included a financial transaction (informal selling of the housing unit) (x nine). Semi-structured interviews were drafted to fit each of these transaction types. Essentially, we based some of our methods on existing network theory – something not unfamiliar to economic sociology (Swedberg, 1997) – in order to understand the nature of the networks embedded in these transactions. However, in contrast to most of the network theory studies, we employed a qualitative research method. We conducted five semi-structured interviews with respondents from households where inheritance had come into play; three interviews in cases where land-swapping arrangements had been made; and four interviews with respondents who had engaged in a financial transaction. These interviews were conducted with the people currently living on the stands (as identified by the household). We indicated the various interviewees in the discussion section.

De Soto and economic sociology: a different perspective

De Soto's ideas and the policy context

The plight of low-income earners attempting to access urban housing and security of tenure in India, Latin America and Africa is well documented (Durand-Lasserve & Royston, 2002). Although self-help housing has long been common practice in the developing world, especially in Latin America (Harris, 1998), the concept of land titling rose to prominence following the acceptance of site and services schemes by the World Bank in the early 1970s (World Bank, 1993) and the publication of John Turner's book *Housing by People* (1976), which emphasised security of tenure as a prerequisite for informal settlement upgrading. The initial World Bank land titling programmes were based on the principles of affordability, cost recovery and replicability. The underlying aims of these programmes were to create a secondary urban housing market, ensure a basis for revenue creation and provide a platform for housing investment.

During the mid-1980s, World Bank housing policy approaches shifted their focus to the relationship between macroeconomic reforms and housing policy. This was a time of worldwide structural adjustment programmes that emphasised the importance of the housing sector within the economy. The early 1990s also saw the introduction of whole-sector housing development, which emphasised urban upgrading (as opposed to site and service schemes), infrastructure improvement, financial market development, regulatory reform and the formalisation of tenure arrangements (World Bank, 1993). The importance of land titling was pointed out by the World Bank (1993: 117) in the following words: "The registration of property rights in squatter settlements is ... important in making land and house transactions possible and giving occupants legal protection. It encourages the buying and selling of housing and makes it possible for households to move to a dwelling that suits their needs and their budgets. It also increases the choice of tenure available to households, allowing them to own or rent as they see fit". These hoped-for outcomes would also allow governments to institute a system for the collection of property taxes, which in turn would generate funding for new urban development.

Similarly to the World Bank approach, De Soto's (2000) publication, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, stresses the importance of land titling in housing policy. Three points should be made about De Soto's work. First, he argues that the biggest stumbling block preventing poor countries from developing is the lack of land titling, which if put in place would release credit markets, thereby fast-tracking growth. Second, De Soto suggests that existing informal settlements (and the informal economy as a whole) are largely the result of inappropriate planning and tenure regulation in the formal sector. De Soto states that the simplistic answer lies in deregulation and the formalisation of tenure through ownership. These two solutions will result in the poor being incorporated into the formal economy. The third important element in De Soto's work (one which is commonly ignored by his critics) is his contextualisation of property law as a social construct. He argues (thereby contradicting his promotion of ownership, to some degree) that land titling systems around the world are – and should be – the result of the social construct of land tenure.

De Soto's ideas have been criticised by numerous authors (Gilbert, 1999; Royston, 2006; Campbell, 2013; Shaw, 2013). For example, Allan Gilbert (2002) questioned whether mortgage lenders would be willing to lend money to poor people, and whether low-income households would actually want to borrow money. From a developmental point of view, De Soto's ideas have been criticised because he singles out one factor (land titling) as a recipe for development, while disregarding a multiplicity of other factors (Campbell, 2013). Gilbert (2002) also argues that most informal dwellers have secure tenure, or at least experience secure tenure – and that land titling plays a marginal role in ensuring security of tenure.

Furthermore, the overall mobility of low-income residents in Latin American cities remains limited (Gilbert, 1999; Ward, et al., 2011), which minimises the demand for a secondary market. Existing criticism also included the assumption that poor people would want to borrow from banks to finance their housing (Gilbert, 2002); the assumed linear development path based on the Anglo-American model (Campbell, 2013); and the further assumption that banks would willingly lend money to poor people. However, De Soto's notion of property and property law as a social construct has largely been ignored. At the same time, the other values of land ownership, such as the psychological value (Gunter, 2013), should not be ignored.

De Soto and economic sociology

Neil Smelser and Richard Swedberg (2005: 7) argue that economic sociology has a tradition which “combine[s] the analysis of economic interests with the analysis of social relations”. It is not our intention to provide a thorough review of the current thinking in respect of economic sociology; but a few introductory comments are required. In general, De Soto's ideas are either hailed or criticised on the basis of the role of tenure in creating secondary markets and releasing dead capital. However, very little reference is made to the fact that De Soto acknowledges that property law is fundamentally built on social values, and that property *per se* is a social construct. In this respect, De Soto (2000: 156-157) writes that: “Creating one national social contract on property involves understanding the psychological and social processes – the beliefs, desires, intentions, customs and rules – that are contained in these local social contracts and then using the tools that professional law provides to weave them into one formal national social contract”. He adds: “Extralegal social contracts on property underpin nearly all property systems... even in today's United States” (De Soto, 2000: 157). In fact, De Soto (2000) argues that in many cases, extralegal contracts portray the actual consensus about how property rights should be managed in an effective manner and that many titling programmes which do not refer to social contracts are destined to fail. Although the concept of law is underdeveloped (Edelman and Stryker, 2005) in economic sociology, many of De Soto's ideas do, in fact, fall well within a sociological approach to law. In essence, such an approach to law accepts that “both law and economy are deeply embedded in social action...” (Edelman & Stryker, 2005: 527).

The theoretical contribution from cultural sociology is mainly derived from the work of Viviana Zelizer (1988). In its critique of purely economic models of markets, Zelizer's work is embedded in the ‘multiple markets model’ which accepts neither economic nor cultural determinism in respect of market studies (Zelizer, 1988). Zelizer (1988: 619) states that “... economic phenomena, although partly autonomous, are interdependent with a system of meanings and structures in social relations”, while at the same time it should be acknowledged that new economic sociology studies emphasise the importance of market processes. Against this background, Zelizer (1988: 631) argues that “...[w]e should therefore aim towards an interactive economic model that will explore and explain the complex historical, cultural and social structural variability of economic life”. In this context, Fred Block (1994: 692) is of the opinion that ‘high marketness’ means “... that there is nothing to interfere with the dominance of price considerations, but as one moves down the continuum to lower levels of marketness, non-price considerations take on greater importance”.

One of the key concepts in institutional economics is the notion of transaction costs. In this respect, Ronald Coase (1988: 15) wrote that: “In order to carry out a market transaction it is necessary to discover who it is that one wishes to deal with and on what terms, to conduct negotiations leading up to a bargain, to draw up a contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on. These operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would

be carried out in a world in which the pricing system worked without cost". Within this context, the informal economy represents a good example in terms of which the social underpinnings of economic transactions can be explained, and it provides a platform to investigate the ambiguous relationship with state regulations (Portes & Hall, 2005). Edgar Feige (1990: 992) argues that the informal sector represents a spectrum of activities ranging from transactions that are more or less illegal, to unreported and unrecorded economic activity, and to economic activities "... that bypass the cost of, and are excluded from the protection of, laws and administrative rules covering property relationships, commercial licensing, labour contracts, torts, financial credit and social security systems". In addition, Portes and Hall (2005: 407) are of the opinion that embeddedness, as conceptualised by Mark Granovetter, is "... nowhere clearer than in transactions where the only resource against malfeasance is mutual trust". Violating this mutual trust can lead to exclusion from future transactions. Portes and Hall (2005) argue that the main paradox in relation to the informal economy pertains to the fact that the more it strives towards the formal economy, the more it depends on social networks for its functioning. The work of Granovetter (1985: 487) with regard to 'embeddedness', by which he meant that economic actions are "...embedded in concrete, ongoing systems of social relations", also requires some attention, along with the role of social networks. In essence, network studies have focused on the role of social networks in economic transactions. In fact, the body of knowledge makes a distinction between strong and weak ties, and emphasises the role of weak ties in a range of economic activities.

South African land history

South Africa has had a long history of land titling, with the former African reserves (later to become homeland areas under apartheid rule) comprising the exception in this respect. The upgrading of informal settlements since the early 1990s and the subsequent housing policy in a post-apartheid dispensation were largely (but not exclusively) dominated by home-ownership. Land tenure arrangements for black people changed over the years, and varied from traditional tenure arrangements in African reserves to a range of tenure options in black suburbs near large towns and cities. However, in general, home-ownership for blacks in urban South Africa was only legalised as from the mid-1980s (despite some forms of home-ownership being available between the two world wars). The emphasis on ownership in the post-apartheid period was multi-faceted and included the need to release the state from the burden of its properties, placing the responsibility on the individual and addressing the negative consequences of apartheid planning by providing black South Africans with access to home-ownership outside of the original African reserves in the homelands. At the same time, a private-sector-sponsored NGO, the Urban Foundation, started to fund some informal settlement upgrading programmes at the end of the 1980s; and the Independent Development Trust funded such projects in the political transition between 1990 and 1994 (Huchzermeyer, 2004). The Independent Development Trust funded approximately 100,000 stands in terms of a site and services scheme, providing ownership and basic services to these households. The basic constituents of this policy were retained in post-apartheid housing policy, with the main difference being the addition of a core house. A number of studies have considered evaluating satisfaction levels of new housing delivery product (Moolla, Kotze & Block, 2011; Ntema and Marais, 2013) but less have considered more detail reflections on what ownership means and how it is traded.

Informal land transfers

The history of Freedom Square is discussed elsewhere (Marais & Krige, 1997; Marais & Ntema, 2013), and only a brief overview is provided here. Freedom Square, near

Bloemfontein, was one of the largest projects financed (4,000 stands) from the funding provided by the Independent Development Trust between 1990 and 1994 (Marais & Krige, 1997). The land was originally invaded as a typical informal settlement at the beginning of 1990. Between 1992 and 1994, an informal settlement upgrading programme funded by the Independent Development Trust provided ownership, water and waterborne sanitation on individual stands and also electricity access (Marais and Krige, 1997). Between 1996 and 1999, the consolidation subsidy was used to provide a two-room house to all the households (Marais, Van Rensburg & Botes, 2003). Since the transformation of local government in 1995, the area was formally included in the local government's domain of service delivery. In the remainder of the section, three forms of extralegal transfer are discussed. This is followed by a number of observations on such transactions.

Stand swapping

We were able to conduct interviews with three individuals in cases where stand swapping had taken place. In all three cases, some kind of family problem had played a crucial role that culminated in the stand swapping, while crime had also played a role. Furthermore, in all three cases, the stand swapping had been facilitated by a third person – mostly through weak ties (neighbours / friends). Interestingly enough, the new owners had all invested in their swapped land / houses (up to R30,000) – a factor that may indicate a perception of security of tenure on their part. Furthermore, all of the parties concerned were aware that the stands had not been formally transferred, and some had even made an attempt to involve attorneys in this respect. In one case, the transfer process was complicated by the fact that the original owner had bought the site through informal mechanisms from someone else prior to the stand-swapping arrangement. In two cases, an agreement had been reached that the transfer of title would take place at some stage, while agreements had also been entered into in respect of the payment of the various water bills.

Inheritance

The international experiences have revealed the complexities that arise when inheritance is not recorded in the deeds registers (Ward et al., 2011). South Africa is no exception in this respect. Respondents generally reported that a family meeting had been held in order to decide or confirm who would inherit the house (x five). This was a mere pragmatic decision based on the question as to which person was most in need of a house (strong ties). In two cases, the deceased, prior to his or her demise, had stipulated who should take ownership of the property after his or her death – usually someone very close to the deceased (strong ties). In neither of these two cases was written documentation available to corroborate the transfer of ownership; and all involved were trusted to comply with the wishes of the deceased. The five cases of inheritance varied in type between parent/s-to-child (x three), sister-to-sister (x one), and grandmother-to-grandchild (x one) inheritance – mostly involving strong ties. The grandmother-to-grandchild 'transfer' reflected an extremely 'strong tie', as the grandmother had taken care of the grandchild from a very young age, while the current owner (the grandchild) had gratefully returned the favour when her grandmother grew older. In the words of the grandchild (current owner): "I looked after her and made sure that she did not struggle with anything" (Interview One – inheritance).

In one case the current owner argued that in addition to some of the factors above, he had inherited the house because he was the eldest boy in the family. The respondent stated: "Since I am the only boy in the family, it was then decided by the family and relatives after the funeral that I should take over from my parents" (Interview Two – inheritance). Thus, although in the majority of cases proximity to the deceased and the need within the family played a decisive role, cultural factors cannot be excluded in this respect.

When the respondents were asked what proof the current owners could produce to confirm that the property belonged to them, a number of answers came to the fore. One respondent articulated her answer in the following words: “The only proof I have is that her children, my uncles, aunts and other relatives who were there in the meeting that was called by my grandmother shortly before she died, all could bear ... witness that she told them this house [would] be mine” (Interview Four inheritance). Two respondents acknowledged that they had no proof, while the remaining two respondents argued that they had lodged a process with the Justice Department. One respondent argued as follows: “I do not have proof, except the photocopies I got from the master of [the] high court that [indicate] that I have applied for change of ownership” (Interview three – inheritance). The latter quote also suggests that the new owner does not understand the process, since the master of the High Court might only have ratified the inheritance, but not the transfer, of the property.

Transferring of land to the current owner seemed to be difficult for a number of reasons. It seems as if historical extralegal transfers, transfer costs, the outstanding water bills (a municipal regulation requires all utilities to be paid for, prior to any land transfer process), the legal process required to confirm the inheritance and the wrong perception in respect of who is responsible for transfers, all played a crucial role in the five case studies. The narrative of one of the respondents best summarises this array of processes: “I first went to the municipality and requested that they assist me with change of ownership and was told that I would have to pay an amount of money which at that time I did not have since I was unemployed. They requested me to draw up an affidavit, which I did. [I] submitted [it] to them, but to date nothing has happened on their part. I also went to lawyers, Home Affairs and [the] City Hall but was never helped. Thereafter I went to the Department of Justice and was issued with [a] letter of authority by the magistrate which stated that I have inherited the property my parents left ... me. I did all these [things] all by myself not knowing anyone in these institutions” (Interview Five – inheritance). In one case, the grandchild expected the children of the deceased to make the transfer. The uncertainty with regard to the process to be followed and the related transaction costs associated with the transfers can best be described in terms of the following comment from one of the respondents: “... I could not afford the money that was asked by the municipality to settle the arrears my parents incurred on their water bill. This was a condition before they could help me with transfer of ownership. Because they [were sending] me from pillar to post, I ended up giving up – I just could not afford the travelling costs, let alone the amount they were asking to settle the water bill” (Interview One – inheritance).

In one of the five cases, the lack of security of tenure played a role in inhibiting the new owner from investing in the house. The respondent stated that she was keen to invest, but was somewhat uncertain about such an investment, as the stand had not been formally transferred.

Financial transactions

We were able to complete four interviews in this category. The first transaction involved an estate agent, and was initiated when the original owner (who was a client at the current owner’s shebeen) expressed his desire to sell his unit. The current ‘owner’ (who resided in an informal housing unit adjacent to Freedom Square and managed a shebeen) was interested in buying the unit. She expected the original owner to arrange a meeting with her to discuss the transaction. However, one morning she saw the vehicle of an estate agent outside the original owner’s house. The current owner confronted the original owner about his commitment to liaise with her with regard to his intention to sell the house. The original owner, according to the current owner, contacted the estate agent because “he was afraid that maybe we were not going to agree on certain issues, particularly the price” (Interview one – financial transaction). Thus, to some degree, the original owner wished to make use of the services of a professional

person, in order to minimise his risks and to set the rules for the transaction. Furthermore, the actual negotiations took place between the new owner and the son of the original owner. It should also be noted that the estate agent intended to upgrade the house (by plastering it and carrying out crucial repairs) in order to increase the price. The current owner went to see the estate agent and they agreed on a selling price of R28,000 (without any repairs). The original offer was R25,000, but the estate agent pushed the price up by stating that the purchase price should also include transfer costs of R3,000. Furthermore, it should be noted that the original owner's son negotiated on behalf of his father. Contrary to normal legal practice, the purchase amount was paid to the estate agent and not to a lawyer (conveyancer). The current owner paid the first R25,500 in cash and the remaining R2,500 in monthly installments to the estate agent over a period of two years – no interest was charged. The new owner raised the original R25,500 by means of a donation provided by her brother. She was also told by the estate agent that the deposit slip comprised proof of the purchase and new ownership of the property. Four main problems remained in respect of this transaction. First, the actual deeds transfer had not taken place, despite numerous attempts by the current owner to accelerate the process. Secondly, the outstanding water and electricity account from the local authority had not been paid (such payment is a legal prerequisite which must be fulfilled before a lawyer can convey the property), despite a commitment made by the original owner at the time of selling the property. Thirdly, the incorrect details on the identity document of the spouse of the original owner (which did not correspond with the details in the deeds register) were also delaying the process. Fourthly, the current owner's husband passed away during 2012, complicating the incomplete transaction even further. The current owner was so frustrated that she declared her willingness to appear on the 'Speak Out' programme on television, in order to state her case against the attorney and the estate agent, because – in her own words – "I don't understand what [has been taking] them so long to process the transaction since 2010" (Interview One – financial transaction). Her frustration was further exacerbated by the estate agent's failure to take her calls.

The second financial transaction came about through the fact that the previous owner had 'inherited' the house from his parents (this inheritance was also not recorded on the deeds register). He was residing in another town, Petrusburg, approximately 80km from Bloemfontein. He initially rented the house out to the current owner (who had a long history of renting housing in the area), although the current owner did not know the original owner, since the rental payments and agreements had been arranged with a third party. At some stage during this rental agreement, the original owner had contacted the current owner directly, stating that he had some personal problems and wished to sell the house. Interestingly enough, the new owner had requested the original owner to reconsider his intention: "I first asked him to go and think about what he was telling me... [about wanting to sell the house]" because "... people should not blame me tomorrow and claim that I have robbed him [by buying the house,] since he was still a young man" (Interview Two – financial transaction). The possible transaction was also discussed in detail between the current owner, his wife and his mother-in-law. They eventually agreed on a sale price of R15,000. The original owner and the current owner decided to agree on a monthly instalment (without interest). This was paid on a monthly basis to the lady who had originally managed the lease agreement. However, after paying R9,000, the new owner stopped making payments, for two reasons. First, the lady who collected the money died. Secondly, transfer had not taken place. The current owner decided that he would pay the outstanding R6,000 when a formal transfer had been realised. It is noteworthy that this lack of payment did not elicit any reaction from the original owner. Contractually, an affidavit was signed at a police station. It is also noteworthy that the affidavit was signed as a family gift from the original owner – a gift from one cousin to another – which was a deliberate lie to avoid potential problems in relation to the eight-year

restriction on selling a government-subsidised house (Housing Amendment Act, 2001). The current owner described the discussion with the original owner that had taken place in this regard. The original owner apparently had said: “Although you and I know that our agreement is about the sale of the house, we should in an affidavit state it as a free of charge transaction [*sic*] to you [as] my cousin” (Interview Two – financial transaction). An affidavit to this effect was accordingly signed. A number of comments should be made with regard to this transaction, and more specifically with regard to the lack of transfer of the title. First, in an attempt to formalise the process, the current owner went to the municipality in order to attempt to change the account details. The municipality requested him to procure the death certificates of the original owner’s parents, as well as the identification document of the person who had inherited the house. Secondly, the new owner was unable to obtain access to these documents; and he claimed that the original owner was avoiding him: “I would always hear from his friends and other people who know him that he would usually come to Bloemfontein and not bother to come and see me despite being told by these people that I am desperately looking for him, so he is giving me a ‘run around’ now” (Interview Two – financial transactions). Thirdly, there seems to have been conflict about the transaction, in that the brother of the original owner disputed the latter’s authority to sell a house ‘inherited’ from their parents.

The third transaction was the result of a parent’s efforts to find accommodation for his child, who had come to Bloemfontein to further her education. The new owner was employed in Kimberley as a mineworker. He had first rented a house for his daughter; but she had been informed by an acquaintance (‘weak tie’) of someone whose house was for sale (not far from the place that her father was renting for her). She contacted her father who resided in Kimberley; and an appointment was made with the prospective seller. An agreement was reached on a sale price of R15,000 and an affidavit to that effect was signed at a police station. The new owner expressed the value of owning the house in the following words: “... I used to spend a lot of money on renting, and [in the event of] a slight delay in monthly payment they would usually kick her out” (Interview Three – Financial Transaction). After an initial deposit of R2,000 had been made, the payment process occurred by means of monthly installments of R500. The new owner claims that an affidavit was signed at the police station and that the monthly installments were also paid there. The new owner reflected on this situation as follows: “We agreed and then went to the police station to make sure [that] we [went] to the law enforcement agents [to] sign the agreement in their presence” (Interview Three – financial transaction). They also agreed to go back to the police station after full payment (which they duly did), to “... officially transfer the house into my name” (Interview Three – financial transaction). The new owner is under the impression that ownership was transferred to him via the police. He stated that his child told him that “... the signed certificate from the Police Station was issued, and given to her, [thereby transferring] ownership to me” (Interview Three – financial transaction). Consequently, the new owner is under the impression that the stand is now legally his.

The fourth transaction goes back as far as 1996/1997, just after the original erf had been formalised through the IDT scheme. The current owner heard, through a distant friend of her husband, about someone who wanted to sell their home. The price agreed on was R1,500, which included the serviced stand and an informal dwelling on the stand. An initial ‘deposit’ of R750 (funded through the new owner’s membership of a savings society) was required; and an agreement was reached on how the remainder would be paid. It is interesting to note that this transaction was facilitated by a colleague of the new owner’s husband. In fact, this person played a crucial role in ensuring trust between the new owner and the original owner. The new owner confirmed this in the following comment about the facilitator: “And he [the facilitator] told her that he knew my husband from work and that he [wouldn’t] do anything

dishonest, she should trust us” (Interview Four – financial transaction). An informal contract was drawn up with the husband of the new owner, with the facilitator acting as a witness for the transaction. The new owner estimated her investment, since taking over the stand, at approximately R80,000 – money originating from savings that she and her husband had put aside when they were still employed. There seems to have been some conflict about this transaction at some stage, as the children of the original owner indicated that they wanted their mother’s site back (she had passed away in the meantime), and that they would, in fact, refund the R1,500 that the new owner had originally paid. The current owner described her reaction in the following words: “I told them that they should ensure that they put wheels [onto] my house and move it to another site, [which] they would have to organize for me” (Interview Four – financial transaction). The new owner has not heard from the children since then (three years ago). The new owner also attempted to get the transfer processed via an attorney, but without success. She expressed her frustration in the following words: “[W]e paid him the requested amount and [it was] later [claimed] that our papers [had been] lost; and since then he [has given] us the ‘run around’” (Interview Four – financial transactions). A complaint to the small claims court did not render the desired results; and the necessary process was initiated with a second attorney. This process also ended in a deadlock, with the end result being that the property was not transferred legally. It seems as if the debt related to the water account is the main reason why ownership cannot be transferred. In the words of the new owner: “... I no longer trust anyone when it comes to transfer of property ownership. So I do not trust anybody, even the deeds office [...] I do not trust them” (Interview Four – financial transactions).

Synthesis

A number of observations should be made about these transactions. First, in two of the transactions, the purchasing price for a serviced stand and a two-room house was R15,000. This is equal to the original investment by the state through the housing subsidy programme (R7,500 for the site and services and R7,500 for the consolidation housing subsidy (Marais & Ntema, 2013). One of the stands was sold (before the housing subsidy was provided) for R1,500 – a considerably lower amount than the investment of R7,500. The fourth house fetched a price of R25,000, in the one instance where an estate agent played a role. If inflation is taken into account, the amounts are all lower than the original investment by the state subsidy programme.

Secondly, a number of observations should be made in respect of the financing of the initial transaction. In three of the four cases, a deposit was required, with some percentage of the purchasing sum to be paid off in installments over a period of time. The deposit amount varied from nearly 90% in one transaction (initiated by the estate agent) to about 13% (excluding the transaction which did not require a deposit). It should also be noted that no interest was charged in respect of the outstanding amounts that were paid in installments. In all four cases, houses were financed partially or fully through the buyers’ own contributions from their salaries, or through an advance on their salaries. In one case, a family relation provided the largest part of the original purchase amount, while belonging to a savings society was instrumental in paying a deposit in one case (although this only involved a small amount of R750, in 1996). It is noteworthy that no formal or informal credit mechanisms were utilised in any of the cases, while formal mortgage financing was also absent (as one would expect).

Thirdly, in one of the cases, the installment process of payment (after a deposit had been made) was used as a mechanism to keep the original owners to the agreement in respect of the transfer of the property. In fact, one of the new owners stopped paying the installments because transfer of property had not yet taken place.

Fourthly, in three of the four cases, the financial transactions were conducted directly between the original owner and the new owner, although the payment of installments was sometimes conducted through a third party. In one case, an estate agent acted as the third party in initiating the process. In this case, the money was paid to the estate agent (in contrast to formal transactions, where the money is paid to an attorney). Third parties (usually weak ties) also played a role in ensuring trust in the transaction and collecting the monthly installments in two of the cases (including the transaction facilitated by the estate agent).

Fifthly, the nature of the contracts needs further elaboration. In two cases, an affidavit was signed at a police station. In fact, in one of these cases, the new owner is under the impression that the police station also issued a legal title deed. The third transaction was effectuated by means of a signed agreement between the two parties. In the fourth case, in which the estate agent was involved, no 'contract/agreement' was signed. In fact, the estate agent told the buyer to keep the proof of payment as proof of the agreement. Thus, the involvement of a professional service provider did not improve legal security – in fact, this might well be the transaction with the least security.

Sixthly, in one of the cases, a deliberate attempt had been made to hide the fact that the transaction was indeed a financial transaction. The affidavit signed at the police station indicated that the transaction entailed a transfer between two family members (cousins), with no costs involved. This was incorrect, in that the parties were not related, and an amount of R15,000, as agreed on between the parties, was paid for the site. This can most likely be regarded as a response to the government regulation preventing home-owners from selling their units during the first eight years, and also as an indication of how the informal market sidesteps government regulations.

Seventhly, some comments are warranted in respect of the understanding of the role of the deeds office and the reliability of the information on the title deeds. In two of the four cases, the existing information on the title deeds was incorrect. Either a spouse's name was spelled incorrectly, or the South African ID number of one of the original owners was incorrect. Furthermore, two respondents did not know that such an office existed. The other two respondents expressed negative perceptions regarding the Deeds Office. One of the new owners remarked: "Eish! Deeds office next to SARS?" (Interview Two – financial transaction).

Furthermore, it should be noted that in all four cases, the new owners had invested heavily in their new housing. The relevant amounts ranged from R5,000 and R15,000 to substantial amounts of R80,000 and R160,000. The funding for these housing units varied from retirement benefits and savings made from salaries received while working, to money obtained through lottery winnings. Nobody borrowed money to fund their housing expansions. Although the sample is small, it suggests that the current owners experience a significant degree of tenure security, inducing them to upgrade and invest in their housing units.

The role of professionals should also be discussed in more detail. Only one of the transactions had a formal estate agent in place. The estate agent provided some security for the original owner in the transaction, as the latter did not wish to deal directly with the buyer. It should also be noted that the highest price was obtained in the transaction in which an estate agent was involved. There is also an example of an 'informal estate agent' – a colleague of the husband of one of the new owners – who had vouched for the trustworthiness of the new owners (a weak tie). The colleague was not paid anything for his assistance. The role of attorneys seems to have been ambiguous, in the sense that even where attorneys were involved, land transfers still did not take place.

Arrears on the municipal account were a common reason why transfers had not taken place. The arrears mostly involved water accounts, as electricity provision is based on a pre-

paid system, while owners in the area do not pay land tax. It is the responsibility of the original owner to ensure that the water fees are paid prior to the finalisation of the agreement. The frustration of one of the new owners was expressed in the following words: “[T]hey (the previous owner) promised to pay arrears that the original owner incurred on his water account, but to date nothing [has been] paid as I continue to receive the monthly bill with [a] huge debt that I have inherited from the original owner” (Interview Three – financial transaction).

Conclusion

This paper investigated the nature of extralegal transfers against the policy notion of emphasising land titling for low-income inhabitants and the theoretical underpinnings in economic sociology. De Soto’s argument pertaining to property as a social construct and his assertion that property legislation should be based on the social construct of property came under scrutiny in the paper. The results are mixed, with the following main points that should be highlighted. First, the processes of extralegal transfers suggest that titling and the required processes thereof are unfamiliar to the inhabitants of the area. Virtually none of the new owners have a history of formal property transfer. This is not strange, in view of the exclusion of black people from home ownership under apartheid. Considering De Soto’s argument, as well as the arguments encountered in economic sociology, the question can thus be asked as to whether these extralegal transfers do not suggest that the current property rights are inappropriate for the social construct of property by the residents. It is not easy to arrive at an answer to this question, as in many cases, the new owners were in actual fact endeavouring to ensure transfer, but were hindered by the administrative processes, the inability to find professional people to assist them effectively, and the requirements and costs involved in ensuring transfer. Essentially, the question is whether the failure to effectuate legal transfers is attributable to a specific social construct of property (or the lack of a cultural history in this respect), or to the complex and expensive transaction costs that are involved, or to the exploitation of the poor by professional persons in the process. Secondly, most of those involved required some form of security in the transactions/extralegal transfers. This ranged from signed affidavits to simply requiring the trust of people (family meeting). However, despite these mechanisms, final security of tenure has not been achieved. Finally, irrespective of the answers to these questions, it seems evident that the processes initiated to transform informality to formality have merely generated a new form of informality – a factor regarding which we still know very little. Stated differently, the process of tenure formalisation that is commonly viewed as the development path has generated a new type of informality.

References

- Block, F. (1994) The roles of the state in the economy. In: Smelser, N. & Swedberg, R. (eds.) *The handbook of economic sociology*, pp. 691-710. New York, Russel Sage.
- Campbell, P. (2013) Collateral damage? Transforming subprime slum dwellers into homeowners. *Housing Studies*, 28(3), pp. 453-472. DOI: 10.1080/02673037.2013.759543.
- Coase, R. (1988) *The firm, the market and the law*. Chicago, University of Chicago Press.
- De Soto, H. (2000) *The mystery of capital. Why capitalism triumphs in the West and fails everywhere else*. New York, Basic Books.
- Durand-Lasserve, A. & Royston, L. (eds.) (2002) *Holding their ground. Secure land tenure for the urban poor in developing countries*. London, Earthscan Publications.
- Edelman, L. & Stryker, R. (2005) A sociological approach to law and economy. In: Smelser, N. & Swedberg, R. (eds.) *The handbook of economic sociology*, pp. 527-551. New York, Russel Sage.

- Feige, E. (1990) Defining and estimating underground informal economies: The new institutional economics approach. *World Development*, 18, pp. 989-1002.
- Gilbert, A. (1999) "A home is for ever"? Residential mobility and home ownership in self-help settlements. *Environment and Planning A*, 31, pp. 1073-1091.
- Gilbert, A. (2002) On the mystery of capital and the myths of Hernando De Soto: What difference does legal title make? *International Development Planning Review*, 24(1), pp. 1-19. DOI:10.3828/idpr.24.1.1
- Granovetter, M. (1985) Economic action and social structure: The problem of embeddedness. *American Sociological Journal*, 91, pp. 481-510.
- Gunter, A. (2013) Creating co-sovereigns through the provision of low cost housing: The case of Johannesburg, South Africa. *Habitat International*, 39, pp. 278-283. DOI:10.1016/j.habitatint.2012.10.015.
- Gunter, A. & Scheepers, L. (2012) "Crisylida Capital": Hatching Informal Township Property Markets to Benefit Low-Income Residents in Johannesburg, South Africa. *Urban Forum*, 23, pp. 165-180. DOI: 10.1007/s12132-011-9136-7.
- Harris, R. (1998) The silence of the experts: "Aided self-help housing", 1939-1954. *Habitat International*, 22(2), pp. 165-189. DOI: 10.1016/S0197-3975(97)00038-6.
- Huchzermeyer, M. (2004) *Unlawful occupation: Informal settlements and urban policy in South Africa and Brazil*. Trenton, African World Press.
- Kihato, C. & Royston, L. (2013) Rethinking emerging land markets in rapidly growing Southern African cities. *Urban Forum*, 24, pp. 1-9. DOI 10.1007/s12132-012-9176-7.
- Marais, L. & Krige, S. (1997) The upgrading of Freedom Square informal settlement in Bloemfontein: Lessons for future low-income housing. *Urban Forum*, 8(2), pp. 177-194. DOI: 10.1007/BF03036768.
- Marais, L. & Ntema, J. (2013) The upgrading of an informal settlement in South Africa: Twenty years onwards. *Habitat International*, 39, pp. 85-95. DOI: 10.1016/j.habitatint.2012.11.00.
- Marais, L., Van Rensburg, N. & Botes, L. (2003) An empirical comparison fo self-help housing and contractor-driven housing: evidence from Thabong Welkom and Mangaung (Bloemfontein). *Urban Forum*, 14 (4), pp. 347-365. DOI: 10.1007/s12132-003-0018-5.
- Moolla, R., Kotze, N. & Block, L. (2011) Housing satisfaction and quality of life in RDP houses in Braamfischerville, Soweto: A South African case study. *Urbani Izziv*, 22 (1), pp. 138-143. DOI: 10.5379/urbani-izziv-en-2011-22-01-005
- Ntema, J. & Marais, L. (2013) Comparing low-income housing outcomes in self-help and contractor-driven projects: the case for longitudinal research. *Urban Forum*, 24(3), pp. 389-405. DOI: 10.1007/s12132-012-9183-8.
- Portes, A. & Hall, W. (2005) The informal economy. In: Smelser, N. & Swedberg, R. (eds.) *The handbook of economic sociology*, pp. 403-425. New York, Russel Sage..
- Housing Amendment Act, 2001 (4 of 2001)*. Pretoria
- Roux, L. (2013) *Land registration use: Sales in a state-subsidised housing estate in South Africa*. Doctoral thesis. Calgary, University of Calgary.
- Royston, L. (2006) Barking dogs and building bridges: A contribution to making sense of de Soto's ideas in the South African context. In: Huchzermeyer M & Kamram, A. (eds.) *Informal settlements: A perpetual challenge?* pp. 165-179. Cape Town, UCT Press.
- Smelser, N. & Swedberg, R. (2005) Introducing economic sociology. In: Smelser, N. & Swedberg, R. (eds.) *The handbook of economic sociology*, pp. 3-25. New York, Russel Sage.
- Swedberg, R. (1997) New economic sociology: What has been accomplished, what is ahead? *Acta Sociologica*, 40, pp. 161-182. DOI: 10.1177/000169939704000203.

- Turner, J.F.C. (1976) *Housing by people: Towards autonomy in building environment*. London, Marion Byers.
- Ward, P., Huerta, E., Grajeda, E. & Velazquez, C. (2011) Self-help housing policies for second generation inheritance and succession of “The house that Mum and Dad built”. *Habitat International*, 35, pp. 467-485. DOI: 10.1016/j.habitatint. 2010.12.005.
- World Bank. (1993) *Housing. Enabling markets to work*. Washington DC, World Bank.
- Zelizer, V. (1988) Beyond the polemics on the markets: Establishing a theoretical and empirical agenda. *Sociological Forum*, 3(4), pp. 614-634.