

COVERING 98% OF WORLD GROSS DOMESTIC PRODUCT AND 93% OF WORLD POPULATION



2018

INTERNATIONAL PROPERTY RIGHTS INDEX

PURSUING PROPERTY TITLES FOR LOW INCOME HOUSEHOLDS
IN SOUTH AFRICA

By: Jasson Urbach & Jessica Canada, Free Market Foundation, South Africa



PURSUING PROPERTY TITLES FOR LOW INCOME HOUSEHOLDS IN SOUTH AFRICA

By Jessica Canada¹ & Jasson Urbach²

Abstract: The Free Market Foundation’s Khaya Lam (My Home) Land Reform Project, secures property rights for South Africans who were previously denied this fundamental right. The Peruvian economist, Hernando de Soto, explained in his internationally best-selling book, *The Mystery of Capital*, that throughout the world the poor may have wealth in the land but it is “dead capital” because they do not have title to it, withholding them from using it as collateral to raise capital for expanding their home, funding a start-up business, educating their children or any other beneficial purpose. Worse, it can lock people into unemployment, because they are unable to move to where employment is available without losing their house. The FMF’s Khaya Lam Land Reform Project aims to turn capital that has been “dead” since 1913 into “dynamic capital” by empowering individuals with a valuable asset—full, unambiguous title to the home that they live in. Individual liberty is the most important appropriation a system of property rights can amplify.

Keywords: *Development Economics, Land Reform, Property Rights, South Africa, Khaya Lam*

INTRODUCTION

Secure property rights represent one of the most important requirements for the protection of both economic freedom and civil liberties. Yet the majority of black South Africans still do not have titles to property in land as a result of the adoption, more than a century ago, of one of South Africa’s most notorious pieces of legislation: the 1913 Natives Land Act. This Act deprived black citizens of all their rights to ownership and occupation of land except for certain parcels that were set aside for occupation by “traditional communities”.

An effort was made to ameliorate the situation during the run-up to South Africa’s transition to democracy. The Black Land Act (as it was later called) was repealed and the Upgrading of Land Tenure Rights Act of 1991, was adopted, which transferred ownership of a large number of municipal-owned rental houses and other designated properties in a mass blanket transfer at zero cost to the registered occupants of the properties as recorded in rental and other official records. However, no or very little effort was made at the time to inform the new “legal owners” or to assist them to claim or assert the rights bestowed upon them by this legislation, possibly because the process was complicated and not easily understandable to the intended beneficiaries. This experience has shown that undocumented land ownership does not properly secure the rights of intended beneficiaries.

¹ Jessica Canada has a Master of Arts degree in Applied Economics from Western Kentucky University and is a PhD student in Economics at the University of Virginia, jessica.canada16@gmail.com

² Jasson Urbach has a Master of Commerce degree in Economics from the University of Kwa-Zulu Natal and is a director of the Free Market Foundation, jassonurbach@fmfsa.org

To rectify the situation the Free Market Foundation (FMF) initiated the Khaya Lam (my home) project in 2010, which aims to bring about the titling of all the apartheid-era properties in which black families had and still have occupation rights, but not title deeds. The project is made possible through partnerships between local authorities, the FMF, and private sponsors to provide resources to carry out the conversion of a substantial number of these properties to freehold title ownership in the hands of beneficiaries.

The FMF decided to pave the way for the reform process by setting up a pilot project in the Ngwathe Municipal area of the Free State province where there are an estimated 11,000 owned houses for which the ownership rights have not been documented and registered in the Deeds Registry. The major purpose of this pilot project was to determine the most rapid and cost-efficient method of registering the rights of the home owners and placing in their possession title deeds that prove their rights and enable them to trade their property in any way they choose.

However, it took over two and half years of negotiations with the local municipality in the pilot district to convince them about the importance of the project. Then, in October of 2013—100 years after the notorious 1913 Land Act was passed—the first 100 beneficiaries of the Khaya Lam project received their title deeds. The project continues the FMF's defense of and promotion of property rights, especially for black South Africans. This project puts into practice what the FMF has long espoused: property rights are a fundamental component of a free society and a cornerstone of economic development. Most importantly, it is a completely liberating action that will sweep away one of the last major vestiges of the iniquitous apartheid system – the prohibition upon the ownership of land by black South Africans.

To strengthen the case for securing property rights the FMFs research team conducted a pilot survey of randomly selected beneficiaries who received title deeds to their property via the Khaya Lam project in 2016 and 2017. A further cohort of new applicants from early 2018 that had not yet received a title were also randomly selected to serve as a control group in the case study. A structured survey was developed to determine the socioeconomic impact of property titling. Some of the research questions that we hoped to answer with this evaluation included: Are the concerns warranted by opponents of titling programs? What are the characteristics of an average household titled through Khaya Lam? Given these characteristics, how could the program better function to empower new home owners?

In the following sections we will relate the economic theory that supports the Khaya Lam project as a viable avenue for land reform; discuss the current literature surrounding the evaluation of titling programs; explain how the case study was structured and how the research itself was administered; and discuss the main findings of the case study research and policy recommendations that these findings encourage.

ECONOMIC THEORY BEHIND KHAYA LAM

Black South Africans constitute slightly more than 80% of the population (Mid-year Population Estimates, 2017). The percentage of households in South Africa that enjoy full ownership of their properties has remained nearly unchanged for fifteen years, with the percentage hovering around 53% in 2002 and 2017 (General Household Survey, 2018). This means that almost half of South African households are subject to limited or insecure tenures. Although the geographical segregation imposed by Apartheid is being disrupted by the rising black middle class, for many South Africans, invisible restraints on their freedom of mobility still exist more than two decades after Apartheid ended. Population mobility is absolutely necessary for the economic future of South Africa. Constraining human capital is bad for an economy because it makes it difficult for the supply of qualified labour to meet the demand for that labour by companies. Freedom of mobility allows people to move to areas where they

could be more productive—areas where their skills are in demand by employers, areas where they see business opportunities, or areas where they will have an opportunity to learn new skills.

With the fully-tradable freehold title provided by Khaya Lam, individuals or entire households have the freedom to choose where to locate because what was once an immobile asset can become fluid as the local property market opens to these newly titled properties. Families can then use the money gained from legal sale of their property to purchase a new one elsewhere, no longer burdened by the fear that they will lose the security of a home if they leave what is often the same home where they were raised.

For those families that choose to remain in their homes, complete tenure security provides a natural incentive for property investments because residents know that their homes are legally defensible as belonging to them and any improvement to the property will be theirs to enjoy. Title deeds also give home owners the option to secure a loan from a financial institution using their home as a form of collateral.

Much of the economic theory surrounding the importance of property rights was popularised by Peruvian economist Hernando de Soto. De Soto said in his internationally best-selling book, *The Mystery of Capital*, that throughout the world, the poor may have wealth in the land, but it is “dead capital.” They do not have title to it, cannot use it as collateral to raise capital for expanding their home, cannot leverage it for funding a start-up business, educating their children or any other beneficial purpose. The Khaya Lam project aims to turn capital that has been “dead” since 1913 into “dynamic capital” by empowering individuals with a valuable asset—full, unambiguous title to the home that they live in. All the legal, administrative, attitudinal and historical challenges are being confronted in this historic initiative.

Like de Soto, we believe that home ownership is an important key to wealth creation and economic empowerment; it is only through tradable title deeds that home owners can reap the benefits of legally owning and occupying their homes. The Khaya Lam project is a significant step towards unleashing the “dead capital” accumulated under apartheid. At an average estimated value of \$3,340 (R41,717) per residence and an estimated household size of 3 persons, Ngwathe residents will be empowered directly to the tune of \$83.5 million (R1.04 billion) converted from “dead capital” to a marketable asset of more than \$1,100 (R13,750) per person. With an estimated 5 million plots to follow countrywide, blacks and the economy will get a direct injection of tradable land worth at least \$16.7 billion or more depending on the average value of residential properties in other areas.

LITERATURE REVIEW

Writing over 325 years ago, John Locke established that private property is absolutely essential for liberty as a means for ensuring a prosperous and peaceful world. Locke states, “Every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his.” He continues: “The great and chief end therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property” (Powell, 1996).

Acemoglu and Robinson explained in their book, *Why Nations Fail*, “Inclusive economic institutions that enforce property rights, create a level playing field, and encourage investments...are more conducive to economic growth than extractive economic institutions that are structured to extract resources from the many by the few and that fail to protect property rights or provide incentives for economic activity” (2012).

Besley (1995) examined how plot-level farming investment changed as a result of tenure security and found that an additional self-reported tenure right increased plot-level investment by 28%. However, the author found that there was no evidence that the investments were made possible through loans using the properties as collateral, signalling that a change in the incentive structure surrounding land is enough to change behaviour even if respondents choose not to use formal credit lines.

Much of the literature reports little evidence that newly titled properties are used as collateral to leverage credit markets, even though that is certainly an obvious benefit afforded to titleholders. Dr. Erica Field conducted research on one of the most popular titling programs in the world, the national titling program enacted in Peru between 1996 and 2001. She found that property rights in urban areas leads to an increase in residential investment by more than two-thirds of the baseline level for properties without title (Field, 2005).

CASE STRUCTURE AND RESEARCH ADMINISTRATION

The Khaya Lam program focused primarily on indigent and single-parent households in initial phases, and later turned to an open-application system for eligible residents once funding became more available. Beneficiaries from these early years were excluded to ensure that the demographics of the case study were as closely aligned with the population demographics of the area as possible, so the study would show relevance to the wider population rather than a small subset.

A random sample of beneficiary households was taken to be surveyed for the case study. Households that received titles in 2016 and 2017 were randomly selected and new applicants from early 2018 that had not yet received a title were randomly selected to serve as a control group. Selection bias, or the idea that the households that approach Khaya Lam to apply for title are somehow different from those households that do not, is often a major concern in empirical research. To minimize the likelihood of selection bias contaminating the case study, new applicants for title through Khaya Lam were used as a control group rather than other Tumahole residents without title.

Households randomly selected to participate in the study were surveyed between February and June 2018 and were offered a small incentive of a \$4 (R50) grocery voucher to encourage participation. In total, 227 households were surveyed to create a cross-sectional dataset of households titled in 2016, 2017, and households to be titled in 2018.

KHAYA LAM CASE STUDY: TUMAHOLE, NGWATHE



Title Presentation Ceremony, Ngwathe Municipality, 2016

There is a Khaya Lam office located in a spare room in the local Home Affairs office in Ngwathe municipality. Those who are too eager to wait for a donation to fund their title transfer and possess the means, pay the expense out of their own pockets. Because the FMF has negotiated cheaper batch rates with lawyers and conveyancers, residents find that it is more cost efficient to go through the program if they have the funds to pay for it themselves. In the past few years, Khaya Lam has processed almost 60 titles in Tumahole township alone for households that chose to pay the cost themselves, roughly \$180 (R2,250).

Tumahole residents who submit applications to Khaya Lam mostly hear about the program through word of mouth. Recently though, Khaya Lam has produced small information sheets to be delivered to eligible households telling them about the program. On those days, there are lines of people winding through the halls and out of the building into the streets, patiently waiting to file applications to receive title for their homes.

Many opponents of titling as an avenue for land reform claim that many people do not understand or value property rights in the Western sense of the word. Others say that the social tenures inherently present in South African society are strong enough to protect a person's claim on his/her property and that titling is not necessary. This has not been the experience in Tumahole. As the long lines of applicants suggest, people do understand and value property rights in the form of a freehold title deed. They also understand that where corruption and favouritism are allowed to flourish, social tenures are quite tenuous. Social tenures may be enough to protect people in an arena where there is no corruption, no favouritism, and no greed. To claim that social tenures are enough is to ignore the reality in which we, especially the most vulnerable among us, live.

The average monthly income of households in our sample, including social grants, is about \$200 (R2,511). More than half of respondents report social grants as their household's main source of income, a figure that is significantly higher than the national 20.1% of households reporting social assistance as the main source of income (General Household Survey, 2018).

Sixty-eight percent of households in our study reported receiving at least one social grant, compared with 43.8% of national households that reported the same in 2017 (General Household Survey, 2018). The estimated unemployment rate of individuals in our sample is 45 percent, far higher than the national unemployment rate, with 75 percent of households in our sample registered as indigent households. Renting a room on the property has provided a steady source of income for more than 10% of households in our sample. The average monthly rent paid to homeowners is \$53 (R660). Residents are also quite comfortable running small businesses out of their homes, with more than 12% reporting home businesses. The most commonly reported small businesses involved preparing and/or selling food and beverages, clothing sales, or repair and mechanic services.

While property rights do allow residents access to bank loans using their homes as collateral, Tumahole residents seem to be reluctant to do so. This could be because almost two-thirds of residents in our sample do not have a bank account, and therefore are not used to utilising banking services. By far the top reason reported for why respondents did not have a bank account was that they did not have enough money coming in each month to use formal financial institutions. This suggests that the monthly fees associated with most bank accounts might pose too great a cost for most residents.

Another possibility is that while the procedural hurdles of acquiring a title to their properties have been overcome, the next hurdle is psychological. Langa is a predominantly black area in the Cape Town municipality of South Africa where most residential plots are held under relatively free title. Titles to the properties here are tradable and even allow owners access to lines of credit. However, a significant property market has never emerged for these homes (Boudreaux, 2006). Few people have opened mortgages and most property sales are not facilitated by realtors, but properties are advertised and sold using one's local personal contacts (Boudreaux, 2006). It is difficult for new home owners to familiarize themselves with the new financial and economic institutions in which they can now participate after having been excluded for almost a century. For this reason, it is important that new home owners receive additional support until the institutional knowledge is developed in the area concerning maintenance of title deeds and the opportunities that have a title presents.

When asked if they had ever applied for any type of bank loan, most respondents said that they preferred never to borrow money unless absolutely necessary for survival. In cases where households had to borrow, their first choice was to borrow from family and friends. Many respondents explained that they had waited for a title deed to their homes for so long that they were not willing to risk that security by taking out a loan using their home as collateral given the unsteady working arrangements that most people maintain. Despite an apparent aversion to debt, the average household does have outstanding debts. In our sample the average total debt per household was just over \$1,040 (R13,000), a majority of which is owed to the municipality in arrears.

The last property valuation roll was completed in Ngwathe in 2015. After adjusting the reported market values for inflation (Consumer Price Index, 2018) and for any home improvements reported since the roll was taken, the estimated average market value for a residence in our sample is approximately \$3,337 (R41,717). While a majority of properties in our sample are self-built homes that can range with valuations of \$12,000 (R150,000) or higher, 12.5% of the residences in our sample are shacks with very low valuations. The average age of a home in our sample is just over 26 years, with the average family size per home around 3.3 persons. Sixty-six percent of households in our sample are headed by a female, compared to the national figure of 41.36% (Mid-year Population Estimates, 2017).

Many households in our study have made improvements to their home despite their aversion to accessing formal credit lines. When households reported making large purchases or investing in a home improvement project, household savings was by far the most common source of funds for these expenses. About 13% of households reported regular monthly savings and the most commonly reported intentions for these savings were to pay for school fees or to make additions or renovations to the home. The average expense per improvement across all households is about \$1,680 (R21,000). These home renovations utilize local labour and promote economic activity, while also increasing the market value of the residence.

CONCLUSION

Donor aid has focused traditionally on funding inputs such as medicines, water, and roads but very little has gone into changing institutions and securing property rights. The Khaya Lam project is a concrete step towards creating a more positive, optimistic, free society, and free economy without perpetuating aid dependency. A title deed is a profound game changer for millions of South Africa's poorest citizens: it is a tangible asset against which they can borrow money, earn rental income and begin to change their family's socioeconomic circumstances.

When people own what is rightfully theirs, and they can truly call their house and their land their home, we believe that the dynamics of their situation, and the country at large, will change. By freeing the dead capital that has locked people in an economic straitjacket for far too long, we can begin to see the country's future brighten, as people undertake home improvements, and begin to unleash the full potential of their most valuable asset. The FMFs Khaya Lam project will allow South African's to escape the long shadow of apartheid and for the first time in their lives feel safe and secure in their homes.

Hernando de Soto emphasized that property titling projects should be highly localized with implementation strategies tailored to context-specific circumstances and be supported by the people. The process allows neighbourhoods to develop the institutional knowledge, that so many of us take for granted, so that they can continue to be included in the social and economic environments in which they live. The FMFs Khaya Lam project is a tangible and practical example of real ownership restoration in action and is a blueprint which can be readily taken up and adopted throughout the developing world where property rights remain insecure. When people have secure rights to their property, it provides them with an opportunity to thrive. The human spirit can only grow and prosper in an environment that is secure. Part of that security lies in knowing that the home where you live cannot be arbitrarily taken away.

REFERENCES

- Acemoglu, D. & Robinson, J. (2012). *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. Crown Publishers, New York, New York.
- Besley, Timothy. (1995, October). Property Rights and Investment Incentives: Theory and Evidence from Ghana. *Journal of Political Economy*, Vol. 103, No. 5, pp. 903-937.
- Boudreaux, Karol. (2006, April). The Effects of Property Titling in Langa Township, South Africa. *Mercatus Policy Series*, Policy Comment No. 4.
- Field, Erica. (2005, May). Property Rights and Investment in Urban Slums. *Journal of the European Economic Association*, Vol. 3, No. 2/3, Papers and Proceedings of the Nineteenth Annual Congress of the European Economic Association, pp. 279-290.
- Powell, J. (1996). *John Locke: Natural Rights to Life, Liberty, and Property*. The Freeman, Foundation for Economic Education. Retrieved from: <https://fee.org/articles/john-locke-natural-rights-to-life-liberty-and-property/>
- Statistics South Africa. (2018, June 20). Consumer Price Index (CPI). Retrieved from URL: <http://www.statssa.gov.za/publications/P0141/CPIHistory.pdf>
- Statistics South Africa. (2018, June 21). General Household Survey (GHS). Retrieved from URL: <http://www.statssa.gov.za/publications/P0318/P03182017.pdf>
- Statistics South Africa. (2017, July 31). Mid-year Population Estimates. Retrieved from URL: <http://www.statssa.gov.za/publications/P0302/P03022017.pdf>