

Land Narratives and Land Registration in State-Subsidised Housing in South Africa

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SUMMARY

The paper presents results from three cases studies of people who have received state-subsidised houses as part of poverty upliftment programmes in the Western Cape Province of South Africa. The ethnographic profile in these case studies was that people had had exposure to state land administration systems for most of their lives and there was little influence of customary land practices. The results show that a few off-register transactions do occur, but people indicated very strongly that they will use official administration systems and approach a lawyer in the event of a challenge to their ownership. The title deed was the most important item of evidence for them. These are good news cases as the official systems are working. There are a number of housing projects in South Africa where off-register transactions are pervasive. The study indicates that, rather than major changes to law, policy and land tenure types, the situation in areas similar to these can be improved by adopting a “management by walking about” strategy rather than major changes to law, policy and administration systems. More attention needs to be given to managing the tenure system after registration, even if the houses are held in private ownership.

1 INTRODUCTION

There is a large body of literature indicating that large scale land titling programmes often do not produce the benefits envisaged by policy makers (Peters 2004, Shipton 2009). South Africa has processed the delivery of more than 3 million state-subsidised houses to the poor since the first fully democratic elections in 1994 (Financial and Fiscal Commission 2012); albeit that the actual number that have been delivered is not known and many have not been registered. Qualifying beneficiaries earn less than R3,500 (± 330 \$ US) per month. The majority of the houses that have been registered, have been registered in individual ownership. However, evidence suggests that a significant number of houses have changed hands off-register through sales or inheritance (Roux 2013; Financial and Fiscal Commission, 2012; Gordon 2008; Marx and Rubin 2008). The paper presents and compares parts of narratives in three case studies relating to the perceived importance (or not) of title deeds, the phenomenon of off-register transactions and why they occur, and strategies that people intend to use to secure their tenure in the event that it is challenged. The primary data were gathered in door to door interviews as components of three ethnographic case studies in housing projects in the Western Cape Province in South Africa augmented by key person interviews and examination of deeds registry records and other documents. These cases form part of a broader set of case studies examining the effectiveness of land registration and private individual ownership in South African state-subsidised housing projects.

The studies are “good news” cases, and they fill a gap in the literature on state-subsidised housing in South Africa and in the international land titling literature. The literature indicates private individual ownership may not be an ideal tenure form in many pro-poor housing projects, especially if the conditions necessary for registration and ownership to work are not in place. However, the three case studies indicate that there are situations where private ownership and land registration system should function effectively if the right conditions exist. We will argue that rather than major changes in tenure type and changes in the systems to administer them, an oversight function for a number of years after first registration is a viable strategy in some housing projects. Similarities in earlier work in informal settlement upgrades (Barry and R  ther 2005) indicate that ongoing hands-on management of the tenure system after registration, a version of what is popularly called management by walking about in business management, may suffice in reducing the risks of off-register transactions.

2 STRATEGIC ALTERNATIVES TO IMPROVE LAND TENURE SECURITY

The authors have found that beneficiaries of the urban state-subsidised housing programmes in the Western Cape do favour individualised tenure (Barry 1999, Roux 2013, Barry and Roux 2014). However, there are housing projects where off-register transactions prevail, and the off-register transaction phenomenon needs to be addressed for a variety of reasons. In short, there are three strategic options available to improve the situation in future housing projects:

1. Provide alternative tenure forms to ownership that suit the local circumstances and land administration instruments, structures and processes that are better suited to the needs of housing beneficiaries. These tenure forms may evolve into ownership or some other form of tenure acceptable to the state over time (UN-Habitat 2012, Barry 2015).
2. Do nothing, because once houses are delivered and registered, people are private owners and the state should not intervene in their affairs.
3. Manage the situation closely for a number of years after the houses have been delivered and the title deeds registered to encourage landholders to use official structures and processes when conducting land transactions. Management implies actual interaction between the land administration authorities or other agents, rather than merely setting title conditions preventing people from selling. Adapt the tenure type or the conditions of title to this requirement.

Internationally, the primary drivers of strategy 1 above include initiatives such as the continuum of land rights (UN-Habitat 2012, Barry 2015), fit-for-purpose land administration (Enemark *et al* 2014), and the social tenure domain model (UN-Habitat 2012). The continuum approach was considered in South Africa when the post-apartheid land reform, land restitution, and state-subsidised housing programme policies and strategies were being formulated, but ruled out for political reasons. Currently, the ruling party is reconsidering elements of the continuum approach in state-subsidised housing programmes, such as using long term leases rather than ownership as the tenure form for these houses (ANC 2012, DRDLR 2014).

There is a gap in empirical evidence gathered at the household level which shows how the continuum option associated with strategy 1 improves a situation in the long term. It requires political will, far more complex regulatory, more complex land administration systems and higher skill levels associated with this complexity than conventional land titles. The real property law and general land administration law may also become far more complex and difficult to harmonise. Unless the resources that are necessary to sustain such a strategy are allocated, laws and the institutions that administer them are properly harmonised, and land administration organisations are equipped and prepared to manage changing tenure situations, programmes based on this strategy may well disappoint. The lessons from the many land titling programmes have not yielded the benefits that policy makers envisaged are

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instructive. Moreover, changing tenure form alone may not be sufficient. The first author found in Barry (1999) that even in a large municipal rental housing project (28,000 houses) that were designated to be upgraded to ownership, over a two year period some 20% of the leases were traded without the official lessee and the “buyer” working through the municipality. These leases were in the process of being converted into ownership at no cost.

From the outset, political dynamics have been a major factor in the tenure form associated with state-subsidised pro-poor housing in South Africa. Recently, in one South African city, a group of senior officials described how they had tried a version of the continuum strategy in a project in their city where households were granted leases that could evolve into ownership. It became a political flashpoint because beneficiaries in neighbouring housing projects had been granted ownership, and leaseholders had less power over their land, and so the strategy was discontinued (Interview 102-2014). Thus there are strong incentives to make the registered ownership system work where possible.

Strategy 2 draws on interviews with a number of senior officials in different South African cities and towns over a number of years. Legally, once people are registered owners the state’s responsibilities to manage land tenure are limited to maintaining the land administration system and the land use planning system. Land ownership is a private law matter and once land is registered it is no longer a concern of the state, providing landholders do not break the law. One official argued that it would be patronising to intervene once people own their property (Interview 102-2014). However, the counter argument is that off-register transactions and their effects, such as downward raiding and frozen formal land markets, are hardly in tune with the poverty upliftment purposes of the state-subsidised housing programmes. Consequently we do not consider the “do nothing” strategy to be a reasonable option.

Strategy 3 is followed in part by municipalities in South African state-subsidised housing projects through housing consumer education programmes. The relevant advice to new homeowners includes:

- ensure that they have a will,
- ensure that they register transactions in the event of a sale or inheritance.

In the past, in some housing projects, land professionals provided similar advice to beneficiaries when processing housing applications (Barry and Roux 2014). Based on this study, we will argue that strategy 3 is an important option, but it needs to be extended beyond the current housing consumer education sessions.

3 CASE STUDIES

Three ethnographic case studies were chosen in the Western Cape where housing beneficiaries had lived under individual tenure (mostly as tenants) for most of their lives, and customary tenure practices would have had no or minimal influence. The majority of beneficiaries who fit this profile would have been classified as coloured under the apartheid system, but a number of black Africans who had been born in the Western Cape or had lived in the Western Cape for a long time also fit the profile (Barry 1999).

The reason for a skewed racial representation in the studies is, in brief, the Western Cape was declared a coloured labour preference area under the apartheid system in 1955. Black Africans, who had been able to own land in the province dating back to 1853, had these rights to own property systematically removed from 1901 onwards, and finally removed in 1936 in terms of the Development Trust and Land Act 18 of 1936. They were further prevented from moving into the Western Cape under apartheid system pass laws after 1948 (Bishop 1983, de Tolley and Nash 1984). After 1948 people classified as coloured could own property. However, many of them suffered forced removals under group areas legislation.

One of the housing projects studied is on the edge of the Cape Town Metropolis (Project 97), one is in a coastal holiday town (Phase II), and one in an agricultural centre in the interior of the province (Project 257). The questions relevant to this discussion that people in the subsidised houses were asked were:

1. What they would do if someone challenged their ownership?
2. Had they had experienced problems concerning their ownership personally?
3. Were they aware of other people in their community having experienced problems with land ownership and if so what were the causes.

3.1 Case 1: Project 97

Project 97 is on the edge of the Cape Town metropolitan area. The 760 houses were handed over to beneficiaries in 1999 and most had been registered by the end of that year (Interviews 700, 706, 743). Some state-subsidised housing projects have a title restriction preventing the sale of the property for five years or for eight years, but it was not applied in this project. The study used 37 open ended, door-to-door interviews with 42 people in the Project 97 housing estate, and 21 key informant interviews in the municipal area with politicians, officials, community leaders, policemen, land professionals and real estate agents.

Historically, the majority of the participants had extensive experience with official structures and systems such as the municipal rental housing department. A number of participants had been forced to move under group areas legislation. Other participants provided narratives of how they had experienced eviction from farms and municipal

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rental flats (apartments) or harassment by officials when they were municipal tenants during the apartheid era. Interaction with official structures in relation to tenure security was prominent from the outset of this project. The preparation and signing of deeds of sale was done with lawyers, who provided information about home ownership that was similar to that of the housing consumer education programmes.

3.1.1 Original Beneficiaries Strategies to Defend their Tenure

Participants were asked what they would do if someone laid claim to their house, and who they would approach for assistance. Twenty two of twenty three original beneficiaries (or their surviving spouse / partner) who were asked this question indicated that they had a title and other municipal papers (e.g. municipal accounts, the original contract of sale papers) and this was the primary evidence that they would use to defend their ownership. The title “is like gold” is how one person put it (Interview 711).

In the event of a conflict over ownership, the majority of participants would approach official institutions, such as a lawyer or the municipality, or both for advice and assistance. One participant recounted how people had invaded her house before she was able to move in (most probably in order to jump the housing queue), and the municipality had had to evict them before she could move in. Three people indicated they would approach the police. Of significance is that none of the participants indicated that they would approach the neighbours, or community based institution such as street committees. This is very different to what has emerged in some other housing projects we are studying and what is reported in the literature.

3.1.2 Buyers’ and Heirs’ Strategies to Defend their Tenure

The interviews, with two possible exceptions, indicated that people who bought a house or people who inherited a house had gone through the formal procedure from the outset. Secondary owners knew the legal procedure through having previously bought and sold a house, advice from their social and family networks, respected community members (e.g. in one case the church stored documents for an heir), municipal officials, employers, lawyers, estate agents, local politicians and political party offices.

Many of the participants had heard about fraud cases related to sales of state-subsidised houses through the media or through their social network. They then used a lawyer to negotiate a strategy to settle any municipal debt, and effect transfer. In some cases the municipal debt was settled immediately as part of the transfer. Some buyers had regular income and obtained a mortgage. Employers assisted others. In one case the employer bought the house as a form of pension for the employee. Others drew on family resources or used money they had inherited. Allowing for the possibility of errors in a commercial vendor’s deeds office data, and discrepancies in the sale price stated in interviews and the price in the records possibly being distorted by outstanding municipal debt, the interview data predominantly matched registry data and the municipal valuation records (Interviews 715, 729, 731, 740, 745, 750, 753,

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754, 755, 756). Building on earlier discussion, buyers used a lawyer and decided to register as protection against the type of fraud that they had observed, heard about or read about. As with the original beneficiaries, for buyers the title deed would be their primary evidence in the event that someone challenged their ownership (Interviews 715, 729, 731, 745, 750, 753, 756).

Translating two of the narratives:

- “When we bought ... we went to the lawyer because of the many scams. People sell to multiple buyers and you can lose your money. If you go into an oral agreement to buy the house by paying instalments to the owner, you are at risk of the owner selling to someone else if you don’t keep up the payments and then you can be evicted.” (Interview 715).
- “If you sell off-register, the seller might reclaim the house... I would always check with a lawyer as you might lose your money. .. I won’t buy a house off-register, not even from my brother” (Interview 731).

Three people indicated that they had inherited from a family member through a will. Three others indicated that they will inherit once the deceased estate is wound up (Interviews 717, 742, 744, 756, 749). Interestingly, in spite of advice from the lawyer who prepared the title deeds, the majority of the original beneficiaries did not have a will.

3.1.3 Off Register Transactions

Key informants and Project 97 interviewees indicated that off-register transactions do occur, and that it is general knowledge that owners sell houses off-register and then reclaim the houses by using the title deed to claim that the original transaction was not a sale (Interviews 721, 727, 731, 735, 755). However, we could not validate any of these claims in the field, and the evidence of off-register transactions occurring in Project 97 is sketchy. A taxi owner has supposedly built up a portfolio of four rental properties in Project 97 (Interviews 706, 738, 716). We could not find one person who owns four properties in Project 97 in the deeds registry data. If the story is true these may be off-register transactions, or registration may be in process. One story emerged of a drug dealer getting an oral agreement to take over house in Project 97, but people were scared to talk about this (Interview 707). Six houses were pointed out that were possibly acquired off-register, and in two of these the occupants gave what appeared to be false narratives about how they acquired their houses. One possible explanation is that they had purchased the house off-register. It was not possible to interview people in the other four houses.

3.1.4 Discussion of Results

Unlike situations described in other state-subsidised housing projects in South Africa, off-register transactions are not pervasive in Project 97, and no concrete evidence of them was obtainable. There are indications that they have occurred and may occur in future, but they are not pervasive. In general, landholders believe that deeds are very important and that agents and agencies such as the municipality and a lawyer are important. For the purposes of administering their tenure, they trust them and no persuasive evidence of corruption, patronage in housing allocation or sharp practice emerged. For original beneficiaries, their houses are a major positive in their lives and the title deed a major element of them feeling secure in their homes. Many indicated that they would never sell, which is unsurprising given how difficult it is to get a house or alternative accommodation, and how difficult it might be for their children to get similar accommodation. People were aware of what might go wrong in off-register transactions i.e. the title holder may attempt to reclaim the property. It is not clear where participants obtained the information about problems with off-register transactions. It may have been from the media (residents favour a tabloid newspaper that has reported on cases of people selling and then reclaiming the house), stories from within Project 97, or stories from neighbouring settlements.

Of note is that there are no street committees in Project 97 and this is an important factor, since our ongoing research in other communities indicates that some street committees have actively encouraged off-register transactions.

3.2 Case 2: Phase II

Phase II is a housing project in a coastal resort town, some two hour's drive from Cape Town. There are 271 parcels in the project. Beneficiaries received their houses in 1998 and 1999 and title deeds were registered soon after for most of the original beneficiaries. Deeds had a clause restricting the sale of the property for five years after the contract to transfer had been signed. Thus if beneficiaries wanted to sell, they would have had to do so off-register and in contravention of the title condition. Forty six door-to-door interviews were conducted with a total of 53 people. Thirty one of these interviews included original beneficiaries. The rest were buyers, heirs and some worked for a local winery which had purchased a house for them as part of their work contract. A further four key informant interviews were conducted and a similar documentary check was done as in Case 1, Project 97. Twenty one interviews included people who had been born in the town. A few had come from Cape Town and further afield, but most of the in-migrants had moved into the town from farms in the area.

3.2.1 Strategies to Defend their Tenure

All the participants, original beneficiaries, buyers, heirs and employee benefit owners emphasized the importance of their title deed. Their house is a major positive in their lives. As with case 1, a number of participants had suffered eviction and forced removal under the apartheid system.

Translating two of the narratives:

- “I feel safe. I know this is my house because I have the documents, the title deed, which my daughter holds in safekeeping and the erf (parcel) number is at the municipality.” (Interview 517)
- “I have a title deed and I am not at all worried. It’s in black and white and all the documents are there.” (Interview 535)

If people had a problem over their ownership, they indicated that they would approach the municipality or a lawyer first, and then perhaps local politicians, family members and possibly the police. As with Project 97, no one mentioned street committees or similar community-based institutions.

3.2.2 Off Register Transactions

All the buyers interviewed had gone through a lawyer. A number of participants claimed to be aware of people selling off-register. They claimed that people sold because of financial distress and related problems of alcoholism and drug addiction. These alleged off-register buyers include drug dealers, shebeen (informal bar) owners, abalone poachers and foreign nationals. One can speculate that one motivation for buyers who are involved in criminal activities to purchase off-register is it is more difficult for the tax authorities and other state agencies to trace their assets. Our other studies indicate that money lenders, taxi drivers and drug dealers build up a portfolio of rental properties using off-register transactions, but it is not been established why they do not register the transaction (Barry 1999). Participants also claimed to be aware of cases where people sold off-register and then the seller claimed the house back as the courts do not recognise unregistered land transactions.

The stories may have been influenced by stories on the radio and print media, but a number of participants pointed the authors to a highly visible case in the suburb, The Yellow House with the broken windows. The Yellow House is iconic of the risks of off-register transactions. In this case a husband and wife were the original beneficiaries.

The wife’s narrative of The Yellow House is as follows. While they were experienced marriage difficulties, the husband sold their house for R5, 000 to a poacher while the husband was under the influence of alcohol. No papers were signed, and they had to move out in 2003. The husband’s employer then assisted in hiring a lawyer and taking

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the matter to court. A version of events, partially backed up by other data, is the court ruled that the sale was not in terms of the procedure required to effect registration. There was no documentary proof of a contract (contracts to sell land have to be in writing in South Africa) and the seller was under the influence of alcohol. The court deemed the R5, 000 to be rent. Of note is that current estimates based on valuation records and interviews with officials and land professionals indicate that the cost of acquiring the land, installing the roads and services and building one of these houses today range from R150,000 to R200, 000.

The original beneficiaries were then able to move back in 2010. However, the buyer then returned and removed doors, windows and the roof of extensions to the house that he claimed to have built (see Figure 1). In 2010, the matter of trespassing and damage to property was still before the courts (Interview 530).

As one official noted this case typifies some of the off-register sales that occur to social problems (Interview 005). This case also highlights a number of important factors. The registered owners of The Yellow House were successful in using the law to regain their house, because of the husband's employer's assistance. Considering that the off-register buyer is financially strong and has powerful connections in the community, it is unlikely that they would have been able to defend their claim without this assistance.



Figure 1 The Yellow House with Doors and Windows Removed from Extensions

3.2.3 Discussion of Results

In Case 2, the participants indicated that having the house of their own was a major positive in their lives. As with Case 1, there was close to unanimity that the title deed is the most important artefact in securing their tenure. They also indicated that they would approach lawyers and the municipality for assistance if they had a problem

with their tenure. There was no mention of community based structures such as a street committee, but politicians and political party offices were mentioned.

There is evidence of off-register transactions and one iconic case which informed other people in the housing project of the risks of doing this. Given that criminal elements are alleged to be involved in a number of these off-register sales, a question arises from this iconic case is if laws and regulations are relaxed as implied in strategy 1 above, what are the risks to the vulnerable?

3.3 Case 3: Project 257

Project 257 is a housing project in an agricultural town two and a half hours from Cape Town. Planning for the project started in 1993 and 257 houses were completed by 1997. During these four years there were a number of changes in the government's housing policy. Unlike the cases 1 and 2 above, the project beneficiaries had to pay R350 for registration (Interview 204; Project files 13/07/1994, 25/09/2007).

In 2010 at the time of the fieldwork 58% of the properties had not been registered in the names of the beneficiaries (Transfer Records 1999 to 2010). This was partly due to the expense of registration, beneficiaries being under the impression that registration had occurred, and accumulated municipal debt. Registration proceeds if there are no outstanding municipal debts against the property (Interviews 204, 210, 228, 229, 232, 230, 238, 241, 242). There were no sales restrictions in the original title deeds (Title deeds T2A/2000; Interviews 202, 204), but there are isolated instances where an eight year restrictive sales clause was inserted. This occurred when the original beneficiary died before the property was transferred. The municipality would transfer the property to the heir, but regard this person as a new beneficiary (Project files 06/10/1999, 26/11/2006). Since 2002, there has been a restriction on selling a state-subsidised house for 8 years after first registration (*Housing Act 107 of 1997, s.10a, b*).

Thirty one residents were interviewed as well as nineteen key informants. The latter included community leaders, municipal officials, councillors, lawyers, bank employees and police officers. The majority of residents interviewed have a strong link to the town. Twenty three participants were born there or had worked and lived in the town and surrounding farm areas for more than 30 years.

3.3.1 Original Beneficiaries Strategies to Defend their Tenure

The eighteen original beneficiary households were asked what they would do if someone threatened their ownership. In nine of these cases registration had not yet been completed. The eighteen responses were as follows:

- Two would use their title deeds as proof.
- Two would use a lawyer as well as their title deed.

- Seven indicated that they would ask the assistance of a lawyer, the municipality or both, but did not mention the deed. Surprisingly, two of these participants were the registered owners.
- Two would call the police.
- The other five other households mentioned the title deed in relation to other questions.

Importantly none of the participants mentioned any other organisations or individuals except for the lawyer, municipality and police.

When the participants were asked about how secure they feel as owners, eleven households said they feel secure or very secure (five of these households were not yet the registered owners). Three households noted that security may depend on debt, in particular municipal debt and bank loans. Households with title deeds were not concerned about debt. For example participant 210 who was in the process of transferring the house after a delay of ten years because of debt

“Now I owe them [the municipality] nothing... I’ve paid my transfer costs so that I can get the title deed, then I’ll have proof that the house is mine”.

3.3.2 Buyers and Heirs

Only one buyer and three heirs were interviewed. Official transfer records show only nine registered sales occurred in Project 257 between 1999 and 2012. One possible cause is a (mistaken) belief that a sales restriction applies to the properties. Twelve participants stated this. Another reason for the few sales may be ascribed to a widely held belief amongst residents that a house should not be sold because it is so difficult to find good accommodation:

“Selling a house is foolish” (Interview 230), and

“It is craziness. Why? You only get a few cents and then you have to wander from one family member's house to another” (Interview 251).

The buyer bought the house through an estate agent, went to a lawyer and completed registration. It worth noting that he had previous experience of the official land transaction processes. He had owned a house in Cape Town and sold it through an estate agent. Two of the heirs inherited from original beneficiaries and stated that they were in the process of getting the houses transferred.

3.3.3 Off Register Transactions

Although off-register transactions in state-subsidised housing projects in this municipality may be few, there is evidence that they do occur. Stories about sellers reclaiming their house after an off-register transaction did not emerge in Project 257. Two participants mentioned what they thought was an off-register transaction, but

official documents indicated that it was a transaction that was cancelled before registration occurred (Interviews 245, 251; Council minutes 19/10/2001, 12/11/2001, 29/11/2001).

Key informants did not distinguish amongst the various projects in the area and discussed the 1400 government subsidised properties in the municipality as a whole. Staff in the local African National Congress political office, which provides advice to constituents in the area, estimated that they dealt with “about five [off-register transactions] a year” (Interview 254). Other local leaders and lawyers were aware of “a few” (Interviews 203, 204, 207, 214).

A lawyer told of cases where a buyer attempted to register after an off-register transaction (Interview 204). This is supported by evidence of three tripod transfers (not in Project 257) in the deeds registry records. These transfers occur when A sells off-register to B who then sells to C. C then wants to register the transaction. Two consecutive transfers occur, one to legalise the off-register transaction from A to B and a second to transfer to the new owner from B to C, thus repairing the chain of title.

3.3.4 Discussion of Results

The residents in Project 257 feel secure in their tenure, despite that 58% of the properties had not been transferred. Although only a portion of residents mentioned the title deed as proof of ownership, it is clear that residents believe that using the legal system would be the best strategy to defend their rights, and that they would approach the municipality if they had a problem. They did not speak about organisations or individuals that would serve as an alternative option. An important characteristic of Project 257 is the residents' aversion to sales. Those interviewed preferred to let their houses rather than sell if they had to move away for work or family reasons. Although what may be a small number of off-register transactions have occurred in other housing projects in this municipality, no evidence of this occurring or an intention to transact off-register emerged in Project 257.

4 ANALYSIS

Analysing the above, whereas the detailed context of the three cases has been excluded from this discussion, a number of common patterns of behaviour emerge as do a number of conditions that appear to give effect to these patterns. The enabling conditions include that the people who were interviewed in the door to door studies had experience, in many cases a lifetime experience, with using official land administration structures and systems, most of them as tenants. Plus they had had exposure to the legal system. In spite of a number of participants having been forcibly removed and evicted during the apartheid era, they tended to trust official land administration institutions sufficiently to take possible problems to them or to seek advice from officials or lawyers. They mentioned no institutions other than official ones. Perceptions of corruption, patronage and unfairness in handling housing allocations did not emerge as a significant element in any of the case studies. There

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were also no community based structures that offered alternative strategies for land transaction. A way of transacting off-register that has been observed in other housing projects is where the two parties to the transaction sign an affidavit at a police station and the seller would then hand over the title to the buyer. None of the door-to-door participants mentioned this.

In two of the cases the title deeds had been transferred soon after the houses were occupied. There was a high level of awareness of the importance of the title deed and other documentary evidence to prove ownership, and high levels of knowledge that lawyers should be used when entering into land transactions. Many participants had had some interaction with lawyers.

Many participants were aware of the pitfalls of off-register transactions, and in Phase II there was an iconic case which served to inform both buyers and sellers. In two of the case studies, there were allegations that gangs, drug dealers and other criminal elements were involved in acquiring houses off-register. We can speculate that in stable communities such as these, where there are low levels of conflict, there might well be a push back against off-register sales if they are perceived to lead to criminal elements moving into the neighbourhood.

5 CONCLUSIONS

The study is arguably one of the few “good news” studies about state-subsidised housing and off-register sales that have been reported in South Africa. This is instructive as a number of problem cases have been reported and the authors have studied a small number of these too. It is important to analyse cases where particular land administration strategies have failed but also identify cases where a particular strategy works, such as registering state-subsidised houses in individual ownership, and the conditions that are present when that strategy works.

In these three cases the regularisation of alternative tenure and land administration systems is not supported by concrete evidence of a significant number of off-register transactions or by landholders expressing a desire for an alternative to using a lawyer and the registration system. None of the interviewees suggested that off-register transactions are preferable to land registration. If forms of private conveyancing systems or alternative record systems are introduced, one question is what type of disruption they may cause in projects such as these where the registration system is providing the desired tenure security and how this may impact property ownership system in general.

These three cases support strategy 3 in section 1; that is, the hands-on management of housing estates for a number of years after occupation. In the three cases the management was partly intrinsic to the projects, for example the formal education by lawyers and officials, knowledge from previous experience, knowledge from problem cases that warn against off-register transactions. These were also stable communities and there did not appear to be much evidence of circular migration between the study and a rural community where customary and extended family interests in a house may

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be an influence. However, the unusual cases, such as The Yellow House in Phase II, indicate that current practices are not sufficiently far-reaching. Additional support is required in accessing legal assistance and financing the defence of tenure security. State-subsidised housing programmes are pro-poor housing strategies and handing over a house and registering it without further support is poor strategy when considered in the context of the purposes of the state-subsidised housing programme. What is referred to as management-by-walking-about in the communities may reduce the risks of off-register transactions.

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