

# **A Historical Post-Formalisation Comparison of Two Settlements in South Africa**

**Lani ROUX & Michael BARRY, Canada**

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## **SUMMARY:**

There is a continuing debate in development and academic circles regarding the viability of formalisation as a means of ensuring security of tenure and thus improving the lives of the urban poor. This paper compares two titling projects in South Africa: Fingo Village, titled in 1857 in Grahamstown in the Eastern Cape and Phumla<sup>1</sup>, a more recent project in Seedorp in the Western Cape.

Manona's (1987) and Kingwill's (2008) work are used to construct a narrative history of Fingo Village. The same is done with Phumla using data collected during fieldwork in 2009. A longitudinal comparison is thus possible between Phumla and Fingo Village in terms of background, initial formalisation, subsequent changes and current situation. There are of course major differences in that these are two separate communities with very different backgrounds and life experiences.

Despite the geographic and historical differences, some similar behavioural patterns emerge in Fingo Village and Phumla. These behavioural patterns result in land records that do not accurately reflect the situation on the ground. Kingwill (2008) noted that inheritance, mainly customary, but influenced by western practices, affects the currency of the registration system. Most of the titles in Phumla were transferred in the early 2000's, but there is already a mismatch between some of the land records and the owners. Transfer through inheritance without registration is identified as one mechanism that causes the mismatch. Additionally interviews with current registered owners indicate that similar hybrid practices, as identified by Kingwill, are likely to be followed. It follows that by considering the present situation in Fingo Village, and the emerging indicators in Phumla, that *ceteris paribus* a similar situation may develop in Phumla to that in Fingo village.

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## 1. INTRODUCTION

South Africa is a good example of a country that embarked on large-scale social housing programmes, which in effect were land titling programmes (Payne *et al.* 2008). In South Africa, but also in other countries, researchers have reported that many land records are not current in newly formalised urban areas (Payne *et al.* 2008; Barnes & Griffith-Charles 2007; Deininger 2003). A variety of reasons for this have been identified, such as initial mistakes in titling, and off-register transfers (sales and inheritance). With regards to off-register transfers, when a transfer occurs but the name on the title as well as in the land records remains that of the previous owner because the transaction was not registered, a transmuted title results. In our definition, the title does not lapse or become defunct. It can be termed a transmuted title, because firstly, the nature of the title changes (*mutare*), for example from documentary evidence of a registered transaction to a symbolic artefact embodying ownership and secondly, the title crosses (*trans*) from one system, the land registration system, by means of a transaction to another system, e.g. an unofficial community system. The title may also fulfil dual roles, where it functions in both systems, e.g. the transmuted title represents ownership to the holder, but the previous owner is still recognised as such by the official systems (land registration, statute law).

Even though a transmuted title may remain useful to a *de facto* owner, incorrect land records may have significant land management implications. Urban planning and service provision, for example, are impacted because the land registration system is an important data source for planning, land taxation, service supply and billing. More importantly, transmuted titles holders may be evicted by the previous owner in whose name the property remained registered. In such a case, the holder of a transmuted title has either no legal recourse or the legal costs in claiming an equitable right on the land may be prohibitive. There are cases where appeals can be made to social structures to resolve disputes. However these structures are not universally available or accessible and they may be biased to powerful constituencies in a community to whom they owe their positions.

This paper focuses on inheritance as one of the sources of transmuted titles. Kingwell's (2008) case study of Fingo Village in Grahamstown supports the notion that customary practices may influence the manner in which property rights are inherited to the extent that they override legal systems of inheritance (Kingwell 2008). At first registration, the owner has dominium over the property as associated with western forms of tenure. However when the property passes to the next generation it becomes family property, subject to family obligations (Kingwell 2008). The family does not register the title to the inherited property and so it becomes a dead man's title (Okoth-Ogendo cited by Pienaar 2007); it remains in the name of the deceased.

Fingo Village differs significantly from Phumla, a neighbourhood of Seedorp. Data shows, however, that there may be similarities in the behaviour of residents when property is inherited. The data on Phumla was collected as part of a doctoral research project studying why new owners in government subsidised housing projects in the Western Cape Province of South Africa decide to use or not use the land registration system when conducting land transactions. As part of the project 35 in-depth qualitative interviews were conducted with residents of Phumla. In addition municipal officials, lawyers, land professionals, community leaders, politicians and community workers were interviewed.

For ethical reasons, participants' names quoted or cited in this paper are pseudonyms. Land issues are sensitive and participants may be vulnerable. Seedorp and Phumla are also pseudonyms and the geographic positions of these settlements are not revealed, suffice to say that they are close to Cape Town, in the Western Cape province.



**Figure 1: Geographic positions of Grahamstown (Fingo Village) and Cape Town (close to Seedorp and Phumla) (Adapted from Barry 1999)**

In the early stages of the doctoral research project, inheritance practices emerged as a distinct factor. In some households, it appears that there is a distinction between behaviour in relation to the land registration system when land is bought or sold and when it is inherited.

This paper compares the data collected in Phumla with Kingwell's and Manona's findings in Fingo Village. We argue that despite differences between the two cases, indications are that the future tenure situation in Phumla may turn out similar to that of Fingo Village.

## 2. FINGO VILLAGE: HISTORY

Fingo Village is a residential area in Grahamstown in the Eastern Cape of South Africa and well-known as being one of the few settlements where black African people retained ownership for more than a 150 years. It was formally surveyed in 1855 and 320 freehold titles were allocated in 1857 (Kingwell 2008; Manona 1987). The new owners, reportedly all Mfengu, were granted ownership titles as a reward for service to the colonial government during the War of the Axe<sup>2</sup> (Manona 1987). During the late 1800s the population continued to grow as refugees from various local wars migrated to Grahamstown. Further increase was due to the inflow of labour migrants to Grahamstown around the turn of the century and as a result pressure on housing increased (Manona 1987).

The Mfengu identity impacts on the situation, because the original residents gained their land rights as Mfengu and continued to defend these rights using this designation. The identity of the Mfengu is problematic and there are arguments amongst historians as to their origins. Stapleton (1996; 1995) contends that Mfengu is a pseudo-ethnicity created by missionaries and colonial government for labour and control. He expands on Webster's (1995) argument that the colonial government labelled groups of Xhosa prisoners and collaborators as Fingo (the anglicised form of Mfengu). This was done to hide the true nature of the Cape-Xhosa War of 1853 - colonial land grabbing and labour seizure in the neighbouring Xhosa chiefdoms - from the British government (Webster 1995). Others contend that the Mfengu are a distinct tribe displaced by expansionist warfare (*Mfecane*<sup>3</sup>) of the Zulu kingdom in the 1820s in the now KwaZulu-Natal area. These refugees fled southwards and found a new home amongst the Xhosa-speaking tribes and the white colonists in the now Eastern Cape (van Warmelo 1974).

For the purposes of this discussion, it is assumed that Mfengu beliefs and practices surrounding land resemble that of the Xhosa people closely, if not completely. This assumption is supported by the close association between Xhosa and Mfengu over hundreds of years. Many families have members of both identities and isiXhosa is the common language. Also, the mere fact that the identity of the Mfengu is debated shows that there is no definite distinction from the Xhosa nation. Another land related aspect is that the use of the Mfengu identity has proved to be a unifying banner for the inhabitants of Fingo Village when they have perceived to be threatened by the authorities and is still used today in various interactions with the Grahamstown municipality (Stapleton 1995).

The housing, health and infrastructure situation in Fingo Village deteriorated over the years and in 1941 it was reported that up to 12-15 people lived on a single residential site (Manona 1987). The dismal conditions, and difficulties experienced by the municipality in managing the black townships, resulted in a recommendation by the Grahamstown Town Clerk and Treasurer to the then Native Affairs Department that all property in Fingo Village be

expropriated and replaced by restricted municipal housing (Manona 1987). The reasons cited by the Town Clerk as motivation were overcrowding, unemployment, failure to pay rates and the municipality's inability to administer the township (Manona 1987). This first significant threat to the owners of freehold property in Fingo Village did not go unchallenged. A counter-proposal was submitted in 1941 by a black oppositional group, led by Dr R Bokwe, Messrs T Nkosinkulu and B Foley, to the Native Affairs Commission and as a result the Town Clerk's proposal failed to gain popular support and was rejected (Manona 1987).

The second significant threat was from the apartheid government's Group Areas Board. This board was responsible for demarcating areas according to the groups designated by the Group Areas Act of 1954. In 1957, Fingo Village was designated as a "coloured" area under the Group Areas Act 41 of 1950 (replaced by Act 77 of 1957) and in 1970 proclaimed as such (Manona 1987; Grocott's Mail 1970). According to the definitions of this Act, black African people were not included in the "coloured group". This effectively meant that all the black inhabitants had to move to a black group area, Committee's Drift, 40 kilometres from Grahamstown, just outside the border of the Ciskei (a Bantustan or homeland at that stage).

According to a Surplus People's Project report, the proclamation of the Group Areas Board in 1970 was the culmination of persistent attempts by the government from 1957 onwards to move people from Fingo Village. These ranged from rezoning plans to blatant threats to clear Fingo Village. However each of these attempts failed due to protests by the residents (Surplus Peoples Project 1983). There were also objections from the Ciskei Cabinet about the use of Committee's Drift as a resettlement area (Daily Dispatch 1977). Finally, in 1980 the government announced that Fingo Village could remain a black group area, but that ownership would be replaced by 99-year leasehold in terms of the Black Administration Act 38 of 1927 (SASPU National 1980; Manona 1987). A statement by a community leader succinctly sums up the feelings of the community: "The 99-year leasehold offered in place of freehold is robbing the people of their title deeds" (SASPU National 1980). However, we could not find evidence showing that the government followed through and replaced allodial ownership with 99-year leasehold in Fingo Village.

To understand the above it is necessary to elaborate on the political climate of the time. It is important to remember that Fingo Village is one of the few areas in South Africa where black people had allodial title over land during the apartheid era and managed to retain it (Kingwell 2008; Manona 1987). Considered against the backdrop of reams of legislation that attempted to prevent black Africans from owning land in designated white areas, the government's attempts to degrade the land rights in Fingo Village were in line with apartheid policy. However, at the end of B.J. Vorster's term as Prime Minister in 1978, "there were signs that the failed policy of apartheid was beginning to be questioned" (Carey Miller & Pope 2000, p.38). Also during the early stages of P W Botha's administration (1978-1989) various court cases decreased the power of the executive over black rights to land in white group areas. The realisation by the Nationalist government that segregationist policies and influx control was unworkable led to the reform of legislation that excluded black Africans from holding permanent land rights outside the homelands (Bantustans) (Liebenberg 1993). However these and other political reforms by the government in the 1980s were insufficient to stem the

escalation of revolutionary activity. Liebenberg (1993, p.499) cites “the economic recession, the unpopularity of the black town councils, the ANC’s intention to make the country ungovernable, and dissatisfaction with the (new) constitution of 1983” as reasons for the volatile and violent conditions of the period. Viewed in context of this history, we speculate that the threat of the government to degrade the rights of Fingo Village title holders became very difficult to carry out.

Therefore, there is a suggestion that the community of Fingo Village was able to defend their ownership successfully in spite of numerous official threats, partly because they had registered titles (despite the fact that these were not current) and partly because of their identity as Mfengu.

### 3. LAND RECORDS IN FINGO VILLAGE

In a study of Fingo Village, Manona (1987) identifies the “lack of easy means for reregistering title deeds” as an administrative constraint and found cases of titles deeds still in the name of a person who died many years ago (Manona 1987, p.575). He also describes the distinction between land that is bought and inherited land (*umhlaba welifa*). The predominant custom in Fingo Village is that an heir is not allowed to sell inherited land and siblings have a right to live on it. The land thus becomes family land. Manona (1987) states, that due to the scarcity of land, family tenure provides stability in the extended family since it ensures a secure home for family members in need. Family tenure also results when the owner died intestate and the family reaches an impasse; in the 1980s the land could not be subdivided legally and the children could not come to agreement on who buys whose share (Manona 1987). Manona (1987) speculates that the serious family disputes over inherited land, of which he found a great deal of evidence, may be alleviated by introducing an easy means of reregistering land.

Kingwell’s (2008) research in Fingo Village shows that since the 1920s the government was aware of the mismatch between official land records and owners because of off-register transfers. Specific Fingo Village commissions were formed in the 1940s, 1960s and 1980s in terms of the Black Administration Act 38 of 1927. The commissions were empowered to investigate and re-adjudicate dead man’s titles and award ownership to putative rights holders, followed by the issue of Substituted Deeds of Grant by the registrar of deeds. Kingwell (2008) observes that the years the commissions sat are consistent with generational cycles. She also found that in most of the cases she investigated, the commissions’ awards could be identified. Despite the relative frequency of the commissions in the past, only one third of the participants in the study produced a title (mostly not current) as evidence of ownership. Some participants still use correspondence relating to the award, as proof of present ownership.

Other records that are used by residents to confirm ownership include municipal accounts for services and dead man’s titles (Kingwell 2008). Most of the families interviewed inherited property without registering transfers and in only four of the 32 cases did owners have “uncontested or unproblematic ownership combined with a current title” (Kingwell 2008, p.189).

Although the titles are not current, they remain a symbol of property ownership, and according to Kingwell (2008, p.193), titles become a “fulcrum around which family ownership turns”. The common belief amongst title-holders in Fingo Village is that the physical form of the title (i.e. the paper document) conveys ownership. She ascribes this to a poor understanding of conveyancing by owners, but does not explain why title holders, after years of using their titles to defend their ownership as well as exposure to three special commissions to adjudicate and adjust titles, do not understand the process and legal requirement to register transfers of land rights.

Despite the fact that land records in Fingo Village are not current, owners have not felt threatened because of social acknowledgement of ownership. However, some residents wish to sell land and are unable to do so because they do not have a current title. Residents also need a current title to access municipal services (although the municipality has modified policy to be more flexible in this regard) and government subsidies. These issues have made the possession of a current title more pertinent (Kingwell 2008).

Another factor that complicates the inheritance of land is that in most cases the participants were uncomfortable with the idea of a will, and in many cases it is regarded as the responsibility of the living to resolve succession (Kingwell 2008).

In Fingo Village the transfer of property to the next generation tends to result in family property. Family rights in the property are maintained by active participation in family matters as well as ceremonies, assisting in maintaining the physical home and caring for the young and aged of the family (Kingwell 2008). Kingwell (2008, p.198) states that the “norm is that all family members have rights of co-ownership congruent with the degree to which physical and supportive links with the property have been maintained”. Family property is also regarded as inalienable. Although a family usually assigns one member as responsible for the property, this person may only manage the property on behalf and for the benefit of the family (Kingwell 2008).

An indication of change in practices is the identification of the person who is assigned as the responsible person or custodian. In traditional Xhosa customary tenure systems the role of custodian is assigned to the head of the family, usually the eldest male. However in Fingo Village most of the appointed custodians are female, perhaps reflecting a belief that women are more reliable (Kingwell 2008). Although Kingwell (2008) also states that male power over property is still significant.

From a different perspective, according to municipal officials and lawyers the reasons for residents not using legal procedures are “ignorance, poverty, lack of education or indiscipline” (Kingwell 2008, p.191).

Fingo Village represents a formalised settlement where the land registration system is not consistently used in a conventional way. Titles are used as symbolic instruments within a system of evolving customary practices. The use of a component of one system - the title as

symbol - in combination with components of another – e.g. local social recognition of ownership and family tenure - results in a hybrid form of ownership (Kingwell 2008). In addition, within Fingo Village, two land tenure systems operate in parallel, the official land registration system and the local modified customary system.

#### **4. PHUMLA: HISTORY**

Phumla is a neighbourhood of Seedorp and is geographically close to Cape Town. Phumla's history is very different to Fingo Village. Seedorp's black inhabitants did not have allodial ownership until the early 1990s. Phumla was established in 1963 and all black inhabitants of the surrounding area were moved there forcibly in 1965 in terms of the Group Areas Act of 1954<sup>4</sup> (Benson, interviewed 13 June 2009; Seedorp News 29 November 1963, 27 November 1965). All inhabitants rented from the municipality or the Bantu Administration Board, until 1988 when the first houses were sold under 99-year leasehold titles (Benson, interviewed 13 June 2009; Miller & Pope 2000; Seedorp News 15-21 April 1988).

The settlement population changed dramatically over the years. According to the 1951 population census there were 950 black people in the area (Seedorp News 12 January 1957). In the early to mid-eighties the population stabilised around 1500. After the repeal of the influx control and pass laws (abolished in 1986), the population grew to 2300 by 1988 (Seedorp News 10 August 1983, 6 March 1985, 9 April 1986, 8 July 1988). The mid-1990s saw the population figures starting to increase dramatically, 4883 in 1996 and 7 000 in 1998 (Seedorp News 30 January 1998, 9 April 1998). The 2000s saw a continuation of this pattern with an estimated 15 000 residents in Phumla in 2003, increasing to 20 000 in 2005 and in 2007 the number stood at 30 000 (Seedorp News 17 January 2003, 15 April 2005, 13 April 2007).

Most of the new arrivals moved into, and continue to move into, informal settlements that developed between areas of formal housing. Data from StatsSA show that in 2001, approximately 75% of the population was under 35. The youthfulness and the rapid growth of the population indicate that the majority of residents in Phumla do not form part of a long established community with strong community ties. Most of the participants interviewed in Phumla stated that they migrated from the Eastern Cape to find work. This is a general trend in the Western Cape; many people migrate to towns and cities in the Western Cape, because of the lack of employment in the Eastern Cape. The participants who decided to move to Phumla for work usually have a family member in the area. The absence of strong community ties in Phumla is thus replaced by extended family networks.

In the 1950s the community consisted of a majority of Xhosa people with a powerful minority group of Sothos and small groups or individuals from other areas in South Africa and the rest of Africa. In the last few years more foreign nationals from other African countries have moved into the settlement.

Throughout the existence of the settlement there were various programmes that provided housing, these include government initiatives (pre- and post-1994), development trusts and

private employers. The first project incorporating houses on fully serviced sites built with funding from the Reconstruction and Development Programme (RDP) of the government was completed in 2001. Approximately 1500 houses were built and individual ownership was granted to beneficiaries. This project is the case study for the larger research project.

## 5. LAND RECORDS IN PHUMLA

The Seedorp municipality became increasingly concerned about the mismatch between the registered owners and actual occupiers. According to standard practices, municipal accounts were sent to the registered owner of a property. However, council documents show that the municipality soon became aware of the relation between outstanding debts and the mismatch between *de facto* and *de jure* owners due to off-register transfers (Seedorp Council minutes 28 January 2003). It is likely that the municipality noted this relation while attempting to collect debts. In a later report it is stated that off-register owners refuse to pay outstanding service accounts because they were afraid that the previous owner or his or her family might return and claim the house (Seedorp Council minutes 19 October 2004). Although off-register transfer through inheritance does not automatically result in the non-payment of services, in many cases family members continue to pay the account (Seedorp Municipal Official pers. com. 8 July 2008).

According to municipal officials and conveyancers working in the area the main reasons for off-register transactions are cost and lack of education.

In 2008, the municipality announced a pilot project in association with a consultant, to use the Land Titles Adjustment Act 111 of 1993, to adjust the *de jure* situation to mirror the *de facto* one (Seedorp News, 13 June 2008). The Land Titles Adjustment Act 111 of 1993 procedures are similar to those of the commissions set up under the Black Administration Act 38 of 1927 in Fingo Village. The guidelines for adjudicating cases are very general. The commissioner is required by the Land Titles Adjustment Act to investigate claims and adjudicate them according to his or her discretion (RSA 1993). This project is ongoing and so far no titles have been “adjusted” or transferred.

In the survey by the municipality for the Land Titles Adjustment Pilot Project, different variations linked to estates can be identified:

- Occupier (a family member) inherited property, no registered transfer occurred
- Adult occupier (a family member) becomes guardian of children of deceased, no registered transfer
- Property claimed by family with no beneficiaries identified by deceased
- Property sold off-register by family or family member of deceased

In qualitative interviews – conducted as part of the PhD research project - with owners that bought RDP houses, off-register and registered transfers, more than half indicated emphatically that they will never sell their houses, because their children need a place to stay or their family members can use the house (see figure 2). Other participants, with some prompting from the interviewer, could foresee circumstances that may cause them to sell, for

example having to move for employment, but were still reluctant to contemplate the idea. There may be two reasons for owners insisting that they are securing the land for their children: one, as per Manona (1987), the scarcity of land and housing is a motivator in securing land, or two, inherited land is believed to be family land.

**Unemployed, male, 36:** No, no, no, because for my child[ren], they won't have a place to stay.

**Shop owner, male, 32:** My daughter or my daughter's son, they have to stay here. It is difficult to find a house.

**Health professional, female, 40:** I will never ever sell the house.

**Married couple, 26 and 31:** No I don't think it is a good idea, because we've got children, so when we're old and passed away, they must have a home.

**Hair stylist, female, 28:** ...so if I want to move they [family] can stay here, I don't think I can sell the house ever, I don't think it is a good idea.

### **Figure 2: Would you sell your house?**

Interviews with other residents revealed the relationship between property and family. Nomble (interviewed 18 June 2009) is living in her sister's RDP house and is only responsible for paying the municipal accounts. Her sister moved in with her husband who also has a RDP house in Phumla. When family visits they stay with Nomble. If a family member wants to move in on a more permanent basis, they first need to ask Nomble's sister and then her, especially because she is responsible for the municipal account. Nomble referred to the house as a family house.

Another example of the extended family making decisions about land is the case of a participant who bought a house off-register from an uncle. The niece stated that she feels secure in her tenure, because "it was discussed within the family" (Vela, interviewed 1 August 2008).

Points that can be drawn from the Phumla case are, from the residents' perspective: it is very important for owners to secure a house for their children; property may become family property when the owner dies, but also in cases where the owner secures another house; family management of property can result in a perception of security of tenure, even when it is a sale internal to the family.

## 6. DISCUSSION

Fingo Village and Phumla are different in terms of the time the settlements have existed and the manner in which they have evolved. Fingo Village was established and formalised in 1857, whereas Phumla was established in 1963 and the case study project area surveyed, developed and registered in 2001. Fingo Village is geographically close to the traditional areas of the Eastern Cape and Phumla is near Cape Town. Although both Fingo Village and Phumla can be categorised as mainly Xhosa speaking, community identity in Fingo Village is much stronger compared to Phumla, where titling programme beneficiaries were mainly informal settlers who arrived in Seedorp recently. Both settlements show a mismatch between *de facto* and *de jure* ownership. This mismatch has created the same administration and management problems for the municipalities. Also, the security of tenure of residents who hold transmuted titles in the settlements are precarious, they may be evicted by the state (e.g. by improper application of the Land Title Adjustment Act 111 of 1993), family members of the deceased or even other family members in cases of disputes internal to the family.

Interviews with residents in Phumla indicate that the transfer of property within the family, inheritance or sale, is managed and secured by the family. In addition, the insistence of owners that all their children will inherit may indicate a similar pattern to that in Fingo Village where transfers to the second generation results in family tenure.

The transmuted titles in both settlements are mainly a result of off-register inheritance and sales of land. According to Kingwell's (2008) study, transfers were not registered in Fingo Village for the following reasons. Unfamiliarity with the conveyancing system has led to the belief that ownership may be transferred by handing the title to the buyer (although we can speculate that is may be due more to a disregard of the registration system). The social recognition of ownership has conferred security of tenure, so no other ways of securing land has been necessary. Manona highlighted the difficulty in reregistering land as an administrative constraint. Both Manona and Kingwell described the predominance of family tenure which, because of its complexity, is difficult to include in the current land registration system. We note that one way of doing this is by registering caveats on the title (Barry 1998).

In contrast to results from interviews with residents themselves, municipal officials and lawyers in Grahamstown (Fingo Village) cite poverty and lack of education as the reasons why transactions are not registered (Kingwell 2008). The cost of registration and lack of education are also identified by municipal officials and lawyers in Seedorp as reasons for off-register transfers. These may well be valid reasons in some instances, but if family ownership is a prevailing belief system then there is little incentive to register successive transfers within the family.

The following are some of the responses to off-register transactions suggested or implemented by municipalities, conveyancers and academics:

- The Land Titles Adjustment Act 111 of 1993: Although the application of this Act will remedy the situation in the short term, it is expensive and difficult to apply. In

Fingo Village a similar legal mechanism was used three times and did not resolve the mismatch between *de facto* and *de jure* land tenure on a permanent basis.

- Family title strategies: In the present legal system a trust could be used. This is also expensive to create and may reduce the flexibility of the current *de facto* family tenure form.
- Land management at a local level as suggested by Davies and Fourie (1998), combined with tools such as Talking Titler (Muhsen & Barry 2008) and the Social Tenure Domain model (Lemmen *et al.* 2007; Augustinus *et al.* 2006), with the focus on the relationships between people. To achieve this on a technical level, capacity and skills-training are required.

In the case of family tenure, Kingwell (2008) suggested a procedure that may retain the flexibility of this tenure form, while securing the property. Historically in cases of intestate estates, the Master of the Supreme Court or the magistrate could appoint a family member as the administrator and distributor of the deceased's estate (Kingwell 2008). This appointment occurred under the now abolished Black Administration Act and could be done in terms of customary law. The appointee was issued a Certificate of Appointment, which in addition to conveying administrative and distribution powers also made the appointee responsible for paying debts. This process provides an alternative to registration that is simple and cheap (Kingwell 2008). However, this system is regarded as unconstitutional because of racial and gender discrimination; the Act was part of the segregationist body of laws and customary law usually favours men. (Kingwell (2008) did find that in recent years it was not unusual for the court, in consultation with the family, to appoint women as family representatives).

## 7. CONCLUSIONS

Despite the significant differences between Fingo Village and Phumla, indications are that similar patterns of behaviour in relation to land tenure are developing. If this is a general pattern of behaviour in RDP housing projects, this may become a significant planning and administrative problem for local and national government. More importantly, the residents' security of tenure in Fingo Village and Phumla are threatened. A major risk for families is that a dominant family member may seize control of the family home and extinguish the interests of less powerful family members.

Additional questions for future research are: how are the views of owners influenced by beliefs about the future, for example, their views on the availability of housing stock and access to housing; how is the structure of families changing and how does this affect beliefs about land; with an increase in housing stock will there be a greater tendency towards individualisation.

The challenge for researchers is to understand the land tenure practices of residents, acknowledge that these are not static, nor homogeneous, and find new ways of supporting security of tenure through social, technical and legal tools.

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## REFERENCES

- Augustinus, C, Lemmen, C & van Oosterom, P, 2006 Social Tenure Domain Model Requirements from the Perspective of Pro-Poor Land Management. In *Proceedings 5th FIG Regional Conference in Accra, Ghana*.
- Barnes, G & Griffith-Charles, C, 2007 Assessing the formal land market and deformalization of property in St. Lucia. *Land Use Policy*, 24(2), 494-501.
- Barry, M B, 1998 *Family Title/Ownership: International Models Investigation*, Report and Author's Notes to the Family Titles Working Group, Department of Land Affairs, Pretoria.
- Barry, M B, 1999 *Evaluating Cadastral Systems in Periods of Uncertainty: A Study of Cape Town's Xhosa-speaking Communities*. PhD thesis. University of Natal, Durban.
- Bradford, H, 2008 Akukho Ntaka Inokubhabha Ngephiko Elinye (No Bird Can Fly on One Wing): The 'Cattle-Killing Delusion' and Black Intellectuals, c1840–1910. *African Studies*, 67(2), 209.
- Carey Miller, D & Pope, A, 2000 *Land title in South Africa*, Kenwyn, South Africa: Juta.
- Daily Dispatch, 1977 Committees Drift go-ahead. *Daily Dispatch*.
- Davies, C & Fourie, C, 1998 A Land Management Approach for Informal Settlement in South Africa. *South African Journal of Surveying and Mapping*, 24(5), 239-246.
- Deininger, K, 2003 *Land Policies for Growth and Poverty Reduction*, World Bank.
- Grocott's Mail, 1970 Group Areas Proclaimed: Fingo Village now for Coloureds. *Grocott's Mail*.
- Kingwell, R, 2008 Custom-building freehold title: the Impact of Family Values on historical Ownership in the Eastern Cape. In A. Claassens & B. Cousins, eds. *Land, Power and Custom, Controversies Generated by South Africa's Communal Land Rights Act*. Cape Town: UCT press.
- Lemmen, C, Augustinus, C, van Oosterom, P & van der Molen, P, 2007 The social tenure domain model—design of a first draft model. In *Proceedings XXX FIG General Assembly and Working Week, Strategic Integration of Surveying Services in Hong Kong, China*.

Liebenberg, B, 1993 Part 5: 1996-1991. In B. Liebenberg & S. Spies, eds. *South Africa in the 20th Century*. Pretoria, South Africa: J L van Schalk.

Manona, C, 1987 Land Tenure in an Urban Area. *Development Southern Africa*, 4(3), 569-581.

Muhsen, A R & Barry, M B, 2008 Technical Challenges in Developing Flexible Land Records Software. *Surveying and Land Information Science*, 68(3), 171–181.

Payne, G, Durand-Lasserve, A & Rakodi, C, 2008 *Social and Economic Impacts of Land Titling Programmes in Urban and Peri-Urban Areas: International Experience and Case Studies of Senegal and South Africa*, Oslo and Stockholm: SIDA and Norwegian Ministry of Foreign Affairs.

Pienaar, K, 2007 *A Review of Institutional Arrangements for Land Reform, Community Land Hold and Land Management*, South Africa: Legal Resources Centre.

RSA, 1993 Land Titles Adjustment Act 111 of 1993.

SASPU National, 1980 Fingo reprieve sparks off row. *SASPU National*, 1(1).

Stapleton, T J, 1995 Oral Evidence in a Pseudo-Ethnicity: The Fingo Debate. *History in Africa*, 359–368.

Stapleton, T J, 1996 The Expansion of a Pseudo-Ethnicity in the Eastern Cape: Reconsidering the Fingo "Exodus" of 1865. *International Journal of African Historical Studies*, 233–250.

Surplus Peoples Project, 1983 *Grahamstown - Fingo Village, Coloureds & Indians*.

Thompson, L, 1990 *A History of South Africa*, New Haven: Yale University Press.

van Warmelo, N, 1974 The Classification of Cultural Groups. In W. Hammond-Tooke, ed. *The Bantu Speaking People of Southern Africa*. London: Routledge and Kegan.

Webster, A, 1995 Unmasking the Fingo: the war of 1835 revisited. In C. Hamilton, ed. *The Mfecane Aftermath: Reconstructive Debates in Southern African History*. Johannesburg: Witwatersrand University Press.

Seedorp News (all names have been changed according to the ethics review)

12 January 1957, *Magistrate's Statistics at Seedorp*, pg 1

29 November 1963, *Group Areas Act to apply to Seedorp*, pg. 3

27 November 1965, *Seedorp group areas hearing*, pg. 1

10 August 1983, *70 Blacks apply for rights*, pg 1

6 March 1985, *Township charges increase*, pg. 7

9 April 1986, *Licence rejected*, pg. 1

15-21 April 1988, *Photo: The mayor of Phumla handed over a deed of sale certificate*, pg. 2  
8 July 1988, *Beroep op sakemanne*, pg. 1  
30 January 1998, *Social problems loom in Seedorp*, pg. 2  
9 April 1998, *Dis ook Seedorp*, pg. 24  
17 January 2003, *Growth of Phumla*, pg. 11  
15 April 2005, *Phumla home to almost 20 000*, pg. 16  
13 April 2007, *Violent crime on the increase*, pg. 16  
13 June 2008, *Municipality breaks new ground*, pg 18

## **BIOGRAPHICAL NOTES**

Lani Roux is a graduate student in the Department of Geomatics Engineering at the University of Calgary. She has a B.Sc. in Surveying and a M.Sc. in Engineering (Geomatics) from the University of Cape Town (South Africa).

Michael Barry holds the John Holmlund Chair in Land Tenure and Cadastral Systems in the Geomatics Engineering Department at the University of Calgary, where he has been working since 2002. Prior to that he was at the University of Cape Town, South Africa. His research interests are analysing and developing systems to support land tenure security and land administration in general.

## CONTACTS

Ms. L.M. Roux  
Department of Geomatics Engineering  
University of Calgary  
2500 University Drive N.W., Calgary, Alberta, T2N 1N4  
CANADA  
Tel. +1 403 220 8038  
Fax. +1 403 284 1980  
lmroux(at)ucalgary.ca

Dr. M. Barry  
Department of Geomatics Engineering  
University of Calgary  
2500 University Drive N.W., Calgary, Alberta, T2N 1N4  
CANADA  
Tel. +1 403 220 5826  
Fax. +1 403 284 1980  
mbarry(at)ucalgary.ca  
Web site: [www.geomatics.ucalgary.ca](http://www.geomatics.ucalgary.ca)

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<sup>1</sup> In accordance with ethics review, names of participants may not be revealed nor the case study area identified. “Phumla” and “Seedorp” serve as pseudonyms.

<sup>2</sup> The War of the Axe also known as *Imfazwe ya-Manzi* (the War of Water) occurred between 1846 and 1947, and was one of nine wars of dispossession fought between the British and the amaXhosa over land in the now Eastern Cape. (Bradford 2008).

<sup>3</sup> The *mfecane* (Zulu), meaning a time of troubles, was a series of conflicts in the early 19<sup>th</sup> century which disrupted communities as far north as modern Malawi, Zambia and Tanzania (Thompson 1990).

<sup>4</sup> The long delay was due to the Seedorp municipality realising in 1963 that the resolution to request the Group Areas Board to have the Group Areas Act applied in the town was never implemented (Seedorp News, 29 November 1963).