



**LAND ADMINISTRATION EFFECTIVENESS IN STATE-SUBSIDISED HOUSING IN  
DU NOON, CAPE TOWN, SOUTH AFRICA**

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# Responsible Land Governance: Towards an Evidence Based Approach

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## Abstract

Du Noon is a Reconstruction and Development Programme (RDP) housing development in Cape Town, which was built in the 1990s. The RDP programme and subsequent state-subsidised housing programmes have delivered some 3.7 million housing opportunities, and it is one of the largest housing and land titling programmes ever undertaken. The study examined the effectiveness of land registration in state-subsidised housing developments, the involvement of community based organisations (CBOs) in land governance, the impacts of the behaviour of the officials and CBOs in the housing delivery process, and the consequences of relaxing building standards in pro-poor housing projects. The study builds on a number of case studies where official systems of land tenure administration function very well. In Du Noon this is not the case. Contributing factors may be that community based organisations have offered alternative strategies to transact in land, the relaxation of building standards has reduced the level of visible administration by street level bureaucrats, and entrepreneurs have bought houses for well below cost, demolished them and built blocks of flats. Ongoing visible administration by street level bureaucrats and a subsidised programme of title maintenance appear to be critical elements that are missing.

**Key Words:** off-register transactions, subsidised title maintenance, visible administration



## INTRODUCTION

Du Noon is a Reconstruction and Development Programme (RDP) housing project in Cape Town, South Africa, which was developed between 1996 and 2000. It was one of the early post-apartheid state-subsidised housing developments. The project built 2964 houses for informal settlement residents in the surrounding area. The vast majority of the housing beneficiaries were Xhosa-speakers who had migrated to Cape Town from the former Transkei and Ciskei homelands in Eastern Cape in the 1980s and 1990s.

The paper examines land tenure administration effectiveness in Du Noon. It is one of 12 case studies in the author's research programme which examines the effectiveness of land tenure administration and the strategies that landholders employ to defend their tenure and to effect transactions in land in the Western Cape province, South Africa. The research programme started with five studies in the second half of the 1990s when the state-subsidised housing programme under the broader Reconstruction and Development Programme (RDP) was getting underway. A further seven studies have been completed since 2010. The latter studies have examined: how well the registration system has worked in securing tenure; the crucial success factors for "making registration work – or not"; and the strategies that the original beneficiaries of these houses, their heirs, and buyers use to defend their tenure and to secure transactions in these houses. The Du Noon case is one of these seven follow up studies. In addition to tenure security matters, the case also informs a number of other land administration themes, including the unintended consequences of relaxing building regulations and the role of community based organisations in land tenure administration.

In the 1990s studies, people living in rental accommodation, backyard shacks, informal settlements and site-and-service schemes were granted a state-subsidised house. Ownership has been the preferred tenure form for the majority of these houses. From a functional perspective, the author's work and that of a number of others indicate that ownership was not a good choice of tenure type, at least not when the houses were first handed over. However, in the 1990s ownership was chosen firstly for political reasons as whites could own property under the apartheid system and black Africans could not - with a few exceptions, secondly most projects had to use ownership because of the way in which the subsidy system was set up, thirdly ownership would avoid the rent boycotts that characterised the anti-apartheid struggle in the 1980s – something the new government in the 1990s desperately need to avoid, and fourthly homeowners would be responsible for maintaining their houses rather than state being burdened with maintaining them (Royston and Ambert 2002, Charlton 2013).



The study provides a number of useful lessons for state-subsidised housing delivery relating to:

- land tenure administration during major change,
- the different strategies that people use to transact in land, and how off-register transactions can lead to dead end situations where buyers are at risk of losing their home and they cannot use the house as collateral for a loan,
- project and operations management, specifically the consequences of the state leaving some of its administrative duties to community based organisations (CBOS) without regularly monitoring the feasibility of the CBOs decisions,
- the possible unintended consequences of relaxing building regulations to expedite development in pro-poor housing projects,
- the challenges in addressing problems that were not addressed at the outset when the housing project started, and
- the importance of continual visible administration in housing projects where there is strong competition for houses and a portion of the beneficiaries have different goals to those of policy makers.

The paper proceeds by examining the literature and the findings from the author's previous work, and then the study methodology is presented. Following this is a brief history of the Du Noon, a section on removing building standards and building inspections from the project and the suburb, the impact of street committees in land tenure administration, and a brief description of xenophobic attacks against foreigners in Du Noon. Finally narratives from a selection of the interviews articulate some of the strategies that landholders use to defend their tenure and to effect transactions in land.

## **LITERATURE REVIEW**

In poverty alleviation contexts, from a land tenure administration challenge alone South Africa's state-subsidised housing programme is instructive due to the scale of the programme and the magnitude and complexity of addressing problems related to ownership and registration. It is one of the largest pro-poor housing programmes and land titling programmes ever undertaken.

Since 1994, when the first fully democratic government came into power and the RDP programme got underway, South Africa has delivered an estimated 2.5 million completed houses and provided a further



1.2 million housing opportunities (serviced sites) to the poor and low income households; a total of 3.7 opportunities, through ownership of state-subsidised houses and rental stock at a cost of ZAR125 billion ( $\pm 8$  billion \$US). There remains, however, an estimated demand of a further 2.1 million housing units due to unforeseen growth in the scale of poverty. Note that the RDP programme was replaced with the Breaking New Ground policy in 2004. However, the houses are frequently still referred to as RDP houses.

There have been a number of problems in the programme, however. There has been a lack of proper procurement management and poor project management in many projects; specifically it would appear that field inspections did not occur while houses were being constructed (field notes). This has resulted in poor quality houses, and a budget estimated at ZAR 58 billion is required to fix them; nearly half the total budget to build the houses in the first place (Tomlinson 2015). Corruption in the handing out of construction contracts and in allocation of houses has also been a problem (Charlton 2013, field notes). There is also a major backlog in transferring ownership to the beneficiaries. In 2014 only 1.43 million houses, slightly more than half of the 2.7 million RDP houses that had been built at the time, had been registered (Tissington et al 2013, Department of Human Settlements 2014). The 1.43 million houses constitute 24% of South Africa's 5.8 million registered residential properties (EAAB 2015). Eventually, if the housing backlog is addressed and some of the current housing opportunities are registered, the total number of RDP properties registered in ownership could number well over 4 million, possibly more than half the registered residential properties in the country. It makes sense to administer tenure in these properties correctly.

A significant number of state-subsidised houses have changed hands off-register (Charlton 2013, Roux 2013). Off-register transactions cloud the title as the registered owner is not the *de facto* owner. In South Africa, if title deeds are clouded by off-register transactions, the affected parcels are removed from the formal land market. Transfers cannot be registered and the parcels cannot be mortgaged. Cloudy titles also impact the efficiency of municipal service delivery, land taxation, a municipality's ability to expropriate land for public purposes as there is no owner with whom to negotiate, and for people wanting to improve their properties to get the necessary signatures from neighbouring owners for land use planning and building plan approvals. If a significant number of RDP housing titles are cloudy, then this has negative implications for the people living in these houses, for their families, for the residential property market in general, and for the efficient and orderly development of the built environment.

For a poor person, unless the process is subsidised, right now cleaning up a cloudy title is close to impossible. One option is a state subsidised programme under the Land Titles Adjustment Act 113 of 1993,



but this is slow, expensive and impractical (Kingwill 2013, field notes). The other is for a lawyer to try to unravel the chain of transactions. Under current legislation, unless the parties to a transaction can be found and they sign the necessary documents, the title cannot be cleaned up. Problems include finding the original beneficiaries and subsequent “owners”, and getting them to agree to sign. Some of them may have moved to their former homes some 1000 km away from their RDP house, and others may have died. Downie and a land titles commissioner observe that lawyers have to work *pro bono* to clean up titles as the poor cannot afford their fees. For lawyers, this is impractical given the estimated number of cloudy titles. Some off-register transactions violate the law and gender equity policies. Primarily for gender equity reasons, RDP houses tend to be registered in 50% undivided shares between spouses or co-habiting partners. In some cases the one partner has been known to sell the house, keep the proceeds, and move away, leaving the other partner landless (Downie 2011, Int #123-16).

## **FINDINGS FROM PREVIOUS WORK**

The reasons why people trade off register have been reported by a number of authors and synthesised in, among others, Marx (2007), Roux (2013), Charlton (2013), and Barry and Whittal (2016). They are not repeated here. In all the case studies that the author has been involved in, the title deed or some form of documentary evidence has been found to be extremely important to landholders as an artefact to defend their tenure. However, parties to a transaction may trade the property off-register, using a form of private conveyance, where they hand the title deed over to the seller and perhaps sign an affidavit in front of witnesses or at a police station. By law, this is a contract, not a transfer of real rights. Unfortunately, lawyers report that many of these contracts do not meet the requirements of the land registry, and so they cannot be used to effect transfer at a later date (Int #050, 075, 152, 123-16).

In the seven post-2010 cases, the research programme first sought to find “good news” cases, the bias being good news from the perspective of the current administration system, where the overwhelming majority of beneficiaries have used the registration system to effect transactions. Whereas a number of proposals exist for alternative methods of registration, it makes sense to first examine if what is currently on offer can be made to work. The simpler the administrative structures and process, the more likely the day to day operations will be effective. Thus, if landholder find it useful, then adapt the existing system to make it work. Four “good news” cases were found; the fourth one, Project 2 in Mbekweni, is particularly instructive in the context of Du Noon. Project 2, Mbekweni and Du Noon share the same beneficiaries’ demographic profile. There had been a great deal of conflict in both areas leading up to the delivery of houses. However,



unlike Du Noon, no concrete evidence of off-register transactions emerged in Mbekweni, albeit they may occur if the situation is not carefully managed. Some distinctive characteristics of the Mbekweni case are (Barry and Whittal 2016):

- The only strategy that residents advocated for effecting land transactions is the official route i.e. by registering the transaction.
- Once the houses had been built and beneficiaries had their title deeds registered, there were no street level organisations such as street committees, a relic from the apartheid struggle days where street committees played the role of an alternative governance and administration system to the apartheid government, and were then active in many areas thereafter. In other RDP housing projects, street committees and some NGO workers often advocated using off-register transactions, either by witnessing the transaction in front of the street committee or the two parties would sign an affidavit at the local police station or then hand over the case (author's field notes).
- The local housing office was easily accessible, as it is within walking distance of the housing project.
- There was a significant level of visible administration by street level bureaucrats. There was great deal of interaction between municipal officials and beneficiaries before they received their houses, and street level bureaucrats were literally active in the streets. Homeowners who did building alterations submitted building plans and it appears the building inspectors inspected them and did regular inspections. Building inspectors being active in the field was found to be an important variable in the five cases studied in the 1990s (Barry 1999).
- There was coordinated operations management and project management in the construction of the houses and maintaining the list of beneficiaries while conflict over housing construction waged. Registration occurred before the houses were built and each registered owner was given the house when it was completed; they could not sell off-register quickly before the house was built and then leave. The municipality would only hand over the house to the registered owner, i.e. the subsidised beneficiary and not someone to whom they had sold the house.

Thus the above provides some indication of the critical factors that should be present for a project to succeed. The discussion now moves on to Du Noon, where there have been major problems in tenure administration and a significant number of off-register sales.



## **METHODOLOGY**

Du Noon builds on the study of the Marconi Beam informal settlement upgrade between 1996 and 1998 and subsequent follow up study of Joe Slovo Park. Marconi Beam was a transit area for squatters to be located temporarily until formal housing could be created for them. Joe Slovo Park was a housing development which was meant to house all the people in the Marconi Beam transit area, but people kept flooding into the site and an overflow of some 350 families ended up being housed in Du Noon. Thus the Marconi Beam settlement politics impacted the Du Noon housing project. In the Marconi Beam case, a total of 64 people were interviewed individually or in groups. Some of these were interviewed again in Du Noon. Key informants included nine people in leadership positions in Marconi Beam. These included trustees of the Marconi Beam Development Trust (MBDT) who lived in Marconi Beam, street committee members and people who maintained a local record of transactions in the settlement. Street committees were the second formal tier of management and power structure within the Marconi Beam community. They were established as internal management institutions as a result of the South African National Civics Association becoming involved in the MBDT. People interviewed from outside the settlement included senior municipal officials and housing officials, advisors from the Development Action Group (DAG) an NGO who were involved in Marconi Beam, the building contractor employees (CONDEV), who also administered the housing allocation process and the project housing information system, land professionals and businessmen who were trustees of the Marconi Beam Development Trust (MBDT), and staff of the landowner, Rabie/Cavcor Developers (Barry 1999).

In Du Noon field work included 42 interviews and an examination of documentary evidence. Five key person interviews included two local politicians, both of whom were also considered to be residents, two senior housing officials and one community paper journalist who worked extensively in Du Noon. One of the housing officials had worked on Marconi Beam and the early stages of Du Noon, and had been interviewed as part of the Marconi Beam study. A total of 39 door-to-door interviews were conducted in Du Noon. These included the two local politicians and another 37 residents / family groups. Of these, 16 were original subsidy beneficiaries, one of whom had also inherited a house. Seven participants had purchased off-register, three of whom had swapped their RDP houses informally, two had purchased off-register and were in the process of registering, five had purchased and registered the transaction, one domestic worker lived in a house bought and registered by her employer, six were tenants and the status of two participants was uncertain. One subsidy beneficiary had bought the house next door for her mother



who had been given an RDP house elsewhere – the only sale of a RDP house and the purchase of another RDP house by an RDP beneficiary that the author has come across in 12 case studies.

The paper proceeds by examining the history of Du Noon, the local politics related to land tenure administration and then reports and analyses relevant parts of the interview data. There were three phases to the housing construction. The focus is on Phase II as all the houses were registered quickly. There is some discussion on Phase I which is instructive on the operations management and project management parts of a housing project, which continue to impact land tenure administration to the present day.

## **PREVIOUS STUDIES IN DU NOON**

A number of researchers have explored land tenure and the built environment in Du Noon. In the first known study, Boaden and Karam (2000) concluded that an informal market was developing, but it was too early in the project to make concrete findings. They would have examined Phase I, which was unregistered then and most of which remains unregistered. Jacobsen (2003) reported properties being sold for between R5000 and R8000, which was typical of the early days of RDP projects, and some of the registered transactions in the transfer records confirm this. She also reported entrepreneurs building up portfolios of properties in lieu of debt in Du Noon and Joe Slovo Park. The author confirmed this in Joe Slovo Park, and found similar patterns in Imizamo Yethu, in Hout Bay, Cape Town (Barry 1999, 2006). However, this did not emerge in the Du Noon interviews.

In 2008 an occupancy audit was conducted in Du Noon for the Provincial Department of Human Settlements by the Professional Mobile Mapping (PMM). A random survey of 505 houses revealed that 80 occupants (16%) bought houses off-register and 42 occupants (8%) inherited their properties. One occupant had bought a house and registered the sale.

McGaffin et al. (2014) examined 21 of the 28 double storey buildings in Du Noon that had been developed for rental purposes. Of the 21 properties, 67% had been bought, and only 2 of these were registered transactions. Five of the participants in this study claimed to have obtained building approval, which the discussion below suggests may not be true.

## **DU NOON DEMOGRAPHICS AND HISTORY**

Du Noon covers approximately 90 hectares on Cape Town's north western edge. It was an abandoned farm on the urban edge when housing development started in the 1990s. The population numbered 31,134 in the



2011 census (City of Cape Town 2011 Census Suburb Du Noon). Most of the residents are Xhosa speakers, many of whom have migrated to Cape Town from the Eastern Cape, as well as small groups of coloured people from the surrounding areas. A number of nationals from other African countries have moved into Du Noon.

Overall poverty in Du Noon is high. In spite of the nearby employment opportunities, unemployment is high at an estimated 37%. An estimated 77% of residents earn less than R3 200 per month ( $\pm$ \$240 US) or have no income at all (City of Cape Town 2013). Other than through formal employment, residents survive through subsistence retailing in the form of small home based shops, home based service industries such as hair dressing and motor repairs, and renting out accommodation and space for subsistence businesses in complete homes (i.e. in the lounge), backyard shacks and rooms in homes and hostel style blocks of flats.

In 1990 when major change got underway, Du Noon was administered by Milnerton Municipality. In the first post-apartheid restructuring of local government, Milnerton Municipality was absorbed into the Blaauwberg Municipality. It administered Du Noon from 1996 to 2000. Since September 2000, Du Noon has been administered by Subcouncil 1 Blaauwberg, which is one of 24 subcouncils in the City of Cape Town Metropolitan Municipality. Plans for the Du Noon site changed from what was initially envisaged as a site for shack dwellers to a formal housing development for the poor. In 1993, after public consultation and negotiations with various interest groups, including representatives from the Marconi Beam informal settlement, Du Noon was declared a Less Formal Township by the Cape Provincial Administration in terms of the Less Formal Township Establishment Act (LFTEA) 112 of 1991 (Die Burgher 1993). LFTEA, which was repealed in 2013, was intended to expedite housing developments for the poor. Of relevance to this discussion is LFTEA exempted a designated development from laws and regulations relating to building standards.

Du Noon ended up housing a number of beneficiaries from informal settlements in the area, one of which was Marconi Beam. The attempts to resettle the Marconi Beam residents in Du Noon as an early response to that “problem” was one cause of delays in Du Noon’s development. As observed in a number of other informal settlement upgrade projects, local politics in the Marconi Beam informal settlement, and the continual influx of people into that settlement contrary to what community leaders had agreed with authorities and the landowner, delayed the upgrade of that project and consequently the development of Du Noon. Some factions in Marconi Beam were in favour of the move to Du Noon, but others resisted it, and



the situation changed over time as the politics in the Marconi settlement evolved (Cape Metropolitan Council 1997, Barry 1999, 2006).

In 1994 subsidies for housing in Du Noon were obtained through the National Housing Subsidy Scheme, which provided for infrastructure and the 2,964 state-subsidised houses (Int #1001, Cape Metropolitan Council 1997). The houses in Du Noon were constructed in three phases. Phase I comprised 1000 houses, which were completed between 1996 and 2000 (Int #1001). The 1331 houses in Phase II were constructed between 1999 and 2000, and the 633 houses in Phase III were constructed between 1999 and 2001 (Power Construction N.D).

## **PHASE I HISTORY AND ANALYSIS**

The focus of the research was on Phase II rather than Phase I, as very little first registration has occurred in Phase I. The history of the Phase I development is important, however, as the outcomes of the housing delivery and registration of transfer processes yielded very different outcomes to Phases II and III. Thus there are important project design, programme management and operations management lessons to be gained from Phase I.

In Phase I, the 1000 houses were allocated to families drawn from a number of informal settlements. The municipality acted as the developer. Paul Robinson and Associates managed the housing construction project in Phase I. A steering committee was established with representatives from interested parties, included representatives of groups of potential beneficiaries in the different feeder informal settlements. The steering committee guided the development process and produced the subsidised housing beneficiary lists. These were then submitted to the Provincial Department of Housing for subsidy approval. (Int #1001; Cape Metropolitan Council 1997).

The engineering works and the construction and delivery of houses reportedly ran smoothly, with a few minor delays. The Phase I layout was surveyed in 1996, construction started in the same year, and the housing project was completed in 2000. From December 1996 onwards, with a number of exceptions which are described below, each house was allocated to a beneficiary as soon as it was completed (Int #1001). In contrast to the construction project, there were major problems in managing the subsidy process and transferring ownership to the beneficiaries. In June 2014, 803 of the 1000 properties (80%) had not been transferred to the original beneficiaries (Transfer Records). This has caused a number of additional



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problems, as transactions have occurred since the houses were first occupied. A number of original beneficiaries are still in these houses, but a number of the current occupants are there because:

1. they invaded the house, or they have bought it from an invader, or they had been given it by an invader;
2. the original beneficiary died and the deceased's family put someone in the house, or local power structures reallocated the house (possibly "sold" the house) without informing the municipality;
3. the beneficiary moved away and presumably the occupant is looking after the house for them or renting it from them; or
4. the original beneficiary sold the house "informally", through private arrangements, even though the beneficiary was not yet the registered legal owner.

In all of these cases the City remains the legal owner. If the "owners" do not qualify for a subsidy, and apparently many of them do not, the situation cannot be regularised. This has caused a stalemate.

According to key informants, a number of factors caused the above. One factor was the refusal of Marconi Beam informal settlers to move to Du Noon – while the Du Noon housing project was under way. The second was the subsidy approval process and what appears to be a failure of officials to take ownership of the process. The steering committee submitted a list of beneficiaries to the municipality. Thereafter the municipality checked the Deeds Office transfer records to see if the person had owned a house before; if so they were disqualified. In addition, there was a check on income level to check if the combined household income was below the R3, 500 threshold. Beneficiaries had to submit copies of their national identity documents. If they did not have one, instead of allocating the house to the next person on the list, the municipality instructed the applicants to apply for one, and then come back to them. This could take months (Int #1001).

In the meantime, the houses had been built and would already have been set aside for the applicants. However, the documents allowing them to take occupation had not been processed. When the time came to take occupation, as in Marconi Beam (Barry 1999), some beneficiaries had moved away and did not take up their houses. That meant that the next person on the list had to go through the entire subsidy application process before they could occupy the house. Delays in occupation meant that houses stood empty. They were then invaded by people who were not on the beneficiary list. At a rough estimate, some 10 – 15% of the houses may have been invaded (Int #1001).



The transfer process in Phase I has been a failure. Deeds registry transfer records show that only 19.7% of the houses had been transferred by June 2014. It is not clear why the transfers did not occur in Phase I. One key-informant speculated that it was due to operations management problems within the municipality. That was exacerbated by the budget for conveyancing running out while registration was delayed. In the interim a number of “out-of-subsidy” transactions have occurred. Many of the new “owners”, the current occupants of the houses, may not qualify for a subsidy as they earn more than the subsidy threshold. Consequently their position is precarious. By law the subsidised house cannot be transferred to them. The challenge then is to accommodate them elsewhere. There were registration drives in 2002 and 2005, and some houses were registered as a consequence of these drives. However, officials received a hostile reception, possibly because some of the informal occupants were illegal and stood to lose their houses (Int #1001, 1004). The matter was further complicated by an official who allegedly sold fraudulent deeds to some 10 “homeowners” (Int #1004, Luhanga 2009a).

Analysing the above, one lesson is that officials might have been more involved in the process of identifying beneficiaries at the outset and checking if they had the necessary documentation before they could be put on the list. However, given the major changes that occurred at the time, it is understandable that officials did not play a more active role. Clearly, while a participatory and negotiated approach to housing delivery is desirable for maintaining stability and a fairness, officials need to take ownership of the programme and do the necessary checks that would be advisable in any project.

## **PHASE II & PHASE III HISTORY**

Phase II, followed soon after Phase I, but a different development and project management process was followed. Lessons appeared to have been learned from Phase I. One company was responsible for all aspects of the development – the engineering and the human components (subsidy approvals, processing and housing allocation). The 1331 houses in Phase II were constructed between 1999 and 2000. Learning from Phase I, the municipality conducted drives to complete the signing of Deeds of Sale (Int #1001). Consequently, 98% of the Deeds of Sale for Phase II had been signed in 1999 and transfers were registered in a short window at the end of 2000 and beginning of 2001. By June 2014 only 16 transfers were outstanding (Transfer records January 1996 to June 2014).

Phase III comprised 633 houses which were completed in 2001 (Power Construction N.D ). The same project management structure and methodology was used as in Phase II. By January 2003, 99% of the properties were registered in the name of the beneficiaries (Transfer records January 1996 to June 2014).



## **LESS FORMAL TOWNSHIPS ESTABLISHEDMENT ACT AND THE BUILT ENVIRONMENT TODAY**

Du Noon was exempted from building regulations in terms of LFTEA s.3 (5). A consequence of how officials interpret building regulations apply in Du Noon may have immediate and long term safety, human rights and engineering service implications. Echoing a view of senior officials in Durban (Int #103), Cape Town municipal officials and local politicians in Du Noon expressed the belief that the National Building Regulations do not apply at all in Du Noon due to it being exempt from them. Consequently, it would appear that building plans are not lodged or approved by the municipality, and it appears that building inspectors do not do site inspections to check if new buildings or alterations to buildings are constructed to generally accepted safety standards, within building set-back lines, and within the boundaries of the parcels.

Today, Du Noon consists of the original RDP houses, extended RDP houses with rooms added on, new houses, and single- and multi-storey flats (apartments) / blocks of rooms for rent . The 2011 census counted 38 blocks of flats in Du Noon and the number has grown since then. In cases of new houses and flats, the original RDP house has been demolished and replaced. Where there is space around the house, the majority of formal houses have backyard shacks on the property.

Houses and property developments on the RDP housing sites are a source of rental income for many residents, and entrepreneurs are developing rental property portfolios. Residents tend to rent out backyard shacks and rooms in extended houses. Entrepreneurs buy out RDP housing sites, demolish the original structure and rent out rooms in blocks of flats (Int #1, 3, 7, 8, 11, 14, 19, 20, 23, 25, 26, 31, 32, 36, 37).

There are construction safety concerns and liability issues for a number of organisations and individuals. As a local politician put it, “Some of the blocks of flats are skew” (Int #1003; author’s inspections). It appears that there are no external quality control mechanisms on the structure being erected, some of which are three stories high. Best practice in construction and urban land administration suggest that some form of independent quality control should exist over the design, construction and material that go into a three



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storey building. Whereas building owners and building contractors would probably be held liable in the event of a collapse, a question is would the City be exempt from liability in the event of such a collapse?

A second problem is encroachments over legal property boundaries. There are encroachments where owners have built extensions onto public spaces and road reserves, and there are encroachments across boundaries between neighbours. Some landowners have allegedly “grabbed” land adjacent to their properties. According to interviewees, blocks of flats appear to be the main culprit in encroachments into the road reserve (Int #1, 15, 1003, 1004). However, this claim can only be verified by a boundary survey. If it is true, a building inspection when the foundations were laid would have prevented these encroachments.

In a dispute between neighbours, participant #29 alleged that her neighbour had moved her boundary beacons and built onto her land. When she sought intervention from the municipality, an official advised her to consult a land surveyor, and then probably a lawyer, which she could not afford (Int #29). These types of land grabs have occurred in other RDP housing projects, and in general it is the vulnerable who lose out. Residents also complained about the loss of light due to blocks of flats being constructed on their boundary line.

Analysing the above, the upshot is that in RDP housing projects that fall under LFTEA, homeowners whose neighbours erect buildings that encroach onto their land have to seek professional assistance and then possibly go to court. RDP houses are part of poverty alleviation programmes and beneficiaries cannot afford professional fees and the costs of going to court. In the affluent areas of Cape Town, the injured owner’s first strategy might be to call the building inspector who would stop the encroachment before the building was erected. If that does not work, then they need to call in professional help such as a land surveyor and a lawyer. In Du Noon, RDP housing beneficiaries are not afforded the building inspector avenue to seek redress.

One may add that blocks of 3 storey flats in a RDP housing project are also hardly a poverty alleviation policy objective of the national housing programme. In effect, the flats are subsidised by the tax payer. An inspection of the Deeds Registry transfer records over the history of Du Noon shows that in early registered transactions, properties tend to be purchased for a fraction of the cost of producing a serviced site with an RDP house on it. Interviews indicated that in off-register transactions, properties change hands for even less than the prices reflected on the register.



## **STREET COMMITTEES AND LAND ADMINISTRATION**

A second distinctive characteristic of Du Noon is the continued presence of street committees. Street committees are a legacy of anti-apartheid resistance strategies (Seekings 1992, 1997), and they continue to play a role in local level administration and dispute resolution in informal settlements and some RDP housing estates. The committee structure in Du Noon is similar to the structures that grew out of the civics movement during the resistance to the apartheid regime in the 1980s, as described by Burman and Schärf (1990) and Seekings (1992, 1997).

While not officially associated with the ruling party in the national government, the African National Congress (ANC), historically there have been strong ties between the South African national Civics Association (SANCO) and the ANC (Lanegran 1996). Street committees acted as alternative administration organisations, which included locally based courts in informal settlements and townships in Cape Town in the 1980s and in the early 1990s. Abuse of power, including evictions and public floggings meant that the SANCO executive had to reign in the militant youth in the early 1990s, but evidence of these practices persisted into the early 2000s (Barry et al. 2007). The system of street committees was prominent in the Marconi Beam settlement, but it was rejected by the community once they had moved into formal houses in Joe Slovo Park (Barry 2006). In Du Noon, street committees are still active.

In Du Noon, in spite of SANCO supposedly being at arm's length from the ANC, SANCO politics has been tied to national politics, and this caused major disruptions between 2007 and 2010. In 2008, the Du Noon SANCO Branch chair, Thandiswa Stokwe, and her deputy chair, Gloria Gqobo, switched allegiance from the ANC to a breakaway party, the Congress of the People (COPE) (Luhanga 2009b, 2009c). The provincial SANCO leadership then dissolved the Du Noon SANCO, which led to political infighting, including violent conflict between the COPE SANCO faction and Peace Stemela's faction. Stemela was the local ward councillor who was a member of the ANC, (Luhanga 2010). Stemela died in 2010, and the new ANC SANCO faction leader was elected as ward councillor. Since then, matters have settled down.

Various allegations of fraud were levelled at the "COPE" SANCO leaders as the situation unfolded, and in turn at councillor Peace Stemela. As these allegations were tied to a political conflict, it is difficult to determine their veracity. One allegation was that SANCO encouraged residents to use them to conduct sales transactions for which SANCO charged between R300 to R10 000, and another was that SANCO members sold houses multiple times (Int #1003). In late 2009, the ANC SANCO faction started targeting residents who they accused of illegally occupying houses in Du Noon. These were mainly houses that had allegedly



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been sold by members of the now dissolved COPE SANCO faction, but other houses were also targeted (Int #1003). In turn, Stemela was accused of providing “job for pals”, manipulating vulnerable residents to obtain their houses, and abuse of the tender process in the contract for refuse removal in Du Noon (Int #1002, 1004; Luhanga, P. 2009d).

The committee structure has been inherited from the 1980s. In Du Noon the first tier is the Area Committees and the second the Street Committees. Interviews revealed that there are five Area Committees in Du Noon, and about 50 street committees. There are fifteen members in each Area Committee. The Street Committees are more numerous, with two or three committees per street. The street committees tend to consist of younger members. They assist in enforcing committee decisions after negotiation or dispute resolution has failed. Enforcement, ideally, occurs in the form of holding discussions with a “transgressor” and protest action outside a transgressor’s house. Participant #15 described her experiences as follows.

- They have dealt with some 50 unfair evictions since she has been on the committee in 12 years (i.e. 4 per year).
- However, they also engage in evictions. Street committee members patrol and search people at night. They search the *tsotsis* (gangsters) and chase them away. They have forced *tsotsis* to leave. They tell the parents they can stay, but their *tsotsis* children must leave. If they resist, then they go en masse to “talk to them”. They have never evicted a whole family, only troublesome individuals.
- Sometimes the committee may facilitate the sale of a house, in the manner of an estate agent. They identify a house, put the seller and buyers into contact, and charge a commission for their services. These are often employer assisted purchases. They put down a deposit and go to the lawyer. They get the original title deed, take it to a lawyer, and they get a new deed. The street committee gets a commission.

It appears that family matters, such as inheritance, do not involve the committees (Int #15).

Interviews revealed that attitudes to the street and area committees were mixed. In general respondents indicated that committee members acted in a manner that was beneficial to the community. There were, however, contrasting anecdotes of committees acting unfairly, and at times for their own benefit (Int #1, 14, 15, 1002, 1003).

The picture that emerges is that the committees assist in maintaining law and good order and assist in dispute resolution, but interviews show that residents have mixed feelings about them. The national level



political links in SANCO in Du Noon is not a healthy governance indicator, as evidenced by the turmoil that occurred in Du Noon in 2009. There are also no formal checks and balances on street committees' behaviour. The committees assume certain roles that should be the work of the police and the judiciary, and there is persuasive evidence of unlawful behaviour by street committee members and interference with individual freedoms over the history of Du Noon.

## **XENOPHOBIA**

To complete the context, xenophobic attacks on foreigners wracked the country in 2008. Xenophobic violence in the Western Cape in 2008 (and 2010) may be partially attributed to an allegation that foreigners were living in RDP houses and by implication this was a consequence of fraud (Charlton 2013). That said, foreigners appear to be buying houses on-register and off-register (Barry and Roux 2016, Barry and Whittal 2016). Du Noon was one of the main flashpoints of the xenophobic attacks on foreigners in the Western Cape in 2008. Sales to foreign nationals has been identified as one of the reasons for the xenophobic violence that broke out in Du Noon in 2008. ANC Member of Parliament and the SANCO head in the Western Cape, Rose Sonto, made unsubstantiated allegations that 75% of the houses in Du Noon had been bought by foreigners. Following this claim, the Democratic Alliance (DA) provincial Member of the Executive Council for housing, Richard Dyanti, visited Du Noon and reported on the PMM occupancy survey of 505 houses. A foreigner claimed to be the owner in only one of these houses. In spite of this, xenophobic attacks occurred soon after the occupancy survey (HSRC 2008, Joubert 2009).

Shops and business owned and run by foreigners were then looted in the attacks. One Somali national was shot and killed (Luhanga 2008). Some of the locals behind the attacks were both community leaders and criminal elements, who took advantage of the situation in 2008. One allegation was that they took a dying woman out of her house and sold it (Int #1002). As in many other areas of South Africa, locals in Du Noon wanted the foreigners to return after the attacks. The foreigners provide easily accessible shops within the community. A number of locals rent out rooms and backyard shacks to foreigners. Many of the locals suffered economic losses as a consequence of their tenants being driven out.

In synthesis the lack of building inspections, the actions of the street committees and the xenophobic violence have all had an influence on tenure security in Du Noon. A set of narratives from a selection of different types of homeowners follows. These include original beneficiaries, registered purchasers, off-register purchasers, and people who had swapped houses.



## **TENURE SECURITY STRATEGIES: ORIGINAL BENEFICIARIES**

The following are narratives from the sample of original beneficiaries. A total of 14 reliable narratives were collected from the original beneficiaries. The following four typify the situation. The narratives were checked against the transfer records and officials' description of events and procedures. All the names are pseudonyms.

Carol is 52. She lived in the informal settlement next to the taxi rank, before she got this house in Phase II in 1999. She used to do domestic work, but she is currently unemployed. The existing house is surrounded by half built walls on the boundaries, as she is busy converting the lot to a block of flats to rent out rooms. Unlike all the other original beneficiaries interviewed, for Carol the house is not a major positive in her life; "it is the same as in the shack." Verifying officials' interviews, the transfer records and documentary versions of events, documents that Carol provided in the field were:

1. A letter from Power Developments informing her that she could pick her site and sign her Deed of Sale on 20 July 1999.
2. A letter from municipality informing Carol that her house was ready for handover on 8 September 1999. The agreement was that once her shack had been broken down she would receive her keys.
3. Registration occurred in terms of Less Formal Township Establishment Act section 9 (1). The title deed was signed by the Town Clerk, Peter Gerber (CEO) for R17250 on 3 October 2000. There was no conveyancer involved and there is no restrictive sales clause in the title.

Examining tenure security, in the event that someone threatened to evict her or claimed her house, Carol said she had a title deed. When she dies, her female children will inherit. She has one boy. Asked if she would ever consider selling, she would not sell, not even for R500, 000 as "the house is for the kids. However, they can sell if they want to." (Int #7\_14).

Janice was born in Tsolo in the Eastern Cape, and she is an original subsidy beneficiary. She extended her house through organic financing. She buys and sells chickens in Du Noon and rents out the front of the house as a shop to Somalis for R1000 per month. She does not have a will, but all of her children should inherit the house. It is good to be out of the shack, which used to leak and flood. She would not sell the house as she needs it for her children. In the event of a threat to her ownership, as a tenure securing strategy, she has a title deed and she would go to the municipality as they still have her details. She would also approach the street committee as they know she lives here (Int #11\_14).



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Jonathan was born in Cape Town and grew up on a stud farm in Tableview, which is within 8 km of Du Noon, before Tableview became suburbia. His parents migrated from the Eastern Cape. As an adult life he lived with his wife in her employer's servant's quarters in Tableview, and then got his name on the housing subsidy list. His main job is as a long distance truck driver and he has a small motor repair shop in his yard. He is a member of one of the main committees. He chose his plot next door to his brother's house. His wife has also inherited a house in Du Noon, and their children stay there with her. The major positive of the RDP house is, "I have my own place. I answer to no one else. I am the owner."

In the event of a threat to his ownership, he would produce his title deed. If someone could genuinely show that they have a greater claim than his, then he would have to leave, but they or the government would have to find him an alternative place. He does not have a will, but he is getting one. He listens to legal advice on the radio when he is driving. He will bequeath the house to his second child, the daughter, or the youngest. He would not consider selling the house. "The house should not be sold; land is really important. You need a house for your children and grandchildren." (Int #15\_14).

Amy received this RDP house in 1999. Her mother had a RDP house in Delft. She works for a research company, and the front part of the house has been developed as a restaurant. Her father is in the Eastern Cape. Her mother moved to Du Noon because her brother was involved in a gang in Delft, and a rival gang tried to burn her house down there. Her mother sold the house in Delft and bought the plot next door. She is in the process of getting the transaction registered. She had engaged the services of a lawyer in Cape Town, Frans Roelofse, who does a lot of work in Du Noon, and he is processing the papers. She advised her mother to use a lawyer, because people have been known to sell the house twice when they go through the street committee. She does not trust them. "How can you sell something and then take it back. That's why you need a lawyer". She knows it's a good practice to use a lawyer because she reads magazines like Drum and YOU, which have legal advice sections. She is also aware of the court case involving the swapped house a few doors down. A man bought the house, but the seller died. The sister then came along to claim the house back – case is in court. The purchaser went to legal aid to assist him. The major positive of having the RDP house is that the family is together. Also, the shack used to flood. She intends to bequeath her house to her children. However, she does not have a will (Int #29-14).

Analysing the interviews with original beneficiaries, the findings confirm those of the other case studies. The house is very important to those who have stayed for several years. They do not envisage ever selling the house as they cannot get another one and they need it for their children. The title deed is very important



as a document. In the event of a challenge to their tenure, official documents and institutions were very important. One participant felt the street committee would help them. Two were vehement that they would not. Similar to the situation in Mbekweni, none of the participants had a will. Based on previous studies, this raises a flag that houses may be inherited off-register.

## **REGISTERED SECONDARY TRANSACTION**

Eight narratives were garnered from registered buyers, two of whom were assisted by their employers. Two of these narratives did not match up to what was shown in the transfer records. Two further participants had attempted to register their purchase, but had not managed to do so. Three narratives are reported here which are representative of the situation.

John and Cathy were renting in Du Noon and then bought the house from the subsidy beneficiary in 2006. As the “first phase” they went to the street committee to witness the transaction, so that “they know we are going to buy the house”. The original title deed was lost and it had to be replaced. They went to the lawyer, on the advice of the husband’s boss, where they signed the “Deed of Sale”. They paid R20, 000 at the lawyer’s. They then took the title deed to the municipality to have the municipal account changed. If his boss hadn’t told them to go to the lawyer they might have stopped the process at the street committee (Int #37-14).

Desiree runs her own business has her own business selling kitchenware and her husband works as an operator in the manufacturing industry in Paarden Island. They bought the house in 2004. Using a practice that became common in many RDP housing projects, and which the author’s interviews over the years indicate that some NGO workers promoted, they first went to the street committee and then to the police station to sign an affidavit. Then they handed over the cash for the house. In 2007 they decided to go to the lawyer, because they wanted to change the house to prevent a reclaim. The husband’s mother advised them to do this because she bought a house using an affidavit in Nyanga a long time ago and that house was reclaimed. Fortunately they could find the seller and he cooperated fully. The house was registered in her husband’s name. In the event of a threat to their ownership, the title deed is most important (Int # 38\_14).

Jennifer was born in Engcobo in the Eastern Cape and came to Cape Town in 2004. She is a widow and rents out the front of her house to a Somali shopkeeper. She bought the house in 2009 from an original beneficiary, and paid R50, 000. They then went to housing department at the municipality who advised them to go to a lawyer. The municipal bills were up to date, and so the transfer should have proceeded. She



went to the lawyer with the owner plus his spouse as both their names were on title. As she understood the situation, the seller had lost the original deed. The transfer has not gone through because the original owner has to sign something (it appears to be the transfer papers or the authority to draw a certified copy of the deed). He is in the Eastern Cape and they don't know where. She thinks she has to pay for him to come to Cape Town to sign something, but cannot find him. Consequently the transfer has not gone through. All she has is a photocopy of the original deed. She has no will. The house will go to her children, including her deceased sister's child (Int #19\_14).

The above stories are typical of a number of experiences. Buyers were shown a house by a street committee, which at the time advised them to convey the property by signing an affidavit. However, outsiders had advised them to use the official system due to the risk of losing the house, or an employer had assisted in acquiring the house. The courts do not recognise unregistered transactions. Jennifer's case is similar to what Roux (2013) found. Parties to a transaction exchanged the money and then tried to get it registered after the fact. The seller returns to the Eastern Cape in the interim, in many cases to retire. If there is a signature missing, then registration cannot proceed.

## **OFF-REGISTER TRANSACTIONS**

A total of eight reliable narratives were collected from buyers who had purchased off-register. Three are presented here.

Jack works as a driver. He was born in Tsolo in the Eastern Cape. He came to Cape Town in 1996 with his parents. He bought his house in 2011 for R70,000. They used a Deed of Sale form which they purchased at stationary store plus a letter to effect the purchase. The letter was stamped and the signature witnessed at Tableview police station. The original beneficiary's deed was passed to the purchaser along with the municipality's original letter stating that the beneficiary had three months to report defects in the building. Jack believed he was the second owner. The seller wrote in the letter that they are returning to the Eastern Cape and will never return to Cape Town. Now he is worried. He was under the impression that he was the second owner. However, his package of documents showed that at least 5 transactions had occurred through off-register, private conveyances. In all the documented cases, the written contract had been witnessed at police station. One contract in the chain of title of contracts is missing, however, and one contract was on a police declaration form. The original deed was passed to the purchaser as part of the delivery process during each transaction. Now, he is not comfortable as he wants the house in his name. People in his family have told him he needs to do this. In the event of a threat to his tenure security, he has his set of papers and



he would call in the street committee. However, he does not trust street committees entirely. He does not have a will, but his children will inherit the house (Int #9\_14).

Francis is a taxi driver who bought his house from the deceased owner's family for R7,500 in 2001, as they had to sell the house to pay for the owner's funeral. He drove the taxi to take the body to Upington in the Northern Cape for the funeral. He paid the family for the house. The family gave him the death certificate, and the title deed and they went to the police station to sign an affidavit. He claimed that consequently people have tried to sell the house four times from underneath him; twice by the sister of the deceased and twice by "street committees" in du Noon. The councillor (Makeleni – current councillor) opened a court case against the fraudsters / street committee. The councillor has advised him to go to a lawyer, and to get the proper papers, but it costs R3,500 (which is nearly half of the R7500 he paid for the house, and in reality he will have to pay significantly more as this is a complicated case) (Int #28-14).

Jake and Janet are a married couple who were granted a subsidised house in Du Noon. They approached the author as they were aware of the house involved in the court case over the road. They also knew of the alleged fraudster, Beauty Jack, who had allegedly pretended to be a real estate agent and sold a number of houses when the owners were away. They were worried. They bought their current property off-register. The contract of sale was on a standard Hortors stationary deed-of-sale form. The transaction was witnessed by the street committee in September 2009. The street committee checked the R60, 000 in cash when it was handed over. Now, the seller has died. She bought off-register from the original beneficiary. Jake and Janet have contacted the original beneficiary in Kraaifontein to try to formalise the problem, and he indicated that he is willing to help (Int #31-14).

## **SWOPPED HOUSES**

Elizabeth lives in the "court case" house that many of her neighbours know about. She originally lived in a house in Nyanga, to the east of Cape town, which her father-in-law swopped for a house in Joe Slovo Park. They then swopped the Joe Slovo Park house for this one. The original beneficiary has died and his son came to reclaim the house and took them to court. They went to court, but the plaintiff did not appear. As far as they know the original beneficiary does not have a son. They don't know what is going to happen. The magistrate told them they must go swop back and return to Joe Slovo and they will probably do this. (Int #32\_14).



Maggie was born Cofimvaba, Transkei. She came to Cape Town in 1988. She got a subsidy house in 1997-8. She swapped the house allocated to her in 2003 for this one. They did an affidavit at Milnerton Police station – on a sworn statement form (which was only signed by her and not the other party). The statement was very simple: “I took his house and she took my house”. She is worried. The other person might have sold his house and then might come back and reclaim this one (Int #20\_140).

Analysing the off-register purchases and swapped house narratives, at first the off-register, private conveyancing, strategy is attractive as it is quick and cheap. It appears that street committees have promoted this strategy and been active participants in the transaction process. However, as the law stands, the process leads to a dead end as it is very difficult to clean up the title. If it can be done, it is very expensive. The situation has changed too. People are becoming sensitised to the risks of off-register transactions. They are aware of the fraud cases and off-register sellers or their families attempting to reclaim the house. Further, the seller can claim the house back, and an unscrupulous seller may sell the same house multiple times. As in other studies, the “court case” house is iconic; people are aware of it and it has made other off-register purchasers nervous. The police no longer witness affidavits relating to RDP housing sales.

## **FINDINGS AND ANALYSIS**

There are a number of findings that emerge from the Du Noon case. The first being the relaxation of building standards, without a clear set of guidelines as to how the legislation should be interpreted and applied. The need for building standards and regulations goes back to the 19<sup>th</sup> century. The effect on land tenure administration has been that building inspectors do not visit sites based on the belief that they have no authority to intervene. It has also encouraged downward raiding by entrepreneurs. Entrepreneurs have bought up RDP houses off-register, demolished them and built 3 story blocks of flats / hostels with up to 20 rooms. Firstly, a poverty alleviation project, funded by taxpayers has provided an investment opportunity for entrepreneurs and the poverty alleviation objectives have not been met. Secondly, there are safety concerns over the quality of construction of some of these blocks of flats. Thirdly, LFTEA has removed the building inspectors from the site. They are street bureaucrats, an important part of the visible administration necessary for effective title maintenance, albeit that is not their job description.

In Phase I, very few titles had been transferred to the original beneficiaries at all. This can be attributed to poor project management of the subsidy application process, the handing over of housing allocation to civil



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society based organisations without checking the efficacy of their work, which in turn meant that people who did not have the necessary documentation were assigned a house which they could not occupy. Consequently when their house was constructed, it was invaded. The knock on effect was that it has been difficult to correct the matter afterwards.

In Phases II and III, the houses were built and the allocation and registration of transfers occurred smoothly. However, subsequently a significant number of these houses have been transferred off-register using a process promoted by a civil society organisation with strong connections to the national ruling party. Civil society organisations became involved in tenure administration and promoted off-register strategies to effect transactions. At the same time there was no or very little visible administration and hence no title maintenance. People entered into agreements of sale which were witnessed by street committees or at a police station. These are contracts. Many of the de facto owners who were interviewed wanted a clean title. However, the cost of cleaning up the title may be far more than they paid for their house. There is also the challenge of fraud and sharp practice. A weakness of CBOs getting involved in tenure administration is there are also no checks and balances on the committees; they cannot easily be voted out.

The findings in Du Noon are in stark contrast to the findings in the four “good news” cases that preceded the study. The differences between Du Noon and these other case studies are seemingly small. Du Noon and similar cases suggest that the land registration system in its current form does not meet the needs of the poor. That said, title deeds are highly valued by all the participants in this study. Two strategic options are worth considering. One is to change the registration system to meet the needs of the poor. The other is a subsidised programme of title maintenance. When Du Noon is compared to the “good news” cases, differences in what appear to be small details in project management and operational procedure and the behaviour of officials in the day to day administration of a housing project can result in major differences in how landholders use or do not use land registration to secure their tenure or effect transactions. Costly and complicated title clean ups can be avoided if ongoing title maintenance is carried out. The challenge is what to do with the existing off-register cases.

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