

An Exploration of the Provision of Government-Subsidised Housing without Title Deeds: A Recipient's Interpretation of Security of Tenure

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Abstract—Low-income households earning less than 3,500 ZAR (about 175 GBP) per month can apply to the South African government, through the National Housing Subsidy, for fully subsidised houses. An objective of this subsidy is to enable low-income households' participation in the formal housing market; however, the beneficiaries received houses without title deeds. As such, if the beneficiaries did not have a secured tenure at the time of their death then surviving family may face possible eviction. Therefore, an aim of this research was to determine how these beneficiaries interpret tenure security. The research focused on government subsidised housing in the Dithlake settlement of a rural hamlet named Koffiefontein, in the Letsemeng Local Municipality of South Africa. Quantitative data on the beneficiaries were collected from the local municipality, while qualitative data were collected from a sample of 45 beneficiaries.

Keywords—Low-income families, subsidised housing, titling, housing market, South Africa.

I. INTRODUCTION

THE Peruvian economist, De Soto [1], drew attention to the absence of legally recognised property rights for the poor and to property rights in informal settlements that are not well documented. The World Bank also promotes titling for the 863 million people living in slums worldwide who have no property rights [2]. The absence of property rights further exacerbates the vulnerability of the poor in urban areas. An example that illustrates how essential title deeds are in South African settlements is the case of the Joe Slovo settlement next to the small rural hamlet namely Koffiefontein and also in the Letsemeng Local Municipality where many families stand to lose their homes. The sites were sold under dubious circumstances as the residents had been disadvantaged because they were not in possession of the title deeds of their properties, which the Local Government had not yet issued [3].

When the 2004 National cabinet approved '*Breaking New Ground*': a *Comprehensive Plan for the Development of Sustainable Human Settlements* [4], which outlines the development of sustainable human settlements, is compared to the 1994 South African White Paper on Housing, a move

away from quantity towards quality in housing provision was introduced [5]. One of the aims of the *Breaking New Ground* plan is to respond to the needs of communities by means of support measures that require security of tenure [4]. In practice, during the provision of government-subsidised houses, the beneficiaries are provided with houses, but they do not receive title deeds. To convert these properties registered at the Local Government into private properties with title deeds is costly and the recipients of government-subsidised housing, with a joint monthly income of less than 3,500 ZAR (about 175 GBP), would have to pay 1,850 ZAR (about 93 GBP) each to acquire the title and freehold ownership of their properties [6]. Without the title deeds these beneficiaries, who have no legal proof of ownership, have no other option when they want to sell their houses than to sell their houses informally in the absence of formal title deeds and also to have their houses transferred informally to their heirs upon their death. Although both these illegal practices lead to disputes, research on a formalised settlement of Bogotá in Colombia claim that legal title deeds provide very few benefits, while the point of view of both De Soto and the World Bank on titling were criticised [7].

While Geyer and Geyer [8] highlight the vitality of market forces in mixed formal-informal housing markets in South Africa, Marais et al. [9] have determined that 93% of the respondents in a case study of a former black township do not have any intention to sell their houses. The findings of Campbell et al. [10] also support this view. Marais et al. [9] further state that the concept of individual ownership is not entrenched in black communities. Following this claim, the aims of this paper are to determine how beneficiaries of government-subsidised houses interpret and understand tenure security; secondly, to determine how the recipients of government-subsidised houses experience security of tenure in the absence of formal title deeds; and thirdly, how they manage without formal title deeds. To explore these issues, the rest of this paper will be structured as follows: firstly, theories on security of tenure will be reflected upon, followed by relevant South African legislation on housing, policies and strategies for subsidised housing for low-income families. These sections will be followed by a short discussion on the research methodology and following that, the findings of the research will be presented and discussed, after which a conclusion will be drawn.

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II. SECURITY OF TENURE

Tenure security has two parts, namely to use the land according to the socio-economic needs of the user and legal protection against eviction or arbitrary restriction of land rights, legal enforcement or social remedies against the loss of these rights [2]. An important outcome of secure tenure is that the owner has the right to bequeath land to heirs, and to lease, lend or grant land to others on a temporary or long-term basis, with reasonable guarantees of being able to recover the land. Although security of tenure is difficult to define in terms of legal or illegal, formal or informal, due to different forms of land tenure and property rights [11], tenure security deals with how citizens organise their livelihood access to government's basic services and establish the relationship with government. Secure land tenure and property rights can be acquired through a variety of forms and are essential to housing, as well as to sustainable livelihoods. They form an important foundation for achieving basic human rights and poverty eradication [12]. Secure tenure can help to fight against gender discrimination, social exclusion of vulnerable groups and wider social and economic inequalities linked to inequitable and insecure land rights.

Access to a formal title can also link the beneficiaries of government housing subsidy with formal markets [12]. There is a clear relationship between land tenure security and investment in property, because insecure tenure and uncertainty of rights to property have a major influence in investment decisions [13]. Others who disagree base their arguments on studies that show that the legalisation of properties do not always result in economic development in developing countries [8].

In areas with secured tenure, people use building materials of quality to construct their buildings and the living space is enough for the household members [13], while houses provided with title deeds were built with Local Governmental approval and with adequate infrastructure [14]. The result is an improvement in social and economic activities in the area [13]. In an effort to improve the quality of life for residents between 1994 and 2000, 370,000 title deeds were transferred to residents who had previously rented houses from local councils in former black South African settlements [15] because freehold ownership can be used when bonds are obtained from financial institutions, whereas leasehold does not provide for the acquisition of loans or mortgages. The following section will reflect upon housing subsidies for low-income families within the South African legal context and titling.

III. POLICIES AND STRATEGIES ON SUBSIDISED HOUSING

The South African Constitution, the Reconstruction and Development Programme, as well as the Breaking New Ground Programme discussed below, provide an overview on how housing subsidies for low-income applicants are regulated. This will be followed by a reflection on the plan for the eradication of the title deed backlog.

A. Reconstruction and Development Programme [16]

The Reconstruction and Development Programme (RDP) was developed in 1994 as a first attempt by the newly elected African National Congress (ANC) to provide a revised policy framework on development for a new democratic country. The RDP is directed at meeting the basic needs of the people of South Africa through the following six principles:

- Integration and sustainability;
- People-driven processes;
- Assuring peace and security for all;
- Nation-building;
- Linking reconstruction and development; and
- Democratisation.

One of the RDP's first priorities is to provide for the homeless [15]. According to the RDP [16], land planning must involve the communities affected and delivery systems will depend upon community participation. Marais [17] supports this notion that inhabitants should be involved in the decisions affecting them, such as the location of the housing, as well as that public interest should determine investments.

While the central government has financing responsibilities, both provincial and local governments should be the primary agencies facilitating the provision of housing and should be particularly active in the provision of rental housing stock [16]. The housing policy guidelines of the White Paper on Housing that was accepted in 1994 has a capital subsidy scheme as its basis that would subsidise low-income families, depending on their salaries [18]. This RDP one-off, project-linked subsidy applies to families earning up to 3,500 ZAR (about 175 GBP) monthly [19]. Applicants apply at their Local Government for these subsidies from the provincial government. These 'RDP' house recipients are supposed to receive full tenure. Other tenure option possibilities available also include collective freehold and leasehold. The latter applies to the following low-income families: Communal Rental Units (CRU) subsidy applies to families earning between 800 ZAR (about 40 GBP) and 1,500 ZAR (about 75 GBP) monthly, while Social Housing (SH) subsidies apply to families earning between 1,500 ZAR (about 75 GBP) and 7,500 ZAR (about 375 GBP) monthly [20].

B. The Constitution of the Republic of South Africa, Act 108 [21]

The government committed itself to improving the quality of life for all citizens and to unlock the potential of each person in this first fully democratic constitution. The constitution mandates that Local Governments promote social and economic development, because it is at the local level where the actual implementation of all development plans takes place. It further states in the Bill of Rights Chapter 2, Section 26 that housing is a fundamental right and that everyone has a right to have access to adequate housing, subject to its resources to achieve the progressive realisation of this right [21].

The issue of whether the state should be a facilitator or a provider in the provision of housing is probably the central debate in housing policy [22]. If the government is the

provider, it is often impossible to sustain the housing provision, as many countries are unable to provide housing for all its citizens. If the state provides housing, it creates a culture of entitlement; “people do not act, even when they are in a position to do so, while they wait for ‘their turn’ from the state” [22].

C. Breaking New Ground Plan [4]

The Comprehensive Breaking New Ground Plan from the Department of Human Settlements, which was mentioned in the introductory section of this paper, is based on the principles of the 1994 White Paper on Housing. The plan aims to address the weaknesses of the 1994 housing policy by integrating all settlements spatially with infrastructure and social facilities, while advocating living closer to places of work [4]. The plan also promotes higher densities and integration as key objectives, emphasising the integration of previously excluded groups into the cities and views housing as a catalyst to achieve national socio-economic goals that include social cohesion, economic growth, and poverty eradication [23]. In the Breaking New Ground Plan, the need is emphasised for beneficiaries of government-subsidised housing to access titles [4]. The Breaking New Ground Plan further highlights the duty to transfer titles by registering in the Deeds Registry, among others, to provide legal protection and unchallenged transactions.

D. Registration Backlog Eradication Plan

A registration backlog-eradication plan with the objective to assist beneficiaries who occupy a property without a title deed can start the process of accessing a title deed [24]. Such a process will include a dispute resolution mechanism to address disputes arising during the registration process. Such a plan implemented in the Gauteng Province between 1993 and 2003, assisted occupants of rental stock from the former apartheid era to apply for ownership. Key successes of the scheme were based on Local Government councillors playing a significant role and a tribunal was established to solve disputes and make decisions. Disputes were resolved in former black settlements where the conflicts were located, while other rulings took place in a special court arranged by the provincial Department of Housing in Gauteng [24].

IV. METHODOLOGY

Random sampling was applied to the 103 beneficiaries who received government-subsidised houses in Koffiefontein during the 2010/2011 financial year. The formula of Stoker [25] was applied to calculate a sample size:

$$\sqrt{(N/20) \times 20} = n \text{ where } N \text{ (Total Population)}$$

$$\sqrt{(103/20) \times 20} = 45, 4$$

Structured qualitative interviews were conducted with the 45 sampled beneficiaries to determine their interpretation of the security of tenure.

V. OVERVIEW OF THE MAIN FINDINGS IN DITLHAK TOWNSHIP

A. Subsidised Housing and Title Deed Statistics

The Letsemeng Local Municipality in the Free State Province consists of five small towns, namely Koffiefontein, Luckhoff, Jacobsdal, Petrusburg, Oppermansgronde and the surrounding farming areas, while the small town of Koffiefontein consists of the Dithlake Township, Rooibult, Koffiefontein Sub Place 1, and Koffiefontein Diamond Mine [26]. The total population of Koffiefontein is 10,402 and 73% of the population reside in the Dithlake Township [27].

In Koffiefontein, 955 government-subsidised houses were built from 1994 to 2014 and in the financial year 2010/11, 103 houses were provided [28]. Approximately 76% of the houses in Dithlake Township are owned and fully paid for [27]. The number of government-subsidised beneficiaries who do not have title deeds to their houses is unknown, but it is estimated that nationally, in 2011, just over one-third, or between 1.1 million and 1.4 million subsidy beneficiaries did not possess the title deeds to their properties [24]. The Department of Human Settlements estimates that nationally 3.25 million houses or sites were provided at the end of the 2010/11 financial year and that the degree to which title deeds were provided differed across the provinces from 22% to 54%, with the Free State Province averaging at 20% [24].

In the following sub-sections, the empirical findings will be presented and discussed.

B. Demographics of the Respondents

The heads of the households, who were the respondents in the survey, were 32% male and 68% female, resulting in the majority of the households that participated in the survey being female headed. It is evident that the South African government's strategies to integrate gender in urban development have paid off, as the majority of the beneficiaries interviewed were women. In this regard, the Breaking New Ground Plan of the Department of Human Settlements is responsive to gender issues and it has developed guidelines for promoting gender in housing and human settlement [4].

The age breakdown of the respondents shows that the largest percentage, namely 46% of the respondents are above the age of 51 and 18% between the ages of 41 and 51. The respondents also indicated that 42% of them are married, 30% are single, 26% widowed and 2% cohabiting (living together).

Nearly half, namely 45% of the respondents, indicated that they had no schooling and had limited reading and writing skills, while 27% attended between one and six years of schooling. Their level of understanding and interpreting documents are thus also limited. Security of tenure, in a form of a title deed, would be difficult to understand and interpret for those respondents with no schooling. The surveyed households consisted of four members on average, while 43% of these household members were aged between zero and 14 years, and 41% between the ages of 16 and 35. The minors, together with the 26% of widows without title deeds were especially vulnerable to evictions and ownership disputes.

The majority of these residents lived in temporary structures

constructed from corrugated iron sheets and plastic sheets or cardboard boxes, while the Local Government was building or planning to build their subsidised houses.

C. Respondents' Perception of Tenure Security

Questions to identify if the 45 respondents had security of tenure and their understanding of security of tenure were posed. In total, 84% of the respondents indicated that their housing subsidies formed part of the RDP once-off project-linked subsidy, which is the most common method of housing provision in Koffiefontein. Out of the 84% who received the RDP subsidies the majority, namely 69% of the respondents are women. Twelve per cent of the respondents indicated that they had obtained their houses through a family member, meaning that the house was transferred to the beneficiary informally, because 100% of the respondents indicated that they did not have title deeds. A small number, namely 4% of the respondents purchased their houses from beneficiaries of the project-linked subsidy scheme to whom they were not related. These informal transactions can result in possible conflict as it was indicated by the beneficiaries that they were still waiting for the Local Government to hand over title deeds.

In the survey the respondents were asked what they understood by security of tenure and 50% indicated that security of the tenure meant that they had the right to occupy their houses and that they could choose who could live with them. The other 50% said that they did not know what security of tenure or title deeds implied, while one female respondent who had received a housing subsidy said that to her, security of tenure meant that she could occupy the house with her family. However, the house still belonged to the government. Another female participant between the age of 41 and 49 said she understood secure tenure as the right to stay in her house with her family and that she could decide who could stay with her and also that the house would go to her children upon her death. One male respondent said that it implied that the house was the property of his family.

The comments made by the respondents undoubtedly indicate that according to the beneficiaries, security of tenure is about the right to occupy the house. The beneficiaries' responses showed that they were not familiar with titling, as their focal point was on occupying the house. Without a title deed, it becomes a challenge to perform any legal housing transactions or to prove that one is the rightful owner of the house. Lack of knowledge may be the main reason for the residents not pursuing title deeds, while 40% indicated that they were waiting for the Letsemeng Local municipality to hand over the title deeds. All of the interviewees said that they did not make improvements to their subsidised houses.

One respondent, a 30-year-old male, said that his father had received the subsidised house from the Local Government, but that his father had passed on in 2013. The respondent reported the matter to the Local Government who said according to the Deeds Registries Act number 47 of 1937 could they not issue a title deed on the respondent's name, as they first had to issue the title deed on the name of the respondent's deceased

father. Next, the respondent would have to come with all his family members to apply for a transfer of the title deed. From the qualitative interviews, it became clear that many beneficiaries were not aware of the importance of having a title deed and did not realise that it would be difficult for them to transfer the houses to their heirs. This could result in disputes and is currently promoting informal transfers, because when a beneficiary passes on, family members transfer the house to one or more people, unaware of the implication of the lack of formal title deeds. Those respondents who said that they were waiting for their title deeds from the Local Government will also experience a similar situation, as they cannot prove ownership or transfer the house formally.

More responses to questions asked to identify how beneficiaries transfer and sell houses without title deeds showed that being able to transfer the house to the heirs was important to ensure that the dependents or the immediate family of the beneficiary could inherit the house. When asked how they were going to transfer the houses to their heirs, 70% of the respondents indicated that their house would be transferred informally to the beneficiaries, while 18% indicated that they would inform the Local Government before they transferred the house informally to their heirs. Another 4% indicated that they would inform their lawyers to help them with the legal transfer and 6% said they would transfer the house according to their tradition, because according to their tradition, only male children could inherit their properties, not their daughters or granddaughters. One male respondent elaborated on their traditions and explained that as he had three children, two daughters and one son, he would transfer his house to his son because, "the girls will get married and cannot inherit, according to my tradition". One female respondent specified that she would transfer the house to her children, as she wanted all of them to stay together as a family after she died. Another female respondent also said she would inform the Local Government before she transferred the house to her children. These responses show that the beneficiaries have no option but to transfer the houses informally to their heirs, as the Breaking New Ground Plans identified needs for beneficiaries of government-subsidised housing to access formal titles did not materialise in practice. Therefore, the respondents had to develop their own informal way of practising security of tenure, as reported above, as they were not familiar with the procedures of legally transferring their houses. The subsequent challenge is that during the disputes that might arise, it will be difficult to prove ownership in the absence of documents showing proof of property ownership, such as title deeds. The following section reflects the implications of insecure tenure.

D. Possible Insecurities in the Absence of Formal Title Deeds

Questions were asked to determine the respondents' possible vulnerability in the absence of legally recognised property ownership documents and property rights that were not well documented. More than half, some 54% of the

respondents interviewed said that, should they be confronted by eviction or ownership disputes in the absence of documents proving ownership, they would go to the Letsemeng Local Government for help, while 12% said that they would seek assistance from relatives. Another 14% said that they could prove that they were the owners of the houses because they had water and electricity accounts in their names, while 16% of the respondents indicated that they would report threats of eviction or ownership disputes to the local police to assist them and 4% indicated that they would report the matter to their lawyers.

The following were individual responses of the above-mentioned respondents: a female respondent indicated that if anyone tried to evict her from her house or disputed her ownership she would report them to the Local Government, as they knew she was the one who had received the subsidy. An elderly woman above the age of 50 said that she would ask her family members to help her because she was old and it would be difficult for her to handle such an issue. A male respondent said that if someone tried to evict him from his subsidised house or disputed his ownership, he would report them to the Letsemeng Local Government, because they had a list of the beneficiaries who had received houses. Another respondent said he would go to the police, because he could prove to them by means of the water and refuse account he paid to the Local Government that he was the owner of the house. These cases raise concerns, as without title deeds, serious disputes can result, although beneficiaries have their own way of experiencing security of tenure. As stated above, the respondents will rely on the Local Government's beneficiary list to prove whom the beneficiary of the subsidised house is. This shows the social capital and trust that the local community have in their relationship with the Local Government. It is also evident that family ties play an important part in this matter, as a significant percentage of the respondents stated that they would inform their family members to assist in case of ownership disputes. Relying on official invoices such as the electricity and water accounts issued by the Local Government indicate that the beneficiaries have their own tenure security arrangements and practices in the absence of title deeds. When the respondents were asked about the implications of insecure tenure in the absence of title deeds, the response from 72% of the respondents were that they were not aware of any undesirable implications. Some 28 per cent of respondents indicated that they were aware of the possible implications; therefore, they were waiting for the Letsemeng Local Government to issue title deeds to them. One respondent stated that he was aware of the negative implications since he could not prove that he was the owner of the house he was staying in; therefore, he was waiting in anticipation for the Local Government to issue him with a title deed.

E. The Changes that a Title Deed Can Bring About

When the respondents were asked about the changes that a title deed could bring to their lives, 72% indicated that they did not know how title deeds could have a positive influence

on their lives, while 28% indicated that the title deed would indeed change their lives. One respondent said that he had no idea what possessing a title deed meant, but if the document would have a positive effect on his life, he would certainly like to have one. One misinformed respondent said title deeds were only applicable to houses that one built with one's own money and since his house was a government-subsidised house, he had no need for a title deed.

The majority of the respondents did not know what a title deed was and were unaware of the disadvantages of not being able to provide documentation as proof of ownership. Foreseen disputes will also only arise after their deaths or if they want to sell the houses. The latter only happens in a very small percentage of the cases, because as explained earlier in the article Marais et al. [9] and Campbell et al. [10] have determined that the vast majority of respondents in a former black settlement indicated that they do not have any intention to sell their houses.

VI. CONCLUSION

This paper looked at how recipients of government-subsidised housing perceived security of tenure. The respondents indicated that most of them, namely 45%, were illiterate with no formal schooling and limited reading and writing skills, while 27% responded that they had attended between one and six years of schooling. To someone with no education or only limited schooling, a legal document such as a title deed is totally outside their frame of reference and, as expected, 50% responded that they did not know what title deeds were or what they implied.

The subsidised housing sector in South Africa has a severe backlog in terms of title deed registrations. In line with this, it was found that these recipients of subsidised housing in Dithlaka had also not received title deeds. In the absence of title deeds, these respondents perceived the handover by the Local Government of the newly built house as security of tenure [29]. In this regard, the majority, namely 54% of the respondents relied on the beneficiaries' list at the Local Government to prove their ownership, while 12% relied on the official Local Government accounts issued in their names for water and electricity. The respondents were also uncertain about who actually owned the house and some said that the government was the owner. They were also unaware of the legal implications of selling their house without a title deed or the challenge of transferring a house to their surviving family members once the main recipient had died. Titling backlogs result in residents not being able to sell and buy on the residential property market, which not only leads to disputes, but also undermine their ability to access work elsewhere.

A registration backlog-eradication plan can assist the beneficiaries of government-subsidised houses to acquire their title deeds faster. If the process takes place at their Local Government, conveyance costs, which provide an additional challenge to low-income families, will be eliminated. The eradication of the backlog can create an element of trust and commitment to service provision; sustaining good relations between residents and the Local Government. A tribunal that

is established locally to handle disputes can avoid lengthy court cases. The information must be accessible to all and the process must be fair to all participants. Local Governments will play a vital role in implementing this programme, and therefore internal capacity building is important before the implementation of the project.

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