

HABITAT-INTERNATIONAL:
Series on International Urbanism

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INFORMAL TRANSACTIONS OF LOW INCOME HOUSES IN SOUTH AFRICA

A Case Study
of eThekweni Municipality

[transcript]



From:

Sandile Mbatha

Informal Transactions of Low Income Houses in South Africa

A Case Study of eThekweni Municipality

July 2022, 244 p., pb., 13 b/w ill.

45,00 € (DE), 978-3-8376-6279-5

E-Book:

PDF: 44,99 € (DE), ISBN 978-3-8394-6279-9

Through a series of intricate informal processes and human-centric institutional arrangements, beneficiaries of South African government-subsidized housing force formally registered properties into informality. Sandile Mbatha explores the concept of informality in relation to how such beneficiaries challenge predominant understandings of property relations. These practices are embedded in complex urban tenure dynamics that prevail in post-colonial societies; societies, in which the state's imposition of predominantly western forms of tenure and property rights ignore the anthropological nature of housing.

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www.transcript-verlag.de/en/978-3-8376-6279-5

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Chapter 1: Introduction

Informal housing transactions are a global phenomenon, recognised as the means by which the poor access land and housing in the city and also realise equity in their assets. Roy (2005) argues that informality as a concept, although once associated with poor squatter settlements, is now seen as a generalised mode of metropolitan urbanisation. There are a number of reported cases of property markets facilitated through informal housing transactions in the Global South (see for example Alston, et al., 1999; De Souza, 2001; Mooya & Cloete, 2007; Toulmin, 2009). Therefore, informal housing transactions are not unique to the South African context but rather part of a global system of urbanisation used by the poor to access property markets.

This study makes key contributions to the housing policy discourse by highlighting the role and influence of policy language in the articulation of key housing ideas regarding informal transactions. It presents evidence of selective use of language in policy articulation as driven by performative 'aspects of language' (Jacobs, 2006). Furthermore, it then highlights several instances where language was used to establish what Foucault (1980) refers to as 'regimes of truth'. For instance, the manner in which the housing policy articulates both housing as an asset and the collateralisation idea indicates the state's attempt at establishing the neoliberalisation of housing delivery as a 'regime of truth'. However, the indication is that these neoliberal ideals are not compatible with the realities on the ground. Instead, the evidence shows that policy language adds to the confusion in the housing policy discourse. The

often incorrectly articulated pre-emptive clause¹ further contributes to this confusion and distortion in the policy discourse. This becomes evident where state officials and politicians, in their rejection of housing transactions in government subsidized settlements, selectively quote some parts of the clause and omit the crucial time limitation of the eight-year period. This omission of the pre-emptive clause exemplifies the performative aspect of [*policy*] language in the South African context.

Setting the Housing Context

South Africa, like many other developing nations has a strong policy and institutional framework designed to facilitate access to housing for the poor. This is supported by the inclusion of housing as a basic human right in the Constitution. The right to access to housing incrementally and within the state's available resources is further translated into policy and legislative frameworks. These sentiments began to find expression in earlier years of South Africa's transition process through the Reconstruction and Development Programme (RDP).

The RDP's most notable influence is reflected in the housing landscape through the key product of the Housing White Paper (HWP)—low income subsidised houses for the 'poorest of the poor'² (Housing White Paper, 1994, Subsection 5.3.2). As a result of this influence, these starter houses have evolved from 24 to 40 square meters since 1994, and are largely homogeneous structures that became known as

1 A policy clause prohibiting the sale of government subsidized low-income houses before the period of 8 years introduced in 2001 as a response to perceived informal transactions by beneficiaries in South Africa. The clause has since been reduced to 5 years.

2 A phrase used in the Housing White Paper policy document of 1997. It is not well articulated in the policy but has become clearer through subsidy bands that the government established to identify beneficiaries.

‘RDP³’. They are a visible landmark of the post-apartheid housing policy (Adebayo, 2010; Bond & Tait, 1997). Despite their often peripheral nature and sometimes inferior structure, they provide shelter to millions of low income beneficiaries⁴ (SA government online, 2014). Many are located in the outskirts of cities; far away from basic infrastructure and social amenities (Huchzermeyer, 2003a). Speculation about mismanaged waiting lists and corruption have characterised access to RDP housing (Rubin, 2011). Notwithstanding the government’s debatable achievement of building one million houses during the first five years of democracy (Housing White Paper, 1994), RDP houses have come under scrutiny for their well-documented lack of quality; peripheral location; and inadequate access to basic social and economic amenities (Huchzermeyer, 2003a; Rubin, 2011; Lemanski, 2014).

Despite mass delivery of low income RDP houses, the demand is persistent and increasing. According to the Financial and Fiscal Commission as cited by Tomlinson (2015), South Africa required approximately \$55 billion and a miracle to clear the current housing backlog of 2.1 million houses by 2020. In 2018, this backlog was estimated at 2.3 million and was growing at 178 000 units per annum⁵. A combination of this moving target and a shrinking Human Settlements Departmental budget, meeting the housing target looks daunting. Making matters worse is the complex delivery process that is characterised by various challenges, as argued above. These include longer and more complex beneficiary waiting lists that are difficult to manage, which subsequently lead to dysfunctional and often corrupt allocation processes (Rubin, 2011; Community Law Centre and Socio-Economic Rights Institute, 2013) and lack of institutional capacity to adequately and inno-

3 A colloquial name given to government subsidised, low income housing in South Africa. They get this name from the transition document of the African National Congress, the Reconstruction and Development Programme.

4 Refers to people who are granted and/or benefiting from government housing subsidies. These are people who meet the criteria set out by government in the housing policy.

5 <https://housingfinanceafrica.org/countries/south-africa/>.

vatively respond to the demands of beneficiaries (Bradlow, et al., 2011). These challenges have further contributed to the ever-increasing housing backlog which is exacerbated by, among other factors, the increasing rate of urbanisation in South African cities (Rust, 2013), rural-urban migration and population growth. The influx of rural migrants seeking employment opportunities and a promise of a better life puts additional pressure on government (Roux, 2009) to deliver housing.

The emergence of state's problematization of informal housing transactions

Since 2000, there has been growing speculation that the government's subsidised low-income housing is being sold informally. The speculation has subsequently attracted the attention of researchers, practitioners, and the state. The main assumptions have been that government subsidised, low income houses are being sold by beneficiaries for amounts lower than their market value and the capital used to construct them. The state assumes that RDP beneficiaries, after selling their properties, move back to informal settlements and subsequently re-join the housing waiting list, thus contributing to the perpetual challenge of informal settlements (Huchzermeyer, 2011). In 2015, the housing backlog was estimated at 2.1 million and the number of informal settlements is said to have increased from 300 to 2,226 (Tomlinson, 2015). The allegations of beneficiaries returning to informal settlements are unsubstantiated and there is not enough empirical evidence to prove that this claim is indeed true. However, research does confirm that RDP beneficiaries transact their properties informally.

Informal housing transactions come on the back of massive government rollout of state subsidised housing. The state housing programme has reportedly delivered over 2.68 million housing opportunities and another 1.2 million serviced sites since 1994 (SAnews, 2015; Tomlinson, 2015). It is due to this investment that the state has reacted with disappointment to what it views as an abuse of its generosity by RDP beneficiaries. The general perception from the state is that infor-

mal transactions are an indication of the beneficiaries' lack of gratitude and a demonstration of 'irresponsible behaviour'. These sentiments are exemplified by a number of official and political statements "Low-cost Housing Not For Sale (see Annex B)" communicated by the state and are also supported by state respondents during the research. For instance, in 2012, then Mayor of eThekweni Municipality, Mr James Nxumalo, claimed:

While we are trying to end informal settlements we have people on the side moving out of the houses that we provide them with and making business out of it by renting them out, while others sell them for a far less amount than the actual value (Ezasegagadini, 2012, p. 3).

Sentiments like these are frequent and dominate the government sector and they are indicative of the discomfort the state has about informal transactions in RDP housing. Charlton (2003) argues that the state's irritation with informal transactions is due to a feeling of having lost control of what is happening in the RDP housing sector. She claimed that this was as a result of the disjuncture between state policy and legislative ambitions versus the reality of RDP beneficiaries. Due to this disjuncture, there is a mismatch between state expectations and the de facto practices of beneficiaries. For instance, the manner in which RDP beneficiaries decide to realise equity in their properties is contrary to what the state expects them to do.

Various other studies have explored the subject of informal transactions from different angles. The majority of these studies have focused on what Fukuyama (2006) would refer to as "Wall Street Journal deterministic materialism" which discounts (not intentionally in most cases) the importance of ideology and culture and sees humans as essentially rational, profit-maximising individuals. Many scholars have explored the performance of RDP housing in the market with the suggestive view that there is an existing RDP property market and that beneficiaries have an intention to maximise profit and accumulate wealth. These include studies by the FinMark Trust (2012) and Rust (2006). Other studies have focused on the *mythical* climb up the housing ladder as an aspiration of RDP beneficiaries. This view overlooks the very problematic

barriers to market entry and cultural factors that prohibit economic calculativeness. There are other fundamental factors that limit beneficiaries' ability to climb this mythical ladder. For instance, as Lemanski (2011) points out, low selling prices prohibit beneficiaries from climbing the housing ladder. She further argues that values in RDP transactions (both formal and informal) are too low to allow for RDP sellers to move to the next level of the property market. Her study is premised on the economic idealism that housing is predominantly a financial asset tradeable in the market and thus should be able to facilitate climbing up the housing ladder. This view ignores the concept of housing as a cultural asset and therefore holding, transfer and ownership are embedded in cultural norms and traditions which aren't always based on economic calculativeness.

Furthermore, studies (see Rust, 2004, 2011, 2013; Marx & Rubin, 2008; Marx & Royston, 2007 and Urban LandMark, 2011) of the functioning of urban land markets begin to unpack the relationship between security of tenure and RDP housing transactions. They outline very intricate processes that the poor employ to access urban land through informal practices. Royston (2006) in particular, focuses on the relationship between security of tenure and access to economic opportunities. She argues that tenure secure properties are a catalyst for economic participation for the poor. Marx's and Rubin's 2008 study focuses on the potential of informal land markets to reduce poverty in low income communities. They deal with informal transactions in housing indirectly but outline the relationship between informal land markets and poverty reduction. They advocate for an independent enquiry into informal land markets. Other studies by Rust (2006) and FinMark Trust (2012) explore informal transactions from the angle of housing as an asset within the framework of property markets.

These studies make important contributions towards the understanding of informal transactions and broaden the existing body of literature on informality, housing, misalignment between state and beneficiary expectations, the relationship between security of tenure and poverty reduction, land markets and poverty. They inform policy interventions as to how the economic potential of RDP housing could be

unlocked in order to achieve the state's broad objectives of improving the lives of the poor.

International studies have focused on tenure regularisation as a catalyst for housing investment and economic emancipation for the poor. World Bank and UN-Habitat studies have focused heavily on unlocking the economic potential of informal assets for the poor. These are informed by de Soto's (1989) popular thesis of unlocking the 'dead capital' assets held by the poor through tenure regularisation. De Soto's message has influenced many housing policies in the developing world, including South Africa. The asset conceptualising of low income housing in South Africa is a direct influence of de Soto's thesis. However, it is important to note that an overwhelming number of practitioners and researchers have rejected de Soto's thesis as impractical for the South African context. For instance, a colloquium⁶ held in 2006 debated the relevance of de Soto's ideas for the South African housing context. The consensus was that they are not necessarily relevant as they ignore complexities of local contexts and intricate vulnerabilities of the poor. However, authors such as Mooya and Cloete (2007) have argued in line with de Soto stating that informal properties form part of significant national wealth but remain dormant or underutilised in most developing countries and these need to be unlocked through informed policy interventions that recognise the economic potential of these assets.

The gap in the literature is in understanding the intricate practices and processes the poor follow in informally transacting their properties. It remains unclear how the state-subsidised formal properties are informalized through transaction practices. While numerous studies make mention of practices of the poor as mainly driven through social networks and informed by their complex circumstances, they do not provide detailed analysis of the extent, nature and character of these informal transactions. Existing literature seems to assume a dichotomy

6 The colloquium was organised by the Graduate School of Public and Development Management and the Development Bank of Southern Africa and held at the University of Witwatersrand. It consisted of a number of stakeholders and practitioners from both the public and private sectors.

between formal and informal practices. In reality, however, the relationship seems to be more opaque; this research sought to explore this opacity. Useful contradictions between state ambitions about RDP housing and actual beneficiary practices have been explored (Charlton, 2003), however, there is limited understanding of the relationship between socio-cultural factors, the state's material processes and transaction practices.

Policy contradictions and the RDP sub-property market

South African housing policy has often been blamed for being contradictory and vague on some aspects (Bond & Tait, 1997; Lalloo, 1999). From the onset, the housing policy programme was stuck between the market and state paradigm of housing supply. While policy articulation was that housing would be delivered through market mechanisms, the implementation process was predominantly state driven. In this regard there was a contradiction in what policy had articulated vis-a-vis what occurred on the ground. Another contradiction was in the assumption that market mechanism was appropriate for housing delivery under the then economic fundamentals (Lalloo, 1999). To a large degree, this was driven by a sense of optimism during the early years of post-Apartheid transition. There was hope that the new government would attract investment and grow the economy thus creating new employment. As reality would find, unemployment levels increased, and economic growth slowed. This meant that the poor could not afford housing investment.

Policy contradiction emanates from the manner in which policy messages are transmitted. The contradiction is exacerbated by the confusing policy language and articulation around RDP housing as an asset. It seems to be common language among state officials and politicians to refer to RDP housing as 'state properties'. This implies that the state owns these properties perpetually notwithstanding that beneficiaries hold title to these properties. There is an impression that the state has a responsibility and a legitimate right to control what beneficiaries do with their housing. The uproar from both politicians

and officials about the selling of RDP houses indicates the state's desire to control how beneficiaries engage with their housing asset. Very frequently the state refers to those who either sell or rent out their properties as 'ungrateful' and 'underserving' of RDP houses. This is a language that does not recognise the broader policy objectives of creating an asset for low income people. While the policy objective of delivering RDP housing is to provide beneficiaries with an asset which they can use to improve their lives, this message is often distorted through political statements and official utterances.

Furthermore, the existence in policy of both 'housing as an asset' and the 'pre-emptive clause' is a contradiction in itself. The state's claim that it wants to provide beneficiaries with an asset which they can use to access finance through collateralisation -which is a flawed idea as has been argued in this study- cannot be realistic under the legislative conditions of the pre-emptive clause. This is particularly so in the context where the pre-emptive clause is often miscommunicated at both the official and political level. Very often state messages regarding the pre-emptive clause exclude the timeframes of the limitation thus creating a sense of perpetual illegality of transacting RDP housing. The clause indicates the state's confusion on what in fact it wants beneficiaries to do with their RDP housing assets. This also reveals a lack of clear and long-term policy direction. The state fails to articulate how it envisages beneficiaries to deal with their assets beyond the collateralisation and asset building rhetoric.

Section 10A of the Housing Amendment Act of 2001 places a restriction on the selling of RDP houses before the period of eight years (see footnote⁹). Although these sentiments are not based on empirical evidence, they have been taken as the truth. Inadvertently, these sentiments suggest that RDP houses should not be sold at all, even beyond the eight year restriction⁷. On many occasions there has been no

7 The Housing Amendment Act of 2001 introduced a restriction on involuntary sale of state-subsidized housing. The Act states that 'it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing subsidy programme for the construction or purchase of

reference to what the legislation permits (particularly the pre-emptive clause) and what it doesn't. Instead, a very stern warning that law enforcement would deal with those who sell their RDP houses was communicated. Political statements and media reports are an integral part of how policy and legislation is communicated to the general public. Based on previous studies, there is a general fear that selling an RDP house is 'illegal'. This is incorrect as both the policy and legislation allows for RDP houses to be transacted after the eight year restriction expires. The backlog in issuing title deeds means that many beneficiaries take occupation of their properties without titles. It remains unclear whether the pre-emptive clause takes effect from the date of the title deed's issue or the date beneficiaries actually occupy their properties.

In addition, the above contradictions have a significant impact on the development of a sub-property market within the RDP housing sector. The state's focus on controlling what beneficiaries do with their assets overshadows the need to create conducive conditions for the development of a sub-property market. Even in the context of existence of improved economic fundamentals and sound calculative agencies amongst RDP beneficiaries, a sub-property market is unlikely to develop under current policy conditions. The impact of current policy conditions creates a confusion for the private sector (particularly the banking industry) and beneficiaries alike. This increases the banks' and other relevant private institutions' reluctance to actively participate in the RDP housing market.

a dwelling or serviced site, that such person's successors in title or creditors in law, other than creditors in respect of credit-linked subsidies, shall not sell or otherwise alienate his or her dwelling or site unless the dwelling or site has first been offered to the relevant provincial housing department at a price not greater than the subsidy which the person received for the property' (Section 10A).

Calculative agency in informal transactions

The research findings have informed perspectives of how formal properties become informalized through informal transaction processes. The study confirms that formality is transmutable under the pressure of informal forces such as a set of rules and practices that are outside of its regulatory framework. This dispels the prevailing notion that formality is less fluid and unlikely to react to forces outside the formal realm. The manner in which beneficiaries navigate between formal and informal processes points towards this fluidity. More importantly, the study has informed understandings of how the poor find ways to navigate between formality and informality, thus reinventing new rules and codes of practice in the process. While these new sets of rules and codes may not be documented or even understood by the outside, they are entrenched within a particular social space.

The literature related to this topic is saturated with assumptions that actors in informal transactions have calculative agency. These assumptions are premised on the conviction that beneficiaries engage in informal transactions in order to maximise economic benefits associated with the exchange of property assets. This perspective assumes that beneficiaries have adequate information about what 'the state of the world' is (Callon, 1998). In fact, the findings indicate that beneficiaries do not have sufficient information about their assets and the market in order for them to participate. The findings indicate that beneficiaries do not have knowledge of the property market and the state does not provide sufficient information on the state of RDP houses with regards to transaction process.

Another important point is that calculation is embedded in cultural contexts and most beneficiaries come from a cultural background that does not wholly and singularly base decisions on economic calculus. Therefore, the study of housing behaviour in informal transactions needs to be considerate of cultural contexts before claims of calculation can be made. The assumptions that RDP beneficiaries have calculative agency to engage in property contracts is limited. The link between culture and calculative agency is nuanced in the section below.

This research claims that calculative competence is a subject of cultural context and therefore cannot be divorced from each other.

Cultural dynamics of housing behaviour—beyond the market

There is evidence in the literature of over-reliance on framing the study of informal transactions in low income housing on the basis of market paradigms related to calculative agency. Methodologies and analytical frameworks place tremendous emphasis on markets as key variables in understanding why beneficiaries transact their properties. As a result, the role of culture and other social elements are ignored. Housing is a product of culture and cultural frames inform calculative competence as reiterated by Callon (1998). Therefore, to detach housing behaviour from cultural contexts is both limiting and incorrect. In the words of DiMaggio (1994), the role of culture in the constitution of market societies is important. He postulates that culture is a necessary premise for explaining the appearance of rational actors and the components of the market economy primarily because “their behaviour and calculative capacities differ from one society to the next” (1994, p. 23). The argument advanced here is that housing behaviour is embedded in cultural contexts and practices. As Callon would argue,

[i]rrespective of mediations through which influence is supposed to be exercised, it is asserted that in all cases certain social structures or cultural forms favour calculations and selfish interests while others induce agents to be altruistic, disinterested, generous and even to give for freely (1998, p. 5).

Therefore, any housing analysis aimed at understanding the behavioural practices of actors should concern itself with understanding culture as a key element to shaping that behaviour. Although authors such as Gao (1998) find the ‘culturalist’ approach to be weak in its claim to explain the role of culture in blocking the emergence of calculative agencies, he still however uses culture as a premise for refuting this

claim. This is an indication of how critical the cultural approach is in understanding housing phenomena such as informal transactions.

Furthermore, using the market as the basis of analysis negates the lack of calculative agency in various cultural contexts. According to DiMaggio (1994), calculativeness is embedded in culture. Some cultures promote calculative rationality while others restrict or limit it. There is certainly a relationship between calculativeness and participation in the market. According to Callon (1998), in contexts where culture limits calculative rationality, the capacity to participate in the market is also restricted. Therefore, Callon's claims that calculative competence is a product of cultural frames rather than an intrinsic property of human beings is well-placed. His emphasis is on the cultural and social dimension of calculative competence as key in understanding the behaviour of actors.

In the context of informal transactions in South Africa, there is limited effort to study this practice from the cultural perspective. This leads to an insufficient understanding of the relationship between culture and housing in general. The complexity of this relationship is enhanced when the role of the state is taken into account. RDP housing is provided by the state which is already an interference with a cultural context. It is here where housing ceases to be purely a product of culture but becomes embedded in a web of institutional relationships and cultural importations and impositions. The state adopts certain cultural perspectives to housing behaviour—those related to individuality, private property, and high calculative competence. It ignores other cultural perspectives which may have less calculative competence.

Therefore, it is imperative to consider the cultural dynamics of housing behaviour when studying informal transaction processes. Studies of housing behaviour should consider the intricate social and cultural factors that influence behaviour. Without doing so, the current understanding of this phenomenon is likely to remain limited. This may lead to incompatible interventions which exacerbate the housing challenge.

Tenure dynamics in South Africa

Tenure dynamics in South Africa are complex and embedded in the history of the state's imposition of predominantly Western forms of tenure and property rights. In this instance, the state sees secure tenure as a provision of legal property rights in the form of title deeds (De Soto, 1989; van Gelder, 2009; Porio & Crisol, 2013). This is amid growing evidence that formal titling does not necessarily guarantee secure tenure. The state's insistence on using legal property rights to provide secure tenure is contradictory to how RDP beneficiaries engage with property relations. In line with the thesis advanced by van Gelder (2009) and Kombe and Kreibich (2000), this contradiction is an outcome of the state's failure to accept that the provision of secure tenure can also be facilitated by giving recognition to the informal processes the urban poor use to hold and transact their properties. There is clear evidence that the state does not recognise the broad range of tenure practices and processes that exist in the low income housing context. Neoliberal aspirations of formal titling as a conduit for accessing housing finance and promotion of housing investment has obviously contributed to this bias towards the formalisation of property rights as the only route to tenure security. This ignores the evidence that the formalisation of property rights has achieved limited results in this regard (Durand-Lasserve, 2006; Payne, 2000; Leap, 2005; Marx & Rubin, 2008). The result of this study confirms that the formalisation of property rights in low income housing has achieved limited results in meeting the neoliberal objectives of using property as a vehicle for economic growth. Instead, it has perpetuated the exclusion of the urban poor from participating meaningfully in property relations.

While the state's intention to provide secure tenure is driven by the desire to redress skewed property ownership patterns, it has not adequately achieved this objective. One of the key reasons why this has not occurred is the nature of how the state has adopted rigid Western forms of tenure and property rights at the expense of socially legitimated ones embedded in RDP beneficiaries' realities. As it will be detailed later on, the state puts emphasis on title deeds as the only proof of tenure. There

appears to be reluctance from the state to accept secure tenure as recognition of these socially-legitimated tenure practices. Tenure practices in urban areas are predominantly driven by principles of private ownership where property relations are defined primarily in economic terms. This is unlike most rural parts of developing countries where tenure practices are embedded in socio-cultural principles. This polarisation of tenure practices has collided in the largely Eurocentric urban context. They inform the friction between state-sanctioned property relations and entangled tenure practices of 'new' urban residents. This friction has resulted in the partial rejection of state-sanctioned property rights in favour of entangled property relations.

This entanglement is further complicated by political utterances about the selling of transaction practices as completely 'illegal' and symbolising a lack of gratitude on the part of the beneficiaries. Such utterances contributed to beneficiaries transacting their RDP informally. It can also be argued that these utterances illegitimize beneficiary practices and thus constrain their ability to sufficiently realise equity in their properties. The research also indicates that political utterances stigmatise RDP properties as unsaleable.

Furthermore, there is a clear relationship between language and power with regards to how policy is articulated. Jacobs (2006) argues that state power is not reducible to individual agency but instead constituent of a network of relations through institutional arrangements. Another key aspect that this research raises is the rigidity and unfamiliarity of state-sanctioned transaction processes, which are located within state-sanctioned institutional arrangements. The evidence indicates that institutional arrangements are alien to the majority of the poor who are coerced by the state to utilise them in order to express their property relations. Therefore, this study claims that it is critical to understand how the state uses language to exercise power and how this power is then positioned and maintained through state-sanctioned institutional arrangements. Moreover, the research highlights the exercise of power through these institutional arrangements as an important contributor to the nature of informal transaction processes. It argues that the resultant outcome of this exercise of power is the housing ben-

eficiaries' limited ability to navigate institutional hierarchies within the property transaction process. Ultimately, beneficiaries opt for alternative methods of exercising their property relations that are outside of state-sanctioned arrangements.

Unpacking the relationship between property and citizenship in South Africa

Informal transactions are informed by much deeper post-apartheid urban governance complexities. These complexities include issues of urban citizenship for Black South Africans in a predominantly Eurocentric urban environment. The assumption that the absence of legislated controls and limitations of urban citizenship for Black South Africans, which prevailed under the apartheid state, automatically translates to equal citizenship is misleading. The legacy of urban exclusion still influences how Black South Africans behave in the urban context. Their urban citizenship is closely embedded to property ownership, transaction and consumption. The state's over-reliance on private ownership as a predominant response to the housing need is therefore questionable and has contributed to the conundrum of informal housing transaction. It appears that this over-reliance was based on assumptions that low income beneficiaries had ambitions to become permanent urban residents. This assumption ignores deep seated and complex historical urban citizenship challenges. It also ignores the hangover from urban governance and structural constraints placed on new Black South African urban residents in their attempt to claim urban citizenship.

Citizenship is a process of self-actualisation facilitated by having property in land or things. This relationship between property and citizenship is articulated using theoretical formulations of both Hegel (1820) and Locke (1690). Both schools of thought agree on the direct relationship between what could be called self-property and property in land or things and between properties and (in both senses) citizenship (Holston, 2008). Using this theoretical framing, this research argues that as a result of deprivation of access to property of South Africa's

Black majority during apartheid, their citizenship was prohibited. It further claims that the current nature of property for low income housing beneficiaries perpetuates inequalities and thus prohibits full access to urban citizenship. The historical disenfranchisement of the Black population in South African cities contributes to this deprivation of urban citizenship. The remodelling of apartheid cities post-transition largely concentrated on political rights and a replacement of institutions of the previous regime with those of the new dispensation. While political rights to vote were important for a nation-building project, they have had a limited contribution in integrating low income population into urban citizenry.

Various scholars offer diverse definitions of citizenship. The common thread is that citizenship entails an interaction between people amongst themselves and with the state within the framework of political, civil and social (Marshall, 1950; Heater, 1990; Robinson, 1997; Lalloo, 1999). Citizenship confers on individuals' certain duties, rights and obligations, and privileges of being a member of a spatial entity—be it state or city (Lalloo, 1999; Brown, et al., 2010). Cities are a strategic arena for formulation of citizenship. Therefore, this strand of citizenship is referred to as 'urban citizenship'. This has been boosted by the desire to shift from notions of citizenship based on membership of nation-states, and expand its political limits to include decision-making control of citizens (Purcell, 2003). Urban citizenship is being defined, redefined and contested through daily practices and actions of citizens, by interactions with each other, whether as individuals or as organised entities, and with state institutions at their various forms (Grest, 2002; Holston, 2008). Cities are a hub of citizen interaction and complex exchanges between state and citizens. In these interactions there are bound to be conflicts arising from freedoms to express one's rights and perform obligations. In the complex context of the post-apartheid or post conflict urban environment, interaction between citizens with each other and with the state has always produced friction. In turn, these abrasions produce diverse forms of citizenship patterns. On the one hand, there is a struggle between what Holston (2008, 2009) refers to as the entrenched citizenship and the insurgent citizenship. Citizen-

ship has always laid down boundaries between those who are included and those who are excluded (Kofman, 1995). In the South African context, these citizenship patterns are illuminated and driven by the past racial segregationist urban policies of the apartheid regime. Thus, entrenched citizenship refers to that enjoyed by predominantly white population, whose right to urban citizenship was enforced and protected through legislated privileges. Historically, this section of the population views urban citizenship as their natural right. In the main, they see themselves as holding power to either accept or reject others who seek urban citizenship. On the other hand, insurgent citizens are relatively 'new' urban residents whose right to the city was restricted through segregationist apartheid laws. Their urban citizenship was prohibited as was their national citizenship. It is only in the post-apartheid period that they can lawfully lay claim to urban citizenship. This claim is dependent on their ability to own property and that ability was severely dented by historical disenfranchisement.

According to Hegel (1820), property plays an integral role in personal and social development. It gives an individual a sense of belonging and self-actualisation. Hegel's theory tells us that for an individual to secure a possibility of developing into their full potential they must have property. And only then can an individual progress from their own personal world into the external world of nature and society by claiming things as property (Hegel, 1820). Property rights empower and validate an individual's citizenship. To climb hierarchies of social standing and economic emancipation, one must have property in himself/herself and in land or things. According to Hegel (1820), individuals without property lose the possibility of fully developing their own person, which is also the basis of their standing in the social world (cited by Holston, 2008). Holston (2008) further attests that in Locke's theory, individuals without property in land or things on which to disburse their labour, lose the full ownership of their own person that is the basis of their equality. Power distribution in society is highly driven by the amount or size of property held. Based on Hegel's formulation of property rights, without access to property, low income people cannot lay claim to citizenship (Lalloo, 1999). Both Lockean and Hegelian (cited by Holston,

2008, p. 115) “lineages of property right claim a close connection between property and the fundamental qualifications of citizenship: Freedom (economic and intellectual independence), capacity (agency, mastery, and responsibility), dignity, respect, and self-possession”. Locke further argues that the propertyless cease to be active citizens and their citizenship becomes differentiated from those with property in land and their rights unequal (Laloo, 1999). Hegel agrees with this assertion by stating that the propertyless not only lose their inner person but also their active citizenship. Both Hegel and Locke see these individuals as unfit to contribute to political decisions. They see them as adolescents incapable of citizenship comprehension.

What can be deduced from these theoretical perspectives is that a meaningful attempt to redress inequalities and create a sense of citizenship must be attached to realistic ideals of facilitating ownership of property. There are fundamental questions raised of the South African housing programme and whether it has been able to move the previously disenfranchised population towards egalitarian citizenship (Laloo, 1999). Instead, it is argued, the housing programme has entrenched and reinforced inequalities and thus failed to realise the goal of equal citizenship. Laloo (1999) attributes this to a failure of policy to address the broader issues of property and place as it instead focused on a uniform and monetarist approach. There are various issues that point towards this policy failure. The first pertains largely to the location of low income housing on the periphery of post-apartheid cities, far from economic opportunities and social amenities. The second is the state's inability to facilitate secure property rights through the timely issuing of title deeds to low income housing beneficiaries. The third refers to the legal frameworks guiding the acquisition and transfer of property by low income housing beneficiaries. Restrictions on when to sell RDP houses are prohibitive to the exercise of freedoms of what beneficiaries can do with their property. This restriction comes in the form of the pre-emptive clause. As a result, RDP beneficiaries can only enjoy differentiated property rights. Fourth, legislative recognition of customary land tenure has not translated to acceptance of customary practices in land transactions. There is evidence that suggests the state's adopted

Western practices of land transactions in the understanding that these would create equality of treatment. Consequently, these factors have contributed to the reinforcement of unequal rights to property and differentiated citizenship for low income RDP beneficiaries.

Research objectives

Previous research studies have largely focused on confirming that informal RDP housing transactions are indeed occurring. Literature has broadly explored the factors that inform these transactions and debated the relationship between informal transactions and poverty. Other contributing factors, such as the backlog in title deeds and complex formal transaction processes, have been dealt with in other studies (see for example Durand-Lasserve, 2006; Jones & Datta, 2000; Urban LandMark, 2011; Sishaka Development Management Services, 2011; Rust, 2011, 2013). Evidence on the extent, nature and character of informal transactions has largely been negligible. The existing body of literature doesn't explore in detail the practices RDP beneficiaries follow in transacting their properties informally and the relationship between their practices and broader socio-economic, cultural and institutional issues.

What is also notable is that the methodologies used have struggled to capture accurate data on informal housing transactions in the RDP sector. This is primarily due to the sensitivity associated with transacting informally. As indicated in the study commissioned by FinMark Trust⁸ in 2012, researchers struggled to get adequate information from those involved in informal transactions in the RDP housing sector. According to the report, those who had purchased or

8 Housing subsidy assets: Exploring the Performance of Government Subsidised Housing in South Africa; A research initiative sponsored by the FinMark Trust, Urban LandMark, the National Department of Human Settlements, Western Cape Department of Human Settlements, the South African Cities Network and the FB Heron Foundation.

sold their RDP houses informally were reluctant to participate in the interview process or to answer any questions related to the research. To mitigate the challenges faced by previous research, this study has explored a methodology and process of data collection and stakeholder engagement that is suitable for dealing with the sensitivities associated with informal housing transactions. For this study the researcher used personal networks and understandings of low income communities to build an intimate relationship of trust. The methods and processes employed were aimed at removing the fear of prosecution for admitting to selling RDP properties informally.

Understanding informal transactions from conceptual, theoretical and practical perspectives is complex and often daunting. Various attempts to conceptualise informal transactions while also placing them within conventional theoretical frameworks have been undertaken. While the conceptualisation of informal transactions has yielded interesting academic discussions, its theorisation has failed to precisely articulate the factors that inform these transactions within the context of post-apartheid South Africa. This research has endeavoured to explore these and create linkages between practice and context.

South Africa's adoption of a neoliberal approach to housing delivery, whereby housing is linked to economic benefits and is positioned as a facilitator of access to property markets, places it as a relevant case study for studying informal transactions. The complex historical role of informality as a primary means for the Black majority to access the city makes South Africa an ideal place to study informal transactions in the context of low income housing. The research is therefore motivated by historical factors and the government's heavy investment in low income housing as a facilitator of access to property markets and as a tool for rebuilding citizenship for the previously marginalised Black population. The neoliberal-welfarist approach to housing delivery further presents a rich context for unpacking informal transactions in low income housing.

This research explored the relationship between state processes and practices, and beneficiary practices in informal housing transactions. The first objective was to determine the effect of policy and legisla-

tive inadequacies on informal housing transactions. The current housing process is an outcome of policy and legislative framework. Therefore the aim of this objective was to first identify policy and legislative inadequacies that have contributed to informal housing transactions and to ascertain how they have affected the current state of informal transactions. The second objective was to explore the prevalence and nature of informal housing transactions. The aim here was to measure whether informal transactions occur frequently or are mainly sporadic occurrences. The research also assessed whether these transactions were prevalent enough to constitute a market. In order to respond to this objective, the study engaged with the role of calculative competence as a useful measure of market existence among RDP beneficiaries. This objective was also concerned with unpacking the nature of informal transactions as being either an outcome of market forces or merely reactions to social shocks and ever-changing socio-economic dynamics of the poor. In this regard, the study raises the argument that informal transactions are not driven by the ideals of climbing the housing ladder but are merely a reaction to the poor's precarious social circumstances. The third objective was to assess the beneficiaries' awareness about legislative limitations on the transaction of their RDP housing assets. The study assessed the levels of knowledge and awareness on the pre-emptive clause. The fourth objective was aimed at identifying the broader implications of informal housing transactions for socio-economic, political and cultural issues in the post-apartheid urban governance context. The aim here was to assess how issues such as urban citizenship, property relations and access to basic amenities are impacted by informal transactions. The fifth objective was aimed at exploring whether informal transactions are linked to factors beyond market conceptualization. This objective was informed by the hypothesis that studies of informal transactions have tended to predominantly use market conceptualization to understand the phenomenon of informal transactions. In this way, these studies have missed an opportunity to explore other factors such as sociological and anthropological factors.

Methodology

The methodological frame selected was aimed at providing an understanding of the context, stakeholders, actors and processes in informal transactions within the government-subsidised, low income housing sector. The main aim was to yield an answer to the following research question: *What is the extent, nature and character of informal housing transactions in government-subsidised, low income housing in eThekweni Municipality?*

The main concern of the study was to develop an understanding of the dynamics of informal housing transactions in government-subsidised low income housing. Initially the study conducted a contextual analysis with the aim of identifying key stakeholders, actors, processes, factors and perceptions influencing informal housing transactions. To unpack the contradictions in processes of the state and practices of beneficiaries, the study contrasted state assumptions with beneficiary practices to better understand the points of divergence. The methodological process needed to take into consideration the nature of low income housing as a space of interaction between various actors, institutions, policy and legal frameworks; the practices and assumptions of those providing low income housing (practitioners, policymakers, government officials, the private sector and etc.) and those consuming low income housing (beneficiaries, informal buyers and informal sellers). As guided by this methodological framework, the study set to unpack and understand the complex web of social interactions and practices of low income housing beneficiaries within the context of prevailing institutional and legal frameworks. It contrasts policy and legislative assumptions, as seen from the perspective of practitioners and policymakers, against the practices that housing beneficiaries employ within the informal housing transaction environment. The study further contrasts institutional behaviour with beneficiary practices and perceptions, with the aim of understanding misalignments in policy and practice, and thereby building a contextual understanding of the informal housing transaction environment. In this regard, there are a number of aspects that the study pays attention to such as social networks, socio-cultural practices, economic practices, state assumptions, institutional

practices and policy communication and language. These inform the nature of the study as a multidimensional inquiry.

Case study selection

EThekweni Municipality as a study area was a natural choice due to the researcher's knowledge and familiarity with the context. The two case study areas of Waterloo and Quarry Heights were selected using the following criteria: Both are government subsidized low income settlements, centrally located and older than eight years, and all properties were registered with the Deeds Office. This criteria was guided by the objectives of the research therefore it is purposive in nature.

The case study areas of Waterloo Ext 5 and Quarry Heights Phase 1 were selected using the abovementioned criteria. The former is an RDP settlement completed in 1999 (although many beneficiaries were only allocated houses between 1999 and 2001) and the latter was built in 1997. Both these areas were built and handed to beneficiaries between 1997 and 2001. Waterloo Ext 5 has an allocation process that predates the pre-emptive clause and falls within the grey area of the introduction of the clause. Waterloo Ext 5 is 15 years old and Quarry Heights Phase 1 is 17 years old. They both presented the basis for the examination and assessment of informal housing transactions as one predates the pre-emptive clause and exceeds the eight-year restriction period while the other falls within the period during when the clause was introduced.

The motivation to select Waterloo Ext 5 as a subject of research was primarily due to indications that a number of properties had changed ownership. Based on information provided by both eThekweni Municipality and the KwaZulu-Natal Provincial Human Settlements Department, there are a number of properties in Waterloo Ext 5 which have changed ownership. Properties labelled in red are those which have changed ownership (refer to Map 2). The ones in green are still under the ownership of original beneficiaries according to the records of both the Municipality and Provincial Departments. In line with the argument raised earlier, while the red properties are recorded as having changed ownership, it was unclear whether these were transactional.

Both the Municipality and provincial government could not provide clarity on whether these recorded ownership changes are a result of formal transactions or part of the regularisation process conducted by the Municipality. The study could not confirm any official records of formal transactions having taken place. According to the Municipality, regularisation is the process used to rectify ownership. The process entails visits to properties to ascertain whether current occupants were original beneficiaries. Where original beneficiaries could not be located, ownership was given to the people occupying properties at that particular time. It is a complex process the Municipality is proposing to implement at scale.

According to data provided by eThekweni Municipality, Quarry Heights demonstrated a high number of RDP housing transactions (refer to Map 3). Both the provincial government of KwaZulu-Natal (KZN) and the local government of eThekweni indicated that the area would be an appropriate case study for understanding RDP informal transactions. Map 3 indicates the number of houses that have changed ownership. It is not clear whether the recorded ownership changes are a result of monetary transactions or municipal regularisation. The data indicates that these changes have been done formally, therefore the assumption is that these are formal transactions instituted by RDP recipients.

Overview

This article details the intricate nature of informal transactions in government subsidized low income housing in South Africa. It articulates how low income housing beneficiaries are challenging Western norms of property relations through practices that reflect their geographies of practice. It demonstrates a contradiction between state expectations and beneficiaries practices. It also highlights the contradictory nature of policy articulation versus practices. It provides anecdotal evidence of these contradictions where the state, on one hand, inadvertently enables informal transactions while condemning them on the other.