

Impact case study (REF3)

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| Institution: University of Birmingham | | |
| Unit of Assessment: UoA 25, Area Studies | | |
| Title of case study: The “family house”: Racial legacies, popular norms and legal reform in Johannesburg, South Africa | | |
| Period when the underpinning research was undertaken: 2015–2019 | | |
| Details of staff conducting the underpinning research from the submitting unit: | | |
| Name(s): | Role(s) (e.g. job title): | Period(s) employed by submitting HEI: |
| Maxim Bolt | Reader in Anthropology and African Studies | January 2012–March 2020 |
| Period when the claimed impact occurred: 2015–present | | |
| Is this case study continued from a case study submitted in 2014? No | | |
| 1. Summary of the impact | | |
| <p>Post-apartheid South Africa experiences a profound disharmony between law and custom in urban home inheritance, creating unclear lines of ownership. Bolt’s research has impacted policy debate and services through collaboration with ProBono.Org, a legal NGO, which seeks to provide free legal representation for all who need it in South Africa, as well as advocating for legislative and policy reform. Core impact lies in:</p> <ul style="list-style-type: none"> - Influencing ProBono’s professional practice, informing their approach to legal remedies and access to justice, facilitating funding and building advocacy capacity; - Stimulating policy debate and establishing a sustained campaign for change among government, legal and civil-society stakeholders, and contributing to draft legislation consultation; - Creating a priority legislative reform programme to advise senior Human Settlements officials. | | |
| 2. Underpinning research | | |
| <p>Bolt’s research offers critical insight on an enduring problem in post-apartheid South Africa. “Family houses” lie at the heart of a gulf between social norms and law, marginalising urban black people despite the formal end of segregation. Under apartheid, black people were prohibited from owning urban property. As apartheid unravelled, township rental houses became private property to promote market inclusion through new asset owners. But popular understandings of property and inheritance diverged from official ones, deepened by distrust in an unclear administrative process. Family houses are regarded as cross-generational, collective patrimony, diverging from the law’s insistence on exclusive and usually individual ownership. Furthermore, the current systems for land registration and succession do not sufficiently recognise popular norms. Bolt’s interdisciplinary social, institutional and legal perspective has illuminated the previously unrecognised complexity of the gap between law and popular norms.</p> <p>The findings below emerged from a project on inheritance in Johannesburg (ESRC Future Research Leaders, 2016–2019). Collaboration for impact was built into a year’s ethnographic fieldwork — including shadowing officials, observations of legal advice, disputes and court cases, and township case studies — which offered unparalleled insight into how inheritance interacts with state systems. The research has been disseminated in position papers for key stakeholders (RO2, RO3), then in a widely circulated academic article (RO1), with a public lecture reconceptualising state administration (RO4).</p> | | |

Key research findings (RF) emerging from the project are as follows:

RF1: Collective entitlement is popularly understood to be “proven” by apartheid-era “family permits”, which regulated tenancy and are no longer officially recognised. More complex than “culture” at odds with the state, popular norms emerge from layers of bureaucratic intervention and informal uses of formal documentation (RO4).

RF2: Even so, the family house is widely understood as a matter of urban custom. This has crucial implications, because customary law is constitutionally protected and the Constitutional Court emphasises the “living customary law” of everyday norms (RO1, RO2, RO3).

RF3: Disputes over ownership today demonstrate two areas of confusion. First, when freehold title to houses was implemented, individual family members sometimes gained ownership without the knowledge of other potential claimants. Second, as “custodian” (guardian of collective family property), a “family representative” was sent to claim the rental house on everyone’s behalf, but the state granted that person exclusive ownership (RO1, RO2).

RF4: Inheritance adds an important dimension: urban black communities see succession law as unjust — the imposed norms of the white elite — prioritising nuclear family over kin group, and asset over patrimony. But custom has its own complexities, often used to justify male control, ostracising widows and children. Discontinuity between law and custom causes many township dwellers to avoid formal processes. The deceased is routinely left as “owner”, re-asserting ancestors’ centrality in anchoring collective family patrimony. Such avoidance pushes already-marginalised people beyond legal protection (RO1, RO2).

RF5: When disputes spill beyond private mediation, official process promises resolution. But, as family members find their stories reinterpreted as administrative “cases”, unfamiliarity and disagreement with the law intensify lack of trust in an overstretched, uneven system (RO1, RO2, RO4).

RF6: It is thus important to bring customary norms within legal protection, addressing social exclusion while ensuring they are non-discriminatory and compliant with South Africa’s constitution (RO3).

3. References to the research

RO1: Bolt, M., and T. Masha. 2019. ‘Recognising the family house: a problem of urban custom in South Africa’. *South African Journal on Human Rights*: 147–168. DOI:

[10.1080/02587203.2019.1632737](https://doi.org/10.1080/02587203.2019.1632737)

RO2: Bolt, M., and T. Masha. 2018. ‘[Family House Position Paper](#)’, position paper presented to South African executive, legislative and judicial officials, as well as academics and civil-society and legal stakeholders, University of the Witwatersrand, 23 July 2018.

RO3: Bolt, M., and T Masha. 2019. ‘[Family House Policy Toolkit](#)’, policy toolkit paper presented to South African executive, legislative and judicial officials, as well as civil-society and legal stakeholders, Hogan Lovells law firm, Sandton, 26 March 2019.

RO4: Bolt, M. 2018. ‘[Fluctuating formality: anthropology and the structure of difference](#)’, Malinowski Memorial Lecture, London School of Economics, 17 May 2018.

Research funded by ESRC Future Research Leaders grant ES/N003071/1, ‘Entitlements, Disputes, and Provision for the Future: Making Wills and Negotiating Inheritance in South Africa’s Middle Class’, 2016–2019. PI Maxim Bolt, value £178,363 FEC (ESRC contribution £142,690).

4. Details of the impact

Bolt’s research has **substantially influenced the practices of legal NGO ProBono.Org regarding the “family house”**. It has created new advocacy for legal-administrative reform, by

informing their policies and delivery of services. ProBono.Org positions itself as the first and only organisation of its kind in South Africa. It promotes access to justice and provides free legal assistance to ‘thousands of poor clients’ (S1) with branches across South Africa’s three largest metropolises: Johannesburg, Durban and Cape Town. Sustained collaboration with ProBono.Org within Gauteng Province (incorporating Johannesburg and Pretoria) resulted in a campaign for evidence-based planning to make law and administration more responsive to popular norms (RF4). The campaign has **stimulated and informed policy debate** and **established Family House legislation reform as a key priority** (S5). Gauteng Province is the country’s leading metropolitan area, and has long been a test case for housing issues and includes a very large number of family houses (there are over 100,000 in Soweto’s townships alone).

1. Influencing professional practices of ProBono.Org

Bolt’s research **informed ProBono.Org’s legal advice practice, broadening service delivery to encompass a new area of advocacy work** (RF2). It established a new priority area in the NGO (‘The Family House Project’) and equipped them with a new interpretation of existing socio-legal dynamics shaping how they view their own role. In the words of both the former National Director and Head of Housing:

- ‘Dr Bolt’s research resulted in services that took into account the social context of inheritance and [...] revealed] that a disconnect exists between the law as it currently stands and popular understanding’ (S1; RF3, RF4).
- ‘This research has [...] enabled us as an organisation that was mostly focused on clinical work (legal advice and legal services) and empowerment to have a broader perspective [...] we are now exploring what legal reform means in the sense of ensuring the access we want to create [...] is socially impactful’ (S2).
- ‘Dr Bolt’s research and collaboration [...] enabled us to raise funding for access to justice in the administration of deceased estates [...] to ensure that we can build on Bolt’s research insights and advocate for change in the administrative process’ (S1).

Bolt has worked closely and regularly with Heads of Housing at ProBono.Org since 2016 **developing a plan for advocacy** (S3). Together, they have:

- a. **Established a new approach to ProBono.Org’s work on the family house** (S2). Created new diagnoses (RF3–RF5) and working definitions (especially RF2) which were taken up by the policy makers, the Provincial Legislature, the judiciary, the lawyers, civil society and select academic experts. The new diagnoses were the result of a co-authored position paper, which presented Bolt’s research findings (RO2) and a closed practitioner forum (July 2018, S4).
- b. **Expanded access-to-justice advocacy within ProBono.Org**, as the position paper (RO2) was adopted and used in service delivery. Bolt’s research-based recommendations have been used ‘as a resource tool’ with ‘insight into how the many gaps between law and popular norms affect society at an economic and social level’. The position paper (RO2) has informed ‘ProBono.Org’s inputs into the land question that currently dominates South Africa’s policy debates’ (S1; RF1, RF3–RF5). The paper ‘has not only been invaluable as a resource within ProBono.Org, but also represented a key step in building the Family House Project as a distinct focus in ProBono.Org’s work’ (S1).
- c. **Ensured public engagement with the research and their collaborative work**. In line with Bolt’s research (RO2), ProBono.Org further expanded outreach and advocacy, educating broader audiences on family house issues via joint radio appearances (discussion/call-in) on community and major commercial stations about the position paper (RO2) (S9).

- d. **Increased understanding among other stakeholders.** Bolt and Masha developed a policy toolkit (RO3) that used Bolt's key research findings (RF2, RF6) to evaluate avenues for the reform of legislation and administrative procedures. It drew on a co-organised community consultation with 180 township residents, ensuring meaningful stakeholder engagement and advocacy (February 2019; S4). Grounded in people's lived experiences, the toolkit was launched to around 40 government, legal and community stakeholders, including the South African Law Reform Commission (March 2019). Attendees emphasised its role in stimulating policy debate and increasing understanding, while the Provincial Legislature delegate underlined its contribution to his work in policy change (S4). This led to formal partnership for policy reform with provincial Human Settlements (S5).

Ultimately, Bolt's research directly resulted in 'a change in our approach to the services' ProBono offers (S1), extending beyond legal advice to a major legal reform programme for change in relation to the family house.

2. Stimulating policy debate

Through 'longstanding collaboration' with ProBono.Org, civil society activists and stakeholders, '[Bolt's] research has been the basis for a programme to make the law more responsive' to custom (S8).

- a. The research **instigated policy debate** (S4) through the position paper (RO2), establishing explicit agreement on the themes and problems, and causing stakeholders to request specific avenues for reform (July 2018; see 1a above). The Deputy Master of the High Court noted the importance of learning 'how this [family house] concept also affects [other departments]' operations and how we can address the challenges collectively' (S4).
- b. This advocacy led the Provincial Legislature to invite Bolt and ProBono.Org to contribute to a **public hearing on a new national Property Practitioners Bill** (February 2019). Drawing on Bolt's research (RF3–RF5), they called for recognition of popular practice in property law (S7, S8). In the words of the Chairperson: 'The submission provided important insights into the needs of marginalised people in regulating property practitioners. Having benefited from the points raised, the bill is now in the process of being passed into law' (S8).

3. Establishing Family House legislation reform as a key priority

Family House legislative reform as a priority area came about as increased policy debate led the Gauteng Province's Department of Human Settlements to request a formal Memorandum of Understanding and Terms of Reference with Bolt/University of Birmingham and ProBono.Org (S5, S6). The MOU is intended 'to harness the research expertise of Dr Bolt, the legal expertise and reach of the NGO and the constitutional obligations of the Department to: contribute to the development of a policy for the Family House Concept [... and] advocate for adoption of the policy' (S5). Under the MOU, the Department responds directly to Bolt's research, drawing on a panel of legal practitioners to test proposals for concrete change (S5). Under its Terms of Reference, the first major milestone (projected 2021, delayed due to pandemic) will be to produce a commissioned report that will lead to the Family House's inclusion in the department's annual policy agenda (S6).

The work with Human Settlements, in turn, reinforced the impact of Bolt's research on ProBono.Org's practice. In the words of the current National Director: 'the collaboration with Dr Bolt and the social-science research insights he brings to ProBono.Org's clinic expertise have been central to the expansion of our work in legal and policy reform. Building on Dr Bolt's research to establish a formal partnership with the Gauteng Department of Human Settlements has expanded ProBono.Org's mission' (S1).

5. Sources to corroborate the impact

S1. Testimonials from the former and current Directors and Heads of Housing of ProBono.Org. (September 2018, April 2020).

S2. Recorded interview (transcript of) with Head of Housing, ProBono.Org. Part of the interview is available on [YouTube](#).

S3. Data showing close working relationship with Heads of Housing, ProBono.Org: details of meeting held 2016–2019; co-authoring of publications (see Underpinning Research RF 1–3); ProBono.Org publicity (social media, circulated event announcements, event registers and reports).

S4. Feedback forms from events (July 2018, February 2019 and March 2019).

S5. University of Birmingham Memorandum of Understanding with ProBono.Org and Gauteng Provincial Department of Human Settlements.

S6. Testimonial from Gauteng Human Settlements.

S7. Formal submission to Public Hearing on Property Practitioners Bill, 23 February 2019.

S8. Testimonial from former Provincial Legislator and Chairperson of Human Settlements and Cooperative Governance and Traditional Affairs, and current Member of National Parliament. (September 2019)

S9. Radio programmes, evidencing the significance of the campaign for change. Discussion and call-in on major radio station [Kaya FM's The Law Report](#) (15 May 2019); Discussion on [community radio Capital Live](#); [ProBono.Org's radio programme](#) on which Bolt appeared. One further interview, in IsiZulu, was done by Tshenolo Masha from ProBono.Org on behalf of her and Bolt.