

landowners have granted permission or settlements on public land with the tacit consent of authorities. Informal settlements should therefore not be simplistically defined as being illegal and spontaneous, but should rather be seen as being in a continuum between completely illegal and spontaneous settlements and completely legal and planned settlements. Informal settlements are often seen by residents as being a combination of “rural” or “customary” and individualised processes (WCPHD/CCT, 2003).

- Irregular subdivisions: Irregular subdivisions (where developers or communities informally subdivide and develop a piece of land, and sometimes also illegally tap into services) are one of the major ways in which people get access to land in Latin America, but seems to be fairly rare in South Africa. Examples exist, however, e.g. an investigation of Umlazi found a few examples of irregular subdivision areas with informally subdivided plots, roads, brick/block houses and illegal water connections (BESG, 1997), and some of the early Homeless People’s Federation projects resulting from land occupations, such as Kanana, could also be categorised as irregular subdivisions.
- Informal renting/ sharing: Due to lack of other options, many households’ only access to land is informal rental (or sharing) of backyard structures or rooms in houses. Backyard dwellers and sharers have very little security of tenure and are frequently evicted, especially during housing consolidation projects (where landlords extend and improve their dwellings). Studies have shown that the main reason why property owners accommodate people in backyard shacks is because of the desire to accommodate relatives; wanting to supplement income through rent is only a secondary reason, and in up to 50% of cases there is no monetary rent at all, but a reciprocal relationship in which both landlord and tenant often helped each other, e.g. by buying food (Watson et al., 1994; Yose, 1999). In general, informal rental generally takes the form of “families accommodating a small number of additional people on their properties, for rents (where these are charged) which may do little more than cover the costs of the landlord him/herself” (Watson et al., 1994: 19).

#### 4. KEY ISSUES

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This chapter identifies the key issues and gaps with regard to land issues in urban areas. Where appropriate, opportunities for possible interventions to enhance the fulfillment of the urban land needs of the poor are also identified. These interventions could take the form of enhancing understanding of certain aspects of urban land issues, changing the legal/institutional framework or supporting programmes/ initiatives.

The key issues identified are grouped in five clusters:

- Delivery programmes for providing urban land for the poor
- The needs of the poor/sustainable livelihoods
- Formal institutional framework and organisations
- Property market issues
- Informal processes

##### 4.A. Delivery programmes for providing urban land to the poor

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The main issues relating to programmes for the delivery of urban land to the poor are:

- The inadequate rate of Housing Subsidy Scheme delivery
- Narrow eligibility criteria
- Slow identification and acquisition of land for housing
- Slow land development procedures
- Insufficient funding for bulk infrastructure
- Land restitution

- Gap housing
- Impact of HIV/AIDS on supply systems
- Poor quality urban environments
- Delivery of non-residential land

### *Inadequate rate of Housing Subsidy Scheme delivery*

The Housing Subsidy Scheme is the main programme for delivering urban land to the urban poor. The scale of delivery has been an impressive achievement - over 1.4 million subsidized plots/houses have been delivered since 1994. The backlog of urban households without land and shelter has continued to increase, however. Subsidized housing delivery in the 1994-2003 period averaged 158 000 units per year, which is less than the estimated annual growth in the urban backlog (which was estimated by the Department of Housing in 1997 as 178 000 households per year). The net result has been growing informal settlements and growing numbers of inadequately housed people, especially in metropolitan areas. For example, in Cape Town the estimated number of shacks in informal settlements increased from 24 000 in 1993 to 68 000 in 1998 to 83 000 in 2003 (Abbott and Douglas, 1999; WCHC/DAG, 2003).

HIV/AIDS will, in the long-term (i.e. after about 2006/2007), result in a decrease in the new demand for urban land and housing. Given enormous existing backlogs and the current disparity between demand and supply, however, in the short to medium-term the demand for land and housing will continue to outstrip supply.

Table 11 shows how expenditure on housing has stabilized at about 1.4% of total government expenditure (the Housing White Paper gave the National Housing Goal as increasing the housing budget to 5% of the total budget). Some of the reasons for the inadequacy of the delivery rate, such as slow land development procedures, narrow eligibility criteria, insufficient bulk funding for infrastructure, are discussed below.

*Table 11: National housing expenditure*

Year	Total housing expenditure (R millions)	Total housing expenditure as percentage of total government expenditure
1997/98	4 520	2.4
1998/99	3 748	1.9
1999/00	3 494	1.6
2000/01	3 329	1.4
2001/02	3 711	1.4
2002/03	4 235	1.5
2003/04 (budgeted)	4 779	1.4
2004/05 (MTEF)	5 040	1.4
2005/06 (MTEF)	5 346	1.4

Source: National Treasury, 2001, 2002, 2003

### *Narrow eligibility criteria*

The eligibility criteria of the Housing Subsidy Scheme exclude many of the urban poor without secure tenure and adequate housing. Beneficiaries must be a lawful resident of South Africa (citizen or permanent resident); must have a partner (either be married to someone or live together with someone) or be a single person over 21 years of age with dependants; must have a monthly household income of less than R3500 per month (combined income of head of household and spouse or partner); and must not have owned property or received any form of government housing subsidy before (except for the consolidation subsidy and disabled people). Many of the urban poor living in informal settlements and backyard shacks do not meet all these criteria – young people with dependants, single people, immigrants without resident status, people evicted

from properties for non-payment of rates/service charges and people without ID books are all excluded from the Housing Subsidy Scheme.

In particular, the income threshold has not kept pace with inflation (it has stayed at R3 500 p.m. since 1994; if adjusted for inflation, it should be over R7 000 p.m. in 2003), so increasing numbers of inadequately housed people are being excluded from the subsidy scheme as the target group grows ever narrower.

The introduction of the R2479 savings contribution for contractor-built subsidised housing in April 2002 may result in increased mobilisation of beneficiary savings, but the poorest households will be disadvantaged by this requirement, and be excluded from getting access to land and housing. The impact of HIV/AIDS means that it is increasingly harder for poor households to save up this amount to be able to access a subsidy.

### *Slow identification and acquisition of land for low-income housing*

The release of adequate amounts of well-located and affordable land for low-income housing is a major blockage to delivery. Municipalities ideally need to acquire land (through purchase, expropriation and land swapping) and then “bank” the land for low-income housing well in advance of development, in order to benefit from lower costs and avoid speculation-driven price increases (which are fuelled by the setting of “urban edges”), but this is not happening. Local authorities, with some exceptions, are generally not being proactive in identifying, prioritising, acquiring and releasing well located vacant land for new low-income housing development or managed land settlement, and this has the potential to result in increasing incidences of unlawful occupation of land. Part of the reason for this has been a lack of guidance from National and Provincial Government. In addition, municipalities have only been responsible for the identification and acquisition of land for green field housing projects since the introduction of the new procurement policy for housing in April 2001, and (with a few exceptions) insufficient information exists on vacant land suitable for development. One of the major reasons for insufficient land acquisition, though, is the high cost of well located urban land, and the inadequate provision within the housing subsidy amount for the cost of land. When the housing subsidy amount was substantially increased in April 2002, there was only provision of R300 for the cost of the land in the subsidy amount. In reality, the actual cost of the land per site for a housing project can be considerably more (more than 10 times as much in some cases), especially in Cape Town, where property prices are substantially higher than in other metropolitan areas. Well-located land is especially expensive. As a result, municipalities have had to use their own funds to substantially subsidize the cost of land (and in a number of instances municipalities have subsidised the entire cost of serviced sites).

State land is particularly hard to get hold of. There is a major problem with making use of State land in urban areas for the urban poor, due to red tape associated with lack of clarity as to which sphere of government or which specific department owns or is responsible for specific pieces of State land. Only 12.6% of national and provincial state land has been “vested” i.e. determined to which particular government department it belongs (DLA Land News, 2003). The requirements for vesting are that land be surveyed, have a title deed, and that its use before 27 April 1994 be determined. One of the by-products of this problem is that local authorities are losing millions of Rands of revenue because rates are not being paid for many pieces of State land in urban areas due to the confusion over responsibility. Much well located urban land that formerly belonged to the State has also been lost through the privatization of parastatals, most notably Transnet.

Furthermore, it is important to stress that municipalities have undergone substantial institutional transformation, on an ongoing basis. The successive phases of re-demarcation and restructuring of municipal government have meant that the extent to which municipalities have been able to perform planning, land administration and land development functions have been restricted.

### *Land development procedures*

Some of the obstacles to rapid housing delivery have been complex and/or time consuming land development procedures (planning approval, subdivision, zoning/rezoning), and delays associated with the need for Environmental Impact Assessments. The problem lies not only with the procedures themselves, but with the capacity to administer the procedures. These issues are discussed in greater depth in the section on issues relating to the legal/institutional framework.

### *Insufficient funding for bulk infrastructure*

Lack of sufficient funding for bulk infrastructure is a major blockage preventing the release of land in some areas. Land in an urban context is only of real value if it is serviced (or capable of being serviced). The availability of bulk infrastructure, i.e. the main water and sewer lines and pumping stations, is therefore crucial. Local government is responsible for providing bulk infrastructure, but is able to access the Consolidated Municipal Infrastructure Programme subsidy of R3500 per unit to cover part of the costs of providing bulk infrastructure. It is widely felt that this subsidy amount is inadequate, especially for well located “brown field” sites where extensive work is required to make the site developable. The total expenditure on bulk infrastructure has increased rapidly in recent years, however.

### *Land restitution*

The land restitution process has been an important remedial programme to partially address the forced removals in urban areas in terms of the Group Areas Act. The urban land restitution process has been relatively slow (although faster than the rural land restitution process) and initially caused delays and uncertainties with low-income housing projects on sites affected by land claims, e.g. in one case in Durban a low-income housing project was frozen for 5 years by land claims (Todes et al., 2003). A number of groups of land claimants have obtained access to well-located urban land, however. In some cases, though, there is insufficient support available for the beneficiaries to develop the land, as land restitution has to some extent taken place in an unintegrated way, divorced from other urban development processes, although it has now started to be more integrated with housing delivery processes. The example of Fairview in Port Elizabeth shows how restitution projects can play an important role in integrating cities and contributing towards the restructuring of apartheid spatial patterns.

### *Gap housing*

The housing subsidy income eligibility limit of R3500 per month was introduced in 1994, and not been increased since then. At the time this limit was introduced some households with incomes of below R3500 per month were still able to obtain mortgage loans from banks, but due to the impact of inflation, an income of about R6000 per month is now typically required to be able to access a mortgage loan. As a result, there is no public sector and very little private sector delivery of land and housing for households with incomes of between R3500 and R6000 per month. There is very little information available on how these households are obtaining land and housing, but it possible that “downward raiding” (i.e. purchasing or renting of subsidy houses meant for a lower income target group) is one of the ways in which this is happening.

One possibility for ensuring greater supply of “gap housing” would be for municipalities to ensure that a proportion of all private housing/mixed use developments projects include an affordable housing component.

### *Impact of HIV/AIDS on supply systems*

There is a relatively shallow skills based of technical people involved in housing and urban land issues, and HIV/AIDS is going to have a significant impact. It is estimated that in 2010, 1.5% of professionals and technicians will die of AIDS – this will severely affect the skills base, and therefore delivery systems. Provinces and local authorities will be increasingly unable to deliver, thus resulting in declining budget allocations, and so on, in an increasingly vicious circle.

### *Poor quality urban environments*

Low-income housing delivery is usually resulting in poor quality urban environments with problems of erosion and flooding. The implementation of new housing projects is usually characterised by the bulldozing of all vegetation, which results in erosion problems. Development also usually results in increased runoff of rainwater and problems with stormwater due to the increased impermeable surface area (roads and buildings) and the disturbance of natural drainage patterns. Windblown sand resulting from loss of vegetation can make stormwater drainage more difficult, as drains get blocked with sand. There is also a notable lack of greening and vegetation in most new housing projects. Apart from the aesthetic aspect, the absence of vegetation contributes to increased stormwater problems, poor air quality (trees can help filter out air pollutants) and less user friendly open space due to there being little protection from wind and sun. In some projects there have been attempts to preserve existing vegetation, promote greening, and to deal with stormwater drainage problems through more natural means (e.g. vegetated swales).

### *Delivery of non-residential land*

Over and above land for residential purposes and for small-scale economic activity, there is also a need for land for non-residential purposes. The main issues are lack of demand for commercial/ industrial land and community facilities in low-income areas, the issue of access to communal/public land for livestock/ urban agriculture (and what role this should play in urban areas) and demand for land for cemeteries and for initiation rites.

Land is often set aside for commercial/industrial purposes or community facilities (e.g. schools) in low-income areas, but is never developed. The reasons include:

- Lack of demand from the private sector, both formal and informal (the former because of location, the latter because residential plots acquired for free can be used for business activities)
- Opposition from informal traders, e.g. to formal shopping centres
- Lack of funds by government departments for capital expenditure
- Overallocation of space and numbers of sites for community facilities, for example, the Guidelines for the Planning and Design of Human Settlements suggest a minimum of 2.4 Ha for a primary school site and 4.6 ha for a high school site. At typical thresholds of 1 primary school per 600 households and 1 high school per 1800 households, at the recommended gross residential density of 50 dwelling units per hectare, almost 33% of the area of the project would theoretically be required to be set aside as school sites. Much of this would lie vacant for many years due to lack of funds and many vacant school sites are the target for unlawful occupations by landless people.

There is a demand for access to communal/public land for livestock/ urban agriculture (in the form of municipal commonages or land leased from the municipality), but this is a contentious issue in rapidly growing metropolitan areas, cities and large towns, where the high demand for developable land may mean that space extensive activities like livestock grazing or maize farming are unviable because of high land costs. In addition, the grazing of livestock may be incompatible with dense urban environments (e.g. in Cape Town during July 2003, one person was killed and a few injured in accidents involving cows on freeways). In smaller towns, with

slower growth and fewer non-agricultural economic activities, space extensive agricultural activities can be viable and can be a safety net for the poor. The Department of Land Affairs reports a declining demand for the municipal commonages programme, though, possibly because people are preferring to use the Land Redistribution for Agricultural Development (LRAD) Programme to access agricultural land adjoining towns. Finally, it should be noted that urban agriculture can be effectively carried out on very small pieces of land. For example, a food garden of 50m<sup>2</sup> can provide 300 kg of vegetables per year (80% of a family of five's vegetable needs) while requiring an average of only 6 hours of work per week (Eberhard, 1989).

#### *Land for cemeteries*

The increased death rate due to AIDS is resulting in a dramatic increase in demand for land for burials. This is imposing an increasing burden on municipalities, who are responsible for providing and maintaining cemeteries, and are increasingly having to subsidise the cost of burial plots for the poor.

#### *Land for initiation rites*

There is a demand for land for initiation rites by groups that practice initiation rites which require initiates to spend time in secluded outdoor areas, but suitable areas are shrinking in urban areas (e.g. buffer strips between townships). There is the possibility of co-existence with environmental conservation areas, although some practices, e.g. burning of structures, are not regarded as being environmentally friendly. The harvesting of medicinal plants for traditional healing practices is also compatible with environmental conservation areas, but approaches to the management of this need to be improved.

### **4.B. Sustainable livelihoods and the needs of the poor**

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Urban land issues relating to sustainable livelihoods include:

- Location
- The nature of new projects
- Lack of co-ordination/integrated development
- Unaffordability
- The impact of HIV/AIDS
- Circulatory migration/urban-rural linkages
- Environmental degradation/environmental health risks

#### *Location of projects*

Location is the biggest single factor with regard to sustainable livelihoods. Many housing projects are located in peripheral areas away from other economic activities and major transport routes, which has a negative effect on potential income generation activities (for example, see Gear, 1999). Minimum plot sizes, e.g. 250m<sup>2</sup> in Gauteng, can also restrict access to well located land. Integrated Development Plans (IDPs) are meant to play a large role in identifying land for low-income housing, but IDPs generally have not done this as yet – new housing projects have usually been in areas where land is cheap and accessible, rather than in well located areas. Municipalities are now meant to formulate Spatial Development Frameworks and Housing Land Plans to guide future urban development and location of housing projects.

The reasons for most housing delivery being in peripheral areas include:

- Land is cheaper in peripheral areas (whereas if the land cost is too high and takes up too much of the subsidy amount it can make the project unviable).

- Large projects have certain economies of scale, while most well located pieces of land are small infill sites where only small projects can be implemented.
- Projects in peripheral areas are politically easier than infill projects, which sometimes involves resistance from surrounding residents (the NIMBY – “not in my backyard” – syndrome).
- There is no holistic life-cycle costing of locational costs: studies in Durban and Cape Town have shown that the costs of transport subsidies for low-income residents in peripheral areas are significantly more expensive in the long-term than the higher costs of well-located higher density housing would be; different government structures are responsible for subsidizing land/housing and for subsidizing transport, however, so this trade-off is not being made.
- In a context of rapid urbanization, while there are still significant vacant pieces of land within “urban edges” and scope for densification of existing areas, the scale of demand necessitates new growth in peripheral areas.

What can be considered as a “good location” is also a complex issue. Current understandings of location rely on the notion of proximity to urban facilities, services and opportunities. This understanding underpins the currently dominant spatial planning principles of integration, densification and intensification and the compact city vision. However, the meanings of “well located” are more complex and varied than this understanding allows. For example (Development Works, 1999; Royston, 2003b):

- For circulatory migrants from rural areas in South Africa, access to a secure place to live as cheaply as possible while in employment in the city.
- For foreign migrants, the nature of access may be a relatively “safe” place to hide as “illegals” within the system, opportunities for participation in the informal economy and refuge from war, drought and poverty in countries of origin.
- For informal economic operators, access may be defined in terms of convenient and viable places for a wide range of unconventional activities, supplying labour, masking operations and concealing goods from activities initiated elsewhere, either in an adjacent area or at very much greater distances.
- For people living informally as tenants or sub-tenants access may be about accommodation in formal townships.
- For people seeking relief from overcrowded conditions in formal housing, access might entail permanent urbanisation, formalisation and upgrading.
- For poorer households, access may relate to opportunities for informal subsistence economic activities in environments, which are affordable by their very informality.

Failure to take into account the diverse meanings of a good location could lead to inappropriate policy and project interventions.

### *The nature of new projects*

Apart from location, new settlements being created by low-income housing delivery are often detrimental to sustainable livelihoods in other ways as well. Some of the problems include uniform plots, inappropriate allocation processes, and low densities and thresholds. In many housing projects in small towns and peri-urban areas sufficient densities to ensure viable thresholds to support a range of activities are not being met (e.g. at least 50 dwelling units per hectare). Plot sizes in housing subsidy projects are often uniform and allocation systems are often random – they do not take the varying needs of people for land into account, e.g. some people may need larger plots on a major transport route because they want to run a *spaza* shop, others may want more space to build additional rooms to rent out, etc.

### *Lack of co-ordination/ integrated development*

One of the preconditions for being able to support sustainable livelihoods and contribute to poverty alleviation is that development should occur in an integrated, holistic way, which requires the co-ordination of different

development programmes. To a very large extent, housing projects are being carried out in isolation, however, with a focus on outputs rather than impact. Current delivery, with a few exceptions (e.g. some of the Presidential Lead Projects) is not resulting in integrated developments with a range of necessary public facilities and amenities and accompanying social and economic development programmes. The White Paper on Housing identified that housing delivery requires co-ordinated and integrated action and recommended mechanisms for co-ordinated planning and budgeting on a multi-year basis and the spatial prioritisation of public investment. Spatial Development Initiatives (SDIs) and development corridors are examples of current development initiatives that seek to harness investment through spatial prioritisation. The rural and urban development frameworks represent attempts to provide a shared development vision for co-ordinating planning and budgeting. However, these initiatives are themselves characterised by a lack of co-ordination, being driven by government departments often acting independently of each other. In the absence of a coherent framework guiding the nature and location of public investment, outcomes appear contradictory or overlapping. This problem is compounded at the local level as many local authorities, due to their limited independent financial means, identify projects for delivery in response to pre-determined national and provincial programmes and budgets. Lack of sectoral integration is evident in the plethora of national programmes that operate in isolation. This includes the housing programme. In the urban setting, the housing programme has become the *de facto* driver of development, in the absence of a coherent urban policy framework. This questions the sustainability of public investment in housing as insufficient concern is being given to enhancing social and economic opportunities at the local level; or, to borrow a phrase from the Housing White Paper - "the creation of viable communities".

#### *Unaffordability of the ongoing costs of property ownership*

Owning property carries certain obligations, e.g. the obligation to pay rates and service charges. Many beneficiaries who receive subsidized properties are unable to afford the ongoing costs of owning property, for example rates and service charges. The situation has improved greatly for ownership housing, with the introduction of rates rebates, free services and indigent policies over the past few years. Some local authorities have introduced rates rebates for properties below a certain value and most local authorities have introduced the free 6 kilolitres of water per month. The monthly costs of individual ownership can therefore be very affordable (although many people have got into arrears in the past and are still repaying the arrears). For example, in Cape Town for individual ownership of property valued at less than R50 000 and using less than 6 kilolitres of water per month, there would be no rates and the only service that would need to be paid for is the prepaid electricity. In smaller local authorities, although they have indigent policies, they cannot undertake large scale cross-subsidization of rates and service charges (although the proposed Property Rates Bill is intended to introduce a rates rebate for properties with a value of less than R15 000). In many local authorities, therefore, rates and services are still unaffordable for the majority of subsidised property owners, and this can result in people ultimately being evicted and becoming landless. Affordability is an even bigger problem for tenure options other than individual ownership, as the monthly operating and capital repayment costs can be up to 10 times higher for institutional housing than rates and services charges for comparable ownership housing (USN, 2003).

#### *Impact of HIV/AIDS*

Due to the scale of the HIV/AIDS pandemic, which is resulting in a dramatic increase in mortality rates, and the protracted nature of HIV/AIDS, it is going to be having a wide range of impacts on sustainable livelihoods issues:

- Broader macro-economic impact: HIV/AIDS will result in reduced GDP growth, thus meaning increasing poverty and unemployment.
- Changing household structure: Increasing dependency ratios due to HIV/AIDS having its greatest impact on people in economically active age groups. Greater numbers of orphans and children with



only one parent. It is estimated that by 2015 the number of orphans will have increased far beyond the carrying capacity of existing social networks.

- Changing demand patterns (e.g. more demand for institutional housing for single people with HIV/AIDS and more demand for land for urban agriculture as part of nutrition programmes).
- Costs of morbidity: HIV/AIDS imposes a bigger burden than most other illnesses because of its protracted nature. The average time from contracting the virus to the onset of AIDS is 10 years, and the average survival following an AIDS-defining condition (without anti-retroviral treatment) is 2 to 3 years. There is loss of income both for the infected person and the carer. On the other hand, one study found that for some people who had never previously had a regular source of income or any access to other opportunities, their HIV/AIDS status meant that they were now able to access government disability grants and NGO support programmes that they previously did not have access to.
- Costs of mortality: The biggest financial impact of HIV/AIDS is the costs associated with funeral ceremonies and burials. For households with strong rural links this is often even more expensive, as a stay of up to 2 weeks in the rural area may be required to carry out traditional practices. For urban households, the average cost of a burial is typically 5 times the average monthly income. Households seem to be very unprepared for these costs: only 26% of HIV positive people have a funeral policy, only 15% have insurance policies with their children as beneficiaries and only 8% have a will (Khayamandi). There has been considerable anecdotal evidence of households selling their subsidised houses to pay for burial costs. It has been found that there is also a long-term financial impact on the household long after the actual death, due to the depletion of savings, sale of assets and accumulation of debt.
- Migration: HIV/AIDS is affecting migration patterns – people with HIV/AIDS often migrate for greater privacy and to have better access to health care. For example, it has been argued that greater access to disability grants and anti-retroviral treatment in Cape Town may be encouraging migration from the Eastern Cape.
- Increasing numbers of vulnerable households: Vulnerable households, especially child-headed households, are often deprived of their properties. 5% of households affected by HIV/AIDS are child-headed households. The Homeless People's Federation has found that members of its communal property associations frequently risk falling prey to the land-owning aspirations of their relatives; communal property associations are better able to protect the rights of vulnerable members, however.

### *Circulatory migration/urban-rural linkages*

A cross-cutting issue is that of urban households which also have a rural home at which members of the extended family stay and/or which members of the urban-based component(s) of the extended family frequently visit. Surveys in South Africa have been unanimous in showing that a large proportion of urban households have strong rural links. For example, 59% of household heads in Soweto had been born outside the metropolitan area. Although more than half of migrants had lived in the urban area for more than 20 years, a majority of migrants considered that they still had a family home in a rural district and more than half of all migrants had some of their dependent children living at the rural home. One third of migrants said that they wanted to retire to their family home (Gilbert and Crankshaw, 1999). Similarly, a survey of five representative low-income areas in Durban found that 39% of households had both an urban and a rural home, and 49% of multiple-home households visited the rural home once a month (Smit, 1998).

The underlying reasons for the persistence of households with both an urban and a rural base are complex. Rural-urban migration in South Africa is occurring in a context of a labour surplus and capital-intensive industrialization and therefore does not necessarily result in rapid economic growth in urban areas nor in permanent urbanization or fundamental transformations in rural areas. These complex patterns of “circular migration” typically involve multiple rural homes and a number of urban work sites can include oscillatory

movement between urban and rural homes (Mabin, 1990). Circular migration is primarily a risk minimization strategy for poor households with few resources – income diversification in a wide range of activities can act as protection against sudden loss of income in any one activity (Evans and Pirzada, 1995).

There seem to be two broad types of poor urban households with rural links (Smit, 1998):

- Owner-only households: head of household “owns” another home. Rural homestead is a safety net and measure of last resort should the household find itself unable to survive in the urban area.
- Owner/contributor household: Regular contact and flows of people between the urban and rural home. Children are raised in the rural home and eventually go to the urban area to look for employment, while the parents may retire to the rural area after they have reached the end of their employment careers. The majority visit the rural home at least once every two months. The rural link is important not only as a safety net but also as a necessity for leading a more fulfilling life. Urban area: access to job opportunities, services and facilities; rural area: perceived better and more peaceful lifestyle, opportunity to practice agriculture.

Although the apartheid policies which reinforced circulatory migration are no longer in place, multiple home-ownership and circulatory migration are perpetuated by customary tenure in former homeland areas, urban housing shortages, high unemployment and poverty and high levels of violence (ibid). It seems, then, that having a rural base can be a safety net, but maintaining two homes can also be a burden on the poor. As an alternative, the possibility of creating new peri-urban settlements or agri-villages, where households can viably undertake small-scale agricultural activities (close to markets) and still be within reasonable commuting distance of economic opportunities and facilities, needs to be investigated.

Informants suggested that one of the main impacts of rural linkages is that often households go back to the rural area for long periods of time and return to find that someone else has occupied their house. Another impact is that of cost – the financial resources committed to the home and family members in the rural area may constrain the affordability levels of the household in the urban area, especially if the rural home is seen as the real home which family members will retire to.

### *Environmental degradation/ environmental health risks*

Environmental degradation and environmental health risks can be a threat to sustainable livelihoods. There is a common perception that informal settlements are a major cause of environmental degradation (i.e. high use of scarce non-renewable resources, damage or destruction of key renewable resources and the generation of wastes that are not easily assimilated or broken down by natural processes), but there is very little evidence that this is actually the case. In urban areas, it is overwhelmingly the consumption patterns of higher income groups and the production and distribution systems that serve them that are responsible for most environmental degradation (Satterthwaite, 2003). The urban poor contribute very little to environmental degradation because they use so few resources and generate so few wastes. New low-income housing projects can have a significant environmental impact, however, due to large scale loss of vegetation and soil erosion. However, informal settlements do have major environmental health problems relating to lack of inadequate water and sanitation, inadequate stormwater drainage, location on unsuitable sites, etc.

### 4.C. Formal processes and organisations

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The main legal/institutional issues, coming out of the analysis of formal processes and organizations, are:

- Lack of clear responsibility for urban land
- Unregistered property transfers
- Provincial/local government capacity

- Capacity of Deeds Registry
- Delays in planning approval
- Withdrawal of contractors/professionals from subsidised housing delivery
- Complex, rigid tenure forms
- Complex legal/institutional framework
- Gender inequities
- Private rental

### *Lack of clear responsibility for urban land*

Responsibility for urban land issues is split between the Department of Housing and Department of Land Affairs (and certain issues, such as planning and the provision of infrastructure fall under the Department of Provincial and Local Government). Although the White Paper on Land Policy (1997) acknowledges the need to address land issues in urban areas this has generally not been entrenched within the scope of implementation activities of the Department of Land Affairs. Initially, landless households were in a position to access land for settlement purposes, however, the re-defined land reform programme is driving a commercial farming agenda and does not offer redistribution resources for settlement purposes (BRCS, 2000). Urban land responsibilities sit uneasily between the DLA and Department of Housing, contributing to a lack of focussed policy attention on land for urban housing. This lack of clarity arises partly from the perception that the Department of Housing is mostly concerned with urban areas and the DLA with rural areas. Neither Department actively or programmatically championed the question of urban land identification, assembly and release or urban land regularisation, but this is starting to change, and there has started to be more collaboration between the Department of Housing and DLA on urban land issues (e.g. on strategies for funding the high cost of urban land).

### *Unregistered owners*

The fact that a growing proportion of households are not the legal owners of the properties they occupy (due to informal transfers or being underage) is a major problem. In some formal townships, conflicting records or lack of records can also make it difficult to identify owners. This results in:

- A lack of legal protection where there are disputes over tenure rights.
- The possibility of the *de facto* owner being ever able to use the property as collateral for credit is eliminated.
- The *de facto* owner will be unable to legally sell the property, which makes the possibility of selling it for a reasonable price unlikely.
- For occupants of serviced sites, not being the legal owner means that they will be unable to access consolidation subsidies for improving their housing.
- Municipalities have to carry the cost of tenure regularization, e.g. it cost the City of Johannesburg R3-4 million for the resurveying of 2000 plots in Ivory Park.
- Municipalities are unable to legally bill for rates and services because they are unable to find the legal owner.

In the past, municipalities have in some cases been able to reassign ownership of properties due to rates arrears on properties, but rates and service charge rebates for properties with a low value are becoming more common, which means this route may become more difficult in future. In addition, titles adjustment (e.g. legally transferring the ownership of a piece of land to the *de facto* owner in a case where a property has been inherited without formal transfer processes having been followed) in terms of the Titles Adjustment Act is complex and expensive, and there is a severe lack of Titles Adjustment Commissioners.

### *Capacity of provincial/local government*

There are capacity constraints among all key role players. This is simply due to the demand being overwhelmingly more than the capacity developed and resources allocated. For example, the Chief Director of Tenure Reform Implementation Systems Support has been quoted as saying that "the department is facing huge budgetary constraints that causes its performance to fall below demand" (DLA Land News, 2003).

Historically, significant administrative capacity variations in the provincial departments of housing responsible for allocating and administering subsidies to projects, have affected the extent to which provincial housing budgets have been spent. In those provinces where the least institutional capacity exists delivery has been slow. Importantly, the annual budget allocation to the various organs of state is informed by previous expenditure capacity. In turn this means that those provinces that are least able to spend their budgets are also those who will be allocated smaller resources over time.

In addition, HIV/AIDS is placing a burden on municipalities in terms of increasing numbers of households being unable to pay for rents and service charges and the cost of subsidizing funerals and cemeteries. For example, the City of Cape Town has introduced a pauper's burial service with a free burial site and standard coffin for households unable to afford the costs of a funeral.

### *Capacity of the deeds registry for tenure upgrading*

The land registration system is highly centralised, although deconcentrated (there was an attempt to decentralise responsibility for registration to municipal level with the Registration Facilitation Bill, but nothing came of this). Perhaps partially due to this centralisation, the registration system seems to have difficulty coping with the large scale upgrading of tenure required post-1994 (the Deeds Registry disagrees with this perception, but most informants agreed with the perception). Until 1986, the majority of the South African population was deprived of ownership rights; since then, steps have successfully been taken to upgrade and regularise tenure rights to individual ownership. This process, together with the granting of more than one million titles since the implementation of the housing subsidy scheme has stretched the administrative capacity of both the Surveyor General and the Deeds Office. In some cases records have not been maintained even for well-established areas, e.g. Alexandra has got four general plans overlapped on it, which makes it difficult to determine plot numbers and who owns which plot. Upgrading of tenure rights in pre-1994 townships (both Black Community Development Act areas and R293 areas) from leasehold to ownership has been slow in some provinces. There has also been slow issuing of Title Deeds in pre-1994 IDT/provincial administration site and service projects and new housing projects. This raises questions about the long term capacity of the registry to accommodate the registration and administration of rights arising from large scale tenure upgrading to ownership in the long-term, including both informal settlement upgrading and the tenure upgrading of R293 towns and BCDA areas. It should be noted, however, that the Provincial Housing Departments and the Deeds Registrars have signed a memorandum of understanding to expedite the registration of ownership in new housing projects.

The emergence of an informal property market whereby properties are sold without the transfer being registered with the Deeds Office has not only been identified as an indication of the inaccessibility of the formal system, but also as a substantial threat to the integrity of the registration system. Furthermore, informal transactions in upgraded sites adversely affect the ability of municipalities to maintain accurate billing systems for service charges and will be having an increasing impact on the financial sustainability of municipalities, as municipalities are only entitled to bill the legal owner of a property.

Furthermore, conveyancing is a closed profession, which helps make access to the Deeds Registry difficult, and property registration and transfer processes expensive and inaccessible.

### *Delays in planning approval*

Complex and time consuming land development procedures (planning approval, subdivision, rezoning), and delays associated with the need for Environmental Impact Assessments, have been a major obstacle to delivery of land and housing for the landless urban poor. Organisational capacity limitations have been identified as particularly problematic in the planning system. For example, in Gauteng, land development applications, brought to the municipal council for planning approval, took on average three to six months in 1994. Today, such applications are lodged for up to 18 months before they are rejected or approved. Similar problems are experienced with provincial Townships Board. Although created to facilitate low-income housing planning processes, the provincial DFA Tribunals have only been minimally drawn upon for such purposes. In a number of provinces, to avoid delays in the planning process, use is still made of the Less Formal Townships Establishment Act, in the name of avoiding holding costs on land and escalation costs on the price of labour and materials. Although attempts to rationalise and speed up the planning/land development process are ongoing, it remains one of the critical risk areas in the delivery of land and housing.

### *Withdrawal of contractors and professional from subsidised housing delivery*

Given the financial limitations placed on profit maximisation opportunities for private sector operators in the housing and land delivery environment associated with the capping of subsidy amounts and the new emphasis of government on the involvement of municipalities and the People's Housing Process, private sector operators such as large and medium-scale developers and contractors have left the market *en masse*. These operators have historically been equipped with sufficient financial muscle to undertake delivery of land, services and housing structures at scale, although the constraints of the subsidy amount and lack of adequate control sometimes meant that private developer projects had severe problems. Since their departure from the market and the introduction of the R 2479 own contribution requirement, delivery levels have slumped, thereby decreasing the level of supply in the face of growing demand for land and housing.

Increasingly, built environment professionals are shunning the low-income housing and land market in favour of financially more rewarding high-income residential, commercial and industrial sectors. New graduates of the built environment education sectors often opt to pursue careers in the more upwardly mobile and lucrative financial and information sectors. This attrition is translating into increased levels of staff turnover as employees move from position to position in search of more rewarding opportunities, which means that the overall professional skills pool for supporting the sector is decreasing.

### *Complex, rigid tenure forms*

Individual ownership and all the alternative forms of tenure (Co-operative, Communal Property Association, Share Block, Sectional Title) are generally complex and rigid, and do not meet the needs of the poor. Even municipalities seem to lack knowledge with regards to tenure options. The communal tenure options are especially complex and expensive, and there is a lack of institutional support for communal tenure bodies. There is a lack of flexible, incremental tenure options to accommodate staged tenure upgrading in informal settlements (as the early imposition of formal individual ownership, with its complex and expensive transfer procedures is inappropriate for the short term needs of the poor). In addition, the granting of formal ownership does not necessarily result in an increase in intra-household security of tenure. The vesting of individual ownership in one member of an extended family can disadvantage other members of the family, especially women, who are often left homeless when relationships break up.

Rental is seen as a tenure option that may be appropriate for some low-income households, but there has been a negligible amount of new low-income formal rental property delivered (and most of it has been in the form of rent-to-buy).

*Complex legal/institutional framework relating to land (physical planning, land development and land use management)*

- South Africa has made great progress in overhauling its inherited legal framework relating to physical planning, land development and land use management. South Africa's history, however, has woven a complex legal framework which has resulted in parallel systems, overlapping laws, burdensome administrative procedures and high development standards. The inherited legal and administrative system is characterised by racial discrimination, duplication of laws and administrations, unequal legal status and procedures and control-oriented laws. Much of this legacy remains, although reforms since 1994 have concentrated on trying to develop an equitable, unitary system which accommodates informal and formal development procedures and meaningful participation.
- Delayed legal transformation: The White Paper on Spatial Planning and Land Use Management and the Land Use Management Bill being driven by the Department of Land Affairs constitute the longer term legal transformation required to undo the apartheid land development legacy. In particular, this area of reform is necessary for the provision of national direction on the issue of land use management. There have been indications of shifts to a unitary, albeit provincially based, system with the enactment of provincial planning laws in some provinces.
- Uneven reform of land use management systems: While some municipalities (and whole provinces in the case of Kwa-ZuluNatal) have begun to develop and implement land use management systems that incorporate entire municipal areas, many municipalities do not have adequate tools with which to manage land use, especially in former BCDA and bantustan / homeland areas. As a result many of these areas lack the protections that land use management can offer. In some places the tendency has been to simply extend pre-existing zoning schemes to these areas, even although they may be inappropriate. Often this is on the basis of equity and of not perpetuating a dual system, apartheid-style. However, the dangers exists that control orientated land use management systems will be ignored. In the likelihood of poor enforcement, the whole exercise becomes a waste of time and energy.
- Shifts towards normative and strategic approaches: The historical route map in Appendix 2 demonstrates the prevalence of physical planning and control in the planning system. Several new laws have introduced binding principles. The DFA was a front-runner in this regard, but other laws followed suite including housing and environmental legislation. This normative shift was initially seen as a welcome break from the control orientation of the past. However, indications exist that the shift away from a "rule-book" approach towards discretion is much more difficult to implement than expected. Another important shift is away from a physical planning approach towards more strategically orientated planning, as envisaged in IDPs. Previously, the main municipal planning instruments were physical structure plans. Although IDPs are intended to contain a spatial development framework, they are much more holistic in scope, encompassing internal organisational concerns like institutional, financial and communications dimensions as well as having a more holistic external perspective.
- Multiplicity of legal requirements: Another important issue is that since 1994, a plethora of new laws have been enacted which require, amongst other things, that municipalities plan. This multiplicity of planning requirements compounds the legal complexity inherited from apartheid. These sector requirements have placed an onerous burden on municipalities to fulfil them. Initially, in municipal contexts with limited planning capacity, they competed with the IDP for the attention and dedication of officials and politicians. However, with IDPs being entrenched as the principal planning instrument for

all planning, development and management decisions in the municipality, the challenge has shifted to one of co-ordination and alignment between the different planning processes and products.

- The need for co-ordination: Municipal governance in South Africa is affected by the absence of fiscal decentralisation. Although municipalities are required to plan for development in their areas of jurisdiction, they must rely on investments from other spheres of government to resource their plans, like the municipal infrastructure and housing grants described previously. Planning in a fiscal environment in which conditional resources are stacked at the top, municipalities have an interest in ensuring that local priorities and national and provincial spending programmes are aligned. In practice, alignment is proving to be a challenge. Without it, the outcome is uncoordinated investment and un-integrated development. Furthermore, in the absence of coordination, municipalities are required to foot the operations and maintenance bill for land developments about which they may have had no role, aside from their agreement prior to township proclamation in the form of land availability and services agreements.
- The prevalence of individual ownership: Individual ownership dominates the implementation of the housing subsidy scheme, through the project-linked developer driven route – nearly 84% of the total subsidies approved to January 2002 were individual ownership project linked subsidies. The institutional subsidy is the sole subsidy vehicle for alternatives to individual ownership, but even most institutional subsidy projects have taken the form of rent to buy or instalment sale and are intended to result in individual ownership after four years (as per the regulations). There have been very few rental or communal ownership (co-operatives, CPAs) implemented, even though these tenure options can offer certain advantages.
- Strength and security of tenure rights in group ownership options: Group ownership tenure options confer personal rights on members. Being personal rights, members' interests or use rights are not enforceable against the world at large, but between immediate parties to the contract that creates that right i.e. the fellow members in the institution or shareholders. Majority decision-making binds individual members or shareholders in these options. These rights are not individually registered in the Deeds Registry, although they may be (and generally are) spatially defined. As these options rely on majority decision-making (directly or indirectly), the relative strength and security of these rights depends to a great extent on the governance and management practices of the institution, against which these rights are enforced (Development Works, 2003b). In cases where institutions are weak, or vulnerable or corrupt, the tenure rights of residents or co-owners are weak and insecure.

### *Gender inequities*

Although the housing policy itself is gender neutral, discriminatory legislation in terms of some customary law practices and marriage laws can prevent equal access to security of tenure for some women, for example, customary inheritance law. In addition, although housing subsidies are issued to both the head of household and their spouse, ownership of the property is often only registered in the name of the head of the household, which is usually the man (although it is possible to register the property in the name of both partners, and this has in fact been done in many housing projects). If the couple split up, the woman (and often the children as well) can find themselves homeless. One possible way of getting around this which has been used in some other countries (e.g. Costa Rica) is for a subsidised property to be always registered the woman partner's name.

In addition, women's position in the labour market and economy more generally, and their lesser involvement in formal employment positions, can further restrict their access to secure tenure, e.g. due to lack of access to credit. Women are also often not given the opportunity and skills to enable them to benefit from the economic opportunities which arise out of housing developments (although this is starting to change, with increasing emphasis on promoting woman builders – there is a quota of 10% for women builders in relation to involvement in housing delivery).

### *Private rental*

The Rent Control Act has been phased out, which is resulting in tenants in some buildings being forced to find other accommodation; the new Rental Housing Act to protect tenants is not yet being adequately enforced, and there are still instances of tenants being exploited by landlords in certain slum areas (e.g. the Johannesburg inner city and Muizenberg in Cape Town). There are varying views on the desirability of regulating the rental of backyard structures – on the one hand landlords sometimes exploit the tenants of backyard structures, but on the other hand greater regulation could result in backyard accommodation becoming unaffordable for the very poor.

### 4.D. Property market issues

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One of the key objectives of South African housing policy is to ensure an effectively functioning market for low-income housing in which subsidized properties are real assets that appreciate in value. In reality, subsidized properties are informally bought and sold for a fraction of their replacement value. A study of housing subsidy projects across the country found that properties were being sold for about R3000-5000, but in some cases they have reported to be sold for up to R20 000 (USN, 2003). The extent of the market seems to vary enormously, from 0% in some projects to an estimated 10-15% of properties (400-600) being sold in less than two years in Diepsloot West (ibid). Provisional results of a research project in low-income settlements in the Blaauwberg area in Cape Town showed that about 30% of the houses in Joe Slovo Park and Du Noon have been sold, generally for R5000-R8000, since the projects were completed about 5 years ago. It appears that most of the sales are to raise money for the funeral costs of people dying from AIDS-related illnesses (an estimated 15-20 people are dying of AIDS-related illnesses every month in Joe Slovo Park, which is a settlement with approximately 1000 houses). Many sellers seem to be going back to rural areas, but some are moving to nearby informal settlements.

The formal low-income property market in urban areas is not functioning adequately for a variety of reasons:

- Apartheid urban patterns
- Emergence of a gap in the housing market
- Expensive and complex property transfer procedures
- Discontinuation of the individual housing subsidy
- Restriction on sale of subsidized properties
- Lack of access to appropriate credit
- Informal “redlining”
- Depressed formal housing market
- Lack of low-income estate agents
- Lack of perceived value
- Lack of impact by new legislation

These issues are discussed in more detail below:

- Apartheid urban patterns: South African urban areas are characterized by apartheid urban patterns, with black townships generally located in peripheral areas with a lack of facilities and with poor quality living environments. Properties in apartheid-style townships therefore have very low market values. Post-1994 housing delivery, with its emphasis on large scale projects on cheap land in peripheral areas, has tended to reinforce apartheid patterns.



- Emergence of a gap in the housing market: Linked to the above point, a significant gap has emerged between the middle/upper-income housing market and lower income housing markets. In the middle/upper income housing market (R100 000+) formal processes are rigidly applied (zoning, building regulations, property registration and transfer systems) and formal market processes are followed (estate agents, mortgage loans from banks). In the very low-income housing market (properties with a value of below about R20 000), properties are allocated through government subsidy allocation processes or informal transactions, and formal processes are only partially followed. Generally, formal processes such as zoning, building regulations, etc., are unenforced in the low-income housing sector. Ideally, there should be an integrated housing market with a range of different value properties suited to different income levels, in which it is possible to work one's way up from a cheap property to a more expensive property (or vice versa) as one's financial conditions change, but the gap between the two housing markets has become almost unbridgeable (although there is some delivery of properties in approximately the R40 000 to R75 000 range).
- Expensive and complex property transfer procedures: As a result, there is a breakdown of the formal property registration and transfer system, both in established low-income residential areas and new housing projects. Properties are exchanged for money but this is not done through a conveyancer or the Deeds Registry so the purchaser has no legal security of tenure. This is largely because of complex and expensive property transfer procedures (even though properties with a value of less than R150 000 are now exempt from transfer duty, conveyancers' fees are still beyond the reach of many). A net result of this is that a gap is opening up between the informal property market, where properties are exchanged for small sums of money, and the formal property market where purchases are funded by mortgage loans and properties are formally transferred.
- Discontinuation of individual housing subsidy: Due to corruption, the granting of individual housing subsidies for people to purchase property (e.g. existing serviced sites or existing houses) has been discontinued. This has exacerbated the inability of sellers of properties to be able to get reasonable prices for low-income properties.
- 8-year resale restriction for subsidised housing: During the first 8 years, the beneficiary of a subsidised house is restricted from selling the house – it is meant to be transferred to the Provincial Housing Department for reallocation and the beneficiary's name is removed from the subsidy database, thus enabling them to qualify for a new subsidy. In practice, this seems to be encouraging informal sales of properties, as many beneficiaries prefer money rather than a theoretical chance of one day qualifying for a housing subsidy again.
- Lack of access to appropriate credit for purchasing low-income properties: there is a great lack of appropriate and affordable housing credit. Mortgage loans are the main form of finance for buying housing in the formal housing market. Minimum mortgage loans are typically R50 000 to R100 000, which generally requires a minimum income of about R3000 – 6000 p.m., plus a stable employment record, which excludes the vast majority of housing subsidy beneficiaries. Banks have therefore not made very many housing loans for subsidised households as a result of very strict borrower eligibility criteria and the informal "redlining" of areas perceived as being high risk (i.e. deciding not to grant mortgage loans in those areas). Micro-lenders have been active in giving out micro-loans (up to about R10 000), but at very high interest rates (and sometimes using pension/provident funds as security, which puts poor people at the risk of losing their retirement funds). Even micro-loans are restricted to people in formal employment with provident funds or whose employers' have payroll deduction facilities. Prices for subsidised properties (i.e. the 0-R3500 pm income group) therefore tend to be restricted to amounts that people can raise in cash, e.g. typically less than R5000 (compared to the typical replacement value of R15 000 – R20 000 for a subsidy house and serviced site). The smaller,

more flexible micro-credit loans being granted by micro-finance institutions such as the Kuyasa Fund projects seem to be a lot more appropriate for low-income households. Borrowers are required to have a successful savings record (with a group of other savers in a savings club) before being granted a loan. Loans are typically R5000 or less and the repayment period is often less than 3 years. Repayment rates, even for pensioners and informally employed people who are not able to get access to credit elsewhere, is very good. Borrowers are able to get additional loans after repaying their first loan. The experience of micro-lenders such as the Kuyasa Fund show that even the very poor are able to save and are creditworthy, as long as the financial mechanisms are appropriate and as long as there is support for savings clubs and there are loans officers who regularly visit the borrowers.

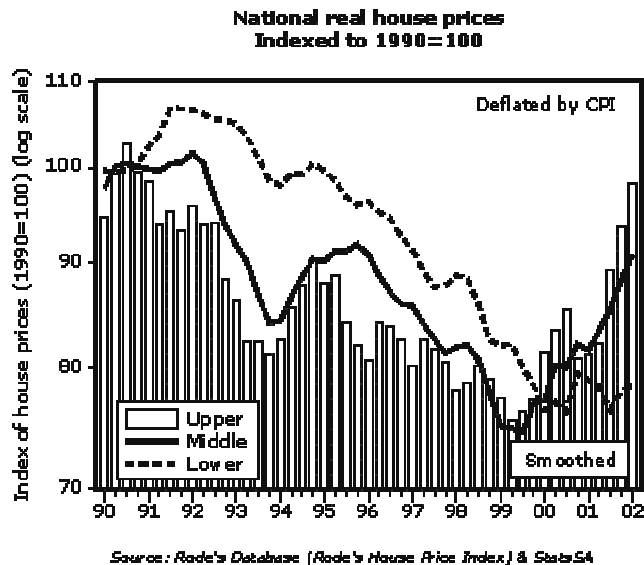
Table 12: Access to credit

Household income category	Proportion of urban households*	Housing need
Unemployed/ irregular income (0 – R1000 p.m.)	11%	Access to full housing subsidy. Unable to access formal credit. Unable to afford rates and service charges.
Formally or informally employed, regular low income (R1000 – R3500 p.m.)	31%	Access to housing subsidy. Those in formal employment can get access to micro-loans of up to R10 000 (usually pension/provident fund secured, with payroll deduction by employer).
Formally employed, lower middle income (R3500-6000 pm)	16%	No access to housing subsidy. Can get access to micro-loans, and potentially can get access to “mortgage substitute” credit, if available.
Formally employed, middle to high income (R 6000+ p.m.)	42%	Can usually get access to mortgage finance to meet their housing needs through the formal housing market.

\*Based on detailed income breakdown of population of Cape Town (WCHC/DAG, 2003); note that higher income households are generally smaller than lower income households.

Source: based on Tomlinson, 1998

- Alleged informal “redlining” by financial institutions in areas where it is difficult to foreclose on properties in the event of the borrower defaulting and where financial institutions struggle to sell properties they have repossessed. As a result, banks are reluctant to grant mortgage loans in low-income areas, which means that it can make difficult for people who would otherwise qualify for mortgage finance to get access to loans. “Redlining” by financial institutions is illegal in terms of the Home Loan and Mortgage Disclosure Act, and the Office of Disclosure set up in terms of the Act will be monitoring this.
- Depressed formal housing market: The formal residential property has been in a state of almost continuous decline (in terms of real house prices) since its peak in 1990/1991. The higher and middle income residential property market began to recover from 1999 onwards, but the “low-income” end of the market (below about R150 000 in value) has still not begun to recover. The fall of real house prices is indicative of falling property values rather than of the formal property market extending further down.



- Due to the lack of an adequately functioning property market there has not been an emergence of estate agents in most low-income areas, which means that even if someone does want to buy or sell property they find it difficult to access information about buyers or sellers.
- It is widely believed that many beneficiaries, especially of contractor-built houses in poorly located projects, do not value their properties because they have little invested in the property (either financial or sweat equity) and the end product does not meet their needs (and, can, in fact, sometimes be a burden and add to their poverty through increased transport costs, increased housing costs, etc.) (Smit, 2000). The R2479 contribution by beneficiaries for contractor-built housing was partially an attempt to ensure that beneficiaries value their properties as an asset. Some surveys have shown that many beneficiaries do recognize that their properties have a theoretical financial value, usually seen as being approximately the subsidy amount (e.g. USN, 2003).
- There is new legislation aimed at promoting a housing/land market in low-income areas (e.g. Home Loan and Mortgage Disclosure Act, Community Reinvestment Act), but this has not had any impact as yet. Although the introduction of the Community Reinvestment Act has been hailed as a means to broaden access to private lending facilities, the South African experience of bond boycotts and the near impossibility of re-possessing property mean that end-user finance institutions are particularly unaccommodating of the low-income market. In Gauteng, for example, financial institutions possess close to 20 000 properties which they are unable to dispose of, which makes them wary of extending finance to a market which cannot afford their financial products.

#### 4.E. Informal processes

Due to the inadequacy of formal processes, informal processes have developed as a response to the demand of the urban poor for land. Key issues include:

- Constitutional rights
- Upsurge in social mobilization and community organization
- Partnership between the State and organisations of the poor
- Rejection/lack of understanding of informality
- Uneven land administration

### *Constitutional rights*

Residents in informal settlements have a variety of informal rights (e.g. Grootboom case, Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, etc.), although most residents are unaware of their rights, and they are difficult to enforce (e.g. even for the Grootboom community). Section 26 of the Bill of Rights in the Constitution states that “everyone has the right to have access to adequate housing” and that “no one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances”. While early interpretations of the right emphasised the concept of right of “access”, the responsibility of the state to “progressively” facilitate such access, and to prevent “arbitrary” evictions, legal precedent was established in the landmark court judgement in the Grootboom case. There have been relatively successful attempts to ensure that these rights are put into practice, for example the Grootboom case. The *Irene Grootboom & Others v. Oostenberg Municipality, Cape Metropolitan Council, Premier of the Western Cape, the Republic of South Africa and the National Housing Board* case involved the New Rust community of 1000 people, who had their shacks demolished and were evicted from the land they were staying on. Analysing the implications for social assistance, Liebenberg (2001, in Huchzermeyer, 2002) comments that “the bottom line of the *Grootboom* decision is that the state is constitutionally obliged directly to assist persons who are living in crisis situations or intolerable conditions.” This ruling obliges the State to provide land and shelter for those in crisis conditions, but has not, as yet, had much practical impact, although the national housing department is believed to be due to release a new policy on emergency housing during the course of 2003.

There are various acts protecting informal tenure rights (e.g. PIE and ESTA), but there seems to be widespread confusion over the situations in which these acts apply as a result of court interpretations at variance with the intentions of the drafters of the acts.

### *Upsurge in social mobilization and community organisation*

There has been increasing mobilization around land and tenure issues. On the one hand there have been organisations who have engaged, or attempted to engage, in negotiation with local and provincial government around access to land, for example, the South African Homeless People’s Federation and the Western Cape People’s Housing Network Forum. This approach has only been successful in isolated cases; more typical has been the experience of Ruo Emoh in Cape Town, where after 2 years of negotiation and promises, a piece of land was invaded, which was followed by immediate police action (People’s Dialogue, 1999). The procurement policy for housing introduced in 2001 defines how land may be identified for development with subsidies in a process managed by municipalities. The extent to which communities will be able to initiate and drive the process of identifying and securing land is unclear.

On the other hand, there have also been other more radical rights based groups that have taken a more confrontational approach to towards the State around land and tenure issues, for example, the Landless People’s Movement and the Western Cape Anti-Eviction Campaign. With both of these two organisations, there has been a backlash by the State, with police intervention and the arrest of leaders.

### *Partnership between the state and organisations of the poor*

The People’s Housing Process (PHP) policy is the only programme which allows for people-driven processes to obtain implement land, infrastructure and housing. However, People’s Dialogue describes how provincial and local authorities have tended to see the PHP as a “delivery route” to be *implemented* rather than as an organic social process to be *facilitated* (People’s Dialogue, 2002). In turn, this has led to an emphasis on institutional mechanisms that ensure *control* over the process of releasing housing subsidies to PHP

beneficiaries rather than on facilitation of their efforts to make best use of it. Increasingly “traditional PHP” projects driven by communities have come to be replaced by “managed PHP” projects in which the role of the community is lessened – the reasons for this are twofold: municipalities see traditional community-driven PHP processes as being too long and too uncontrolled, and PHP projects are currently excluded from the R2479 savings requirement.

### *Rejection/lack of understanding of informality*

Although policy recognizes the existence of informal settlements and there are a number of cities that are implementing or planning informal settlement upgrading programmes (most notably eThekweni Municipality in Durban), there is a general tendency to reject the permanence of informal settlements. For example, many provincial multi-year housing development plans refer to the eradication of informal settlements (Development Works, 2000a). The logic underlying these kinds of positions is that formal, programmed supply can deliver at sufficient rate and scale to deal with the backlog. A corollary of this view is that people must wait patiently until their names come up for a subsidized house. In addition, although valuable research has been undertaken on informal supply systems, informal supply systems are often ignored or rejected, instead of being built upon.

### *Uneven Land administration*

Unplanned urbanisation took place on or close to the metropolitan fringes as well as in outlying areas. Often these places are situated in former bantustan, homeland or reserve areas (in communal areas), like the displaced settlements referred to previously. Although bantustans are now historical political and administrative entities, an administrative vacuum exists in many places. This is particularly the case with land administration. With the introduction of wall-to-wall municipal government since democracy, many administration functions are the responsibility of municipalities. However, many municipalities still lack the capacity to perform them, particularly where there was not a local government administration in place previously, which is the case with former homeland areas. A lack of land administration is also evident in informally urbanised areas. Being unsanctioned, these places are not included in the formal, regulated system of governance. As a result, land administration systems, among other functions, do not reach them. Land allocation, land use management, development facilitation, property taxation and valuation, recording of land parcels and rights and dispute resolution are among the land administration functions that are not formally performed. Not enough is known about how these functions are unofficially performed in urban informal environments, although much more is known about how things work in communal areas.

## 5. CONCLUSION

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The urban land sector is a complex set of formal and informal processes and organisations that cut across a number of other sectors. As highlighted in the previous chapter, there are a vast range of issues that need to be engaged with, but the most important policy and knowledge gaps can be grouped into two clusters: policy/programme gaps and lack of knowledge of informal processes.

### *Policy/programme gaps*

Major gaps in terms of policies and programmes relating to urban land include the following:

- Municipalities need to have integrated land strategies to assess the land needs of the urban poor, to identify suitable vacant land, and to begin acquiring this land through purchase, expropriation and land swaps. Funding programmes and land development procedures need to be amended so that sufficient suitable land can be released and developed for the urban landless poor. An urban land reform