Informal settlements

A perpetual challenge?

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Editors:

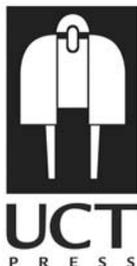Marie Huchzermeyer

Aly Karam

UCT
P R E S S

Informal settlements: A perpetual challenge?

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Foreword

Informal settlements are a shameful feature of poverty and inherited inequalities in South Africa. Defined in this book as 'settlements of the urban poor developed through the unauthorised occupation of land', they are regarded by many as unhealthy and overcrowded blights on the urban landscape 'squatter camps' in common parlance. Yet census data tell us that 16.4% of households across the country live in informal settlements, mostly in urban areas where an insecure foothold on the land enables these households to access the economic opportunities, social and economic networks and basic amenities that are essential to their survival.

International human rights law has long accepted that all human beings have the right to live somewhere in security, peace and dignity. In South Africa, the Constitutional Court has accepted the rights of access to adequate housing, water, food, health care and social assistance as essential to transforming our society into one where there is dignity, freedom and equality. One of the most urgent and challenging questions of South Africa's democracy is how to translate these rights into safe, secure and affordable living conditions for the poor. In doing so, what is the role of courts, of all spheres of government, of civil society and of the poor themselves, together with their organisations?

The role of the courts was settled in the case of Irene Grootboom.[1] Grootboom had moved from the 'intolerable conditions' of an informal settlement onto private land earmarked for low-cost housing. She and her community were then evicted from this land, and forced to seek shelter under plastic sheeting on a sports field. She asked the court for the immediate provision of adequate shelter or housing, pending permanent accommodation. A court settlement gave her tents, latrines and a supply of water.

For the Constitutional Court, the main question was whether the measures taken by the state to provide housing for its citizens were reasonable. Reasonableness was measured in a number of ways, including the inclusiveness of the policy, the comprehensiveness and flexibility of the plan, the role of different spheres of government and the provision of adequate financial and human resources. Significantly, the court found that the housing programme must account for the needs of those who are most desperate and whose ability to

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[1] *The Government of the Republic of South Africa and others v Irene Grootboom and others* 2001 (1) SA 46 (CC).

enjoy all rights is most in peril if their situation is not addressed. The state is obliged to 'take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing'. In this case, the court found that there was no provision for those in desperate need, and therefore the programme was not reasonable.

The court disappointed many by not setting out a minimum core content to the right to adequate housing, although it acknowledged that 'housing' included the provision of land and services. Instead, the judgement speaks mainly about the standards of governance required for government to deliver housing to the poor. The idea of democracy that underscores this judgement recognises that housing policies and programmes must address the needs of the poor effectively. Democratic governance means that national policies must articulate constitutional aspirations and must be implemented by various spheres of government which must work in concert with each other. In their formulation and implementation, such policies must address the poor and ensure that the rights of these most vulnerable citizens are met. In doing this, government must listen to, and heed, the voices of the poor.

What seemed clear after Grootboom was that housing policies based on the idea of long waiting lists for access to formal housing without securing the lives of the poor in the interim were possibly unconstitutional. Insecure and intolerable living conditions in informal settlements violated citizens' rights to adequate housing and, in fact, violated all their human rights. It was the constitutional responsibility of government (at all spheres) and of parliament to meet this challenge.

This book seeks to analyse the 'perpetual challenge' of these informal settlements by addressing the complexities of the gap between constitutional rights and the reality of poor people's lives. Its starting point is that 'effective intervention programmes to improve the living conditions of the poor have to be based on a more accurate understanding of what is happening at local and national level'. In fifteen carefully researched and argued chapters, the authors seek to expand this understanding by interrogating national policies, uncovering the lives of the poor who live in informal settlements, examining the influence of the market on the tenure opportunities for poor people, and subjecting the actions of city municipalities to scrutiny. These local studies, enriched by comparative insights, constitute a significantly important intervention in South Africa's stated attempts to eradicate poverty and informal settlements.

The particular value of this book is its emphasis on national and local policy and people on the state and its citizens. As the book reminds us, addressing the challenge of informal settlements requires effective governance and enhanced capacity within the state. It also requires policy to respond to the lived realities of poor

communities in order to secure their lives and livelihoods, rather than render them ever more precarious. It is South Africa's ability to enable all its citizens to live a life of dignity, freedom and equality that is the ultimate test of its democracy.

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Preface and acknowledgements

The United Nations Millennium Development Declaration of 2000 has brought informal settlements, or 'slums' as they are often referred to internationally, squarely onto national and international development agendas. One of the Millennium Development Goals is to significantly improve, by 2020, the lives of 100 million slum dwellers globally. Country governments have responded varyingly to this challenge. In South Africa, an informal settlement upgrading programme was introduced for the first time in 2004. It makes direct reference to the Millennium Development Goal on slum improvement, while also referring to a national campaign to eradicate informal settlements. For an informal settlement upgrading programme to eventually result in the eradication of the phenomenon of informal settlements, it has to navigate complex dynamics and realities.

A group of colleagues in the School of Architecture and Planning at the University of the Witwatersrand recognised this challenge in 2003, when embarking on a two-year collaborative research project on informal settlement policy, funded by the National Research Foundation (NRF). The project sought to bring international experience into the changing policy environment in South Africa. Across the two years, four workshops were held to discuss informal settlement policy with national, provincial (Gauteng) and local government (Johannesburg) policy makers, NGOs and researchers. The final workshop (November 2004) also involved a range of high-level international scholars in the field of informal settlements policy.

The interest in this final workshop from local and provincial governments, the national Department of Housing, consultants and various civil society organisations was overwhelming. This was partly because the national Department of Housing had recently released its new housing policy '*Breaking New Ground*', which announced a new Informal Settlement Upgrading Programme with a dedicated subsidy, to be piloted in all nine provinces. It was evident that the NRF-funded Informal Settlement Policy research project had been timely, and that its results, including the insights of the local and international scholars who shared their experiences at the November workshop, needed to be disseminated widely.

This book comprises a selection of the November 2004 workshop papers. The chapter texts were largely completed in July 2005, and we acknowledge that some more recent developments, particularly on the part of the national Department of Housing in South Africa, are not mentioned in this book. The chapters were each

individually peer reviewed by a panel of external referees, (see list of external referees) and the entire manuscript reviewed by an external reviewer. We would like to acknowledge the incisive comments and suggestions made by the referees. In particular, we are indebted to the external referee for the entire manuscript, Professor Vanessa Watson of the School of Architecture, Planning and Geomatics at the University of Cape Town, South Africa. We would also like to acknowledge meticulous text editing by the US volunteer Mary Bennett, who took it upon herself to ensure that all the chapters are accessible to the international reader. In the publishing process, we are indebted to Fiona Wakelin, Ute Spath and Melanie Wagner at Juta Academic (UCT Press), David Merrington for rigorous copy-editing, Peter Howe for typesetting, Ethné Clarke for indexing and Angus Boswell for proofreading. We would also like to acknowledge the work of Siviwe Eric Mpongoshe, whose untitled painting is featured on the front cover of this book. Siviwe lives in an informal settlement in Cape Town. Some of his paintings were damaged when a fire ravaged part of the informal settlement in June 2006.

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The editors would also like to thank the people, including our students, who participated in the various project workshops and enriched the debate. The book is the result of an interactive and collaborative intellectual project.

Marie Huchzermeyer
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List of acronyms & abbreviations

ACPP	Asian Centre for People's Progress (Hong Kong)
AFRA	Association for Rural Advancement (South Africa)
AGM	annual general meeting
Aids	acquired immunodeficiency syndrome
AMA	Accra Metropolitan Assembly (Ghana)
AMCHUD	African Ministerial Conference on Housing and Urban Development
ANC	African National Congress
ARI	acute respiratory infections
ART	antiretroviral treatment
BBC	British Broadcasting Corporation
BESG	Built Environment Support Group (South Africa)
BID	Inter-American Development Bank
BMA	Bangkok Metropolitan Administration
BUNEP	*Bureau National d'Études de Projets* (Rwanda)
CALS	Centre for Applied Legal Studies (South Africa)
CAPP	Community Action for Popular Participation (Nigeria)
CBD	central business district
CBO	community-based organisation
CEHS	Centre for Environment and Human Settlements (Edinburgh)
CEPED	*Centre Français sur la Population et le Développement* (France)
CEPIL	Centre for Public Interest Law (Ghana)
CESCR	International Covenant on Economic, Social and Cultural Rights
CLT	Community Land Trust (Kenya)
CMA	Cape Metropolitan Area (South Africa)
COHRE	Centre for Housing Rights and Evictions (Geneva)
CO-URC	Community Organisation Urban Resource Centre (South Africa)
CPD	continued professional development
CSD	Commission on Sustainable Development
CSIR	Council for Scientific and Industrial Research (South Africa)
DA	Democratic Alliance (South Africa)
DAG	Development Action Group (Cape Town)
DFID	British Department for International Development
DPU	Development Planning Unit (London)
DVD	digital video disk
DW	Development Workshop (Angola)
ESIA	environmental and social impact assessment
ESIS	Emergency Servicing of Informal Settlements Project (Cape Town)
FAO	Food and Agriculture Organisation (United Nations)
FIFA	*Fédération Internationale de Football Association*
GIS	geographic information systems
GoK	Government of Kenya
GRET	Group for Research in Technological Exchange (France)
GTZ	German Agency for Technical Cooperation
HABRI	Housing Architecture and Building Research Institute (Nairobi)
HBB	*Programa Habitar Brasil* (Brazil)

HDI	human development index
HIPC	highly indebted poor country
HIV	human immunodeficiency virus
HPF	Homeless People's Federation (South Africa)
HSRC	Human Sciences Research Council (South Africa)
ICRP	Inner City Regeneration Project (City of Johannesburg)
ID	identity document (South Africa)
IDP	Integrated Development Plan (South Africa)
ILO	International Labour Office
IMDC	International Marine and Dredging Consultants
IMF	International Monetary Fund
ISLP	Integrated Serviced Land Project (Cape Town)
ITDG	Intermediate Technology Development Group (UK)
JDPC	Justice Development and peace Commission (Nigeria)
KANU	Kenya African National Union
KENSUP	Kenyan National Slum Upgrading Programme
kfW	German Development Bank
KLERP	Korle Lagoon Ecological Restoration Project (Ghana)
KMUTT	King Mongkut's University of Technology Thonburi (Thailand)
Leap	Legal Entity Assessment Project (South Africa)
LPM	Landless People's Movement (South Africa)
LRC	Legal Resources Centre (South Africa)
Mayco	Mayoral Executive Council (Cape Town)
MDGs	Millennium Development Goals (United Nations)
MEC	Member of Executive Council/provincial minister
MINMEC	Ministers and Members of Executive Committee Forum
MLMUPC	Ministry of Land Management, Urban Planning and Construction (Cambodia)
MM	Mahila Milan (India)
MPLA	*Movimiento Popular de Libertaço Nacional* (Angola)
MRC	Medical Research Council (South Africa)
MUIP	Monitoring Urban Inequities Programme (UN–Habitat)
NA-ERUS	Network Association for European Researchers into Urbanisation in the South
NARC	National Rainbow Coalition (Kenya)
NCC	Nairobi City Council
NGOs	non–governmental organisations
NHC	National Housing Corporation (Kenya)
NRF	National Research Foundation (South Africa)
NSDF	National Slum Dwellers Federation (India)
NSSF	National Social Security Fund (Kenya)
OPIC	Overseas Private Investment Corporation (USA)
OWA	One World Action (UK)
PLAAS	Programme for Land and Agrarian Studies (UWC, Cape Town)
PTO	permit to occupy
RDP	Reconstruction and Development Programme (South Africa)
REDSO-ESA	Regional Economic Development Services Office for East and Southern Africa
SANCO	South African National Civic Organisation
SDI	Slum Dwellers International

SERAC	Social and Economic Rights Action Centre (Nigeria)
SIDA	Swedish International Development Agency
SIPs	Slum Improvement Projects (Bangladesh)
SPARC	Society for the Promotion of Area Resource Centres (India)
STD	sexually transmitted diseases
TB	tuberculosis
UCL	University College London
UCT	University of Cape Town
UKZN	University of KwaZulu Natal (South Africa)
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNCHS(Habitat)	United Nations Centre for Human Settlements – Habitat
UNCRD	United Nations Centre for Regional Development
UNDP	United National Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UN–Habitat	United Nations Human Settlement Programme
UNHCHR	United Nations High Commissioner for Human Rights
USAID	United States Agency for International Development
USG	Urban Survey Group (Cambodia)
USN	Urban Sector Network (South Africa)
UWC	University of the Western Cape (South Africa)
WCDOH	Western Cape Department of Housing (South Africa)
WCHC	Western Cape Housing Consortium (South Africa)
WEP	Women Environmental Programme (Nigeria)
WHO	World Health Organisation
ZANU-PF	Zimbabwe African National Union Patriotic Front

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The continuing challenge of informal settlements: An introduction

Marie Huchzermeyer and Aly Karam

The current focus on informal settlements

In most developing countries, informal settlements have marked the urban land-scape for at least half a century. As cities have expanded, so have the informally developed residential areas. Where development has been uneven, particularly in situations of war and large-scale displacement, informal development has over-taken the formal, resulting in a majority of the sub-Saharan African urban popu-lation residing in informal settlements (UN-Habitat, 2005a). Few governments have managed to curb this trend. Settlement formalisation and improvement, where attempted, has proven complex, and implementation is usually slower and more costly than anticipated. Changes in political leadership at national or even city level have often meant a change in approach, discarding valuable lessons from the past.

A few countries have progressed to develop national-level policies and pro-grammes that aim to deal realistically with informal settlements. The Brazilian *Programme to Support Sustainable Land Regularisation*, the *Kenyan National Slum Upgrading Programme* and the South African *Informal Settlement Upgrading Pro-gramme* are examples in the new millennium. While each of these emerged out of political processes at national level, they also interact with international cam-paigns that have increasingly promoted informal settlement upgrading. Brazilian policies and programmes are often presented as exemplary cases in international campaigns. In South Africa, recent national policy on informal settlement upgrading developed to some extent in response to international campaigns and out of the government's commitments to international agendas. The Kenyan policy was developed in direct partnership between the Kenyan government

and the United Nations (UN) Human Settlement Programme (UN-Habitat), which has its headquarters in the Kenyan capital, Nairobi.

International initiatives over the past decade, in particular of UN-Habitat, have become increasingly focused on informal settlements. Several initiatives in the preparation to Habitat II, the 1996 summit of UN-Habitat in Istanbul, focused on informal settlements. In response to the Habitat Agenda that was developed at the summit, UN-Habitat initiated two major campaigns, one on good governance, and the other on security of tenure. Both have direct relevance to informal settlements. However, it was in 1999 with the new '*Cities Without Slums*' initiative of the World Bank and UN-Habitat (through their jointly funded Cities Alliance) that the term 'slum' drew international attention. Cities Alliance defined slums as

> neglected parts of cities where housing and living conditions are appallingly poor. Slums range from high-density, squalid central-city tenements to spontaneous squatter settlements without legal recognition or rights, sprawling at the edge of cities. (Cities Alliance, 1999, cited in UN-Habitat, 2005a)

In 2000, the United Nations Millennium Development Declaration made reference to this initiative and the term 'slum' in defining one of its goals as follows:

> By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the 'Cities Without Slums' initiative. (United Nations, 2000: 5)

This target was later grouped as Target 11 under Millennium Development Goal (MDG) 7 (to ensure environmental sustainability), and a special Task Group was convened to give meaning to the term 'slum' and to Target 11. 'Slum' was then defined as any area that met the following six criteria: lack of basic services, inadequate building structures, overcrowding, unhealthy and hazardous conditions, insecure tenure, and poverty and exclusion (UN-Habitat, 2005a).

In South Africa, political leaders frequently refer to MDG 7, Target 11 when stating their commitment to dealing with poverty and informal settlements, phenomena that the current government is seeking to eradicate. Various trends in South Africa and the region have drawn media attention to the South African campaign to address informal settlements and fight poverty. Media reported intensely on community-level protests around housing and services, which erupted across South Africa in 2005, in the wake of the third round of local government elections. Media outrage and intense debate was then sparked by ruthless evictions from urban informal settlements carried out by the government of neighbouring Zimbabwe from May to July 2005 (UN-Habitat, 2005b), while this book was being compiled.

Undoubtedly, the international campaigns of the last decade have led to greater national-level attention in many countries to the plight of those living in informal settlements. While some country governments, most recently Zimbabwe, contravene international consensus on the need to improve living conditions in informal settlements, strong international response to their violations has increased awareness in many other countries. However, will the current campaigns, declarations and targets be any more effective than the initiatives of the past? The 'Challenge of Slums' has been the priority of international development agencies for over a decade. In this collection, we raise concern about the perpetual nature of this challenge. To date, approaches that have been developed to address the challenge of informal settlements have fallen short of reducing the challenge. Perversely, they may have contributed to the perpetuation rather than reduction of informal settlements.

Our book is not addressed at 'slums' as per the UN-Habitat definition, but rather at 'informal settlements'. We restrict this term to those settlements of the urban poor that have developed through unauthorised occupation of land. Tenure insecurity is the central characteristic of informal settlements, with varying attributes of unhealthy and hazardous living conditions to which overcrowding and lack of basic services may contribute.

Over a decade ago, the editors of the journal *Environment and Urbanisation* (1989) drew attention to the many submarkets that operate for low-income households. With reference to the over-simplified use of the terms 'slum and squatter settlements', they argued that 'for at least fifteen years, detailed studies of particular Third World cities have shown this to be an inaccurate and over-simplified picture. . . . [T]he very concept of ''slums'' is open to question' (Environment and Urbanisation, 1989: 2). Therefore, they argued that effective intervention programmes to improve the living conditions of the poor have to be based on a more accurate understanding at local and national level. To some extent, we have sought to provide such understanding for informal settlements in South Africa. However, we are of the view that many of the insights are relevant to informal settlements in the broader Southern African region. From our interaction with the many authors and referees that have contributed to this collection, we have come to understand that many of the reasons for the perpetuation of the challenge of informal settlements stem from an inadequate understanding, in policy and programmes, of the reality of informal settlements and of the capacity for implementation.

Beyond the challenge of informal settlements: The problem of perpetuation

This is not the first volume that addresses the perpetuation of informal settlements. Again we refer to the journal *Environment and Urbanisation*, which leads in terms of many informal settlement related themes. Hasan, Patel and Satterthwaite (2005: 3), in an introduction to a special issue of the journal on the challenges of meeting the Millennium Development Goals in urban areas, ask: '[W]hy has 50 years of development cooperation failed to address the needs of much of the population in low- and middle-income nations?' Their collection calls for greater inclusion of the poor in development initiatives, and their recommendations are directed at improving the effectiveness of development assistance to developing countries.

Our collection is aimed less directly at improving the effectiveness of development assistance. The book is based to a large extent on an analysis of experience in South Africa, where direct international development assistance has played a minimal role in determining the low-income housing policy, the legislative framework, budgetary allocations and implementation. The book addresses the complex processes of policy making at national level, as well as political processes at the local level where programmes are conceived and implemented. Unless the challenges that emerge within these processes at national and local level are understood, also in countries that receive development assistance for informal settlement intervention, and are addressed internally by governments and those lobbying them, the many factors that underpin the need for informal settlement production and growth are merely perpetuated. International development assistance, when bypassing and even legitimising these factors and processes, may contribute to the perpetuation of informal settlements.

The need for illegal occupation of land and informal dwelling arrangements stems from a deep marginalisation and exclusion from formal access to land and development. Informality has made possible the survival of a large percentage of the urban population, enabling a range of precarious livelihoods. The way informality does this is not compatible with formal urban processes. However, current orthodoxy among governments and development agencies alike, reinforced by the simplified arguments of the bestselling Peruvian economist Hernando de Soto (2000), is that informality can readily be incorporated into the formal, thereby providing access to the benefits of the market or capital. This collection questions this orthodoxy from various angles. While pointing to the extreme inadequacies of informal settlements, in particular their poorly understood cause-and-effect relationship with the HIV/Aids pandemic, the complex, varied and precarious ways in which informal settlements respond to poverty are

highlighted. Throughout the collection, a call is made for a careful engagement with this reality.

An important theme in this collection is that the market in unevenly developed countries not only perpetuates the need for informal settlements but also directly intervenes, reducing the extent to which informality can respond to poverty. Forced evictions from informal settlements are often carried out in favour of the market, and, on an even greater scale, people are displaced from informal settlements by the market, mostly in return for levels of compensation that are well below market values. The market also operates in an exclusionary manner when attempts are made to enable market access for the poor. The provision of costly individual freehold titles to informal settlement residents, with the aim of incorporating them into the formal market, often results in poor households selling out to those more established in the formal market, and returning to informal settlements.

Simply securing tenure for the poor in informal settlements, thus effectively preventing displacement, may be a more effective form of poverty alleviation than provision of formal land titles and redevelopment to meet the physical standards of the formal urban environment. Given a substantial housing demand for formal low-cost housing options from slightly better-off households in most developing countries, the market ensures that such improvements are traded to a social class other than the original informal settlement dwellers. Informal settlement dwellers are usually more aware of this reality than the professionals who design intervention programmes and the politicians who launch and promote them. Fear of displacement, and associated loss of livelihood and devastation, often results in community protest against insensitive upgrading plans. Too seldom, these early signs of informal settlement perpetuation are noticed, and instead politicians and officials, in many cases supported by international development agencies, roll ahead with 'development' that eventually displaces the poor, driving them into deeper poverty in new informal settlements.

However, securing tenure on its own may not prevent the devastating effects of the vicious cycles that deepen poverty in informal settlements. Precariousness of livelihoods and health conditions are exacerbated by the high prevalence of HIV/Aids in informal settlements, calling for improved access to water and sanitation and multi-sectoral approaches that combine economic, social and human development with effective political empowerment of the poor. However, a basis for such measures to be effective is that the poor are not displaced (even by the market, with their own consent), whereby tenure is effectively secured.

Both in South Africa and Kenya, the current piloting of new informal settlement upgrading programmes (in the informal settlements Kibera in Nairobi and

along the N2 freeway in Cape Town) is taking the approach of formal redevelopment to standards that, in market terms, are not within the reach of most original informal settlement dwellers. The informal settlement residents realistically fear their displacement from the informal settlement locations. Here, the rhetoric of international targets and goals, notably MDG 7, Target 11, is readily used to legitimise local agendas of beautifying the city to better attract international tourism and investment. The pervasive market directly and indirectly determines much of the informal settlement intervention that leads to displacement and thereby the perpetuation of the need for informal settlements, rather than ensuring the alleviation of poverty within informal settlements for the resident population.

The international prioritisation of informal settlements through various initiatives should be welcomed. However, greater attention needs to be given to the way these targets and campaigns are translated into programmes on the ground. The nature of pilot projects needs to be reviewed, particularly where they result from high-level partnerships. In South Africa, the N2 Gateway pilot project involves a high-level intergovernmental partnership, and, in Kenya, the Kibera-Soweto pilot project involves a high-level partnership between the Kenyan government and UN-Habitat. Contradictions are emerging in both pilot projects, placing significant constraints on the extent to which these capital-intensive projects will benefit the residents living in the informal settlements. Piloting is a first step in the implementation of a new policy. It is intended for testing and subsequent refining of policies, before full-scale implementation. Both the Kenyan and South African pilot projects are ambitious in scale and serve the political purpose of demonstrating government commitment to the new programmes. We hope that through this book we may encourage reflection on these pilot projects, as well as those underway in other countries. We hope to encourage a refinement of policies and programmes that realistically considers the factors that lead to the perpetuation of the need for informal settlements.

The structure of the book

This edited collection is presented in four parts, focusing first on the national level where polices are defined, second on the level of informal settlements, where complex and varied processes and conditions are unpacked, third on the relationship between tenure security and the market, and finally on processes at the city level, where national policies and programmes are piloted and implemented in a complex and varied context.

Part 1 of the book, which deals with national-level policy and programmes that

are directed at informal settlements, reviews a range of policy responses internationally, and analyses in more detail the recent South African, Brazilian and Angolan policy contexts. The chapter on Brazil offers comparison between South Africa and a country of similar economic strength and a similar level of inequality. The chapter on Angola, in turn, offers comparison with a context that is more representative of the sub-Saharan African context, where 72% of the urban population is estimated to be living in slums (UN-Habitat, 2005a), and where inclusive democratic governance is only gradually emerging. In relation to national policy, Part 1 discusses upgrading and regularisation programmes, their interface with civil society, and the role of data gathering and action research.

In Chapter 2, Huchzermeyer, Karam and others provide a useful overview of the range of existing policy responses to informal settlements — from repressive policy responses, through those that are deterministic, tolerant or ambivalent, transitional, and granting of amnesty, to policy responses of actual transformation. Examples from across the developing world show that some countries have progressed from repressive to transformative policies, while others have reverted back to repression. This indicates that informal settlement policy is an area of continuous political contestation, with civil society groups engaged in an ongoing struggle to oppose repressive policies, achieve progress towards transformative policies, or contest reversion back to repression. The authors further explore the policy-data-civil society relationship. While discussing the population data challenges in the social context of informal settlements, they also point to an effective approach of consensus-seeking enumeration, which should be accommodated in policy. As a tool through which civil society groups can put marginalised or ignored communities 'on the map' by providing data, this is also an approach that has influenced policy in certain countries.

In Chapter 3, Huchzermeyer focuses on the South African policy context, where an Informal Settlement Programme was recently developed within the new *Comprehensive Plan for the Development of Sustainable Human Settlements* ('*Breaking New Ground*'). Responding to the persistent growth of informal settlements since 1994 despite massive housing delivery, the new Housing Plan was launched with the political objective of not only halting the production of informality, but actually 'eradicating' informal settlements over the next 10 years. Huchzermeyer discusses the political context and process through which the new Housing Plan and Informal Settlement Upgrading Programme was formulated. The political focus on poverty eradication is highlighted in particular, examining the way in which this is translated into the new Housing Plan. She then examines the new Informal Settlement Upgrading Programme in relation to the

three interrelated challenges that the national Department of Housing has linked to the perpetuation of informal settlements: poverty, vulnerability and social exclusion. While highlighting important interventions that the Informal Settlement Upgrading Programme enables in these areas, the chapter also points to aspects where the programme falls short of enabling the paradigm shift it calls for, particularly given that certain political objectives at provincial level contradict aspects of the programme. The chapter identifies this as one of the challenges for the ongoing monitoring and refinement of the programme.

In Chapter 4, Fernandes discusses how the Brazilian Ministry of Cities' *National Policy to Support Sustainable Land Regularisation* was pioneered to address informal settlements as a means of achieving urban reform and social inclusion in the context of uneven development. In some Brazilian municipalities, 80% of the population live in informal settlements; others are more comparable to South African cities, with 10-20% informality. Fernandes identifies major challenges for halting the perpetuation of informality as lying in the constitutional, political and legal order. Many proposed interventions have ignored these challenges and therefore produced limited results. The *National Policy to Support Sustainable Land Regularisation* sets out to break the 'perverse cycle which has historically produced urban informality' (Fernandes, in this book: p. 68). Therefore, it does not address land regularisation in isolation from the urban-legal framework or from redistributive fiscal policies, inclusive urban management, and the production of formal low-income housing. In the first instance, the policy seeks to support municipalities and states (provinces) in implementing the urban legislation that comprises the City Statute, while also seeking to promote integration between various programmes and to ensure the incorporation of social and constitutional rights. The support therefore spans the legal, financial, planning, institutional and technical dimensions. While highlighting the important social and intergovernmental mobilisation that the policy has achieved, Fernandes also spells out the limitations of the programme in halting the process of informal urban development, as well as the challenges that the Ministry of Cities has yet to overcome.

In Chapter 5, Jenkins uses a case study of Angola to address important questions about the perpetuation of informal settlements, and what action is relevant. He explores the meaning of social, economic and physical informality, arguing that, while governments tend to see informal settlements as negative, 'they are often a socially legitimate response to real needs and represent many positive features' (Jenkins, in this book: p. 85), are likely to continue growing, and should be permitted to coexist alongside the formal, rather than be eradicated. The pervasiveness of informality — 'non-state-regulated forms of social, economic and cultural action' (Jenkins, in this book: p. 85) — and its misrepresentation in policy

are exemplified in the Angolan case, where there is also no conclusive census data since 1983. The action research initiative in Angola reviewed in this chapter, therefore, set out to establish a minimal basis of knowledge in collaboration with local partners, with the aim of using this in policy advocacy. The knowledge base covered the legal, regulatory and institutional context, existing patterns of land access, the nature and scale of poverty, and housing demand. The action research developed recommendations on land law and land management centring on social inclusion, with mechanisms for an incremental transformation from informal to formally regulated systems that are operated in a decentralised form. Further recommendations were addressed at creating institutional capacity. Jenkins reports initial results from the advocacy, namely the development of a land law and physical planning law through consultation with civil society, and concludes on the need for research institutions, including universities, to engage in action research that furthers the social function of knowledge.

Part 2 of the book provides insight into the informal settlement reality, and the multi-dimensional challenges this poses. The complexity and diversity of informal settlements are discussed through a detailed analysis of livelihoods in six informal settlements in Cape Town (Part 4 of the book discusses municipal responses to informal settlements in Cape Town, as well as the complex challenges faced in the high-profile N2 Gateway pilot project in that city). The theme of complexity is expanded in an exploration of the unrefined interface (or 'clash') between the reality in informal settlements and the bluntness of governments' infrastructure upgrading programmes, with reference to various countries across southern and eastern Africa. This part of the book also unpacks the complex contextual challenges for policy posed by the HIV/Aids pandemic, which appears to hit hardest among informal settlement residents.

In Chapter 6, Smit gives empirical insight into aspects of informality intro-duced by Jenkins in Chapter 5, and highlights the variation between six informal settlements in Cape Town. Smit shows relative integration of residents of well-located informal settlements in terms of job opportunities and social and commercial facilities in the surrounding areas. From the perspective of the residents, the chapter unpacks the spatial or physical qualities and problems related to informal settlements. Evidence is given of rent tenancy in some informal settlements (this trend dominates informal settlements in Nairobi, as discussed by Omenya and Huchzermeyer in Chapter 15). Poverty levels in terms of income vary substantially across and within the six informal settlements, with associated social differentiation. Evidence is given of a high incidence of fluctuating incomes, as well as of households with zero income, dependent on handouts from others. One response to extreme poverty and exclusion from urban amenities is the

spanning of extended households across the rural–urban continuum. Smit applies the sustainable livelihood framework to develop recommendations for informal settlement intervention centring on community participation and flexibility in the regulatory environment.

In Chapter 7, Martin and Mathema explore the differences between social organisation in the construction of informal settlements and the formal model that is applied to informal settlement upgrading. The authors argue that most forms of upgrading are ill-tuned to the existing informal processes, therefore resulting in a 'clash'. With reference to informal settlements in Nairobi, Addis Ababa, Lusaka and peri–urban Swaziland, the chapter describes various models for settlement formation and governance. Martin and Mathema show how many of these collective processes foster social capital within the settlement communities, though they also point to forms of exploitation. From this perspective, the authors review the main questions that informal settlement residents pose to formal upgrading programmes. These relate to decision making, governance and regulation, as well as the impact on their businesses or livelihoods, and new costs imposed. These questions are contrasted with the official and political motivations for upgrading intervention. The consequent limitations of such intervention are highlighted. As a result, supposed beneficiaries are displaced, a concern that is echoed in chapters 3 and 15 in relation to the South African and Kenyan informal settlement upgrading pilot projects. A central recommendation in Chapter 7 is to respect and work with existing settlement leadership, ensuring that all interest groups (including those with exploitative commercial interests) are permitted to have their interests considered objectively. Consensus seeking, which is common to African society, is emphasised as a vital step (as in Chapter 2, which reviews the Slum Dwellers International approach to consensus building through enumeration) in upgrading informal settlements. Further, the management of conflict between formal and informal models requires gradual transformation that builds on the existing community-based systems of governance and control.

In Chapter 8, Ambert examines complex challenges presented by high levels of HIV infection in informal settlements in South Africa, and the consequent serious impact of Aids and related mortality. Ambert explains how the socio-economic impacts of HIV and Aids among the formally housed result in a filtering down of households into informality, and how the inadequacy of living conditions in informal settlements, in turn, not only reduces households' ability to cope with the disease, but also results in vulnerability to infection by HIV and by Aids-related opportunistic diseases. Thus, a complex relationship between HIV, Aids and informality is spelt out, with many dimensions of vulnerability — in relation to household income and expenditure, tenure rights, social capital and household

cohesion. Ambert further discusses the way in which HIV/Aids erodes human capital in the development sector. How then should policy and practice respond? Strategic priorities that are put forward in this chapter span basic servicing, tenure security, environmental health (in particular refuse removal), affordability to the poor, flexibility to varied localised conditions, and inclusion of affected households in the decision making. Further recommendations relate to the integration of HIV and Aids challenges into institutional and budgetary frameworks, and the compatibility of upgrading programmes with the context created by HIV and Aids.

Part 3 of the book addresses insecurity of tenure in informal settlements. This discussion relates to the property market in several ways. The dominant approach of providing informal settlement households with freehold titles, as a bridge towards integrating them into the formal market, is critically discussed, in particular in relation to the assumptions this approach makes about the market. The theme of the market appears again as one of the causes of forced eviction, which persists at an alarming scale across the globe, resulting in largely unacknowledged losses, often in instances where *in situ* upgrading would have been a viable alternative. The indiscriminate functioning of the market in perpetuating the formation of new informal settlements is a central theme in a discussion of market-driven displacements. The fairness of compensation is explored in relation to the real losses that result from displacement, and the extent to which planning measures can provide protection against displacement and loss.

The title of Chapter 9 ('Barking dogs and building bridges') refers to the anecdotes that bestselling author Hernando de Soto uses to explain the 'simple' mystery and solution to the exclusion of five sixths of the world's population from the market-related benefits of globalisation. The 'simple solution', which accepts capitalism as status quo, is to make the residential property market more functional, simply by legalising the informal or extra-legal processes that already exist. With reference to South African cases, Royston questions whether such a bridge between the formal and informal can in fact be constructed. If it were to be constructed (which would be a drawn-out process), the poor would be incorporated into a market that does not function for them, shedding them back into the informal. De Soto's liberal concept of property as collateral, and thus as engine for the creation of wealth, has another side, namely that of loss through foreclosure — a constant threat for the poor. The threat of loss through formalisation or titling has led to conflict, an observation also made by Martin and Mathema in Chapter 8, which casts doubt over de Soto's seductive argument that capitalism can work for the poor. Royston's position is that tenure security should be considered more important than market access for the poor through individual

freehold titles. Here, she points to the existence of a range of options to achieve tenure security, which must have social legitimacy and meaning in a given context.

Chapter 10, drawing on the research and advocacy work of the Centre on Housing Rights and Evictions (COHRE), focuses on forced evictions. Du Plessis raises concern about the seeming acceptance of forced eviction as an inevitable part of the development process. He points to an alarming scale of such evictions in cities across the world, beyond what catches the eye of the media, and despite international law that classifies such intervention as a human rights violation. The chapter alerts the reader to the fact that forceful evictions persist at alarming scale in South African cities. COHRE's recent report on evictions in Johannesburg provides worrying evidence. Du Plessis's position in this chapter is that the best solutions are often those put forward by the affected residents themselves, but it takes many years before formal institutions are willing to listen. Du Plessis presents two case studies — one from Bangkok (Thailand) where an old informal community in the inner city was to be relocated to a distance of 45 km to make place for a public park; the other from Accra (Ghana), where a large community is subject to a deeply contradictory relocation plan. In the Bangkok case, attempts by the community to cooperate with the government and put forward alternative solutions met with little response and the eviction and displacement has largely gone ahead. In Accra, similar attempts were made to create a space for the community to put forward alternative proposals, with evidence that serious conflict might erupt should the Ghanaian government not involve the residents in the decision making. Du Plessis notes that this tendency for local communities to struggle for space in decision making is a growing global trend, with some examples of positive responses from governments.

In Chapter 11, Durand-Lasserve differentiates between forced evictions (the theme of Chapter 10) and market-driven displacements. The latter are the 'direct or indirect consequences of development' that seeks to make profit from the use of land (Durand-Lasserve, in this book: p. 207). Durand-Lasserve notes that, though largely ignored, market-driven displacements, whether from public or private land, tend to occur at an even greater scale than forced evictions, and are tending to replace forced evictions. However, they remain largely under-researched and unreported. Where displacement or relocation is negotiated with the informal occupants of land, the negotiated compensation tends to be much lower than the land value eventually gained from the investors' planned development. A less extreme form of market displacement results when *in situ* upgrading of informal settlements is not coupled with measures to secure tenure of the original beneficiaries against escalation of land values after legalisation and physical improvement, a fear raised by Royston in Chapter 9. Durand-Lasserve uses

two case studies from the developing world, Kigali (Rwanda) and Phnom Penh (Cambodia), where property rights are gradually being reintroduced after genocide and war respectively, in a context of large-scale return of displaced people. Durand-Lasserve discusses the factors that lead to market displacement in these two cities, the scale of conflicts that arise, how compensation is handled if at all, and what alternatives are offered. Durand-Lasserve's recommendations relate in the first instance to the compensation paid to those displaced by the market. This needs to better reflect the real loss caused by displacement, and real value later recovered by the investor. Further recommendations relate to protective planning measures, appropriate (in particular collective) tenure forms, and mobilisation of communities to increase their bargaining power in negotiations.

Part 4 of the book examines how the challenges of informal settlements discussed in the previous chapters are handled at the city level. This spans a discussion of responses to informal settlements in the cities of Cape Town, Johannesburg and Nairobi. Both in Nairobi and in Cape Town, national informal settlement upgrading programmes are currently being piloted in extremely complex settlements. In the City of Cape Town, the informal settlement intervention is constrained by national and city-level political decision making that ignores both the capacity of the municipal bureaucracy and the need for consensus to be reached with the affected communities. In Nairobi, the informal settlement upgrading pilot project is shaped by an incomplete national policy framework, top-down decision making and donor perpetuation of *ad hoc* implementation. In the City of Johannesburg, an integrated health and development approach to informal settlements is being piloted as part of the city's Human Development Strategy. This responds in particular to the HIV/Aids challenge and underscores the need for a flexible and multi-pronged approach to informal settlement intervention, but is as yet not aligned with the national Department of Housing's new Informal Settlement Upgrading Programme.

In Chapter 12, Graham examines the complex challenge for local government in dealing with growing informal settlements. A case study of the City of Cape Town's Emergency Servicing of Informal Settlements Project, initiated early in 2004, illustrates the complex political motivations for, as well as constraints upon, informal settlement intervention. Graham shows how political promises and decisions at the municipal level tend to override the regular programmatic planning, accessing of funds and procurement of contracts. He further highlights the tendency by the increasingly centralised decision-making process to ignore requests and preferences from informal settlement communities. Graham thus identifies three contradictions in relation to informal settlement intervention in the City of Cape Town. The first relates to the contradicting approaches within

the political vision for informal settlements. The second relates to the increasingly centralised decision making on informal settlements at the municipal level, which contradicts the community engagement and consensus seeking that all informal settlement intervention calls for, as highlighted also in chapters 7 (Martin and Mathema) and 13 (Cross). The third contradiction is between the centralised struggle for power to shape the city and the larger political prioritisation of informal settlements as part of the municipality's developmental mandate. Here Graham shows how the translation of the political prioritisation of informal settlements into implementation is constrained by centralised power struggles. Graham concludes that, unless these contradictions are recognised and resolved at the city level, the integration of informal settlements into the city will not be achieved.

In Chapter 13, Cross reinforces the concerns of Graham in Chapter 12. Cross speaks to the recent resurgence in South Africa of community level conflict and protest over housing and service delivery, which poses a challenge for governance in relation to informal settlement intervention. Cross focuses on recent empirical data on Crossroads, a partially informal area in Cape Town that has symbolised urban land conflict under apartheid in South Africa. A decade after apartheid, housing delivery has deadlocked due to renewed conflict over resources. The settlement is now earmarked for the N2 Gateway pilot project of the Informal Settlement Upgrading Programme of the national Department of Housing. Cross uses a review of the Crossroads history and of the findings of a recent study on social and governance conflict in Crossroads to spell out challenges for the N2 Gateway pilot project. These intersect with generally high levels of housing demand related to rural–urban migration, and the ineffectiveness of local–level representative structures. Cross is cautious of the South African government's goal of eradicating informal settlements or informal housing structures over the next 10 years, and advocates instead a more realistic approach of responding to informality through upgrading as well as a form of guided informality that would meet new demand. She calls for more options in the government's housing programmes that would allow for owner construction and improvement of shacks. She further spells out governance recommendations for large-scale housing delivery projects, particularly relating to the management of conflict.

In Chapter 14, Thomas discusses the challenges for local government in promoting healthy living environments through development or improvement of informal settlements. In this context, Thomas unpacks the health and development challenges posed by the high incidence of HIV/Aids in South African informal settlements. The health and development analysis highlights the importance of access to basic services, but also raises more complex questions about the reasons for and implications of the high prevalence of HIV/Aids in informal settlements.

With reference to the legislated framework of 'developmental local government' in South Africa, Thomas considers what appropriate local government responses to informal settlements would entail. She presents a case study of the City of Johannesburg's Human Development Strategy, and, within this context, the *Jozi Ihlomile* programme, an integrated and flexible health and development programme of the city's Health Department. The integrated response to HIV in this programme initially focuses on informal settlements, integrating various actors in response to the particular needs emerging from a baseline survey. This approach therefore goes beyond the mere provision of basic services. At present, there is no evident coordination between this initiative and the pilot projects of the new Informal Settlement Upgrading Programme. Thomas recommends that lessons from the City of Johannesburg's *Jozi Ihlomile* programme be incorporated into the Department of Housing's new approach to informal settlements.

In Chapter 15, Omenya and Huchzermeyer discuss the pilot project of the Kenyan informal settlement upgrading programme in Soweto, a so-called village of Nairobi's largest informal settlement Kibera, in the current context of a shifting policy environment. The authors present the scale and conditions in Nairobi's 'slums' or informal settlements, which house 55-60% of the population on 5% of the land. They explain the tenancy system that largely excludes owner occupation and has resulted in complex layers of interest in the development of the informally (and corruptly) allocated land. Nairobi's slum upgrading initiatives of the past have been *ad hoc*, but, in 2000, the Kenyan government, in collaboration with UN-Habitat, initiated the Kenya National Slum Upgrading Programme. Omenya and Huchzermeyer analyse the slum upgrading programme's approach in the Kibera-Soweto pilot project in Nairobi, highlighting its limitations in addressing residents' concerns at being displaced from centrally located Kibera. Omeya and Huchzermeyer explain these shortcomings to some extent through an analysis of the policy framework of the past and current regimes. They highlight the deep neglect of urban development over many decades, and current political inertia in addressing this complex problem at its roots, namely the absence of a framework aligning policy, legislation and resource allocation. The pragmatic focus of international donors and agencies, such as UN-Habitat, on immediate implementation in the absence of such a framework results in a deepening discontent among Nairobi's informal settlement residents.

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Policy and national programmes

Policy, data and civil society: Reflections on South African challenges through an international review

Marie Huchzermeyer, Aly Karam, Ian Lamla Stemela, Nkhangweni Siliga, Sierajodean Frazenburg

Introduction

In South Africa, as in many developing countries, informal settlements persist despite the government's targeted provision of low-cost housing. Slow delivery on new government-subsidised low-cost housing is often put forward as the cause (see for example Department of Housing, 2004). Informal housing, even if based on the illegal occupation of land, is recognised by some as a more affordable and more immediately accessible solution to the housing deficit. However, unplanned occupation, while meeting certain shelter needs, often leads to conditions that pose a risk to the inhabitants. These settlements therefore require technical and socio-economic intervention. Such intervention, however, does not happen in isolation from urban, often national and even global politics. The political decision for intervention may be top-down and at times repressive, or, at the other extreme, may be the result of intense mobilisation, internationally, nationally or on the part of informal settlement residents.

In this chapter, we explore how informal settlements are dealt with through policy. The literature reviews, on which much of this chapter is based, formed part of a National Research Foundation (NRF)-funded research project on informal settlement policy in the School of Architecture and Planning at the University of the Witwatersrand. In 2003, the literature reviews covered developing countries in sub-Saharan Africa, Latin America and Asia, selected according to the particular insights they could provide on the sub-themes of the project. In this chapter, we build on the 2003 literature reviews by Stemela (2004),

Siliga (2004) and Frazenburg (2004) on the interrelated sub-themes of policy approaches, data and civil society. In 2004, the project used insights from the international literature reviews to reflect on the changing informal settlement policy framework in South Africa.

The NRF project began early in 2003, at a time when South Africa's housing policy did not include an instrument for upgrading informal settlements, assuming instead that informal settlements would be replaced through the delivery of formal subsidised housing. This restricted the informal settlement upgrading that was being attempted in certain South African municipalities. The recent (2004) shift in South African housing policy towards supporting informal settlement upgrading is discussed in detail in Huchzermeyer (in this book: Chapter 3). In this chapter, we hope to contribute a deeper understanding of various policy approaches to dealing with informal settlements in developing countries, as a basis for reflecting on the current South African situation. In relation to this, we explore the role of quantitative data in determining or underpinning these policies, and to what extent mobilised civil society influences the policy process.

The range of policy approaches in dealing with informal settlements

Most governments would agree that informal settlements are an indication of a failure of the public sector, the legislative framework and the economy to provide conditions through which the poor may be housed formally, whether this is through government programmes or through private means (see for example Department of Housing, 2004). It follows that the scale of informal settlements in a country is an indicator of the performance of a number of sectors of government and of the economy. Policy to address informal settlements, therefore, should reach into these sectors, rather than simply deal with the symptoms. Due to the interpretation of informal settlements as larger national performance indicators, most governments are concerned about the visible presence of such settlements in their cities, but policies often tend to focus on eradicating the symptoms.

As we write (July 2005), the Zimbabwean government, through a programme aimed at 'restoring order', is temporarily erasing such indicators through an unprecedented urban shack-demolition campaign that is said to have left over 200 000 people homeless (IPS, 2005; COHRE, 2005b; Tibaijuka, 2005). In South Africa in 2004, the political aim of 'eradicating' informal settlements (Sisulu, 2004) was translated more sensibly into a 10-year upgrading programme (Department of Housing, 2005), coupled with initiatives that aim 'to grow the economy, including intervention in ... the Second [informal] econom[y]'

(Mbeki, 2004), to which the poor have access, and to which the production of informal settlements is linked. Whether growth in the informal economy, in a context of continued high rates of urbanisation and the increasing devastation of poor households by the HIV/Aids pandemic (see Ambert, in this book: Chapter 8 and Thomas, in this book: Chapter 14), will contribute to the eradication of informal settlements, or merely the increased (and hopefully improved) production thereof, are questions currently being asked in South Africa, but not directly addressed in this chapter.

Informal settlement policy is determined by state-society relations. In African cities, these have been classified as either

- oppositional (hostile, repressive or exploitative),
- indifferent (neglecting, tolerating or ignoring), or
- cooperative (co-opting or integrating). (Aina, 1997)

Hostile, repressive and exploitative state-society relations may also emerge where governments are not openly oppositional. First, regimes may be blinded by negative perceptions and interpretations of informal settlements among the dominant classes, and may therefore be motivated to act repressively to advance the narrow interests of the dominant classes (Stemela, 2004). Second, governments rigidly following the 'markets-first' approach imposed by lending institutions such as the World Bank and the International Monetary Fund (IMF) (see Pugh, 2001), may find themselves serving elite interests in a way that is repressive towards informal settlement residents, rather than responding directly to the organised demands of the poor. We return below to a discussion of the voice of civil society in the policy-making process.

Indifferent state-society relations with regard to informal settlements may result under several conditions: first, where the ruling party considers these settlements necessary for political support, second, where their existence does not pose a threat to the principle of private property, and third, where they are recognised as supporting the economic and social system (Gilbert & Gugler, 1982).

Cooperative state-society relations with regard to informal settlements are reflected in the state's understanding of its mandate in relation to housing not merely to deliver to citizens, but to facilitate an ongoing participation by citizens in decision making. Various policy approaches can result from such ongoing cooperation or participation.

Based on Aina's (1997) broad classification of state-society relations, we have developed the following typology of policy responses to informal settlements. Approaches four to six in the typology would be the result of increasing influence by civil society in the policy-making.

1. Repressive (removal of informal settlements despite resistance, with the inter-vention usually having a negative impact on the affected people's livelihoods).
2. Deterministic (rigid prescription of a 'good' solution to the problems of the poor, usually with little reference to the affected people's livelihoods and socio-economic reality).
3. Tolerant/ambivalent (often based on a cost-benefit analysis regarding votes before an election).
4. Transitional (affording temporary occupational rights in the informal settle-ment or a transit camp, with a view to future orderly relocation — often with little consideration of the impact of uncertainty about the future on people's fragile livelihoods).
5. Giving amnesty (immunity to eviction, usually based on a predetermined time of uninterrupted occupation or a cut-off date — this may involve temporary or permanent occupation rights).
6. Transforming (upgrading infrastructure and facilities, formalising land tenure and integrating the informal settlement into the surrounding urban fabric, while also seeking to address the larger socio-economic and legal framework).

We debated whether an additional policy type may be identified as 'proactive', seeking to prevent health and physical risks associated with informal settlements. However, in our project discussions with policy makers in South Africa (Huchzermeyer, Karam & Mayekiso, 2003), we realised that 'proactive' policies are also understood as those policies that resort to deterministic or even repressive methods in order to reduce the risk. We found that acting 'proactively' may also front a more sinister agenda of displacing the poor from strategic locations in the city. In our understanding, truly proactive policies would seek to ensure socio-economic and legislative conditions under which the entire urban population can find formal, legal housing. This we have included under 'transforming' policies. A precondition here is that informal settlement residents become formally recognised, first through the collection and correct interpretation of accurate data on informality, and second by affording organised informal settlement residents a role in policy making.

However, this led us to the question of how 'transforming' policy approaches deal with new land invasions, which will persist at least temporarily in countries embarking on such a policy approach. How could these policy approaches avoid resorting to repressive measures such as the forceful stamping out of any attempts at new land invasion or at informal settlement densification and expansion?

The dominant approach among governments is to react to new land invasions by deliberately ignoring them (tolerant/ambivalent), or by repressing them through an approach of 'zero tolerance', as in several South African municipal

housing strategies, for example the City of Johannesburg's 2000 Housing Strategy (Spadework Consortium, 2000, cited in Huchzermeyer, 2004a: 337). This approach tends to avoid questions regarding the socio-economic and legal exclusion that causes people to invade land, and instead labels the invaders as greedy and criminal 'land-grabbers'.

The more 'transformative' policy approach is to recognise the larger pressures and desperations that lead to land invasions, and also to recognise that informal settlements, as embarrassing as they may be (as indicators of failures in various sectors of government and the economy), inherently have a role to play in ameliorating the housing backlog. Policy responses within this approach may involve setting aside portions of conveniently located land with basic services for a relatively informal and rapid form of occupation under flexible but secure tenure (in South Africa these are referred to as 'reception areas'), while also allowing existing informal settlements to expand where possible, and simultaneously addressing the affordable housing demand through formally planned channels. This approach requires support from organised civil society, with a conscientisation (or awareness raising) of all economic classes to the pressures that shape poverty, and to the benefits of a form of structured and legalised informality, at least as a temporary response.

South Africa's new housing policy, though applying the term 'informal settlement eradication' may be interpreted as a broadly responsive and in parts 'transformative' approach. However, despite the fact that 'reception areas' as a response to rapid urbanisation of the poor are envisaged in the policy (Department of Housing, 2004), the tendency in South Africa is to focus on the forceful prevention of new land invasions in the absence of a working model for structured and legalised informality. Nevertheless, one may speak of a progression, at policy level, from repression and determinism during the height of apartheid up to the mid 1980s, through a mixture of ambivalence and tolerance (with bouts of repression) in the late apartheid years, to tolerance at the time of the first democratic elections in 1994, and again determinism throughout the first 10 years of post-apartheid government, towards a more responsive and realistic dealing with informal settlements in 2005.

This follows the example set by Brazil (see Huchzermeyer, 2004b), where the policy process was a linear progression, from repression in the 1960s up to the early 1970s, to ambivalence into the 1980s, and increasing efforts at transformation or integration in the 1990s and into the new millennium (though always with elite opposition). Linked to these progressive shifts were intense mobilisation by civil society, a process of democratisation that opened increasing space for civil society involvement in policy making, and changes in the official perceptions on

informal settlements (Taschner, 1995). However, despite the Brazilian govern-ment's attempts at transformation through the active integration of informal settlements, new forms of repression are exercised through the control of settlements by drug-related gangs — a perverse form of civil society that has little interest in respecting or promoting the public good (Souza, 2005).

Two other country cases, Zambia and Bangladesh, where policy reverted from transforming back to repressive, may warn against complacency in countries such as South Africa that have adopted transformative policy. In the Zambian case, ambivalence has persisted throughout. This is contrasted with a clearer govern-ment commitment to policy in Bangladesh.

In Zambia, policy towards informal settlements shifted from ambivalence in the late 1960s, which included some repression, to attempts at transformation in the early 1970s, though with repressive measures still directed against the forma-tion of new informal settlements (Schlyter, 1998). Pressure in Zambia for this early shift towards more transformative policy that allowed for informal settle-ment upgrading came in part from within the ruling United National Indepen-dence Party (by then Zambia was a one-party state). In this period, the strongest political support for the ruling party was in the informal settlements, which were organised by party leaders (Schlyter, 1998). World Bank funding of the extensive upgrading projects had the result that this approach was identified more with the World Bank than with Zambian policy. Once funding declined, upgrading was largely abandoned (Schlyter, 1998).

With economic decline in Zambia by the late 1980s, informal settlements received little attention. Therefore, without any explicit policy, informal settle-ments became tolerated. With the victory of multi-party democracy in 1991, repressive measures were resumed, with the large-scale bulldozing of unauthorised structures (Schlyter, 1998). Only in 1996, a new housing policy made provision for informal settlement upgrading (Ministry of Local Govern-ment and Housing, 1996). The policy relies heavily on community participation and self-help in infrastructure delivery and maintenance, and on NGOs and international donors rather than government resources (Schlyter, 1998).

In Bangladesh, the first policies after independence from Pakistan in 1971 were deterministic, with involuntary removals and relocation to distant sites. From 1988 to 1996, the government implemented slum improvement projects (SIPs) countrywide. The projects included community development and local economic development, with an emphasis on improving living conditions (SIPs were funded from external sources) (Siddique, Alam, Rahman, Rahman & Jahan, 1998). However, more recent reporting (Lankatilleke, 2002) points to a return to repressive means of criminalising and demoralising the informal settlement

population in order to cause their migration elsewhere. Other recent documentation finds informal settlement policy in Bangladesh to be marked by blatant disregard for the international human rights obligations of Bangladesh, with physical violence instituted by the government against many, including women and children (COHRE, 2001).

In countries with transforming policies, the complex process of informal settlement upgrading is usually much slower than is called for in policy. Ambitious programmes are seldom completed within the anticipated framework (in Brazil, for example; see Huchzermeyer, 2004b: 61). This means that informal settlements persist even in these countries, and continue to provide embarrassment to governments. Cosmetic interventions, not necessarily in alignment with national or federal policy, were attempted at municipal level to remove or hide residential squalor. In Rio de Janeiro's extensive *Favela-Bairro* programme of the late 1990s and early 2000s, the tendency was to neglect the less cosmetic goals of community participation, regularisation and income generation. The associated limits to redressing socio-legal exclusion in Rio de Janeiro have been highlighted (see Souza, 2005: 11). In São Paulo, the Cingapura Programme, which involved demolition of informal settlements along the major city freeways and their replacement with blocks of flats, is another example (see Huchzermeyer, 2004b: 36). A few years after implementation, the original residents had largely been displaced, presumably to other informal settlements (*Jornal da Tarde*, 2001, cited in Huchzermeyer, 2004b: 36). In South Africa, there are fears that Cape Town's N2 Gateway Project, which targets informal settlements along the freeway from the airport to the historic centre of the city, may repeat these mistakes (Houston, 2005).

The role of quantitative data collection in policy making on informal settlements

With a tendency by well-meaning governments to wish away or hide their residential squalor, is there also a deliberate under-representation of the informal settlement population in official statistics? Their under-representation would decrease the importance given to informal settlement populations in policy or even in the views of officials and politicians. This concern leads us to the role of quantitative data in accurately representing existing and emerging informal settlement populations, thus contributing to appropriate policy formulation and implementation. Our review of the literature leaves many questions unanswered, highlighting this as an area that should be addressed at the institutional level, where greater collaboration between statistical and housing/land departments is called for.

An accurate understanding of the scale and trends of informal settlements should be imperative to the policy-making and budgeting process, particularly with encouragement to city municipalities from programmes such as Cities Alliance (a joint World Bank and UN-Habitat initiative), which promote city-wide informal settlement upgrading and city development strategies to extend slum upgrading programmes to the city-wide scale (Cities Alliance, 2002). Hasan, Patel and Satterthwaite (2005: 12) note that '[t]he first step in any city-wide programme is building a city-wide information base'. However, as these authors also point out, there are limits in the extent to which official data sets may represent informal settlement populations.

One major challenge is that of accuracy (Satterthwaite, 2003). In South Africa, various 'scientifically' derived data sets of Winterveld, a semi-informal former 'homeland' area west of Pretoria that developed high densities through informal rent tenancy on small farms in response to the influx of apartheid-displaced households, presented considerably different population figures (Horn, 1997). In the Winterveld case, it was not clear whether some studies had under-counted or others had over-counted. It has long been argued (see Bulmer, 1983) that most quantitative methodologies have originated in the developed world, where social situations are considered accessible and predictable. Irregular layouts and difficult access pose challenges for data collection in informal settlements. In certain situations, it is considered too dangerous for official enumerators to do house-to-house data collection in informal settlements. In addition, informal settlement populations fluctuate seasonally and over longer periods of time, meaning that a once-off door-to-door survey does not capture the population reality. A further challenge that has long been pointed out is that of definitions — what constitutes an 'informal settlement' or 'slum' may vary significantly from one context to the next (Aina, Davila, Hardoy & Satterthwaite, 1989: 2).

Acknowledging some of these challenges, approaches have been developed that derive population estimates through the analysis of aerial photography (for example Abbott & Douglas, 1999). A comparison of a consecutive set of aerial photos may result in some understanding of the growth of informal settlements (Abbott & Douglas, 1999). A well acknowledged limitation, however, is that this does not take into consideration seasonal absence of households, the abandonment of some structures, or their use for non-residential purposes (Abbott & Douglas, 1999). It is seldom that quantitative surveys, even those that involve door-to-door data collection, are designed to capture the varied and rapidly changing population reality in informal settlements. In addition, door-to-door surveys such as the national census may take years to process, rendering the results outdated at the time of release (K'Akumu, 2006).

The national census is a costly yet important data set, although 'national statistical systems in most countries are inadequate' (Mboup, 2005). Assuming the systems were adequate, would they collect data with regard to involuntary illegality, insecurity of tenure and threats of eviction? Here, the status of 'illegality', with which most legal frameworks label informal settlements, if included in the census questionnaire, would pose a challenge to official enumeration — settlements are often not illegal in the eyes of the residents completing the census questionnaires.

In India, the 2001 census attempted for the first time 'to collect detailed data about slum [informal settlement] areas of the country particularly in cities/towns having 50,000 population or more' (Office of Registrar General, 2001). This could indicate a shift in the Indian government's approach towards a more transformative approach to informal settlements, beginning with recognition. However, the tendency in India as in South Africa is for the census questionnaire to focus on the physical characteristics of the dwelling and services, and not on their legal status, let alone threats of eviction. This is indicative of the dominance of determinism as the policy approach (at least until recently), with concern for the replacement of physical structures, rather than the socio-legal exclusion that is manifested in informality. In South Africa, the censuses of 1996 and 2001 used a limited typology of houses that lumped together shacks in informal (illegal) settlements and on serviced sites, focusing on the informality of the dwelling structure (shack) and not on the informality or precariousness of the land occupation (Huchzermeyer, 2004b: 149).

Beyond determining housing backlogs and informing budgetary allocations or programmatic decisions on delivery of new houses, does a population census have a role to play in informing informal settlement policy? Or is more detailed quantitative and qualitative data collection and monitoring at local level of greater use? Recent efforts to localise the implementation of the United Nations Millennium Development Goals (MDGs) have highlighted the importance of local statistics (Mboup, 2005). In 2003, UN-Habitat initiated its Monitoring Urban Inequities Programme (MUIP), which seeks to 'monitor the plight of urban slum dwellers around the world' (Mboup, 2005: 12). This initiative calls for 'census and survey data' to be 'combined with Small Area Estimates' (2005: 12).

In South Africa, many municipalities have 'squatter control units' (though often renamed more acceptably) closely monitoring the informal settlement and land invasion trends at a city level. Are there any attempts to use this data collectively, beyond planning at the local level, to inform wider policy making? Is it possible for different local authorities to coordinate their data into comparable sets, and for these to be coordinated with national data sets such as the census? (See

UNDP, 1995.) Are regional differences understood, and can data collection be sensitive to differences in cultural values? (See Joshi, Srinanda & Hobson, 2002.)

A strong level of collaboration between national housing institutions in Argentina and the government's statistical agency has been reported by the World Bank (1995). Much of the data collection on informal settlements in Argentina is linked to ongoing monitoring and evaluation of intervention programmes. This example has relevance for the ongoing refinement of South Africa's new informal settlement upgrading programme. One could argue that such data, based on the evaluation of programmes, are as important for the policy-making process as are data on the trends and conditions in those informal settlements for which intervention decisions have yet to be made. In Argentina, the effort to monitor and evaluate also fostered a culture of transparency, and built capacity around the analysis and management of informal settlement data, which had been largely absent in that country (World Bank, 1995).

In Kenya, where the institutional framework for data collection, processing and dissemination is weak (K'Akumu, 2006) the United Nations Population Fund (UNFPA) has played an important role in building capacity for data gathering and use of data for planning as well as monitoring of implementation programmes, including those relating to housing (UNFPA, 2002). Munene (2002) has noted that this form of support has also assisted with gathering and analysis of data on informal settlements, particularly in Nairobi. This was supplemented with in-depth qualitative studies, the *Nairobi Situation Analyses* (Syagga, Mitullah & Karirah-Gitau, 2001; 2002), commissioned by the Kenyan government in order to inform the planned slum upgrading programme. However, the implementation of the Kenyan Slum Upgrading pilot project in the Kibera slum in Nairobi overrides many of the recommendations made in the situation analyses (COHRE, 2005a; Omenya & Huchzermeyer, in this book: Chapter 15), indicating the weakness of data in relation to the political objectives of development and modernisation.

An important lesson from India has been the philosophy in some parts of the NGO sector that it is the poor themselves who are best positioned to collect relevant data for their areas. Patel, d'Cruz and Sundar (2002) note that shelter associations, and non-governmental organisation (NGO) and community-based organisation (CBO) partnerships have been developing approaches for information collection on slums, for appropriate policy intervention. Community-based surveys have been successfully linked to GIS (geographic information systems) and have helped in converging various government programmes addressed at the urban poor (Patel & Kalpana, 1998).

Similar approaches have been used to inform localised policy in South Africa,

for example for the New Rest settlement in Cape Town, where the University of Cape Town worked with the local government and the local community in what led to the city's first *in situ* upgrading project, supported by GIS (Abbott, 2002a; 2002b). In a more recent development, the South African Minister of Housing, Lindiwe Sisulu, tasked the Homeless People's Federation with conducting an enumeration (door-to-door survey) for the N2 Gateway pilot project of the new Housing Plan (Slum Dwellers International, 2005).

It is worth taking a closer look at the community-based enumeration approach, promoted by the international NGO Slum Dwellers International, and practised in countries such as India, South Africa, Zimbabwe and Kenya, as this has been refined to ensure relatively high levels of accuracy in informal settlement situations. These community-based enumerations are usually conducted in antici-pation of, and in preparation for, development or negotiated relocation. Weru (2004) describes the enumeration process in a Nairobi slum. Through the door-to-door surveys that are conducted by local residents, information is shared about envisaged intervention, and households are able to make individual decisions in relation to these projects. Acknowledging the diversity of household needs and plans, it is understood that some households or individuals prefer, or have pre-existing plans, to migrate to other settlements. The accuracy of the population data is increased through a 'multiple verification' process (repetition of the door-to-door survey) so that a gradually negotiated consensus and commitment by (the remaining) households to a particular development process is achieved.

Weru (2004: 55) highlights 'the importance of having people from the com-munity trained as the main enumerators — rather than developing a specialist team of external enumerators'. She further notes that the time needed to reach accuracy and consensus is not necessarily predictable, a reality that authorities need to accommodate in their development processes. In Nairobi slums, the particular challenge of complex and often exploitative relationships between tenants and illegal structure owners (see also Omenya & Huchzermeyer, in this book: Chapter 15), means that enumerations are initially received with suspicion and resistance (on the side of structure owners) and fear (on the side of tenants). Time-consuming consensus building through enumeration is a necessary precondition for any development to be inclusive in such areas (Weru, 2004).

While the enumeration discussed here is addressed more at the project than the policy level, it is important that the approach is acknowledged in policy, therefore ensuring the relevant resources and institutional processes are put in place, and time is allowed for the consensus-building process. This is particularly relevant in the current context in South Africa, where elected politicians have felt compelled to demonstrate their commitment to improving the living conditions of the poor

by meeting impressive delivery targets, leaving little space for participatory processes. However, community-based enumeration has also informed policy directly. In the case of Mumbai, India, community-based enumeration of pavement dwellers, who were hitherto not recognised in official statistics or policies, contributed to the official inclusion of pavement dwellers in development projects (SPARC, 1985). This leads us to our next question: To what extent can civil society participate in policy making that relates to informal settlements?

The participation of civil society in the policy making on informal settlements

For our purposes, civil society is defined as collective initiatives for the public good. By definition, then, it is civil society's aim to engage with public policy. Clearly, the make-up of civil society depends on the characteristics of the political regime within which it emerged and continues to exist.

Where authoritarian policy has driven citizens' protest against regimes (be they the authoritarian communist regimes of Eastern Europe, dictatorships of Latin America, or the apartheid state in South Africa), civil society has played a central role in the process of democratisation (Taylor, 2003). A similar role may be played where government is not explicitly authoritarian, but policy making is still top-down.

Under an uncontested political regime, particularly one of representative democracy, the organisations of civil society may often act as intermediaries between households and the state. Civil society's role, then, is to build solidarity between citizens, and to mediate and negotiate their common interests and aspirations with the state (Hirst, 1994).

In regimes where the free market and private enterprise are accepted as the engines of economic growth, civil society acts as a sphere of interaction between the economy and the state. Such civil society tends to be institutionalised and its role related to generating influence through the institutions (Cohen & Arato, 1992).

Civil society varies from one country to the next, and the ethical and political character of civil society actors also varies. Indeed, there is great variation as to whether civil society is concerned with issues of informal settlements or involuntary illegality. In South Africa, a strong concern for informal settlements was present in civil society in the late 1970s and throughout the 1980s, but has not dominated civil society activities in the 1990s (other than the consistent efforts of the Homeless People's Federation/People's Dialogue Alliance). Only in the new millennium, with the emergence of 'new' issue-based social movements (one

being the Landless People's Movement) responding to growing dissatisfaction with evictions/involuntary relocations and a persistence of unequal distribution of land rights, have informal settlements re-emerged on the civil society agenda. Urban development NGOs such as the Development Action Group (DAG) and Planact, and university initiatives such as the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand, increasingly support these popular movements. However, a formal space for these movements and NGOs to influence policy, or to have a voice in policy, was not created in the recent development of the new Housing Plan (see Huchzermeyer, in this book: Chapter 3). Linking poverty to the informal settlements, Friedman, Hlela and Thulare (2003: 5) note that 'the lack of an effective voice for the poor is a primary constraint on the formulation and implementation of effective social pro-poor policy in Southern Africa in general, South Africa in particular'.

India and Brazil present interesting, though different, cases of civil society mobilisation around the issues faced by informal settlement residents, relentless efforts by civil society to participate in policy making on informal settlements, and eventual institutionalisation of such participation with varying degrees of regime change. Thus, mobilised civil society in these countries has taken on an explicitly political dimension. The ethical orientation of civil society has been central in both countries. Practising honest, democratic and accountable governance (and tolerance of diversity) within civil society organisations has helped build an ethical political culture. The role of civil society in these countries, then, has been to mobilise particular constituencies (whether slum and pavement dwellers in India or *favela* inhabitants in Brazil) to participate in politics and public affairs, according to this ethic.

Central to this ethic is the understanding that the residential illegality of the urban poor is not by choice, that, despite their illegality, the populations of informal settlements make a substantial contribution to building the city (see Rakodi, 1986), and that this should be recognised. Indeed, they demand to be recognised as citizens (see Hardoy & Satterthwaite, 1989). Within this set of civil society values, participation in policy making is perceived as a political right (Gaventa & Valderama, 1999). The participatory spaces that were eventually opened for civil society in the Brazilian and Indian systems of government have enabled the development of alternative policies (Grindle & Thomas, 1991). This has entailed a shift from a reliance on assessments of 'users' needs', to civil society's direct involvement in policy making, which could then reshape policies affecting the poor (Cornwall & Gaventa, 2001).

Indian society has been plagued with inequality and discrimination (by gender, caste, residential status, and control over the environment). Civil society

organisations such as SPARC (Society for the Promotion of Area Resource Centres) have brought the affected people to the forefront through the community-based enumeration approach detailed above, and have pressured the government to take note of their concerns (see SPARC, 2002). This was a process of making visible those whom the authorities viewed as invisible.

For the city of Mumbai, through a political change in 1995, the Alliance between SPARC, NSDF (the National Slum Dwellers Federation) and MM (Mahila Milan) was appointed to develop policy and oversee the process of delivering housing to the urban poor. The civil society Alliance's involvement in this process led to the official recognition of pavement dwellers through inclusion in official data sets, and to the recognition of their right to shelter through upgrading or negotiated relocation. Part of the policy was also to give incentives to affected landowners for their constructive participation (Patel, d'Cruz & Sundar, 2002).

In Brazil, the experience under an authoritarian regime, and the subsequent persistence of control by the state and its dominant (elitist) political forces, led to civil society mobilisation around the so-called autonomy project, which promoted an increase in self-determination by grassroots organisations (see Souza, 2003). Through the process of (re)democatisation after the gradual demise of the dictatorship (mid 1970s to mid 1980s), spaces of dialogue between state and civil society were conceptualised and consolidated (Souza, 2003).

Informed by neo-Marxist concepts of social control over policy, councils for the management of public policy were introduced at various levels of Brazilian government (Pólis, 2005). Such advisory bodies, in parallel with the government administration, constituted a form of parallel political power. Increasingly, proximity between governments and organisations of civil society was sought (Abers, 2000). This necessitated a realistic understanding by civil society of the workings of government and its bureaucracy. Members of civil society needed to upgrade their qualifications, in order to be in a position to influence the formulation of public policy, causing tensions between popular organisations and more specialised and better capacitated NGOs (Abers, 2000). Notably in India, SPARC's training and mobilisation techniques directed at the grassroots level have contributed to their ability to engage the state on relevant areas of policy (SPARC, 2002).

In South Africa, the Centre for Applied Legal Studies at the University of the Witwatersrand has recently engaged, in collaboration with the international NGO COHRE (Centre on Housing Rights and Evictions), in training and conscientisation (or awareness raising) of the Landless People's Movement (LPM) and Homeless People's Federation (HPF). The emphasis of this initiative is on training civil society as well as on ensuring the appropriate legal framework.

In South Africa, case law, resulting from cases that human rights organisations,

in collaboration with civil society organisations in informal settlements, bring to the courts, plays an important role in shaping the South African interpretation of rights, and in turn has impacted on policy. The most explicit case has been the Grootboom judgment in 2000 (see Huchzermeyer, 2003), which by 2004 led to the new housing programme *Housing Assistance in Exceptional Urgent Housing Situations* (Chapter 12 of the *National Housing Code*). It is interesting to note that the absence of official data on people living under the same conditions as the evicted informal settlement community, referred to as 'Irene Grootboom and others', played an important role in this Constitutional judgment. In its appeal against the High Court judgement, the government argued that it would be flooded with requests from other people living under similar conditions should it abide by the judgment and provide basic shelter and services to the evicted community. The Constitutional Court judge responded that government had not bothered to count the people living under such conditions and therefore could not claim that they would make requests in large numbers. Indirectly then, and through a very protracted and costly legal process, the informal settlement residents referred to as 'Irene Grootboom and others' (representing a larger group of officially uncounted people living in desperate conditions), by taking their urgent needs and concerns through the courts with the support of rights-based organisations, managed to influence national policy, and possibly, in the longer term, data-collection initiatives at municipal level.

Conclusion

The scale of informal settlements and the rate at which they increase are an indicator of skewed access to the economy and to public intervention, and indeed a visible sign of levels of inequality. Informal settlement upgrading or relocation is not merely a technical exercise but a highly politicised intervention. Governments' political motivations for informal settlement intervention vary, from extremely repressive, as in the current case of Zimbabwean urban evictions, to truly transformative, with an emphasis on recognition and integration. Transformative policies work towards achieving conditions under which the entire population has access to adequate living conditions. But they are sensitive to the fact that this is not achieved overnight, therefore enabling benign forms of informality to serve delicately balanced socio-economic and shelter roles over time. Transformative policies seek support from all sectors of society, giving particular recognition to the organisations of the poor, who are directly affected by informality. While some countries have progressed to such policy approaches, and South Africa appears to have embarked on this route, others have reverted

back to neglect or even repression. Depending on levels of decentralisation, it may also be municipalities that lead the policy choice. They may decide for neglect, determinism or repression, at times in contradiction with their national policy framework.

It is often the municipal governments that are most embarrassed by the squalor presented by informal settlements. Their deterministic or even repressive inter-vention is often targeted at settlements most visible from high-profile transport routes. For civil society organisations of the informally housed, this presents the challenge to remain seen. This struggle to be seen and recognised has also been directed at official data sets, which in some cases have deliberately hidden or misrepresented such communities. Where official data do represent informal settlements, it is often exclusively from the physical perspective (that which is most embarrassing to the authorities), rather than establishing the levels of socio-political precariousness — levels of tenure security, threats of eviction, or extent of effective political representation.

While important policy-data relationships with regard to informal settlements are established through monitoring and evaluation mechanisms, the most innovative informal settlement data relationships have been established through community-based enumerations, which at the same time achieve negotiated consensus in complex environments, and form a vehicle for effective community participation.

This approach must increasingly find expression in policies directed at informal settlements. In South Africa, the new Housing Plan invites organised communities to partner with the government in implementation of its phased upgrading of informal settlements. The extent to which informal settlement residents can engage their governments depends on the extent to which organised civil society prioritises its concerns. In South Africa, informal settlements are re-emerging on the civil society agenda, yet the space for an effective voice in policy making has yet to be won.

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The new instrument for upgrading informal settlements in South Africa: Contributions and constraints

Marie Huchzermeyer

Introduction

The persistence of informal settlements in South Africa, and their continued growth despite extensive government subsidised housing delivery since 1994, has increasingly received national attention. In 2004, this led to the development of an Informal Settlement Upgrading Programme with a dedicated subsidy mechanism, as part of a larger refinement of the National Housing Policy in the form of a document called *'Breaking New Ground': A Comprehensive Plan for the Development of Sustainable Human Settlements*. In its introduction, the Informal Settlement Upgrading Programme (hereafter referred to also as 'the Programme') calls for a paradigm shift in relation to informal settlement intervention.

Various national political dynamics and shifts led to a growing consensus on the need to develop this new paradigm. They were reinforced internationally by initiatives in response to the United Nations Millennium Development Declaration addressed at reducing poverty globally. The UN-Habitat/World Bank initiative 'Cities Alliance', of which former South African President Nelson Mandela is the patron, has promoted slum upgrading and 'scaling up' to city as well as national level (Cities Alliance, 2003). Cities Alliance's support to the national Department of Housing in developing the new Informal Settlement Upgrading Programme in 2004 meant that international insights and experiences could be incorporated into the Programme.

Timeframes for the formulation of the new Housing Plan and its Informal Settlement Upgrading Programme were too tight to allow for comments from the public, in particular civil society, and some aspects of the Upgrading

Programme remain unresolved. However, the national Department of Housing has committed itself to monitoring and evaluation leading to review and refinement of the Programme.

This chapter examines the new Programme for Informal Settlement Upgrading. It discusses the Programme in the context of policy formulation around 2004, and within the objectives of the new *Comprehensive Plan for Sustainable Human Settlements*, referred to as '*Breaking New Ground*'. The chapter then reviews the Upgrading Programme, identifying its possibilities and constraints in relation to the objectives of poverty alleviation, reduction of vulnerability and increase of social inclusion, in order to discuss the extent to which the Programme enables the paradigm shift for which it calls.

The context of the policy formulation

Following almost a decade of housing-policy focus on the subsidised delivery of turnkey housing (for which the former — second — Housing Minister Sankie Mthembi-Mahanyele received a UN-Habitat Scroll of Honour Award in 2003 — see UN-Habitat, 2003), the persistent problem of informal settlements began to receive national attention in 2003 under a new (third) Housing Minister, Bridget Mbandla. Drawing on her human rights background, Minister Mbandla brought concerns of farm worker housing and informal settlements onto the national agenda (see Mbandla, 2004). This coincided with extensive reviews of the first 10 years of democracy in South Africa (see Republic of South Africa, 2003). In 2003, the national Department of Housing, with the United States Agency for International Development (USAID), commissioned various review studies, including a study into beneficiary satisfaction with housing delivery (Zack & Charlton, 2003). Collectively, these studies across various sectors were providing evidence of increased unemployment and poverty, and a certain amount of dissatisfaction from the poor, in particular with aspects of housing delivery, although the public's general approval of the government's housing intervention had increased (Republic of South Africa, 2003). The ANC government identified poverty and unemployment as challenges that it sought to address in a new term, and accordingly developed the concept of 'a people's contract to create work and fight poverty' (Mbeki, 2004b).

A further development in 2003 was a first official delegation from the South African Department of Housing to the Brazilian Ministry of Cities and key Brazilian municipalities, as part of the high-level South Africa-India-Brazil inter-governmental cooperation agreement. One of the policy areas discussed in Brazil, and project types visited, was informal settlement upgrading (see Bayat, Bosch,

Napier & Arendse, 2003). This is an area in which Brazil has decades of experience, although the scale of the challenge remains commensurate with that in South Africa. Other influential international initiatives were those of the Cities Alliance and the United Nations Millennium Development Declaration, in particular the Millennium Development Goal (MDG) 7, Target 11, globally 'to achieve significant improvement in the lives of at least 100 million slum dwellers by 2020' (United Nations, 2000).

Building on the reviews of 2003 and international initiatives, terms of reference were developed by the national Department of Housing under Minister Mbandla for a *Study into the Support for Informal Settlements* (Department of Housing, 2004b). This was put out to tender shortly before the 2004 (14 April) national elections. The terms of reference for this study explained the emerging policy orientation as emphasising 'a demand-driven, supply-negotiated delivery regime embedded in asset-based community development approaches' (Department of Housing, 2004b: 1). It acknowledged 'the growing slums and shantytowns' as 'physical manifestations of social inequality, exclusion, marginalisation and discrimination' and expanded as follows:

These settlements are products of failed policies, ineffective governance, corruption, inappropriate regulation, exclusionary urban (economic) development/ growth paths, poor urban management strategies, dysfunctional and inequitable land markets, discriminatory financial systems, and a profound democratic deficit (2004b: 1).

Based on the ANC government's position, the terms of reference further suggest that

combating poverty, inequality and discrimination through appropriately designed public policies to support informal settlements could not only deepen democracy and citizenship, but also improve the prospects of robust and socially inclusive economic growth. (2004b: 2)

Arguing that informal settlement support 'needs to go beyond traditional approaches that have tended to concentrate on improvement of housing, infrastructure and the physical environment', the terms of reference put forward three key policy objectives:

■ poverty eradication;
■ reducing vulnerability; and
■ promoting inclusion. (2004b: 2)

The overwhelming support given to the ANC by the poor in the April 2004 elections was seen as a mandate to the ANC government to intensify poverty

alleviation or 'eradication' (Mbeki, 2004a). In terms of housing, this involved a commitment to relieve cities of the phenomenon of informal settlements. In her budget speech in June 2004, the newly appointed (fourth) Housing Minister, Lindiwe Sisulu, emphasised that 'this government has indicated its intention to moving towards a shack-free society' (Sisulu, 2004). Referring also to MDG 7 Target 11 to improve the lives of 100 million slum dwellers by 2020, she further noted that the Premier of the Gauteng Province intended to 'eradicate informal settlements' in his Province in the next 10 years (Sisulu, 2004).

While 'poverty eradication' is clearly related to measures to improve the well-being of the poor, the 'eradication of informal settlements' can be misunderstood as a blanket mandate to remove shacks, in the absence of solutions that eradicate poverty, remove vulnerability and promote inclusion. This interpretation was reflected in a *BBC News* article (admittedly poorly researched) titled 'SA's controversial housing policy' (Hamilton, 2004). Unwittingly, the political message to informal settlement dwellers may be that *they* are to be eradicated, or at best displaced, and probably not given a meaningful role in defining a solution.

As mentioned in the introduction to this chapter, the revision to the housing policy occurred under enormous time pressure. In his Opening of Parliament address (21 May 2004), President Mbeki mandated the newly appointed Minister of Housing, Lindiwe Sisulu, as follows: 'A comprehensive programme dealing with human settlements and social infrastructure, including rental-housing stock for the poor, will be presented in Cabinet within three months' (Mbeki, 2004a).

In September 2004, Cabinet approved *'Breaking New Ground': A Comprehensive Plan for the Development of Sustainable Human Settlements* (Department of Housing, 2004b). This includes an Informal Settlement Upgrading Instrument (2004b: 17). I return in more detail to this new plan and instrument in the sections that follow.

At the time when the appointment of a consulting team for the *Study into the Support of Informal Settlements* was made in June 2004, a Task Team had been constituted with housing officials from national, provincial and local government for the speedy development of an Informal Settlement Upgrading Programme. Cities Alliance had made its sub-Saharan African representative Carien Engelbrecht available to the Department of Housing to assist with the drafting of the policy. The appointed research team was asked to devote its first two weeks to the preparation of an input into the Task Team, and to comment further on the draft Programme, before embarking on the actual three-month research into the support of informal settlements. Rather than to inform the policy formulation, this research was later to inform the implementation, evaluation and review of the Informal Settlement Upgrading Programme.

The research team, which I coordinated, had to weigh the poor alignment

between its research and the policy-making process against the benefit of high-level political support and pressure for the development of an Informal Settlement Upgrading Programme, and against the brief opportunity to make an input into this process. As the research team included representation from the Community Urban Resource Centre (CO-URC, a Slum Dwellers International affiliate working closely with the Homeless People's Federation and the newly formed Coalition of the Urban Poor), it sought to incorporate into its early recommendations to the Task Team the experiences, concerns and suggestions of organised informal settlement residents, while also consulting with professionals with experience in working with informal settlement intervention in South Africa. However, the full formulation of recommendations on informal settlement support (University of the Witwatersrand Research Team, 2004b) were only formulated in August 2004. I ask later in this chapter to what extent the wide-reaching concept of informal settlement support, as specified in the research brief and explored in the research project, can be achieved though the four-phased project-oriented Informal Settlement Upgrading Programme that was formulated (the four phases of the Programme are (1) application, (2) project initiation, (3) project implementation and (4) housing consolidation).

The 15 May 2004 FIFA announcement that South Africa had won the bid to host the 2010 World Cup (see Mbeki, 2004c) appeared to add an additional agenda to the Informal Settlement Upgrading Programme, namely that of transforming all informal settlements 'visible' to international visitors into respectable built environments. In a draft stage, the Informal Settlement Upgrading Programme was differentiating between visible and non-visible informal settlements (visibility presumably referring to what can be seen from high-order transport routes), prioritising the former for replacement with formally constructed medium density rental/social housing blocks, whereas the latter were to receive *in situ* land tenure and service intervention. While this differentiation was not adopted as such into the final version of the Programme, it informed the development concept of the N2 Gateway project (which had its origins in discussions between national, provincial and local government in 2003 — see Khan, 2004). The project is directed at the informal settlements visibly lining the N2 freeway from the Cape Town International Airport to the historical centre of Cape Town, and envisages their replacement with medium-density rental/social housing (see Department of Housing, 2005b; see also Cross, in this book: Chapter 13). The N2 Gateway pilot project formulation was taking place at the same time as the formulation of the Informal Settlement Upgrading Programme, with direct inputs made from the high-level N2 Gateway project team into the deliberations of the Task Team

for the Informal Settlement Upgrading Programme. This approach differs from the conventional 'piloting' or testing of a fully formulated programme.

Breaking new ground: The premises of the refined housing policy

The new *Comprehensive Plan for the Sustainable Development of Human Settlements* is based on the challenges of changing and growing urban housing demand in the context of slow employment creation, the experience of housing delivery over the past 10 years, and the worrying slowdown of this delivery. It seeks to address the challenges by emphasising the role of housing delivery in poverty alleviation, linking this to employment creation and to access to subsidised property as a form of 'wealth creation and empowerment'; housing delivery is to leverage economic growth, combat crime, and improve social cohesion and quality of life (Department of Housing, 2004b: 7).

The new plan addresses itself not only to low-income housing, but to 'the functioning of the entire . . . residential property market', with the objective of 'breaking the barriers' between the formal market (or 'first economy') where the growth is located, and the informal market (or 'second economy') which has experienced a slump (2004b: 7). It seeks to move beyond the 'dominant production of single houses on single plots in distant locations' (2004b: 8). It therefore sets out to respond flexibly to demand, rather than simply to allocate the same product equitably to all households. One of the programmes that is linked to this objective is the Informal Settlement Upgrading Programme (2004b: 8), which is framed as 'progressive informal settlement eradication' (2004b: 12).

With the intention to integrate informal settlements urgently 'into the broader urban fabric', the document introduces 'a new informal settlement upgrading instrument to support the focused eradication of informal settlements' (2004b: 12). Clarifying what is meant by 'support' and 'eradication', the new document explains that 'a phased in-situ upgrading approach to informal settlements, in line with international best practice' is adopted. Accordingly, 'a range of tenure options and typologies' is supported (2004b: 12). Thus '[t]he plan supports the eradication of informal settlements through in-situ upgrading in desired locations, coupled with the relocation of households where development is not possible or desirable' (2004b: 12). In a context where municipalities have been hugely constrained by the very limited allocation for the purchase and rehabilitation of land in the National Housing Subsidy System (only a small percentage of the household-linked subsidy was permitted to go towards land), it is important to emphasise that where development *is* possible, it is substantially redefined in the

detail of the Informal Settlement Upgrading Programme, to which I return below.

The earlier differentiation between visible and non-visible informal settlements emerges, framed instead as well-located versus less well-located settlements. For the former, 'measures will be introduced to optimise the locational value and preference will generally be given to social housing (medium density) solutions' (2004b: 12). The document further refers to nine pilot projects that will be identified, the lead pilot project being the 'N2 upgrading project from the Airport to Cape Town' (2004b: 12), now referred to as the N2 Gateway Project. The informal settlements in this project are identified as 'highly visible' settlements — as highlighted by the Minister of Housing in a February 2005 media briefing (Department of Housing, 2005b).

How affordability is dealt with in an *in situ* upgrading project through social/ rental housing is not resolved. Several months after its initial launch, the N2 Gateway project has become a serious political challenge for Cape Town's elected politicians, with a series of community protests across Cape Town over 'perceived unfair housing allocation for the N2 Gateway Project' (*Mail & Guardian*, 2005; *Sowetan*, 2005). The project is now no longer intended to benefit only those originally living in the informal settlements flanking the freeway. After intense political pressure from the wider under-housed Cape Town constituency, the decision was made that 30% of the new units will be allocated to back-yard shack residents from surrounding formal settlements (see Kahn, 2004). Half of the existing population in the N2 informal settlements will be resettled elsewhere.

By June 2005, the other provincial pilots had been identified by the provincial governments (Department of Housing, 2005a) as follows:

- Gauteng: Winnie Mandela Park in Ekurhuleni Metro, with partial relocation to Old Mutual Park and Esselen Park,
- Eastern Cape: Duncan Village in Buffalo City Municipality (East London); Soweto on Sea in Nelson Mandela Metropolitan Municipality (Port Elizabeth),
- Mpumalanga: Emsangweni/Enkanini in Emalahleni Municipality; Ngodwana and Phumulani in Mbombela Municipality (Nelspruit); Thakukhanya Extension 4 and 5 in Mkhondo Municipality,
- Northern Cape: Lerato Park in Sol Plaatjie Municipality,
- Limpopo Province: Phomolong in Mookgophong Local Municipality,
- North-West Province: Klerksdorp (no further details),
- Free State: Grasslands area, Mangaung Municipality (Bloemfontein), and
- KwaZulu-Natal: Mount Moriah (no further details).

The choice of pilots appeared primarily to be politically motivated by the provincial governments, rather than identified by municipalities. At the time of writing, it was too early to establish details of their planning and implementation.

As the politics of implementation unfold, possibly in unpredicted ways, new suggestions will be made for aspects of the Informal Settlement Programme. The *Comprehensive Plan for the Sustainable Development of Human Settlements* commits the Department of Housing to develop a 'comprehensive housing sector monitoring, information and reporting system based on key performance indicators', both 'qualitative and quantitative' (Department of Housing, 2004: 27). It further commits the Department to using this information 'to support policy development and enhancements' (2004: 27). Civil society input should be welcomed in this process, as the Comprehensive Plan requires 'that communities and the beneficiaries of government housing programmes be mobilised to partner [with] the Department in the implementation of the new human settlements plan' (2004: 26).

A paradigm shift? Limits and possibilities of the new instrument for informal settlement upgrading

The recently approved Chapter 13 of the *National Housing Code*, titled 'National Housing Programme: Upgrading of Informal Settlements' (Department of Housing, 2005c), speaks to situations such as the N2 Gateway project experience. It introduces the objectives of the Programme with the statement that

> [t]he challenge of informal settlements upgrading must be approached from a pragmatic perspective in the face of changing realities and many uncertainties. Informal settlements should also not be viewed as merely a 'housing problem', requiring a 'housing solution' but rather as a manifestation of structural social change, the resolution of which requires [a] multi-sectoral partnership, long-term commitment and political endurance. At the outset therefore, a paradigm shift is necessary to refocus existing policy responses towards informal settlements from one of conflict or neglect, to one of integration and co-operation. (Department of Housing, 2005c: 4–5)

The 'long-term commitment' relates to the concept of *informal settlement support* (poverty eradication, reducing vulnerability and promoting social inclusion, all of which cannot be achieved through a once-off project but require long-term 'support'), as formulated in the Department of Housing's (2004b) research brief. However, the four phases of the Informal Settlement Upgrading Programme, as per Chapter 13 of the code, are limited to a once-off project, and do not contain guidelines and regulatory and funding regimes for long-term support. Aspects of

this four-phased project (as per Chapter 13 of the code) represent a major departure from former instruments that were available to provincial and local governments for intervention in informal settlements — as of 1994, the Project-linked Subsidy (Chapter 3 of the *Housing Code*); as of 1998, the People's Housing Process (Chapter 8 of the *Housing Code*); and, as of early 2004, in certain circumstances the Housing Assistance in Exceptional Urgent Housing Situations (Chapter 12 of the *Housing Code*).

In the following paragraphs I will discuss the extent to which the new Informal Settlement Upgrading Programme enables a paradigm shift that centres on poverty eradication, reduction of vulnerability and promotion of social inclusion, as called for in the terms of reference for the *Study into Supporting Informal Settlements*. At the time of finalising this chapter (June 2005), the *National Housing Code* was being rewritten by the national Department of Housing into more user-friendly language (Bayat, personal communication). The quotes below may therefore not be found in the new version of the code, which is expected towards the end of 2005. However, the principles of Chapter 13 of the code will remain the same.

The relevance of land rehabilitation for poverty reduction/eradication

In situ upgrading is more likely to be responsive to poverty and vulnerability, and to lead to social inclusion, than a relocation process, due to the socio-economic disruption (of delicately balanced livelihoods) associated with the latter. Plans for relocation are usually motivated on grounds of unsuitability of the occupied land for residential occupation. It is important to note that, in support of *in situ* upgrading, the Informal Settlement Upgrading Programme makes funding available for land rehabilitation: In certain cases 'upgrading may be possible if extensive rehabilitation is undertaken to make land suitable for settlement' (Department of Housing, 2005c: 10). As already mentioned above, this substantially redefines where upgrading is possible, and forms part of the paradigm shift that municipalities have to undergo in their engagement with informal settlements. However, the Programme requires its upgrading projects to be 'within an approved Integrated Development Plan [IDP] of the municipality in question'; further, land rehabilitation will be funded only on the basis of 'sound financial and socio-economic indicators' (Department of Housing, 2005c: 7).

Where municipal IDPs have not been revised to embrace the paradigm shift towards tenure security, health and safety, and empowerment (three broad objectives spelt out in the Informal Settlement Upgrading Programme — see Department of Housing, 2005c: 5), existing plans might be used by municipalities to argue for relocation to newly developed sites rather than to investigate the

feasibility of *in situ* upgrading. This is the case with the Harry Gwala informal settlement in Ekurhuleni Metro (the former East Rand), where the municipality (Alida Koetzee, personal communication) has admitted to the community (which is resisting relocation) that a small but undefined portion of the site may be upgradeable *in situ*, but relocation is more practical and in line with the applicable plans.

The kinds of land rehabilitation that are enabled through the Informal Settlement Upgrading Programme are typically drainage, storm water intervention and 'the engineering of steep slopes' (Department of Housing, 2005c: 15), presumably over and above the conventional earthworks required on land considered 'suitable' for residential development. 'No ceiling amount [referring to cost] is provided for land rehabilitation but detailed technical information will be required in support of this activity' (2005c: 15). Section 13.11 of the *Housing Code*, which deals with 'General Conditions for Pilot Projects', states that areas to be rehabilitated 'typically comprise areas with extremely high water tables, settlements situated on floodplains and settlements located on infill areas or near mine dumping sites/slime dams' (Department of Housing, 2005c: 38–39). Under 'Identification of Pilot Projects' (13.11.2), it is stated that '[t]he focus should be on settlements located in dangerous areas posing a threat to health and safety and areas known to be affected by disasters' (Department of Housing, 2005c: 31). The frequency of flooding and fires in the N2 informal settlements in Cape Town suggest appropriateness for piloting the Programme.

The funding available for land rehabilitation allows for creative responses through *in situ* upgrading. However, these will be limited by engineering knowhow and creativity, a paradigm shift among civil engineers being called for as much as among planners and project managers. While those responsible for the Programme implementation explore the limits of what can be defined as re-habitable land, engineering solutions may have to include water precautionary measures on low-risk dolomitic land, walls to reduce noise levels from freeways or other busy roads, and measures to extract harmful gases from waste dumps. Where municipalities are not willing to explore such solutions, an increasingly informed civil society will be calling for innovative measures, taking their rightful position as active participants in the 'design, implementation and evaluation of projects' (see S*ocial Capital*, Department of Housing, 2005c: 5).

Land acquisition: Reducing poverty by securing tenure and supporting livelihoods through well-located sites

The Informal Settlement Upgrading Programme highlights the social, economic, political and financial costs of relocating informal settlement residents to

'peripheral sites' (Department of Housing, 2005c: 13). The Programme therefore encourages municipalities to put forward a motivation (using 'three independent valuations') for the purchase of well-located land that is occupied. Where relocation cannot be avoided, the purchase of unused well-located land is encouraged. State departments and other public entities are encouraged to make well-located land available at no cost (2005c: 13).

The Programme does not give a definition of well-located land as such, but does give various clues. Under 'General conditions for pilot projects' (13.11.2), the Programme emphasises that '[p]rojects should further the principle of spatial restructuring and integration' (Department of Housing, 2005c: 31). While the majority of informal settlements are found in and around existing low-income residential areas, where eviction threats have been least, there have been numerous invasions of valuable but unused real estate in middle-income areas. These are settlements that have challenged the spatial structure of the city, and, to date, with a handful of exceptions, they have lost their struggle for convenient space in the city. Whether the Informal Settlement Upgrading Programme will provide new backing in the legal struggle for upgrading of such informal settlement communities, against municipalities determined to relocate them to orderly housing developments on the urban periphery and against strong middle-income ratepayer associations, remains to be seen. It would be hoped that a broader promotion of the principles of the Informal Settlement Upgrading Programme and the *'Breaking New Ground'* document among all city residents would reduce the perceived vulnerability of the middle-income residential market to the proximity of the poor. At the time of writing, June 2005, neither Chapter 13 of the *Housing Code*, nor *'Breaking New Ground'* was available on the website of the Department of Housing.

A further clue to the definition of well-located land is given under the *Principles of the Programme* (Department of Housing, 2005c: 6), which states that '[t]he flexibility of the Programme is intended to encourage local solutions through a process of engagement between local authorities and residents living within informal settlements'. This suggests that informal settlement residents should be involved directly in identifying whether a portion of land is well-located in relation to their livelihood strategies and opportunities for the development of their human capital (such as ability to access educational and social facilities). The same paragraph under 'Principles' emphasises that residents have to agree to a chosen relocation site (which also has to be part of an Integrated Development Plan). Again, it is important that municipalities revise their IDPs so as to align them with the principles of the Informal Settlement Upgrading Programme.

A further clue to the definition of well-located land is reference to 'sound

financial and socio-economic viability indicators', according to which the Programme will fund land acquisition and rehabilitation. The socio-economic viability indicators must be those that trace households' livelihood strategies and ability to access higher level social and educational amenities (that cannot be funded through the Programme itself) — a form of social impact assessment of land, which should examine impacts of a relocation on poverty, vulnerability and social inclusion.

While the Programme seeks to minimise relocation, it acknowledges that in certain cases households will have to be relocated — from hazardous conditions that cannot be rehabilitated, or to make space for essential infrastructure. However, 'relocation must take place at a location as close as possible to the existing settlement and within the context of a community approved relocation strategy' (Department of Housing, 2005c: 19).

The Programme further makes a maximum of R600 available for household support in the relocation process, of which an 'average' allocation of R250 is for food support. This food-support allocation is viewed as problematic by various community groups and officials, as food parcels and food vouchers have served to 'buy' instant community support for a relocation that does not make long-term livelihood sense, and have resulted in community conflict over scarce resources (University of the Witwatersrand Research Team, 2004a).

Responding to poverty and vulnerability through provision of social and economic facilities

The provision of social and economic facilities plays a major role in the Informal Settlement Upgrading Programme's objective of empowerment. Social development is envisaged 'through the development of primary, municipal-level social amenities and community facilities such as sports fields, community halls etc.' (Department of Housing, 2005c: 5). Under *Project Implementation*, the following possible social facilities are added: 'early-childhood development facilities, primary health clinics, recreational and community facilities [and] public open space improvements' (Department of Housing, 2005c: 16). Economic development in turn is to be achieved through 'municipal-level economic infrastructure such as transportation hubs, workspaces and markets' (Department of Housing, 2005c: 5). The decision as to which social and economic facilities are to be provided should be arrived at 'through a process of engagement between the local authority and residents' (2005c: 6). The Programme provides funding 'for the construction of limited social and economic infrastructure' (Department of Housing, 2005c: 8), whereas operational costs are to be born by the municipality.

The Gauteng Province Department of Housing, which, unlike other provincial

governments, has assumed the status of direct implementer of housing projects (in other provinces this is the function of municipalities), has disagreed with the principle of providing social and economic amenities with the new upgrading of informal settlements. The Province argues that, as long as there is a backlog of such amenities in older low-income residential areas, application of this principle exclusively to the new upgrading of informal settlements will lead to political conflict. It has therefore allocated available funding for social and economic amenities to previously developed subsidised housing areas. The Province claims otherwise to have embraced the principles of the Informal Settlement Upgrading Programme, which it implements at scale (without a pilot stage, although a pilot project has been identified) through what was previously the Essential Service Programme (Odendaal, personal communication).

Whether the paradigm shift that is called for in the Informal Settlement Upgrading Programme has taken place in the Gauteng Provincial administration and the Province's municipalities will have to be a subject for the ongoing Programme monitoring and evaluation. As with the N2 Gateway project, it appears inevitable that political decisions will override important programme principles, particularly those that are delicately supported by the concepts of poverty, vulnerability, and social inclusion. The same trend has been observed in the implementation of the government's People's Housing Process (Bay Research Consulting Services, 2003, cited by Khan & Pieterse, 2004).

Addressing vulnerability through interim services

Reduction of vulnerability is addressed in a significant way through the Informal Settlement Upgrading Programme in that it requires the initial/immediate provision of basic infrastructure (water and sanitation). This can be funded through the Programme, and addresses health risks, while also freeing up time for women and children to pursue activities that secure a livelihood or develop human capital (such as education). The importance of access to water and sanitation in addressing vulnerability is discussed in detail in Thomas (in this book: Chapter 14).

It is interesting to note that the unavailability of water to informal occupiers of land has been interpreted by authorities and landowners as a health risk to the occupiers. In some instances, this has been used as a justification for eviction, as in the application for an urgent eviction in the Bredell case in Benoni (in Ekurhuleni Metropolitan Municipality east of Johannesburg) in 2001, which led to the immediate forceful eviction of all 'occupiers', ignoring the fact that many had lived on the land for more than six months and therefore had legal rights to alternative accommodation (Huchzermeyer, 2003). A similar argument around access to water (though not leading to an eviction) was brought by the then Lekoa

Vaal Metropolitan Municipality to the Kanana informal settlement invaders in Sebokeng south of Johannesburg (People's Dialogue, 1997, cited in Huchzermeyer, 2004: 208). Availability of funding for initial engineering services might make this reasoning for eviction less tenable in the courts.

Social inclusion and tenure security through *in situ* upgrading rather than relocation or redevelopment

Social inclusion and tenure security cannot be achieved without affordability. Solutions that are not affordable to beneficiaries in the long term will lead to their displacement to housing areas that impose fewer costs, usually new or remaining informal settlements. If the living environment created through the informal settlement intervention is no longer affordable to the original residents, these will eventually be excluded, irrespective of the inclusiveness of the initial allocation procedures. This poses a challenge to the measure that the '*Breaking New Ground*' document recommends for well-located informal settlements, namely social/rental housing at medium densities (Department of Housing, 2004a). As yet there are no proven models through which social housing rentals of acceptable units will be affordable to the socio-economic group that normally resides in informal settlements, and the approach in the N2 Gateway project is not resolved with regard to affordability.

However, unlike the '*Breaking New Ground*' document, Chapter 13 of the *National Housing Code* does not directly call for the social/rental housing approach, and instead details the phased approach to *in situ* upgrading (procedures and mechanisms for medium density housing were being developed under a separate programme at the time of writing this chapter). *In situ* upgrading is more likely to achieve social inclusion than large-scale redevelopment into medium density social/rental housing, as *in situ* upgrading enables continued owner occupation of the existing dwelling structures and their incremental improvement over time, thus not imposing rigid housing-related costs. With regard to well-located land, Chapter 13 of the Code merely states that 'where substantial public funding is invested in the acquisition and rehabilitation . . . public interest factors may support tenure forms which encourage retention of land and housing assets for long-term occupation by lower-income groups' (Department of Housing, 2005c: 8).

The recommended tenure form is a permit/permission to occupy (Department of Housing, 2005c: 29 — Annexure A), also referred to as *commodatum* or 'gra-tuitous loan for use'. This tenure form is 'available under South African common law' (University of the Witwatersrand Research Team, 2004c: 69) and was recommended by the research team conducting the *Study into Supporting Informal*

Settlements. The research team also noted that '[i]n time, it would probably be preferable to enact a dedicated informal settlement support statute along the lines of the comparative models in Zambia (*Statutory and Improvement Areas Act*) and Namibia (Flexible Land Tenure Bill)' (University of the Witwatersrand Research Team, 2004c: 30). The current *commodatum* does not impose costs on the resident household, but provides adequate tenure security for household investments to be made in the dwelling. 'As lawful occupiers, residents of informal settlements would be entitled to compensation for improvements to the land from the municipality, but not in law from the person to whom they transferred their rights. In practice, of course, an informal market in structures will likely develop, and this should be tolerated' (2004c: 30).

Social inclusion through a community-based or area-based subsidy

The new Informal Settlement Upgrading Programme prevents exclusion in the procedure that allocates project benefits to residents, as it enables all existing residents of an informal settlement to benefit from an upgrading project, irrespective of whether they qualify for the household-linked capital subsidy under the Housing Subsidy Scheme. The grant to the municipality for the land regularisation and upgrading intervention is not linked to the individual qualifying household, as is the case with most of the subsidies available under the national subsidy system. The individual household qualification criteria apply only in the last (fourth) phase of the Programme, which focuses on the improvement of the dwelling structures.

This new community-based or area-based subsidy mechanism for land and infrastructure is central in achieving tenure security, as it does not apply qualification criteria. This, in turn, can play an important role in addressing vulnerability — internationally, tenure security is considered central in strategies to alleviate poverty (UN-Habitat, 2001). In contrast to the project-linked capital subsidy (through which most municipalities have intervened in their informal settlements), the Programme does not exclude single people without dependents, those with incomes slightly higher than the capital subsidy cut-off amount, or those who have benefited from the capital subsidy programme or owned property before. The Programme also does not exclude 'illegal immigrants', though it states that 'benefits of the Programme will not necessarily be available to such persons' (Department of Housing, 2005c: 11). The Department of Home Affairs is to be notified of the presence of people without legal residence documents.

Social inclusion, however, is limited in Phase 4 of the Programme, '*Housing Consolidation*'. In this phase, the Programme reverts back to the household-linked capital subsidy mode of the national subsidy scheme through which municipalities

intervened in informal settlements over the past 10 years. This phase of the Programme appears to be poorly resolved and in contradiction with the earlier phases. Instead of treating individual ownership as one of several tenure options, and indeed not the most recommended one (see Department of Housing, 2005c: 29), it treats individual freehold ownership as the ultimate end state of the upgrading, and as the condition for application for a consolidation subsidy (Department of Housing, 2005c: 17). It goes further to classify residents into groups that are excluded altogether from such ownership (such as illegal immigrants and child-headed households), which have to pay the full cost of land acquisition, servicing and transfer in order to obtain freehold ownership (those earning above R3 500), and which may apply for consolidation subsidies (those meeting all subsidy qualification criteria as under the Housing Subsidy Scheme since 1994). Households consisting of only one person may obtain individual ownership but may not apply for a consolidation subsidy until 'such a person complies with the remaining qualification criteria' — this may unwittingly call for premature pregnancies or unions, as having a dependent qualifies single people for the consolidation subsidy. Further, under Phase 4, the Programme states that '[p]revious owners of residential property, existing owners of residential property and previous beneficiaries of state housing assistance schemes' will 'not necessarily qualify for assistance under the programme including phases 1 to 3', though they are to be 'considered on a case-by-case basis'. (Department of Housing, 2005c: 17)

The '*Breaking New Ground*' document makes quite different statements on the final phase of the Upgrading Programme:

> There is a need to establish a new funding mechanism of PHP [the People's Housing Process], adopting an area-wide or community, as opposed to individual approach. In particular, this revision should ensure that resources and support for beneficiary-level capacity building and organisation building are made available with locally constructed social compacts. (Department of Housing, 2004a: 18)

This appears to be reflected in Phase 3 of the Programme, during which Housing Support Centres are to be established 'to support households at an early stage regarding their rights, housing options and construction of various housing typologies in accordance with their needs, means and aspirations' (Department of Housing, 2005c: 15). However, a community-wide approach to housing consolidation finds no mention under 'Phase 4'. Nor is there mention of the role for the Housing Support Centres, or support for savings and community-based micro-lending, which would enable the incremental consolidation of upgraded informal

settlements. Interestingly, the Minister of Housing, Lindiwe Sisulu, recently (29 May 2005) gave significant support to community savings and micro-lending approaches, when pledging a grant of R10 million to the uTshani Fund of the Homeless People's Federation (Slum Dwellers International, 2005).

Social inclusion through participatory layout planning

Inclusion of the resident community in the definition of the upgrading process is detailed in Chapter 13 of the Code in relation to various aspects or stages of the Programme, further defining the extent of the paradigm shift that is called for. It is important to highlight that funding for the community empowerment and participation process is available through the Programme (this has not been the case with the project-linked capital subsidy programme). An important aspect of the paradigm shift will lie in community involvement in the layout planning process. The Programme notes that it is 'not desirable to determine uniform or minimum stand sizes', and that 'actual stand sizes should emerge through a process of dialogue between local authorities and residents' (Department of Housing, 2005c: 7).

Within the spirit of the *'Breaking New Ground'* document, the Programme encourages higher densities than have been common in the subsidised greenfield housing developments of the past decade. The Programme notes that vehicular access need not be provided to each unit, but layouts must enable access for pedestrians and municipal infrastructure and services, including emergency services. The examples given in the Programme, which indeed are typical challenges for informal settlement management, are waste collection and the prevention of fires. These requirements present a paradigm challenge to civil engineers, who need to explore new ways in which engineering solutions can facilitate community-based management of externalities (such as refuse) and of risk (such as fires). The Programme does prescribe adherence to the National Norms and Standards with respect to Permanent Residential Structures for engineering services (while exempting house construction from these). Possibly, as pilot projects are evaluated, this will require a revision or refinement of the municipal engineering requirements in the National Norms and Standards, to be more responsive to the density and irregularity of informal settlement layouts.

Conclusion

The new Informal Settlement Upgrading Programme resulted from a high-level political prioritisation of poverty eradication. Although the policy formulation process afforded no space for public consultation, the Programme that has

emerged makes many advances towards achieving the reduction of poverty, vulnerability and social exclusion within South African urban environments. *In situ* upgrading, rather than relocation, is enabled through new measures for the acquisition and rehabilitation of well-located occupied land by municipalities (substantially redefining in which cases upgrading is feasible), and through flexibility in the layout planning allowing for non-standardised and higher density solutions, which may be based on the informal layout of the settlement. Social inclusion is supported through participatory decision making in (a) the layout planning, (b) the provision of social and economic amenities, and (c), where required, in the relocation process. Communities are further given a role in monitoring and evaluation of the Programme. Social inclusion is also enabled through a community-based or area-based grant for the land acquisition and regularisation, rehabilitation and service provision, therefore not requiring individual households to comply with subsidy qualification criteria. Further, vulnerability is addressed through initial or immediate provision of interim engineering services, later to be upgraded to permanent services.

A significant shortcoming in the Programme lies in the provisions of Phase 4, the housing consolidation. This is formulated within the framework of the household-linked Housing Subsidy Scheme, and contradicts many of the objectives of the Programme and indeed of the '*Breaking New Ground*' policy. This should be revised as soon as possible, while further revisions to the Programme should result from the monitoring and evaluation of pilot projects. This monitoring and evaluation will have to pay particular attention to the political dynamics that unfold during implementation. It is important to monitor these both in the way they limit and in the way that they advance the Programme. The Gauteng Provincial administration, in anticipation of such dynamics, is limiting, or, more strongly stated, 'violating' (see Pieterse & Khan, 2004: 20) aspects of the Programme implementation. This trend may be challenged through monitoring and evaluation in other provinces, where the Programme may be piloted in full.

The focus in the past decade has been on redistributive equity through a standardised approach to housing, and, associated with this, a strong entitlement to a given product and a perceived mandate to the state from the electorate for relatively top-down provision became entrenched. The objectives and approach of the Informal Settlement Upgrading Programme can be seen to contradict the entrenched political processes of standardised delivery with the associated, often clientelist, political gains to be made (housing delivery in return for the vote). The paradigm shift that is called for in the introduction to the Programme must therefore transcend not only the municipal planners, engineers and implementers of the Programme, but more broadly the political spectrum.

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Principles, bases and challenges of the National Programme to Support Sustainable Urban Land Regularisation in Brazil

Edesio Fernandes

Introduction

The socio-economic development model that has required rapid urbanisation in Brazil has produced cities heavily marked by the presence of peripheral areas. About 83% of Brazilians are reported to live in urban areas. According to data from several sources, 26 million people living in urban areas do not have access to water, 14 million are not served by refuse collection, 83 million are not connected to sewerage systems, and 70% of the collected sewage is not treated. Other figures suggest that, despite the often long distances involved, 52 million Brazilians walk to work, given the high costs of public transportation. The national housing deficit has been estimated as 7.2 million units; even more alarmingly, the number of existing vacant properties has been estimated as 5.5 million units. Socio-spatial segregation, environmental degradation, and urban violence are increasing.

Moreover, tens of millions of Brazilians do not have access to urban land and housing other than through informal, and mostly illegal, processes and mechanisms. Although the data are imprecise, it is realistic to say that more than 50% of the people living in urban areas have access to land and housing through informal processes. For several decades, Brazilians have been self-constructing a precarious, vulnerable and insecure habitat in *favelas*, irregular and clandestine land subdivisions, irregular housing projects, and front-and-back houses, as well as occupying public land, steep hills, preservation areas, water reservoirs and riverbanks. For a long time, Brazil's process of informal urban development has not been the exception but the main socio-economic way to produce urban space in the country. This has resulted from the combination of speculative land markets, clientelist

political systems, elitist urban planning practices and exclusionary legal regimes, which have affirmed individual ownership rights over the constitutional principle of the socio-environmental function of urban property and of the city (for a critical overview of Brazil's current urban realities, see Fernandes and Valença, 2001).

It is a phenomenon that has structured Brazil's consolidated urban order, and as such it needs to be confronted. In its many different ways, the process of informal access to land and housing has increased in large, middle-sized, and even small cities.

Since the 1980s, a few municipalities have confronted the problem of informal settlements through land regularisation programmes, but the truth is, that while there have been localised advances, these programmes on the whole have left much to be desired. Moreover, most municipalities still have to formulate their own land regularisation programmes (for an assessment of the overall legal-institutional context and the evolution of public policies and regularisation programmes in Brazil, see Fernandes, 1993; 1995; 2000a; 2000b; 2002a; 2002b; 2003; and Fernandes and Rolnik, 1998). Only two or three states, such as Rio Grande do Sul and São Paulo, have formulated regularisation programmes.

Moreover, the action of the federal government has been very inefficient. Up to 2002, despite the existence of a few support programmes and a few lines of finance for municipalities, there was no integrated and comprehensive approach at the national level to the question of the informal production of space. In 2003, recognising the scale, seriousness, and the implications of the informal urban development process, the federal government, through the newly created Ministry of Cities, for the first time formulated a national policy and a corresponding national programme on this question. The policy was to orient all the specific programmes in all spheres of government, relating to regularisation of urban informal settlements already consolidated and occupied by low-income groups.

The creation of the Ministry of Cities in January 2003 was a long-standing claim of the Urban Reform Movement in Brazil. Following the introduction of the original chapter on urban policy in the 1988 Federal Constitution and the enactment of the Federal Law on urban policy — the internationally acclaimed 2001 City Statute — the Urban Reform Movement demanded from President Lula the creation of a specific institutional apparatus within the Federal Government to deal with matters related to urban development. The Ministry of Cities is subdivided into four National Secretariats: Housing; Transportation and Mobility; Environmental Sanitation; and Land and Urban Programmes. At the same time, President Lula called for a national mobilisation process to discuss the new proposed national urban policy, through the organisation of municipal, state

and national 'Cities Conferences' throughout 2003, involving in total over 3 000 municipalities and all 27 states. As a result, the National Council of Cities was installed in 2004, comprising representatives of all stakeholders — government, civil society, universities and technical institutions, and the private sector. It is responsible for approving the Ministry of Cities' agenda and programmes.

This chapter is based on my direct involvement as Director of Land Affairs of the Ministry of Cities during 2003. It aims to present the Brazilian National Policy to Support Sustainable Urban Land Regularisation. It begins by discussing its nature, assumptions, and general and specific objectives, as well as the bases of the resulting National Programme to Support Sustainable Urban Land Regularisation. Special attention will be given to the national programme's legal, financial, urban and institutional strategies. The chapter then proposes a critical discussion about the main mobilisation, articulation and intervention actions that have been undertaken within the ambit of the national programme from 2003, stressing the main existing challenges to the progress of governmental action.

Principles of the National Policy to Support Sustainable Urban Land Regularisation

Up to 2002, there were some federal programmes directly or indirectly addressing informal settlements, such as the Programa Habitar Brasil BID (HBB, BID being the Inter-American Development Bank) and Caixa Economica Federal's 'Building Materials Programme'. However, there was no national policy to articulate these programmes and thus to express the objectives of the federal government. It was in this context that the Secretariat for Urban Programmes in the Ministry of Cities, in a pioneering way, proposed and discussed at national level the terms of such a national policy.

Nature of the national policy

First of all, it needs to be said that the federal government had necessarily to take into account the distribution of legal-political competencies, established in the 1988 Federal Constitution and by the 2001 City Statute, on the question of land use control in general, and land regularisation in particular. This was necessary in order for the federal government to formulate a national policy compatible with the legal order in force and with the socio-political processes historically produced in the country. In this context, the federal government recognised the central role of municipalities, and, to a lesser degree, of the states, in confronting the problems

resulting from informal land development and in formulating and implementing regularisation programmes of consolidated informal settlements in urban areas.

The problem of informal urban development is notably massive and requires a broad intervention by the public authorities — informality reaches 80% in some cases. But the fact is that the country's socio-political history over the past 20 years has been one of political-institutional decentralisation, so much so that the role of municipalities in Brazil's federalism is unique in the world, even given due respect to all the existing financial limitations. However, many attempts have been made to address informal land development, proposing magical solutions without vigorously addressing the constitutional, political or legal order. Many such proposals expect immediate intervention by the federal government (through the Ministry of Cities, created in January 2003) to solve the growing urban and socio-environmental problems, thus simply ignoring the municipal competencies. This is clearly an expression of historical neglect in confronting the urban question at the national level, as well as of the absence of a national policy on regularisation. However, it is important to understand that the position of the federal government in this field is very constrained.

The action of federal government has the intention of supporting, complementing and/or supplementing the action of municipal and state governments. It intervenes in a more direct way (although always in a partnership with municipalities and states) only if the occupied land is owned by the Union, especially if the consolidated settlements meet the criteria for the Special Concession of Use for Housing Purposes, introduced by Provisional Measure No. 2.220 in 2001. These criteria are the pacific occupation of public land in urban areas for at least five years, of up to 250 square meters, provided that the occupier does not own other properties. In some situations — mostly in environmentally sensitive areas — the public authorities may propose the removal of the occupiers, provided that a suitable alternative is accepted by them.

In considering these limits, the role of federal government has great socio-political importance, given the extent and implications of the problem of informal urban development. There is an urgent need to create a sufficiently integrated front of intra- and inter-governmental action, as well as various forms of partnership between the state and civil society, so as to confront the problem. The federal government is best placed to promote and lead such a front.

Conditions and assumptions of the National Policy to Support Sustainable Urban Land Regularisation

The federal government is aware that regularisation programmes, at whatever level they are formulated, have an intrinsically curative or remedial nature, and

that, in order to be sustainable, such programmes should always be implemented within a broad context of public, urban, and housing policies, in all spheres of government. Such combined policies should aim at intervening in the land and property market, thus having effective control over the processes through which urban land is accessed, with a view to breaking the perverse cycle that has histori-cally produced urban informality, and to prevent the illegal production of cities.

Therefore, regularisation programmes necessarily have to be combined with the following:

- the production of new social housing developments and serviced sites for low-income groups, by the public authorities in all spheres of government,
- the opening of new lines of official credit and housing finance, especially for the population earning between 0–3 minimum salaries,
- inclusive urban planning and democratic management of cities, especially through the instruments, mechanisms and processes of urban land use as per the 2001 City Statute, in order to induce the occupation of vacant land, reha-bilitation of urban centres and the full realisation of the socio-environmental function of urban property. In particular, the question of land regularisation should be considered as one of the central axes in formulating municipal master plans, as is required by the 1988 Federal Constitution and the 2001 City Statute,
- the use of redistributive fiscal and extrafiscal policies, as well as mechanisms for surplus value-capture by the public authorities, always in the terms of the 2001 City Statute, and
- the creation of mechanisms and processes of various orders to involve the formal land and property market in the production of regular serviced sites and buildings for the low-income population in good locations, at accessible prices, and in sufficient quantities.

However, one should no longer ignore the enormity of the already established problem of informal settlements, and the urgency to address these. In this context, throughout 2003, the Ministry of Cities coordinated a full process of discussion on a 'National Policy of Support to Sustainable Urban Land Regularisation', agree-ing on the following basic premises:

- the recognition of the social right to housing and to security of tenure as fundamental human rights, in accordance with the 1988 Federal Constitution and the terms of the Global Campaign for Secure Tenure of UN-Habitat,
- access to urban land as realisation of the constitutional principle of the socio-environmental function of property (whether private or public) and of the city,

- the supremacy of Public Law over Private Law in the regulation of the urban order and in the interpretation and application of the 2001 City Statute,
- an understanding of the curative nature of the regularisation programmes, which need to be implemented within a broad context of public policies in all spheres of government,
- the need to reconcile infrastructural, spatial and environmental regularisation with legal regularisation, and
- the need to contribute to the revival of the processes of social mobilisation around the discussion of informal urban development, especially through the recognition of effective popular participation in all the stages of the process of regularisation.

According to the current urban–legal framework (set by the 1988 Constitution and consolidated by both the 2001 City Statute and the 2001 Provisional Measure No. 2.220), there are two distinct situations in Brazil today related to informal settlements:

- settlements in which the residents have the collective right to regularisation, independently of the willingness of the public authorities, and
- settlements in which the regularisation policies remain at the discretion of the public authorities.

Therefore, not all informal settlements have to be regularised. Examples are very recent occupations. Nor are all consolidated informal settlements upgradeable. For instance, based on safety, health or environmental reasons, the public authorities may not recognise the right of the residents to stay on the occupied land. However, the big advancement of the current legal order is that, in these cases, the right to housing continues to prevail, meaning that the public authorities have the obligation to offer concrete and acceptable conditions for the relocation of residents.

Consolidated informal settlements in urban areas have specific legal characteristics; that is, the criteria introduced by the 1988 Constitution, City Statute and the Provisional Measure. However, the question of land regularisation of these settlements is an aspect of the broader social right to housing, secured through the 1988 Federal Constitution, and as such must be treated within the context of an articulated housing policy.

Objectives and strategies of the national policy

The National Policy to Support Sustainable Urban Land Regularisation, which was proposed by the Ministry of Cities in 2003, was based on the principle that land regularisation is a broad process, which cannot or should not be reduced

solely to its legal dimension, as the legal regularisation of occupied areas and plots has to be reconciled with the urbanistic and environmental regularisation of the settlements, as well as with the introduction of socio-economic programmes (especially generating employment and income) and other governmental programmes that propose the full integration of the informal settlement residents into the economy of the city and the urban society.

The main general objectives of this national policy are:

- to support municipalities and states in the implementation of the 2001 City Statute, with emphasis on the new legal instruments of land regularisation in the City Statute and in Provisional Measure No. 2.220/2001 and on the need to widen and democratise access to urban land for the lowest income groups,
- to promote the integration of land regularisation programmes (combining upgrading and legalisation) in all levels of government, with inclusive urban planning policies and democratic urban management strategies, and
- to promote the integrated recognition of social and constitutional rights to housing and environmental preservation, quality of life, and preservation of natural resources.

The main specific objectives of the national policy are as follows:

- to promote the recognition of the new rights recognised by the legal-urban order, especially the special urban *usucapião* (prescriptive acquisition/adverse possession; i.e., the acquisition of ownership after pacific occupation according to set *ciretira*) — the concession of the real right to use, the special concession of use for housing purposes, and surface rights — and their full utilisation, emphasising that they are new forms of real property rights,
- to prioritise the collective use of these instruments, in order to give collective legal solutions to urban and social problems that are essentially collective,
- to remove the obstacles to land regularisation that still stem from the federal legislation, be they related to land laws, registration laws, urban laws, environmental laws, judicial procedural laws, administrative laws, fiscal laws, criminal laws, etc.,
- to create conditions for the full recognition and validation of titles representing the new rights mentioned above, by public and private credit and finance agencies as well as by public opinion, and
- to encourage various forms of partnership with civil society, promoting full popular participation in all stages of the land regularisation interventions and thus contributing to the revival of the social mobilisation processes through the discussion about informal urban development, in a way that socially includes communities living in informal settlements to a full extent.

Based on the above objectives, the Ministry of Cities' Secretariat for Urban Programmes defined the terms of the National Programme to Support Sustainable Urban Land Regularisation, seeking especially to reconcile the proposed objectives, principles, mechanisms, processes and resources.

The national programme is structured into four principal support strategies, which are, or need to be, fully integrated, namely legal, financial, urban planning and administrative/institutional support strategies. In addition, there are strategies directed specifically at occupied land that is owned by the Union, and at support required by municipalities. The most important aspects of the various strategies are discussed in relation to the activities and experiences of the national programme in 2003/4.

Actions and challenges of the national programme: A critical overview

Since 2003, the National Secretariat for Urban Programmes has undertaken various actions of mobilisation, articulation and intervention to launch, consolidate, legitimise, and expand the regularisation programme nationally. Some qualitative and quantitative targets were defined for the short (2003-4), medium (2003-6) and long (2003-7) terms, and a first, incipient, effort was made to territorialise the reach of the national programme.

This section discusses critically the principal difficulties the regularisation programme has encountered, and what the main challenges are for it to contribute effectively towards addressing the growing problem of informal development in Brazil.

Discussion in the federal government as a whole

The first challenge to the Ministry of Cities is to place the question of regularisation at the centre of the agenda for political action of the federal government as a whole. This requires a systematic, and combative, effort to provide all sorts of information on the scale, seriousness, and the implications of the informal urban development process so as to create the conditions for a broad governmental policy, and not merely a ministerial policy, promoting interministerial articulation and applying pressure for adequate budgetary resources.

In this context, a Working Group was created in 2003 on the theme of land regularisation, in the context of the Committee of Federative Articulation, presided over by the Civil Presidential House. This committee was a pioneering initiative of the federal government, and it aims to improve the relations between

federal government and municipalities and states so as to modernise and make more dynamic the complex and distorted federal system in Brazil. The Ministry of Cities coordinates the Working Group on Land Regularisation, and counts on participation of representatives of the National Federation of Municipalities, the Municipal Confederation of Municipalities, the Brazilian Association of Municipalities, the Civil House, the Ministry of Justice, the Ministry of Planning, the General Advocacy of the Union, the Brazilian Institute of Property Registration, the National Association of Notaries and Registrars, etc.

Although the Working Group was originally created to discuss a proposal by the National Front of Mayors restricted to land regularisation of consolidated settlements on *terrenos de marinha* (coastal land) belonging to the Union, the Ministry of Cities was able to widen the scope of the discussion around three main axes:

- the socio-environmental function of the public patrimony of the Union, including the question of occupied coastal land,
- the activities of property registration offices in the context of regularisation programmes, and
- the need for compatibility between the cadastral bases used by the municipalities and the anachronistic cartographical bases used by the registration offices, especially through the use of systems of geo-referencing.

Several meetings have taken place since 2003, and, albeit in an incipient way, the Working Group has managed to place the discussion on land regularisation on the agenda of sectors of the federal government to some extent. The Working Group has contributed to organising the themes of the issues to be addressed and has legitimised important discussions and proposals; it has also formed some promising partnerships, particularly with the Brazilian Institute of Property Registration and the National Association of Notaries and Registrars, which have long represented conservative interests.

However, it has to be said that, generally speaking, there is still insufficient recognition of the importance of land regularisation by the federal government as a whole. As a result, the National Programme to Support Sustainable Urban Land Regularisation was allocated a mere 5 million Brazillian Real for 2004 (less than US$2 million) — while in 2003 a budget was practically non-existent.

Clearly, this is a reflection of a broader problem, which is the lack of understanding by the federal government of the importance of the urban question in Brazil. Above all, it is a reflection of the total incapacity of the federal government to appreciate that 'the city' lies at the heart of the country's economy and that investing in cities is an investment in the national economy. In the context of a

clearly demarcated division within the federal government (insurmountable in 2003 and 2004) between economic policies and social policies, the urban policies (land, housing, environmental sanitation, transport and mobility) of the Ministry of Cities were viewed merely as social policies, or at most as infrastructure investments for economic development. Given the rigorous and overly orthodox policy of fiscal adjustment adopted by the federal government since 2003, the social policies have been given second rating, and the budgets of those ministries in the social domain have been seriously affected. In the case of the Ministry of Cities, created in 2003, and therefore not having inherited any significant institutional infrastructure, the initial budget was 'virtual', in the words of the minister, Olivio Dutra. This position also meant that the organs responsible for the economic policy placed enormous limitations on the process of redefining the nature of the patrimony of the Union and its utilisation in programmes for land regularisation.

As a result, the national regularisation programme is still an isolated policy, without interministerial character. It remains inefficient, lacking resources and without effective capacity for significant intervention in the Brazilian reality.

The federal government (and the Ministry of Cities) has been questioned and charged daily by various socio-political actors, including the national media, for not recognising the centrality of the question of social housing and land regularisation in the agenda of political action. This is also due to its incapacity to confront the growing socio-environmental conflicts resulting from the process of informal urban development, and the lack of adequate alternatives to accessing serviced urban land for the large majority of the urban population.

The Ministry of Cities will have to double its efforts to promote the recognition by the federal government as a whole of the importance and centrality of the question of land regularisation in consolidated urban areas. This needs to be done in such a form that appropriate political-institutional commitments with support in the form of adequate budgets are given to the regularisation programme with due urgency, especially through an integrated interministerial action, which would include confronting the growing discussion around the possibility of creating a National Agency for Land Regularisation by Presidential Decree.

The discussion on land regularisation in the internal context of the Ministry of Cities

Inserting the question of land regularisation into the agenda of federal government in an adequate way is a huge challenge placed on the Ministry of Cities. However, an equally important challenge lies in adequately inserting the same

question in the context of the overall agenda of political action of the Ministry of Cities itself, in a way that will overcome the current situation of institutional fragmentation, duplication of programmes and conceptual conflict.

Linked to a series of historical reasons that lie at the basis of the creation and internal organisation of the Ministry of Cities, the treatment of the question of land regularisation of consolidated informal settlements was divided between two National Secretariats in the context of the organisational structure of the Ministry. The National Programme to Support Sustainable Urban Land Regularisation was conceived in the National Secretariat for Urban Programmes, but the National Secretariat for Housing inherited the abovementioned Programa Habitar Brasil (HBB), which, since 1999, has given financial support to municipal and state programmes for upgrading of *favelas*, with resources from the Inter-American Development Bank and from the Union budget.

This institutional fragmentation not only resulted in an undesired programmatic duplication, it also expresses a serious conceptual conflict, given the fact that the national regularisation programme proposes an integrated approach for the treatment of the question of land regularisation, articulating legalisation, upgrading and integration of areas and communities, rather than only a legalistic or merely physical approach to the question of regularisation.

In 2003, the organisational structure of the Ministry of Cities re-enforced this fragmented treatment of the question, and this was worsened by the fact that, while the HBB programme (which has a component of land titling conceived with different criteria from those of the national regularisation programme) counts on considerable financial resources, the regularisation programme was not given sufficient resources. This situation was not improved significantly in the 2004 budget. By not being equipped and resourced adequately, the regularisation programme has effectively been limited to the dimension of land regularisation in strictly legal terms, and has not been able to respond to the demands of upgrading informal settlements.

This is a totally inadequate situation, as this dissociation between legal regularisation and physical upgrading is completely artificial. Ironically, as soon as the Ministry of Cities was created in January 2003, it had publicly questioned a proposal to legalise informal settlements en masse, which had been launched nationally by the Ministry of Justice. The Ministry of Cities had argued for the need to treat the question in a broader and more integrated way, and was eventually given the institutional responsibility to formulate and coordinate a national policy to confront the question of informal land development.

In 2003 and 2004, it was not possible to overcome this internal institutional fragmentation in the Ministry of Cities, despite attempts at creating an informal

internal working group involving both Secretariats. There was a lack of adequate internal management channels between the two National Secretariats and between the two national programmes, and the necessary processes for communication that this order of political and conceptual questions requires were not in place.

This is a discussion that needs to be promoted urgently so that there is a proper institutional, programmatic, financial and conceptual integration in the Ministry's action. In particular, it is necessary to discuss and rethink the bases of the HBB programme. In a country where the universe of informal settlements (including *favelas* and other forms such as irregular and clandestine land subdivisions) has been estimated as thousands of cases, and in which the federal government's capacity for action is very limited, it is highly questionable that a national programme involving enormous financial investment (calculated in US dollars) only applies to an insignificant number of interventions — less than 100 — and only in *favelas*. Moreover, the technical criteria that have guided such interventions have also been seriously questioned. It is especially revealing that none of the ongoing HBB projects has reached the stage of full land regularisation

Another fundamental discussion that was not properly confronted by the Ministry of Cities in 2003 and 2004, but which can no longer be ignored, refers to the need to reconcile the National Programme to Support Sustainable Urban Land Regularisation and the new National Housing Policy that is being formulated by the Housing Secretariat. The National Housing System has gradually been redesigned, so that new social housing projects can be implemented and new lines of credit and financing can be opened to the population earning up to three minimum wages per household.

One of the objectives of the regularisation programme is to create the conditions for the municipalities to act, widening the access of the lowest income groups to serviced land, and, for this purpose — together with a broad concept of regularisation that combines upgrading and legalisation — it is necessary to create new social housing policies and inclusive urban planning directives. Given the extent of the housing problem, the action of the public authorities alone will not be sufficient, and the private sector needs to be involved for the production of serviced plots of land especially by making use of the possibilities (incentives, and building credits) offered by the 2001 City Statute. In order to be effective, regularisation programmes need to be intimately related to other programmes that aim to produce serviced land for the low income population, as well as to urban policies that give a social function to the millions of vacant properties, private and public, existing in the country.

In the more restricted ambit of the National Secretariat for Urban Programmes

in which the national regularisation programme has been located since 2003, this programme has not been fully articulated with the other existing programmes — National Programme to Support Municipal Master Plans, National Programme to Control and Prevent the Occupation of Risky Areas, National Programme to Support Municipal Urban Management, and the National Programme to Support the Rehabilitation of Inner-city Areas. Regardless of the fact that all such programmes are profoundly interrelated, in 2003 and 2004 there was no adequate incorporation of the objectives of each programme into the terms of reference formulated by the others. Special attention needs to be given by the Secretariat for Urban Programmes to the relation between the regularisation programme and the programme aimed to support municipal master plans, so that the discussion on municipal regularisation programmes is no longer promoted in a sectoral or isolated manner, but instead in the very heart of the municipal processes of formulation and implementation of master plans. In terms of the 2001 City Statute, all Brazilian municipalities with more than 20 000 inhabitants have to approve their master plans by 2006.

There is an enormous expectation on the part of municipalities and the people living in informal settlements that the National Programme to Support Sustainable Urban Land Regularisation will be effective, especially following the 'National Conference of the Cities' that took place in October 2003, in which the subject of regularisation was a dominant one. However, the future — and the success — of the national regularisation programme will depend on how the current state of affairs is reverted — by overcoming the institutional fragmentation within the Federal Government, within the Ministry of Cities and within the Secretariat for Urban Programmes itself, and by promoting a better distribution of budgetary resources in order to make it possible to solve the problems related to the lack of human resources, equipment, and resources for investment and action.

Strategies for legal support

A New legal-urban order

One of the most significant actions within the National Programme to Support Sustainable Urban Land Regularisation in 2003 was the promotion of a series of events that aimed at involving legal actors and urban managers in the discussion of the new legal-urban order consolidated by the 2001 City Statute and the 2001 Provisional Measure No. 2.220, in which, among other developments, the collective right to regularisation was recognised. Two specific workshops were promoted in Brasilia, and the conceptual basis of the new legal order was presented and discussed in the Seminar 'The New Legal-Urban Order', promoted in São

Paulo in November 2003 by the Ministry of Cities in partnership with the Brazilian Institute of Property Registration, the Prosecutors for the Government of the State of São Paulo, the São Paulo Judicial School, and the Lincoln Institute of Land Policy. The seminar was attended by judges, prosecutors for the government, public attorneys and registrars, as well as by urban planners and managers.

The challenge faced by the Ministry of Cities is to give continuity to such a fundamental process of information dissemination and critical discussion, which is essential to promote an advance of legal doctrine and jurisprudence on Urban Law in Brazil, especially through the promotion of events in all Brazilian states that lead towards the consolidation of the abovementioned institutional partnerships.

Another important front that was opened in 2003 within the remit of the regularisation programme was the Ministry of Cities' active participation in the process leading to the revision of Federal Law No. 6.766/1979, which governs the subdivision of urban land nationally, and which is crucial for the promotion of regularisation programmes at local and state levels.

The fact is that even those municipalities that have already progressed in addressing the process of growing informal land development through regularisation programmes are facing several orders of legal obstacles deriving from the federal legislation in force — urban laws, the Forestry Code, land laws, registration laws, expropriation laws, etc. Creating a solid partnership with the Commission for Urban Development of the Chamber of Deputies in order to broaden the scope for the discussion of a draft land law aimed at replacing Federal Law No. 6.766, the Ministry of Cities proposed in 2003 that the scope of the new law should refer not only to future land subdivisions, but also to the regularisation of consolidated informal settlements. This process of legal revision provides a historical opportunity to overcome all the abovementioned legal problems still existing, and the national discussion was fully supported by a very successful cycle of public audiences promoted by the Urban Development Commission and the Ministry of Cities in October and November 2003.

This discussion dominated much of the Secretariat for Urban Programmes' agenda in 2004, but it was not possible to come to a consensus involving all the major stakeholders — various ministries, local governments, institutions representing the registration offices, institutions representing land developers and promoters and institutions representing civil society — in short, the same segments represented in the Council of Cities mentioned above. The challenge faced by the Ministry of Cities is to give continuity to this important process of improvement of the legal order, in order not only to deepen the conceptual discussion, but also to establish the necessary political articulations, within and outside the National Congress, to guarantee the enactment of a 'Federal Law on

Urban Land Subdivision and Regularisation of Consolidated Informal Settlements in Urban Areas'. This federal law would then become a long-claimed 'Law of Territorial Responsibility'.

The activities of the registration offices

Among the main questions discussed in 2003 and 2004 within the context of the legal strategies adopted by the national regularisation programme, the discussion on the activities of the registration offices was of utmost importance. There were reports from several parts of the country indicating that it had been impossible for municipalities and states to register the newly regularised settlements at the local registration offices. This is indeed a major problem in a legal system such as Brazil's, in which it is the registration that constitutes ownership. A specific workshop was promoted in 2003 to discuss this matter, aiming to identify the reasons for the difficulties, as well as alternatives for their solution.

Three main problems were detected: the high costs of registration, the erratic procedures adopted by the registration offices and the nature of frequent practices on the part of these offices, which have long been presenting insurmountable obstacles to the development of municipal and state regularisation programmes.

Following this discussion and further political articulation with the entities representing the registrars nationally, significant gains were achieved in 2003. Regarding the matter of financial costs, the national entities declared publicly that they would not charge for the registration of the first documents referring to the registration of special urban *usucapião*, concession of the real right to use or the special concession for housing purposes. Some registration offices acted on this decision immediately, but the challenge remains to turn this into a standard national guideline to be followed by all registration offices.

Another significant development concerns the legal and administrative procedures adopted for the registration of the areas and plots resulting from regularisation programmes. Each Brazilian state has different guidelines, and the registration offices have given different interpretations to such guidelines, often refusing to register the newly regularised areas and plots. The existing bureaucratic requirements are enormous, and frequently the public authorities promoting the regularisation are treated by the registration offices as if they were private promoters acting in bad faith. The national entity representing the registrars proposed the creation of a national council to regulate all registration offices. This council would be in charge of defining uniform and simplified legal and administrative procedures to be followed for the registration of regularisation programmes. This would put an end to the problems that have been affecting

even the most advanced municipal regularisation programmes, such as that of Porto Alegre.

Also regarding the legal and administrative procedures, a more difficult task will be to reconcile the anachronistic databases used by the registration offices with the cadastral databases used by the municipalities, given the fact that there is a wide gap between them. This compatibility can only be provided by the use of GIS, in the same way as has already been determined for the registration of rural areas by Federal Law No. 10.267/2001. The challenge, then, is to define the criteria to be followed so that this can also happen in urban areas.

Another important factor regarding the actions of the registration offices concerns the nature of some of their practices. On the one hand, there are offices that have refused to get involved in regularisation programmes, creating all sorts of obstacles (sometimes for ideological reasons). On the other hand, most municipal administrations have little understanding of the importance of getting the registration offices involved in all stages of the regularisation programmes. Systematic partnerships need to be formed between the registration offices and the municipal administrations. In fact, it was as a result of one such solid partnership that thousands of titles of the special concession of use for housing purposes could be given to residents by the Municipality of Sao Paulo in 2003, properly registered. Registrars and other legal actors have to be permanently involved in this attempt to work out adequate legal solutions to the question of regularisation of consolidated informal settlements.

The challenge faced by the Ministry of Cities in this respect is to give continuity to this discussion and to consolidate the partnership with the national entities representing the registration offices, so that the achievements already made become general rules valid for the whole national territory. This is a discussion that is also directly related to the abovementioned ongoing discussion on the draft of a new federal law, and much still needs to be done by the Ministry of Cities to achieve a consensus with the national entities representing the registrars.

Regularisation and environmental preservation: A false conflict

One of the actions launched in 2003 by the national regularisation programme was the discussion on the growing conflict between public policies that aim to protect the social right to housing, and those that aim to promote environmental preservation, especially because environmental arguments have often been used to present obstacles to municipal and state regularisation programmes. Placing emphasis on the notion of 'environmental deficit', such arguments have not allowed for a broader discussion, certainly more adequate to the Brazilian reality, which is that of the 'socio-environmental deficit'. With regard to the latter

argument, in those situations in which environmental values and housing needs (both constitutional rights) cannot be fully or even partly reconciled, and if the environmental value has to prevail over the housing need, effective alternatives have to be offered to the low-income population living in the areas. Together with the National Council for the Environment, the Ministry of Cities has discussed the terms of a draft resolution that proposes a specific treatment for the regularisation of informal settlements on preservation areas. This is an issue that certainly deserves to be emphasised within the context of the abovementioned ongoing process of legal revision, and there remains a great deal to be done.

The new instruments

One of the specific objectives of the regularisation programme is to promote the full recognition, as new forms of real rights, of the institutes of special urban *usucapião*, concession of the real right to use and special concession of use for housing purposes, especially when used in a collective manner. For this purpose, in 2003 a mobilisation process started aiming to validate such instruments, which requires dissemination of information on existing laws as well as legal assistance for the initiation of legal or administrative proceedings. Important organisations, such as Fundacao Bento Rubiao, in Rio de Janeiro, and the remarkable project 'Poles for the Reproduction of Citizenship' promoted by Minas Gerais Federal University have provided legal assistance to communities, as well as stimulating a broader set of actions in informal settlements involving engineers, architects, social workers, psychologists, students and professionals working with the cinema and with videos, music and drama, aiming to promote socio-cultural as well as legal-urbanistic inclusion. The fact is, even when they have titles following the completion of regularisation programmes, the residents of informal settlements are still perceived — and see themselves — as *favela* dwellers and, as such, they are discriminated against by the labour market.

Special attention was given in 2003 and 2004 to the need for the registration offices to proceed with the registration of these new titles, and this is a debate that needs to be expanded. The challenge faced by the Ministry of Cities is to promote the acceptance of such new titles also by the private and public financing agencies, especially by Caixa Economica Federal, so that they are not treated as inferior forms of property title.

It is fundamentally necessary to conceive collective legal solutions to the legal problems of informal settlements. In the same way that collective technical solutions have been discussed for problems of water or sanitation provision, collective legal instruments need to be used to resolve collective legal problems.

Strategies for financial support

Three lines of finance were prepared in 2003 by the Ministry of Cities with the team of Caixa Economica Federal for launching in 2004, with resources from the Union's budget:

- grants for municipalities and states that have not yet initiated regularisation programmes and that need to do a survey of existing irregularities,
- grants for the formulation and implementation of municipal and state regularisation programmes, and
- grants for those states and municipalities that have already implemented upgrading programmes, but have not been able to conduct collective actions of special urban *usucapião*, or the special concession of use for housing purposes. This third stream of finance is especially important and original, as it is open not only to the public sector, but also to third sector organisations (NGOs, foundations, associations) that give socio-legal assistance to informal settlement communities. The approval of this line was a major breakthrough in the history of public policies in Brazil.

In the short term, the impact of these lines of finance will be very limited, given the insignificant budget that was given to the national regularisation programme.

At the same time, some discussions around international finance were promoted in 2003 and 2004 during a Cities Alliance mission and with World Bank representatives. However, the government determined, due to its strict fiscal adjustment policy, that no project could be submitted immediately to obtain new international loans for land regularisation programmes. Contracts should be signed with both the Cities Alliance and the World Bank in 2005.

Strategies for urbanistic/planning support

Given the need to treat regularisation within the context of the municipal master plans required by the 2001 City Statute, and no longer as isolated or sectoral policies, the national regularisation programme promoted in 2003 the first of a series of teleconferences in partnership with the national entities representing architects, engineers and urban planners. A successful roundtable was promoted to present and discuss the national programme, with participation of professionals from all parts of Brazil.

Moreover, several contacts were established with schools of architecture and engineering in order to encourage the programmes of public architecture and engineering that include free technical assistance for regularisation programmes.

The national regularisation programme was also presented and discussed during

the national conference 'City Citizen', promoted in December 2003 by the Commission of Urban Development of the Chamber of Deputies. The challenge is to give continuity and to expand this line of support strategies.

Strategies for administrative-institutional support

Regarding the strategies for administrative and institutional support, some agreements for technical cooperation for the improvement of regularisation programmes were discussed and/or signed with several municipalities and states in 2003 and 2004. At this first stage, however, given the lack of financial resources and adequate human resources, such agreements are above all a political opportunity for the Ministry of Cities to celebrate partnerships around the subject of urban land regularisation.

The main challenges on this front are twofold: first, the regularisation programme needs to promote the definition of explicit criteria for the celebration of new agreements — other than the mere existence of opportunities and demands — especially in order to implement a national policy for governmental action with a territorial basis. Second, it is fundamental that the Ministry of Cities should materialise the objectives of the existing agreements, and for this appropriate financial and human resources are crucial.

Another action was the capacity building of many actors involved in regularisation programmes throughout the country, which was done through two important meetings in 2003 aimed at critically discussing aspects related to the subject of regularisation, and involving in total over 500 people. These meetings were the National Seminar on Urban Land Regularisation and the Meeting of the Latin American Research Network on Regularisation, sponsored by the Lincoln Institute of Land Policy.

Support to municipalities, states and society

A series of other activities has been promoted by the National Programme to Support Sustainable Urban Land Regularisation since 2003. A specific space was created within the Ministry of Cities' website (www.cidades.gov.br) to organise and make available all the materials and information resulting from the regularisation programme's actions, including the formation of an incipient database of experiences, legislation and literature on regularisation. A wide email network was created to promote systematic exchange of information, and, by the end of 2003, thousands of people and organisations were already participating in it. Articles discussing the national programme and its objectives were also

published in newspapers in several states (Rio Grande do Norte, Bahia, Minas Gerais and Alagoas).

Moreover, members of the programme's team have participated in numerous meetings in several cities, giving talks and participating in debates, roundtables, seminars, conferences and academic meetings, and participating in the 2003 National Conference of the Cities. Hundreds of claims brought to the attention of the Ministry of Cities by individuals and private and public organisations from all over the country have also been received and addressed.

Perhaps the most important challenge to be faced by the Ministry of Cities, besides keeping and systematically expanding all the abovementioned actions of dissemination of information and capacity building, will be to overcome the burden of individual claims and needs upon the bureaucratic 'help desk', which increases on a daily basis. These are essentially spontaneous and casual claims, but they end up taking up significant time of the regularisation programme's small team. The team members should concentrate their time in performing actions that explicitly express the general and specific objectives of the national regularisation programme.

Conclusion

The formulation by the Ministry of Cities of a national policy and the creation of the National Programme to Support Sustainable Urban Land Regularisation to express this policy was without doubt a great pioneering advancement in political action by the federal government, which deserves respect and encouragement. An important social and intergovernmental mobilisation was stimulated through the national policy in 2003, aiming to legitimise the conceptual design of the regularisation programme and its strategies and to promote the construction of the socio-political and legal-institutional basis for its materialisation.

However, the reality is that the national policy is still merely a declaration of intentions and, as a result, the National Programme of Support for Sustainable Urban Land Regularisation is still an isolated and inefficient action, without a significant impact on the Brazilian reality. The existing obstacles that need to be confronted by the Ministry of Cities and by the federal governments as a whole are conceptual, political, institutional and financial. These obstacles have to be overcome in order for the national policy to be materialised, and in order for the objectives and measures of the regularisation programme to be attained.

Perhaps the main challenge is to overcome the various orders of existing fragmentation, by promoting a profound integration: within the regularisation programme itself, within the National Secretariat for Urban Programmes in the

Ministry of Cities, and among ministries. For this purpose, it is necessary that the question of land regularisation be recognised urgently as central to the agenda of action of the federal government, in order to realise the declared constitutional principles and governmental commitments. It needs not only to be given recognition in an institutional articulation but also to be considered in the distribution of budgetary resources.

The search for this recognition involves broad internal discussion in the Ministry of Cities and the improvement of interministerial relations, together with overcoming the division existing in 2003 and 2004 between the economic and social policies. It also depends on further pressure from the municipalities and states towards better terms of intergovernmental relations, with a view to correcting the historic distortions and to modernise the federal system. It depends on the articulation of the legislative power at all levels, with a view to maturing the institutions and mechanisms of representative democracy. Above all, it depends on the revival of social mobilisation, in the sense of deepening the participative base of the democratic order. In this context, the fundamental arenas for setting in motion and advancing the discussion about the national policy and national regularisation programme are the Committee for Federative Articulation set up by the Civil House of the Presidency of the Republic, the Commission for Urban Development of the Chamber of Deputies, and, above all, the National Council of the Cities, which was established in April 2004.

The promotion of sustainable land regularisation in consolidated urban areas is certainly one of the main challenges placed not only on the federal government, other governmental levels and entities of political representation, but, above all, on Brazilian society, for the promotion of urban reform and social inclusion so that Brazilian cities can become more just and sustainable.

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Informal settlements: Infernal and eternal? The role of research in policy advocacy and urban informal settlements in Angola

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Introduction

This chapter briefly examines informal settlements in a generic way as an introduction to a case study on recent action research on approaches to urban land rights and policy formulation for informal settlements in Angola. The title 'Informal settlements: Infernal and eternal?' reflects the querying of the predominantly negative image of informal settlements as well the structural reasons why such settlements continue to exist. This chapter addresses the following questions:

- What do we mean by informal settlements?
- Why do informal settlements continue to exist across the world?
- Why do we think these need action, and what sort of action?

The chapter describes how action research has been used to develop an alternative approach in relation to informal settlements in Angola, as a case study of the way in which advocacy can play a part in policy-making processes, and what some of the parameters for this are likely to be. The possibility for wider stakeholder participation in policy making, especially of institutions representing civil society, depends largely on the nature of the governance structure, as well as the way information can be produced and utilised. The paper argues for a stronger social function of knowledge bases in key research institutions, such as universities, to support such processes.

Informal settlements: Infernal and eternal?

To establish what general approaches can be relevant for informal settlements, we need to be clear what we mean by informality in settlements. The concept of informality was developed in relation to employment in Ghana in the early 1970s (Hansen & Vaa 2004) and then adopted by the International Labour Office (ILO), subsequently being applied to other areas, including human settlements. Although often used quite loosely, the key criteria for definition in relation to human settlements is regulation or lack thereof. The concept of informality fundamentally refers to activities without authorisation by government, whether through laws or other forms of regulation. As such, the concept is rooted in an approach that is state dominated. However, this is not the only possible criterion for evaluating the legitimacy of actions, as state norms and controls are often far from socially legitimate, particularly where governance is weak. In addition, state regulations are often of limited application, as government institutional capacity is weak, as is also often political and technical/bureaucratic interest to make such norms more relevant. Although usually synonymous with 'bad' (that is, 'infernal') conditions, informal settlements are often a socially legitimate response to real needs, and represent many positive features. The 'informal' characterisation for settlements is much more a reflection of the institutional capacity and interests of the state than a reflection of the aspirations of those who inhabit or work within them. This is not to say that collective problems in urban informal settlement areas do not need some form of public action, but it highlights the fact that the state may not be the sole vehicle for this. Hence, the negative connotation that is given to informal settlements by the state is both detrimental and, in fact, inherently self-critical.

'Informality', as non-state regulated forms of social, economic and cultural action, in fact pervades our lives in many ways, but is more symbolic in the higher income countries, where states are usually strong and state activity penetrates social and economic life more profoundly. An example of active informality in such situations is the way in which people hear of work opportunities, often predominantly through social networks, although the state and private sector firms also provide mechanisms to link work seekers with opportunities. The degree of informality in evidence in various societies across the world is changing, however, as states 'shrink' in the new global economic order and their institutional capacity to implement regulations, norms and standards decreases as a result, although states in the higher income countries often aspire to continue to penetrate further into social and economic activities. Contrary to the situation in higher income countries, in lower income countries the 'informal' dominates in

almost every aspect of economic and social activity, and the 'formal' is very limited in scope, even within government and higher income groups — in fact 'informal is normal'. Here, even in aspects of formal life, such as government action, forms of non-regulated and un-authorised activity abound and in fact permit much action to take place — that is, even the most formal settlements can be underpinned by informal activity.

In middle-income countries, despite concerted attempts to formalise human settlements, informal forms often remain widespread until demographic change slows down in relation to economic growth, political change takes place to permit more redistributive government, and socio-economic change results in a larger middle-income group that can work within formal systems. In these conditions, state capacity is usually brought to bear on wider aspects of life such as informal settlements — including, but not limited to, land occupation and construction standards — and forms of 'regularisation' of the previously non-regulated are implemented, with or without inhabitants' participation and agreement. A feature of such socio-economic situations is the relatively high degree of private sector informal activity, and the gradual formalisation of this — such as informal sub-division of land and housing development.

The existence of informal settlements is thus not only a factor related to government attitudes and state capacity, although this is the key defining feature. It also reflects the capacity for 'formal' systems to meet demand for human settlements. To the extent that this demand grows faster than the possibility of satisfying this, informal solutions fill the gap. Hence, where demographic growth rates outstrip formal economic growth rates or the distribution of this economic growth, the result is inevitably provided by informal solutions, since formal systems do not provide adequately. The same applies where economic decline takes place.

In addition, the nature of the formal solution may not be considered socially, economically or culturally suitable. This may also promote informal solutions such as settlement formation and growth or the development of informal solutions within more formal settlements. In the current conditions of rapid urbanisation of many countries, the capacity for formal systems to satisfy demand is often either absolutely limited, or relatively limited. The former relates to the private and state sector capacity to produce, and the latter to the way in which demand is channelled and what is defined as 'formal'. Where the formal market system is uninterested in lower income groups, as is often the case due to the costs of formal provision, the state can intervene and both regulate and subsidise forms of supply, as is the case in South Africa. However, in these situations, institutional

capacities are of even greater importance, even if there is political will for such 'formalisation'.

The current trends in the new global economy (Jenkins, Smith & Wang, 2006 forthcoming) show tendencies for further concentration of global wealth in higher, middle and low-income countries. In many of the latter there is still rapid urbanisation and urban restructuring, and demand for housing and land is much higher than can be met by formal systems, which are relatively weak and often not interested in satisfying this stratum of demand, whether market- or state-based. In middle-income countries, depending on how supply is structured and what forms of governance and wealth redistribution exist, there may be attempts to regularise informal areas, but this is not likely to eliminate all forms of informality. In higher-income countries, informality is likely to grow in importance as the state reduces its role and greater wealth disparities develop. Thus it is likely that, while not 'eternal', informal human settlements will continue to exist and will in fact grow in various places as globalisation leads to different forms of economic exclusion across the world, more socially than geographically differentiated. The nature of this informality can be physical (land and house construction/redevelopment), but also social (different household structures) and economic (informal access to resources).

Although often espousing social improvement rhetoric, governments still tend to see informal settlements as being outside their control and thus often mainly want to control or manipulate them — this is demonstrated by the actions of governments in many parts of the world in involuntary resettlement and *ad hoc* improvements (especially near elections). In other situations, regularisation pro- grammes for informal settlements may be more ostensibly for the public good — such as for public health and safety reasons — but action to 'formalise' can be retrogressive instead of progressive — especially as 'formal' action often costs more for the settlement dweller. Thus, regularisation as an intended form of social inclusion can lead in fact to forms of economic exclusion. The main issue is not so much how to integrate informal settlements to urban 'formality' through apply- ing state regulation and assistance, but how to promote social and economic inclusion — and not further exclusion — through urban development processes. This needs to be the basis for any approach to informal settlements, and not a simplistic eradication or regularisation programme — which can be simplistic treatment of 'symptoms', ignoring the fundamental causes of these.

Overall, there is a need for a different approach to 'informality' in human settlements that recognises the positive elements of so-called informal action within these, accepts that such settlements are valid and valuable, and works to mitigate and overcome their negative elements, in conjunction with the residents

and other relevant stakeholders. In reality the informal–formal divide is not a dichotomy but a continuum, and mechanisms that permit the formal and informal systems to interact, or to co-exist where appropriate, are more realistic than any attempt to eradicate 'informality', even for valid social reasons (Jenkins, 2004). How such an approach can be translated into policy has been the objective of an action research project into urban land rights in Angola over the past two and a half years, as the following case study describes.

The role of research in advocacy on informal settlements in Angola

The research process

The Centre for Environment and Human Settlements (CEHS) at Heriot Watt University in Edinburgh was invited to assist non-governmental organisations (NGOs) in Angola, working on behalf of civil society organisations, to undertake research on appropriate action concerning massive informal urban settlements. Recent estimates put the urban population of Angola at some 34%, with 60% of this in the capital Luanda, totalling some 3.5 million people, or 600 000 households, of which an estimated 70% live in peri–urban settlements, the vast majority being informal. The nature of informality varies from unauthorised settlement and construction through to unauthorised plot subdivision and infilling, to unauthorised extensions in the few areas with any authorised land occupation (usually prior to Independence). Quality of construction varies enormously but is mostly in 'permanent' materials (cement block and corrugated metal roofing) but of a low quality, and the level of provision of services is extremely low — most water is supplied by water tankers and there are no systems for drainage, sanitation and waste collection. For more information on the nature of informal settlements in Angola and the impact of globalisation on these, see Jenkins, Robson and Cain (2002a; 2002b). More detailed information on urban land and the action research programme can be found in DW-CEHS (2005).

The initial invitation was made in November 2001, as the country looked like it was finally to emerge from some 40 years of war, of which 30 years were after Independence in 1975. This request was based on the experience CEHS had in investigating urban land issues in Mozambique, a country with a similar situation in the region. However, unlike Mozambique, Angola's prolonged civil war, following on from the weak form of Portuguese colonisation, meant that there was an extremely limited knowledge base — for instance there has been no census since 1983, and in the intervening two decades there have been major population

changes. The initial focus of the collaboration in Angola was thus to begin to develop a minimal knowledge base, as a foundation for policy-related advocacy.

While this was being developed, the main opposition leader and director of the guerrilla war against the government, Jonas Savimbi, was killed and the country entered into a fast-tracked peace-building process — actually re-starting a process which had been underway in 1992 but had collapsed. As part of this process, the government began to take up strategic development initiatives that had also been commenced at that time, including addressing national land issues. Two closed working groups operated in parallel on a draft Land Law, one being nominated directly by the president and the other by the Ministry of Agriculture, with the former also drafting a Physical Planning Law. For the first time ever, the government indicated that it would consult publicly on the resulting draft Land Law prior to parliamentary discussion, and hence research on urban land became oriented to advocacy on behalf of civil society in the official consultation process on the former law, focusing on urban land rights.

The action research programme that was developed in the above (changing) context was formulated initially in early 2002, with a scoping study being used as a way to identify key issues for further investigation. This scoping study was funded by UN-Habitat as a means to provide Angolan baseline information for the global campaign for secure tenure, and was commissioned through the Angolan Ad-hoc Technical Group for Habitat, within the Ministry for Public Works and Urbanism. This initial overview was undertaken by the Angolan-based NGO Development Workshop (DW), which has been operating in the field of human settlements in Angola since the early 1980s (as well as a number of other development sectors such as peace-building and micro-finance). DW was advised by CEHS as to how to implement this study and how this could serve as the first stage of a wider and more comprehensive research programme, which DW and CEHS formulated in conjunction with the UK-based international NGO One World Action (OWA). The wider research programme was submitted to the UK government's Department for International Development (DFID) in May 2002, and accepted for funding in October, with research activities starting in November of that year.

A range of research projects was undertaken within the overall research programme to provide information on the following:

- the legal and regulatory context,
- prevailing institutional attitudes to urban land across various sectors (state, private, voluntary, households),
- the nature of state institutional capacities,
- the nature of past and current formal and informal access to urban land,

- the nature of past, current and projected future demand for urban land (formal and informal), and
- the nature of land conflicts and degree of poverty in peri–urban areas where informal settlements predominate.

The research implementation involved participatory seminars to launch the work and to triangulate the results of the primarily qualitative research through participatory feedback sessions, desktop studies and institutional visits, open semi-structured interviews with key informants, satellite image interpretation (for the sample structure and population estimates), 'transect' field visits with key informants (to structure the sample), and closed semi-structured interviews with sample households.

Although a quantitative questionnaire formed part of the scoping study, the research was primarily a qualitative analysis — partly due to the lack of a census to provide a quantitative survey sample base, and also partly due to the size of the possible study 'universe' and the limited research funding available. The scoping study was undertaken in four cities (the capital Luanda, and secondary cities Huambo, Benguela and Namibe) with in-depth follow-up studies being either national in scope or focusing on Luanda and Huambo. For more information on the methodology, see DW-CEHS (2005).

The research was conceived from the beginning as an action research project — that is, one that aims '. . . to contribute both to the practical concerns of people in an immediate problematic situation and to the goals of social science by joint collaboration within a mutually acceptable ethical framework' (Rapoport, 1970, quoted in Lambert, Paris & Blackaby, 1978). To this end, it was undertaken as far as possible through involving local stakeholders. This entailed providing training as well as informal information provision on key factors of urban land in face-to-face meetings. The main stakeholders actively involved in the research included NGO workers, some international and national consultants and university students, with CEHS assisting DW with management and getting directly involved in certain studies as well as the analysis. Other stakeholders more passively involved in the research included government officials (at central, provincial and local levels), private sector developers, other NGOs active in rural land affairs, and households in peri–urban areas.

Apart from the scoping study, the research outputs produced between November 2002 and September 2004 include the following publications: training guides (participatory research and pilot project preparation), a legal study, a study of institutional attitudes, reports from fieldwork in Luanda and Huambo, a study of formal land demand and supply, a study of institutional capacity within government, and an informal land demand and supply study. In addition, specific

synthesis material was prepared from the above for participatory workshop presentations of the results. Separate inputs were prepared for a high-level national land seminar organised by the UN Food and Agriculture Organization (FAO) on land issues in general, and inputs were prepared for parliamentary lobbying during the period from October 2003 to July 2004 (prior to the land law going to Parliament for approval), as well as subsequent inputs to the proposed land law regulations.

The research programme thus integrated the findings of a series of linked and coordinated specialised studies into various aspects of urban land affairs in Angola as a contribution to the debate on the new Land Law. It represents the most detailed and extensive study on this subject undertaken to date in the country, and incorporates investigation of the political-economic and legal-administrative background for urban land management, actual formal administrative and informal socio-cultural practices in urban land management, issues concerning migration trends, land conflicts and urban poverty, projections of urban growth and overall assessment of institutional capacity in urban land affairs, and reviews of (then) current draft legislation, legal approaches in the region and recent international experience in urban land management.

A key issue raised was the state's claim to manage all land (urban and rural), yet its manifest lack of institutional capacity to undertake this, whether from a legal, administrative or technical point of view. This had led to a strengthening of informal mechanisms for land access, occupation, development and transfer, with modification of these systems to include a role for the lowest levels of state and political party activity — actions that were themselves informal as they had no legal or administrative basis. This led to a strong sense of the legitimacy of these informal actions in *de facto* social land management, and a relatively high sense of security, albeit not contemplated in law.

The state's initiative to introduce new legislation without significantly increasing its capacity to implement this, and the nature of the draft legislation focusing on formal 'modern' systems of land use planning and management, were thus seen as potentially more alienating for the majority of the population, socially, economically and culturally. In addition, the prevalent attitude in the government (officials and politicians) that the majority of urban dwellers were in some way 'temporarily relocated' from rural areas because of the war ignored existing and likely trends for rapid urbanisation that are both typical of the region and linked to basic demographic patterns.

The implementation of the research was carried out as far as possible using local personnel and with low costs of other resources. This entailed a clear set of research objectives and methods, with some aspects of the research being

undertaken by local consultants. The main fieldwork was undertaken by university students in their traditional long summer work placements, with supervision by NGO personnel who were given specific training for this, in the context of a wider understanding of qualitative research techniques (sometimes called 'rapid urban appraisal'). Some aspects of the research were undertaken directly by CEHS staff with local counterparts — for example, the sensitive 'institutional attitudes' surveys and the data analysis. All but part of this data analysis was carried out in Angola, with Angolan project team members coming to the UK to finalise this. In general, the research was widely accepted by the various entities with which it was engaged — key stakeholders and institutions, as well as local peri-urban residents in the two cities. Through the process, a considerable set of skills has thus been built up within the NGO partners, which was the basis for a follow-up training session on pilot project development that included a wider set of actors, especially government.

The research findings

The vast majority of urban dwellers in peri-urban areas of Angola have occupied land through informal mechanisms, and these, in fact, often involve action by local administrative institutions. These processes have existed from before, and continued during, the whole period since Independence, and are thus deeply rooted socially. The most common mechanism has been informal purchase of land with witnessed purchase documents. An active informal land market exists for residential rental as well as land/house purchase. While having limited actual land rights in terms of the current and proposed land law, the vast majority of the peri-urban populations do consider themselves secure in their property holdings, although they have a very low understanding of the formal legal and administrative context. In practice, there has been no alternative for land access other than the informal system, as state supply of land for housing has been virtually non-existent, despite the state having assumed exclusive responsibility for this after Independence. In addition, state capacity to formalise irregular land occupation has also been minimal and has been undertaken (in a minimal way) for an extremely limited number of properties by cumbersome and expensive methods.

Given the high level of perceived security and the limited alternatives for land access, the majority of peri-urban households have continued to make substantial investments in consolidating their land holdings, in relation to their economic capacity, and are intending to invest further to improve their social circumstances and pass on their property as inheritance. Despite the lack of adequate land registration and dispute resolution mechanisms (both legal and administrative), there are — as yet — relatively few land conflicts, and most of these are resolved locally.

This was closely linked to the high perceived sense of security; however this situation can change rapidly. There were generally high levels of structural poverty (particularly related to high levels of dependency, low levels of social infrastructure provision and informal forms of economic engagement) in the peri-urban areas, but the existing household investment in shelter (albeit inadequate in terms of need) represents a substantial overall economic investment, especially in relation to these poverty levels. Overall, therefore, the study found that any state intervention (legal, administrative and/or physical) would need to build on the existing situation, as to attempt to change this outright would risk severe social disruption and rapidly rising levels of social unrest. In addition, the economic impact of discounting the high proportion of household investment to date in shelter with removal or renewal was considered significant, placing additional demands on the state or the residents who would be unable to cope with these.

The extremely weak legal, administrative, technical and investment capacity of the government — at all levels — in urban development (urban planning, infrastructure investment, land management, assistance to construction, etc.), and the structural constraints on a widespread operation of a formal private sector in this, reinforce the need for national government urban policies, urban development strategies and programmes/projects to focus on the social and economic inclusion of the majority and not their potential exclusion. The study recognised that there are likely limitations on widespread relevant institutional capacity building for urban development in the short term (legal, administrative and technical) — as this takes time to develop — but it emphasised that this should be a priority for the future that needs to be commenced now. Given the institutional reality, the study found that — at least in the interim — state action needs to focus on partnerships with communities and civil society organisations (and the private sector where appropriate), in order to maximise impact. Given the contemporary minimal relevant skills base identified in the research, this would require investment in institution building as well as transparent and accountable action based on forms of participatory governance to permit recognition of a wider set of stakeholders engaging with urban land management processes.

Key recommendations

Secure access to, and transferable rights in, urban land is one of the key components for urban development, as is the provision of urban infrastructure. Inadequate urban land management and improvement can create massive inefficiencies for the whole economy (national and urban) and undermine the more equitable distribution of development opportunity. This then reduces the opportunity for

more broad-based economic growth as well as improved living and environmental conditions. The key issues in urban land management are *social inclusion, economic opportunity* and *participation in urban governance.*

Social inclusion needs to be the basis for appropriate urban land strategies and should be based on clear land rights — access to land, secure tenure, avoidance/resolution of conflict, and transparent administration, including transfer rights. To exclude part of the population systematically from land rights — whether based on legal and/or technical grounds or due to limited institutional capacity — essentially undermines governance and the role of the state. The need for land — as for services — leads urban populations to resolve this 'informally' where 'formal' systems cannot. To consider informal solutions as being illegal means putting the majority outside the law and in effect undermines the law. Many informal systems, while inadequate in various ways, are more legitimate and more functional than formal systems — especially when these formal systems have been inherited from another period or imported from another context.

Urban land is also an essential source of livelihood — but it can also be a source of wealth creation, and this represents an *economic opportunity*. The balance, at times delicate, between these two factors needs to be understood, and the function of land both as a survival mechanism and as a creator of wealth needs attention. Urban land as such plays an extremely important role in poverty reduction and economic development — directly and indirectly.

Thus, mechanisms to move incrementally from informal, unregulated systems, towards formal, regulated systems are essential — and this entails *intermediate forms of land rights*. There have been an increasing number of forms of intermediate land rights developed in various developing countries, including some in the Sub-Saharan African region, underpinned by innovative approaches to land law and urban land regulations/mechanisms (Payne, 2002; Durand-Lasserve & Royston, 2002). These intermediate forms of land rights permit social and legal inclusion, and as such are a strong element in promoting *participation in urban governance*.

However, adequate institutional structures need to be created to permit these to operate in as decentralised a form as possible, as this reduces the high costs of centralised or privatised systems of land management and can improve responsiveness. Such publicly accountable institutions should operate also at local, provincial and national government level, where they can provide essential inputs to refining national urban land policies and city-wide urban development strategies, as well as specific projects and programmes. They should comprise the main actors in each situation, and should invest in civil society organisational capacity.

Land is so important for all urban dwellers, in different social and economic situations, that it has an equally important political role. However, attitudes to

land are deeply rooted in cultural values. Hence strategies and mechanisms for urban land management need to be sensitive to the political, cultural, social and economic context for which they are directed. This changes from country to country, from one urban area to another, and even within one urban area. Urban land management is complex and thus there is no single simple approach. Simplistic solutions end up being more costly in all ways. The best approaches are based on a clear understanding of the diversity of land interests and the different contexts, and are based above all on open participation in developing the appropriate management mechanisms for these. This can of course draw on international experience, but it can also draw on national experience, such as 'learning by doing' through pilot projects.

In passing new legislation, the research has emphasised that the Angolan government needs to realise that the new land law and its regulations are only part of the answer. It is equally important to create institutional capacity and change the way in which people think and act on urban land. There is no point having new laws just for these to be ignored or applied for a minority. More comprehensive land policy approaches, however, cannot be a task of the state alone but must engage the private sector, NGOs and communities. The approach to developing appropriate urban land management thus needs to evolve and to draw on actual experience, and not only be based on legal and administrative definition or importation of international experience.

Distinctive Angolan approaches can use research and open discussion with wide stakeholder groups and 'learning from doing', as suggested above. For many, the so-called anarchic situation in Angola's urban areas concerning land development is only seen as a *problem*. However, it also represents a unique *opportunity* to develop new approaches to urban land management that are based on Angola's reality, to engage the potential of Angola's urban citizens, and to contribute positively to Angola's development. There will be different solutions/mechanisms for different situations and different objectives. However, these must be as simple and as transparent as possible and devolved to the level where decision making has the most effect. It is essential to avoid creating new bases for social conflict, which can rapidly emerge in situations such as peri-urban Angola.

The outcomes to date

During the research period, the Ministry of Agriculture was tasked to organise a series of public discussions at provincial level; these tended, however, to be focused on top-down information provision. The NGO community, in response, created a 'Land Network' (*Rede Terra*) and started a wide advocacy and public information programme. While the main focus of *Rede Terra* was rural land,

Development Workshop led an advocacy process on urban land. While the Land Law draft was being discussed, the draft Physical Planning Law was published, with no formal process for consultation, and a new Ministry for Urbanism and the Environment was also created, which took over the land law political process from the Ministry of Agriculture. DW developed its advocacy work using the concurrently developing knowledge base, through participatory seminars, Rede Terra publications, briefings directly at ministerial level and international agencies.

After the formal consultation process ended, a new draft of Land Law was prepared by the Presidential Working Group and submitted to the Council of Ministers who subsequently approved it and sent it on to parliament. This amended draft took on board some of the amendments based on the public consultation but by no means all. About the same time as this went into the parliamentary schedule for debate, the Physical Planning Law was passed without significant debate. The NGO community continued advocacy on land law on behalf of civil society through ministerial meetings, a high-level participatory seminar and direct parliamentary lobby up to the period the amended version of the law went to debate.

Despite considerable debate taking place on issues that had been lobbied for, the dominant party in government, the MPLA (*Movimento Popular de Libertação Nacional*), applied a 'whip' in voting on this, and, while the main opposition abstained, it was passed as presented. While the final Land Law incorporates some aspects of NGO and civil society advocacy, many of the issues raised have in fact been deferred to the Land Law regulations. These, however, are being prepared by a fast-track process, in conjunction with regulations for Physical Planning Law, through a process that has minimal public consultation.

Public consultation on the land law was the first ever for the Angolan government before or after independence and, as such, needs to be seen as a major progressive step to be encouraged and repeated, learning from the process thus far. An important factor in the advocacy process is that the NGO lobby was generally *proactive*; that is, critical of government proposals in positive ways, with recommendations for alternatives. However, it was effectively an 'elite' lobby aimed, to date, at policy-makers. In this, the process used was effective at reaching a considerable number of parliamentarians, mostly members of the MPLA, who raised key issues in debate, as other opposition parties were generally negative to the proposal as being from the government, and not on the grounds of substance. In the event, therefore, party politics dominated the decision process in favour of the dominant governing group.

The approval of the Land Law, and imminent approval of the regulations for

this and the Physical Planning Law, has led to the opportunity for a new phase of advocacy that has two possible fronts. One is to widen the political debate on key issues — such as the right to regularisation of land occupied in good faith and the related possibility of progressive 'intermediate' land rights and associated decentralised management — through a focus on local government and civil society, where the need and demand for this is most felt. The other is to build on new opportunities for partnerships between the government and NGOs to provide input to regulations of the law (and eventually legal revisions of this), to assist with much-needed institutional capacity building through training programmes, and to provide input to actual practice through pilot projects.

The NGO sector — although stronger than the government in many ways, such as in technical skills, and with a longer 'institutional memory' (due to high staff turnover in government) — is still limited in capacity, and thus to take both these opportunities forward is a major challenge. This would also entail widening the 'technical focus' of activities in informal settlements to include land use planning, as, according to the new Physical Planning and Land Law, any recognition of informal settlement land rights will now be subject to urban 'plans'. To this end, DW, CEHS and other partners, including government and parastatal institutions, have been working on a new research project to focus on ways in which 'participatory planning' can be implemented to further widen participation of local government and civil society.

Conclusions

The Angolan experience shows how research can be used in various ways to underpin policy development. Research can be used by other participants, especially where government attitudes are less progressive, as is often the case with informal settlements. However, it also stresses the need for a clear analysis of the 'realpolitik' and contextual analysis. There is no 'quick fix', especially by importing 'consultants' and 'best practices' from other contexts — although much can be learnt from these if critically analysed *vis-à-vis* their contexts. The most relevant research is that which is grounded in, and not disassociated from, the realpolitik and institutional capacities of the context. Not all research aspires — and can, or should aspire — to be action research, and action research should not be an excuse for any less rigour in investigation. Action research also needs to be flexible and adaptable, something not easily achieved in an academic or consultancy environment where products are the measure of success, not processes. This highlights the importance of the social function of knowledge and knowledge development.

Much of the possibility for research institutions, non-governmental

organisations and civil society to influence policy making depends on the nature of governance structures. Where these are relatively closed, the mechanisms for policy involvement by wider stakeholders will be limited until space for negotiation is opened up, possibly in a more confrontational way — as may well become the case in Angola in the follow-up phase of advocacy. This was certainly the process on rural land issues in Mozambique. Where structured mechanisms for wider policy input to government policy formation exist — such as consultation and commissioned research — these can be an important mechanism for widening the stakeholder groups involved, although this is not often the case as it will depend on the definition of the terms of reference and agenda. The effect of different political regimes in defining the parameters for relationships between the state and civil society actors in policy formulation has been investigated more generally for South Africa and Mozambique in Jenkins (2002) and Jenkins, Smith and Kirk (2004).

Policy formulation is not a short-term process — it is inevitably longer term and often depends on changes in socio-cultural attitudes as much as politics and economics. As such, institutions that want to influence policy change need to commit themselves to longer-term engagement and accept that different options for influence exist in different, and changing, contexts. This form of flexible adaptation to the changing context is difficult for funding organisations (especially international agencies) to permit, and DFID has been exemplary in this case.

Another key issue is that researchers cannot consider themselves 'neutral' in policy research, although they should strive for objectivity in the methods they use. The definition of research agendas inevitably establishes the parameters for the nature of the findings, so engagement in definition of these agendas is of great importance. Researchers thus also need to be clear what their motivation is and make this clear for ethical reasons. They also need to be prepared to be flexible to achieve major objectives through the various options for investigation open to them, whether funded by government or independently resourced.

In conclusion, informal settlements in situations such as Angola will remain a dominant feature of urban areas for a considerable time to come, and the recognition of this and the development of more appropriate responses have been the focus of the action research described above. Either to ignore this reality, through for instance a strong focus on formality in planning and land use legislation, or to attempt to eradicate informal settlements through forms of induced relocation, is highly unlikely to succeed. However, strong modernising trends within governments often override such conceptual approaches, as does the realpolitik of land use control, especially concerning appropriation of value added to land in urban areas.

Action research as a means to influence policy making and better practice is not an isolated act but needs a longer-term perspective, and it also needs to be integrated into other forms of action, such as institutional capacity building and 'learning by doing'. In low-resource contexts such as peri-urban areas of Angola, there is a potentially strong role for research institutions to engage proactively in various ways within this context. To what extent this can change the attitudes to the 'infernal' perception of informal settlements will take time to assess properly, and it is their continuing 'eternal' nature that may in the end play an important role in this process, with adequate continuing inputs.

More important, how we approach informality as a general concept needs to be challenged. If — at least in Sub-Saharan Africa — we face a massive phase of rapid urbanisation (as all predictions indicate), it is unlikely that governments can control or adequately service this. Hence, to consider large proportions of the urban population as 'informal' is detrimental to more inclusive approaches to urban development. As noted in the introductory section, the key issue is not how to 'formalise' the informal, but how to use broader urban development pressures to promote social and economic inclusion instead of exclusion, with appropriation of the main benefits of urban residence by elites. Informal settlements can only be 'infernal' or 'eternal' if we conceptualise them in this way.

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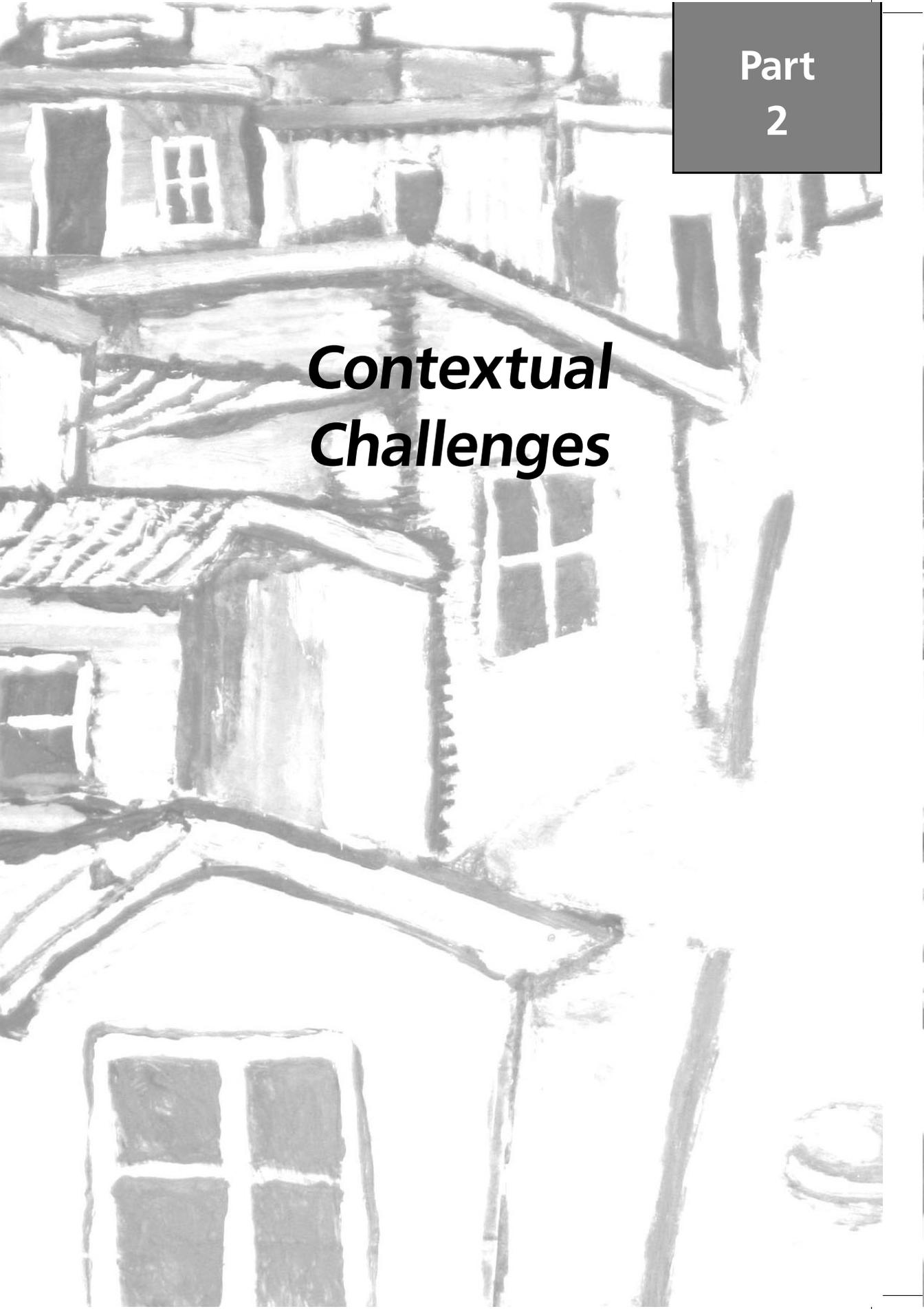
Contextual Challenges

Understanding the complexities of informal settlements: Insights from Cape Town

Warren Smit

Introduction

Informal settlements vary greatly in their size and location, the way that they are formed and the reasons why people live in them. Upgrading interventions need to take this into account. This chapter discusses some of the lessons that the housing NGO Development Action Group (DAG) has learned over the years with regard to the complexities of informal settlements, having worked with them since 1986.

The sustainable livelihoods framework is used in the chapter as a way of understanding informal settlements. The chapter focuses on a number of key issues. The first key issue highlighted is that of the physical form of informal settlements — the physical layout of settlements and the design of informal dwellings can vary greatly, and they are often closely linked to social networks and the requirements of livelihoods. The second key issue is that of poverty and vulnerability. Incomes of households in informal settlements are generally low, and there are significant proportions of very vulnerable households. There is often a large degree of social differentiation between the better-off households and poor or vulnerable households in informal settlements. Informal settlement communities often have complex social problems and internal community conflicts. Many households in informal settlements also have to be seen, within the context of urban-rural linkages, as small components of extended families that have both a rural home and one or more urban homes. The final key issue addressed in this chapter is that of the ineligibility of many households in informal settlements for state assistance such as housing subsidies.

The complexity and diversity of informal settlements have important implications for policy. First, the participation of residents in decision making about proposed development interventions is essential. Second, there needs to be an

integrated approach to informal settlement upgrading that focuses on using the provision of housing and infrastructure to contribute towards poverty alleviation and reduction. Third, regulations and procedures for tenure, land use and construction need to be flexible and appropriate.

The sustainable livelihoods approach and informal settlements

The sustainable livelihoods approach, which dates back to the work of Robert Chambers in the 1980s and 1990s, is a way of thinking holistically about poverty and development (see for example Chambers, 1995). A livelihood comprises

> the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from shocks and stresses and maintain and enhance its capabilities and assets both now and in the future, whilst not undermining the natural resource base. (Carney, Drinkwater & Rusinow et al., 1994: 4)

The formation and continuing existence of informal settlements needs to be understood as being part of poor households' livelihood strategies aimed at accessing income, increasing well-being, reducing vulnerability and improving food security. Essential elements within a poor household's livelihood strategy can include access to land for shelter, access to income-generating opportunities and access to social networks, and informal settlements are a way for poorly resourced people to attempt to access these assets. Poor households often have multiple livelihood strategies, for example a range of formal and informal activities or both an urban and a rural base, and this diversity and complexity of livelihood strategies has contributed to the diversity and complexity of informal settlements. Some of the ways in which the establishment and development of informal settlements are related to livelihood strategies, for example in terms of location, spatial layout and urban-rural linkages, are explored through the examples discussed below.

Overview of six informal settlements with whom DAG has worked

The estimated number of shacks in informal settlements in Cape Town increased from 24 000 in 1993 to 68 000 in 1998, and to an estimated 100 000 in 2003, an increase of more than 300% over the 10-year period (Abbott & Douglas, 1999; WCHC/DAG, 2003). This paper is based on DAG's experience with six informal

settlements in the Cape Town area that represent a wide range of types. These six informal settlements are described below.

Marconi Beam

In 1990, a group of households occupied part of a well-located vacant piece of land in Milnerton owned by Telkom. The area was declared a temporary 'transit' area in 1990, and, after years of negotiation, the Joe Slovo Park housing project with 936 houses was developed adjacent to the informal settlement area. DAG was involved in assisting the community from 1990 until the completion of the housing project in 1998.

Imizamo Yethu

In the early 1990s, the residents of a number of informal settlements in the Hout Bay area were relocated to the serviced-site settlement of Imizamo Yethu. DAG had been involved in assisting these communities since the 1980s. The two Imizamo Yethu informal settlements, the Shooting Range (located on the slopes above Imizamo Yethu on a site that had been used as a shooting range) and the Circle (located by the traffic circle at the entrance to Imizamo Yethu), are spillovers from the serviced-site area of Imizamo Yethu. In 2003, DAG undertook a survey of all 3 819 households in the Imizamo Yethu area for the City of Cape Town. This information is being used to plan for the proposed development of new housing in the area. At the time of the survey, there were 1 892 households (3 886 people) in the Shooting Range and 610 households (1 265 people) in the Circle.

Freedom Park

On Freedom Day (27 April) 1998, a group of households occupied a vacant school site in Tafelsig, Mitchells Plain. The Legal Resources Centre (LRC) assisted the community in its struggle against eviction by the City of Cape Town. DAG became involved in assisting the community in 2000. The City eventually agreed to develop the area, and the housing project will commence in 2006. About 300 households currently live in the settlement.

Morkel Cottage

This is an informal settlement that developed on a farm on the urban periphery (Strand-Somerset West) with permission from the owner. DAG became involved in assisting the community in 2000. When the survey was conducted in 2002, there were 83 households in the settlement.

Mocke Road

This is a very small informal settlement that gradually developed on vacant land owned by the South African Railway Commuter Corporation in Diep River. In 2001, DAG assisted the LRC with a socio-economic survey, which was used successfully to oppose the forced removal of the residents. At the time of the survey, there were 14 households (32 people).

Kayamandi Zone F

This informal settlement developed when a vacant piece of land in Kayamandi, Stellenbosch, was occupied by people (mainly in 2001) with no alternative accommodation. The residents were mainly people evicted from backyard shacks or
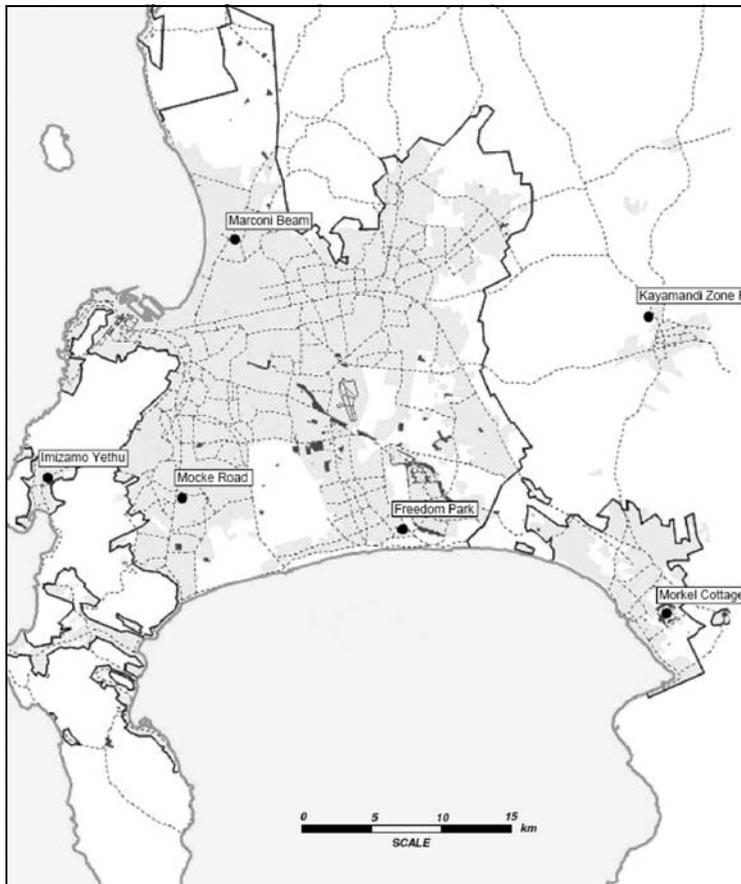
**Figure 6.1: Location of six informal settlements in CapeTown
with whom DAG has worked**

Source: DAG, base map by Nick Graham.

who came from overcrowded hostel accommodation. In 2002, DAG assisted the LRC with a socio-economic survey which was successfully used for negotiation with the municipality. At the time of the survey, approximately 180 households lived in the Kayamandi Zone F informal settlement (about 520 people).

These informal settlements vary greatly in size, from over 5 000 residents in the Imizamo Yethu informal settlements to less than 40 residents in Mocke Road. The settlements have a range of locations, from inner urban sites to sites on the urban periphery, each with its own locational advantages (and disadvantages). Only the Marconi Beam and Mocke Road settlements are well-located in the conventional sense of the term, in inner urban areas close to employment opportunities and facilities. Imizamo Yethu, Freedom Park, Morkel Cottage and Kayamandi Zone F are all in fairly peripheral areas. Imizamo Yethu and Morkel Cottage are near fast-growing higher income areas, where there are job opportunities available. Freedom Park and Kayamandi Zone F are adjacent to already established low-income areas where the residents of these informal settlements previously used to live. Mocke Road and Freedom Park are illustrative of the link between location and livelihoods. The majority of people in the Mocke Road settlement earn an income either through paid domestic work or through the door-to-door collection of scrap metal. The location of the informal settlement, which is surrounded on all sides by middle-income suburbs and industrial areas, facilitates these income-generating activities. Freedom Park, on the other hand, is located on the urban edge, next to a nature reserve. Some residents gather wood fuel there and sometimes collect plants to sell. Freedom Park is also close to a major road (Baden-Powell Drive) where people get picked up for casual work (such as on building sites) and is close to the Kapteinsklip station, where some residents earn some money through collection of empty bottles on trains.

Many residents of informal settlements work near where they live and walk to work, and make use of nearby facilities. Many school children who live in informal settlements go to school nearby and can walk to school. As an example, the children in the Mocke Road settlement attend three schools in the surrounding middle-income suburbs: St. Anthony's Roman Catholic School in Heathfield, which is within 1 km of the settlement, Thomas Wildschutt Primary School in Retreat, which is 1.5 km away, and Sibelius High School in Retreat, which is 2.5 km away. In addition, a number of residents with medical problems receive health care from facilities in surrounding areas, for example, a clinic in Plumstead and a day hospital in Retreat. Shopping facilities are also relatively close — the nearest superette is about 1 km away from the site in Heathfield, and the Meadowridge shopping centre is 2 km away. All the residents regularly attend churches in the

surrounding areas, especially the Assembly of God Church in Heathfield and the New Apostolic Church in Retreat.

On the other hand, however, some residents of informal settlements commute long distances to work. For example, 16% of employed people in the Kayamandi Zone F informal settlement commuted from Stellenbosch to Cape Town by train (DAG, 2002b); the train journey from Stellenbosch to Cape Town typically takes 75 minutes.

Most of the informal settlements are well established. For example, in Mocke Road, the average number of years each household had been living there is 15 years, and 58% of households in Morkel Cottage had lived there for five years or more (DAG, 2001a; 2001b). Among the many reasons why people move to informal settlements, there are two main factors:

■ *Push factors*: In these cases, people previously lived in overcrowded or unafford‐ able accommodation, and wanted to move out (or were forced to move out) and had nowhere else to go. All the households in Kayamandi Zone F moved there because of push factors (DAG, 2002b).
■ *Pull factors*: These are cases where people moved because they were looking for work and wanted to be close to work opportunities. Seventy-five per cent of households in Imizamo Yethu moved there because of pull factors (DAG, 2003).

The former type of movement into informal settlements is usually intra‐urban movement, whereas the latter is most often rural-urban movement (but can also be intra‐urban movement). There is also some international migration, generally via other forms of accommodation, to informal settlements. In Imizamo Yethu, for example, 5% of residents are immigrants, mainly from Angola and Mozambique (DAG, 2003).

Kayamandi Zone F is an interesting case study of push factors in the formation of an informal settlement (see table 6.1). The vast majority of households in the settlement (93%) originated in the Eastern Cape (in terms of birthplace of the head of household), but all households had lived in the Stellenbosch area for a number of years, mainly in backyard shacks in Kayamandi or in the Kayamandi hostels. The main reasons for leaving their previous place of residence in Kayamandi were overcrowding (and the associated lack of space and privacy), being evicted by the house owners, and being unable to afford high rents for the backyard shacks or rooms. Reasons for eviction included situations where the owner household evicted people from their backyard because they wanted to extend their house or because they wanted the space for their own family members. Many of the residents experienced severe overcrowding in their previous places of residence.

For example, there were cases of three families (20 people) having to share a single room in a hostel, and two families (10 people) having to live in one backyard shack.

Table 6.1: Reasons for moving to the Kayamandi Zone F informal settlement

Reason for moving	Number of households in sample	Percentage
Overcrowded/lack of space/no privacy	87	59
Evicted	31	20
High rent	14	9
Nowhere else to go/needed shelter	8	5
Conflict/violence	4	3
Death of partner/divorce	2	1
Don't know	2	1
Total	148	100%

Source: DAG, 2002b.

The facets of complexity and diversity in informal settlements

Informal settlements are complex and diverse in a variety of ways, such as their physical form, the nature of poverty, vulnerability and social problems within the settlement, and the rural linkages of residents. An added complication is that many households do not meet the eligibility criteria for conventional housing subsidies. These issues are discussed below.

Physical form of informal settlements

Most informal settlements initially seem haphazardly laid out and composed of a chaotic assortment of dwelling types, but in reality they often have very complex physical forms that are closely aligned to social networks and livelihood activities.

The spatial arrangements in informal settlements can greatly facilitate social support networks. Households that are part of the same social network can build their shacks next to each other and extended families can build larger shacks. Households that operate home-based enterprises, such as spaza shops, are easily able to locate themselves in accessible locations that can attract more customers. There are also often complex patterns of use of the open space — most of the open space in informal settlements is communal space, but there is also sometimes fenced-in 'private' space surrounding dwellings.

Morkel Cottage

Source: DAG

Most dwellings in informal settlements in Cape Town are shacks made of wood or corrugated iron. A distinction can be made in some informal settlements between shacks and prefabricated wooden dwellings, known as bungalows or 'wendy houses', which tend to be occupied by the better-off households in informal settlements. The sizes of dwellings in informal settlements can vary greatly, depending on the number of people in the household, the economic activity undertaken, and whether or not there are tenants. In the Marconi Beam settlement, many shack owners had large shacks with rooms for tenants. Most 'tenants' in the Marconi Beam informal settlement did not pay rent — there was more of a reciprocal relationship in which both landlord and tenant helped each other out. For example, the tenants helped out with domestic chores and childcare or contributed to buying groceries when they were able to. Sometimes employed tenants even supported their unemployed landlords (Yose, 1999). Having tenants is often impossible in new housing projects due to the size of the houses — a study of housing projects in the Western Cape found that about a third of all households' new RDP houses were actually smaller than the informal dwellings they had lived in previously (Thurman, 1999).

The three main problems with living in a shack are inadequate protection against damp, the risk of fire and the risk of theft (as the relatively poor construction of most shacks means that it is difficult to guard against burglary). Poorly constructed shacks with earth floors are strongly associated with dampness (Thomas, 1998).

Although the evidence is contradictory, damp housing can be considered to be a contributory factor to rheumatism, arthritis and respiratory diseases such as pneumonia, bronchitis and upper respiratory infections (Ranson, 1991).

The level of service provision for informal settlements varies, but, at best, there are only a few communal standpipes and a few communal toilets. In Morkel Cottage, the households paid R20 a month to the municipality for the use of communal standpipes. In Mocke Road, there was no water supply — residents obtained water from a neighbouring factory for free. In return, the residents acted as informal security guards for the company. Inadequate water supply and sanitation are strongly linked to a variety of illnesses, especially diarrhoea. Households storing water are 4.6 times more likely to have diarrhoea than those that do not have to store water (Thomas, 1998: 16); diarrhoea was the leading cause of death in most areas of South Africa for children aged 1-5 (Seager, Bourne & Phillips et al., 1998: 175).

In addition, the lack of proper roads and stormwater drainage are a major hazard and inconvenience, as flooding can destroy shelters and damage people's possessions. Lack of access to electricity can result in reliance on energy sources that can be more expensive and be a greater fire risk, such as paraffin and candles.

In 2004, the City of Cape Town began implementing its Emergency Servicing of Informal Settlements programme, to provide temporary or rudimentary services to informal settlements. This includes one toilet for every four or five households, communal standpipes within 200 m of all dwellings and fire hydrants within 150 m of all dwellings. Stabilised earth roads, lined stormwater drainage channels and area lighting will be provided in informal settlements deemed suitable for further upgrading (City of Cape Town, 2004b).

Poverty and vulnerability

Although most households in informal settlements are able to access income-generating opportunities in one form or another, in general, the incomes of households in informal settlements are low. For example, the proportion of households with incomes of R1 500 or less per month ranged from 100% in Mocke Road to 72% in Morkel Cottage (see table 6.2). Average household incomes ranged from R380 per month in Mocke Road to R1 055 per month in Morkel Cottage (DAG, 2001a, 2001b). There is, however, great variation in income levels. For example, in the Kayamandi Zone F informal settlement, although the average household income was R740 per month, household incomes ranged from R0 to R3 000 per month (DAG, 2002b). Significant numbers of households had no regular income at all, and had to rely on handouts from relatives, neighbours and friends. For example, 24% of households in Imizamo Yethu (Shooting Range) had no regular income at all (DAG, 2003).

Table 6.2: Household incomes in selected informal settlements

Informal settlement	Proportion of households with no regular income	Proportion of households with incomes of R800 per month or less	Proportion of households with incomes of R1 500 per month or less	Proportion of households with incomes of R3 500 per month or less
Imizamo Yethu: Shooting Range (2003)	24%	data not available	56%	98%
Imizamo Yethu: Circle (2003)	20%	data not available	60%	98%
Mocke Road (2001)	14%	93%	100%	100%
Freedom Park (2002)	data not available	51%	80%	99%
Morkel Cottage (2001)	data not available	data not available	70%	100%
Kayamandi (2002)	16%	61%	92%	100%

Sources: DAG, 2001a; 2001b; 2002a; 2002b; 2003.

Levels of employment among adults (including formal employment, informal employment and self-employment in informal activities) varied from 56% in Kayamandi Zone F to 72% in Imizamo Yethu (DAG, 2002b; 2003). Employment can vary considerably in terms of stability and income. For example, in Kayamandi the majority of employed people (64%) were formally employed, whereas in Mocke Road 88% of the employed people only had informal or irregular work (DAG, 2002b; 2001a). Employment as domestic workers is particularly important. For example, 68% of the employed women in Imizamo Yethu were domestic workers (DAG, 2003). A significant proportion of employment is self-employment in activities such as spaza shops, shebeens and selling cooked food. In Imizamo Yethu, 6% of employed people were self-employed in activities such as these (DAG, 2003). Some of the informal and irregular work provides extremely low incomes. For example, the people in Mocke Road who earned an income from collecting scrap earned an average of only R200 per month each (DAG, 2001a).

Unemployment among adults (excluding people not looking for work) ranged from 21% in Mocke Road to 40% in Morkel Cottage (DAG, 2001a; 2001b). Unemployment levels at the time of the DAG survey were generally higher than the 2001 Census figure of 26% for unemployment in the Western Cape as a whole (Statistics SA, 2003).

The net result of the great variability of types of employment and income levels, and of the relatively high unemployment levels, is that there is a high level of social differentiation between households. There are large differences between households, from households with no regular income at all (14% of households in Kayamandi Zone F) to households with incomes of more than R3 500 per month (2% of households in Imizamo Yethu) (DAG, 2002b; 2003). Table 6.3 shows the typical characteristics of well-off, better-off, poor and vulnerable households in Freedom Park, as determined by a participatory research exercise. The source of income is the key determinant in the classification of households. Those households with formal employment (and, in some cases, spaza shop and shebeen owners) generally live in bigger, better dwellings and generally have sufficient food to eat, whereas households that only have incomes from informal, irregular income-generating activities, such as scrap collecting, generally live in smaller, less adequate dwellings, cannot afford to use electricity and often do not have sufficient food to eat.

Table 6.3: Classification of Freedom Park households

Category	Well-off	Better-off	Vulnerable	Poor
Typical dwelling	Wendy house (4 rooms)	Wendy house (4 rooms)	Wood/ corrugated iron shack (2 rooms)	Wood/ corrugated iron shack (2 rooms)
Typical household heads	Married couple	Married couple	Single woman	Single woman
Main sources of income	Formal employment or spaza/ shebeen owner, grants	Formal employment, grants	Informal employment, grants	Irregular informal employment, grants
Obtaining food	Able to purchase their own food	Able to purchase their own food	Obtain food from church/ welfare organisation	Obtain food from church/ welfare organisation
Main energy source	Electricity	Electricity	Gas/paraffin	Wood
Usual form of transport	Taxi/ train	Taxi/ train	Walk/ hitchhike	Walk/ hitchhike

Source: DAG, 2004.

Health problems often result in increased vulnerability for many households; for example, in Mocke Road, 29% of households were burdened with severe health problems, mainly tuberculosis and chronic asthma (DAG, 2001a). In Freedom

Park, 64% of households had health problems, mainly diarrhoea (23% of house-holds), intestinal worms (21%) and tuberculosis (14%) (DAG, 2004).

Social problems

Although informal settlement communities can be cohesive and tightly-knit, there are often severe social problems caused by poverty and vulnerability, and by a general sense of social exclusion. Typical social problems include crime, drugs, alcoholism, domestic violence, dependence on welfare, and community conflict. Issues mentioned by households in Freedom Park as being causes of their social vulnerability included low levels of education (mentioned by 21% of households), being single parents (21%), domestic violence (18%) and alcohol and drugs (16%) (DAG, 2004).

A participatory social mapping exercise undertaken in Freedom Park graphi-cally depicted some of the social problems in the area (see figure 6.2). Gang areas and the site where the gangs meet to fight are highlighted on the map. Shebeens are also highlighted, and one of them is also seen as being a place of danger. The informal settlement is shown as being divided into clearly distinguishable 'well-off' and 'vulnerable/poor' sections. 'Rastas' (Rastafarians) and 'alcoholics' are seen as being part of the 'vulnerable/poor' section. The prominence of the soup kitchen and the places where food is donated also highlight the poverty and vulnerability in the community.

Figure 6.2: Hand-drawn social map of Freedom Park, indicating key landmarks and areas of danger

Source: DAG, 2004.

Informal settlements are also often characterised by community schisms. Freedom Park, for example, was divided into two spatially defined factions, each one associated with a specific political party. One of the factions controlled the committee of the residents' association. In Imizamo Yethu and Morkel Cottage there have also been, at various times in their history, rival factions (mainly based on length of time in the area).

Urban-rural linkages

Average household sizes in informal settlements are generally small, typically between two and three persons, for example, 2.1 in Imizamo Yethu, 2.3 in Mocke Road and 2.9 in Kayamandi Zone F (DAG, 2003, 2001a, 2002b). Only in Morkel Cottage was the average household size of 4.3 more or less the same as the average household size of 4.5 for South Africa as a whole (DAG, 2001b; Statistics SA, 2003). It should be noted that, although average household sizes are small, there is a large variation in household sizes. In Kayamandi, for example, the sizes of households ranged from one to eight, with 17% of households being one-person households and 14% of households consisting of five or more people (DAG, 2002b).

The small average household sizes have to be seen within the context of strong urban–rural linkages. Many urban households 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. Although the reasons for continuing urban-rural linkages are complex, they include the potential role a rural home can play as a safety net within the context of a diversified livelihoods strategy. Surveys in South Africa have been unanimous in showing that a large proportion of urban households have strong rural links (both an urban and a rural home, with some family members living at each home), ranging from about 30% of households in Soweto to almost 40% of households in low-income areas in Durban (Gilbert & Crankshaw, 1999; Smit, 1998). The rural linkages of house-holds in informal settlements can be even higher — a survey of three informal settlements in Johannesburg, Cape Town and Durban found that an average of 52% of households had rural homes at which members of the extended family lived (Shisaka, 2004).

The extent of the urban-rural linkages in some informal settlements can be gauged by the fact that, in both Imizamo Yethu and Mocke Road, 43% of children of adult residents lived and attended school outside of Cape Town (DAG, 2003; 2001a). Absent children of Imizamo Yethu households mainly lived and attended school in the Eastern Cape, while absent children of the Mocke Road households mainly lived and attended school in small towns in the Western Cape.

The reasons for children not living in informal settlements include inadequate access to schooling, overcrowding, lack of access to electricity, lack of access to water and sanitation, and safety concerns.

Ineligibility for housing subsidies

A constraint in addressing the needs of households living in informal settlements has been the large proportion of residents of informal settlements who do not qualify for housing subsidies (this constraint is partially addressed by the new informal settlement upgrading policy, where households will not need to qualify individually for housing in order to benefit from the first phases of upgrading).

For example, of the 808 households that moved into the Imizamo Yethu area during 2002 and 2003, 397 (49%) did not qualify for the housing subsidy. The overwhelming majority of households that qualified were single people with dependents (see table 6.4).

The reasons why people did not qualify for housing subsidies included the following:

■ not being a South African citizen or permanent resident (3% of households in Imizamo Yethu),
■ being a single person without dependents,
■ having dependents but being under the age of 21,
■ having owned property or received a housing subsidy before,
■ having an income of above R3 500 per month, and
■ not having an ID book.

This clearly points to the need for more flexible criteria for the targeting of housing assistance to informal settlement residents.

Table 6.4: New households in Imizamo Yethu qualifying for the housing subsidy.

Subsidy category	Number	Percentage
South African citizen with spouse/partner	89	11.0%
Single South African citizen with dependents	316	39.1%
Permanent resident with spouse/partner	2	0.2%
Single permanent resident with dependents	4	0.5%
Households not qualifying for subsidies	397	49.1%
Total	808	100.0%

Source: DAG, 2003.

Implications of complexity and diversity for informal settlement upgrading

The residents of informal settlements are generally long-standing residents of urban areas who have been forced to live in informal settlements due to over-crowding and a lack of appropriate affordable accommodation. Informal settlement communities are complex, and they vary greatly from one settlement to another. Although informal settlement communities can be socially cohesive, and many residents in informal settlements have stable employment, informal settlements often have severe social and economic problems and there are significant numbers of very vulnerable households, with little or no regular income and with child dependants.

People living in informal settlements need access to shelter and services, access to social facilities and access to income-generating opportunities. Informal settlement communities often contain many vulnerable households that depend upon a fragile set of livelihood activities and social networks, and therefore upgrading interventions need to be very sensitive. Understanding the livelihood activities of informal settlement residents is particularly important, so that people's livelihoods can be strengthened wherever possible and the negative impact of upgrading interventions on people's livelihoods can be minimised.

Some of the livelihoods in informal settlements are fairly transitory and can be threatened by formalisation. For example, the formalisation of Marconi Beam resulted in the displacement of the meat traders (selling sheep's heads and offal), who were not able to slaughter animals and cook meat on open fires in terms of the health regulations applied to formal areas (Yose, 1999). Another livelihood threatened by formalisation is that of people who earn an income through illegally connecting people to the electricity supply (this illegal connection fee is often a monthly fee, and non-payment can result in disconnection) and through illegally connected households that rent out space in refrigerators and the use of washing machines to those households in the settlement without electricity. Another livelihood strategy that can be put at risk as a result of informal settlement upgrading is the renting out of rooms within shacks. In Freedom Park, for example, accommodation within the shacks is rented out to lodgers for rents ranging from R100 to R400 per month, depending on the size of the accommodation and the services offered (DAG, 2004). Informal settlement upgrading processes need to take such issues as these into account.

In order to be able to improve people's lives in a meaningful way and be able to cope with the complexities of informality, it is essential that informal settlement upgrading policies and programmes are integrated, participatory and flexible. Three related aspects of informal settlement upgrading are discussed in greater detail below:

■ an integrated approach to informal settlement upgrading,
■ community participation, and
■ flexible regulations.

Freedom Park

Source: DAG

An integrated approach

Housing and infrastructure delivery needs to be regarded as being part of broader integrated development interventions aimed at social and economic development. Urban poverty is complex and multi-dimensional, and 'single sector interventions cannot sustainably improve the shelter conditions of urban poor households' (Majale, 2003: 7). In an integrated approach, it is important that all facets of poverty are addressed through a multi-faceted strategy that includes strengthening social capital (strengthening community institutions and social networks, such as neighbourhood committees, savings groups and income-generating activity groups), strengthening human capital (improved health and education), strengthening financial capital (increasing income and access to credit) and strengthening physical capital (access to infrastructure and shelter). The Integrated Urban Housing Development Project in Kenya and India is an example of ways in which these linkages can work in practice (see figure 6.3).
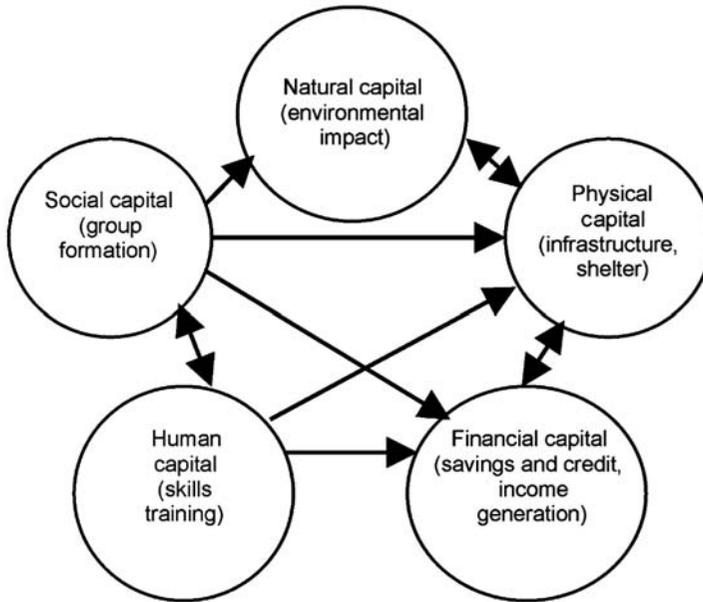
Figure 6.3: An integrated approach to development, based on the Integrated Urban Housing Development Project in Kenya and India

Source: Majale, 2003.

What an integrated approach means in practice is that informal settlement upgrading initiatives need to have a range of complementary programmes that address physical, social and economic development needs. For example, integrated urban upgrading programmes in India have typically included the following interventions (Barrett, 2000; Amis, 2001; Majale, 2003):

■ *physical development*: roads, pavements, stormwater drainage, water supply, sanitation, street lighting, solid waste management,

■ *social/human development*: setting up neighbourhood and women's groups, youth activities, forming savings groups, pre-primary education, adult literacy, community health, mother and child care, and

■ *economic development*: mobilising community savings, supporting income-generating activities through vocational training/skills upgrading and facilitating access of small businesses to finance and trade.

Understanding households' existing livelihoods strategies, through participatory livelihoods assessments, is an important first step towards achieving a more integrated approach to development. In Freedom Park, for example, DAG assisted the community in undertaking a livelihoods assessment in the area, which was then used as a basis for implementing a range of development initiatives in

partnership with other NGOs, for example a community food garden, a recycling project and a proposed community advice office.

Community participation

One of the basic points of departure for South African housing policy is that

> housing policy and strategy must be structured so that South Africa's housing process . . . maximises the involvement of the community and leads to transfer of skills to and empowerment of the community to ensure higher levels of appropriateness and acceptability of such projects as well as the development of skills and capacities within these communities to pursue other development objectives. (Department of Housing, 2000: 11)

Participation is especially important in informal settlement upgrading, where there are already existing communities and where there are significant numbers of vulnerable households whose livelihood strategies may potentially be at risk as a result of interventions. Beneficiary participation needs to occur through a committee elected by beneficiaries, and the committee needs to be accountable to, and regularly report back to, the beneficiaries. There should be direct engagement between the committee and the officials and consultants involved in the upgrading process. It should be noted that some decisions may need the involvement of all beneficiaries, and the participation of vulnerable and marginalised groups needs to be encouraged. Where there is an existing structure representing beneficiaries, that structure could be used as the beneficiary committee as long as it meets certain criteria, for example, the committee is democratically elected, the organisation has a written constitution, minutes of all meetings are kept, and regular general meetings of the members of the organisation are held. If the existing structure does not meet these criteria, support should be provided to assist it to become more democratic and better functioning. If these efforts are unsuccessful, the formation of a democratically elected beneficiary committee should be facilitated.

It is important to get the input of stakeholders from the broader community, as housing projects can have a major impact on surrounding areas. Stakeholders from surrounding areas should not have the right to participate directly in decision making around informal settlement upgrading (as they can derail the process), but they should be regularly informed about the process and be able to make inputs and have their views considered.

A precondition for successful participation is capacity building of committee and forum members and of local government officials who will be involved with the community. An example of a training programme for building the capacity of committee members is the Leadership Programme that DAG has developed.

The 11 one-day modules are leadership, the leader as a change agent, gender, conflict management in communities, organisational structure, communication and leadership, planning and leadership, meeting procedures, advocacy and lobbying, resource mobilisation, and financial management.

NGOs have an important role to play in building the capacity of communities to participate in the development process, and providing ongoing advice and support. In Freedom Park, for example, DAG assisted in building the capacity of the community through training courses and workshops, and assisted the community to participate in the selection of consultants for the proposed upgrading project, in the layout design process, in selecting house design options and in the selection of a housing delivery model. At every step of the process, the space for community participation had to be fought for, as there was often resistance by officials to community involvement in what were perceived as being 'technical' issues. The participation of the Freedom Park community in the layout design was particularly important — the layout plan went through seven different drafts before a layout plan that satisfied the needs of the community (for example, in terms of creating densible spaces) was achieved (see figure 6.4).

Figure 6.4: Existing structures and proposed layout in Freedom Park

Source: MCA Urban and Environmental Planning.

Flexible regulations

Informal settlement upgrading can only be successful if regulations and proce-dures relating to land tenure, land use and building standards are flexible and appropriate for the needs of residents. Formal processes cannot be blindly imposed on complex existing informal processes, as they can be an obstacle to real improvement in people's lives. Appropriate regulations and procedures that take account of existing informal processes (whether for land tenure, land use or building) and allow for some flexibility and for some degree of 'less formality' need to be developed. One interesting attempt at this is the 'incremental housing zone' in the proposed City of Cape Town Zoning Scheme, which will facilitate formal development processes while also legally accommodating existing infor-mal dwellings and informal economic activities (City of Cape Town, 2004a).

A particularly important precondition for successful large-scale urban upgrad-ing programmes is access to land through flexible land tenure arrangements that help bridge the gap between formal and informal land tenure systems. Suitable land tenure arrangements for informal settlement upgrading can range from a moratorium on relocations and evictions to temporary occupation licences, com-munal or individual leases and community land trusts (UN-Habitat, 2004). In Cambodia, for example, there was a six-month moratorium on relocations and evictions while decisions were made on which informal settlements should be relocated and which should be upgraded; subsequently, for the upgrading of settlements, 12-year leases of the entire informal settlement area by the state to a community trust and 10-year sub-leases by the community trust to individual households were introduced. At the end of the lease period, there is the option of extending the lease, upgrading to a more long-term tenure system, or termi-nating the lease with market-related compensation for improvements. This was considered adequate to encourage those with funds or access to credit to invest in home improvements without resulting in excessive increases in property prices and the displacement of the poor (Payne, 2003).

Conclusion

Informal settlement communities are complex and diverse entities. A one-size-fits-all approach to informal settlement upgrading, which ignores the differences between and within informal settlements, is not going to be successful — the complexities of individual informal settlements needs to be understood before development interventions are made.

Two key dimensions of the complexity and diversity of informal settlements are the high levels of poverty and vulnerability in informal settlement

communities and the existence of complex informal processes. Upgrading programmes therefore need to have an integrated approach that includes economic, social and human development interventions, and informal settlements must not be treated as if they are a blank slate — existing informal processes within informal settlement communities need to be recognised and built upon. An understanding of livelihoods strategies is particularly important as a basis for designing development interventions.

What is most important is that residents of informal settlement communities need to play a meaningful role in decision-making processes that are going to affect their lives. Ultimately, upgrading informal settlements should not simply be about the eradication of shacks, but should be about understanding people's existing circumstances and contributing towards improving people's lives in a meaningful way.

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seven

Clash of civilisations: Reflections on the problems of upgrading informal settlements — experiences in Ethiopia, Kenya, Swaziland and Zambia

Richard Martin and Ashna Mathema

Introduction

Informal settlements are easy targets for politicians. They represent a threat to the good order of urban development, and their appearance may be seen as testament to a failure by government to fulfil its role in providing housing and in preventing urban blight. Residents of upper-income areas and those living in nearby areas are likely to be especially vociferous in their objections, and even residents of conventional low-income housing may resent the intrusion. For the occupants, they are unserviced or under-serviced; to other citizens they represent a threat in terms of disorder and competition for resources. There is thus, for a variety of reasons, a drive to eliminate the 'problem' through upgrading programmes.

Although these programmes are typically designed as infrastructure projects, wider issues are involved. The most important of these is the way in which upgrading impacts on the lives and environments of the residents of informal settlements. This chapter examines that interface. In order to do so, we look at the way society organises itself in the construction of informal settlements, and the contrast between that organisational model and the model used by government and the formal sector.

Because of these differences, when upgrading is undertaken, there are clashes in terms of objectives, modalities and values. We call these clashes, borrowing the title of Huntington's book, a 'clash of civilisations' (Huntington, 1996). While the

book's focus is on civilisations as manifested in international relations, there is value in transferring the concept to the local level.

We use this label in the context of our experiences of working with the residents of informal settlements and observing their responses to the imposition of the systems that upgrading usually imposes. It is quite possible that the specific examples, mainly in Africa, are not transferable — we therefore make no claim that the findings of our work are applicable to other regions and continents. In other words, though we may be tempted to make generalisations from the findings presented in this chapter, they are based on specific cases and we generalise at our peril.

Informal settlements as systems

The terms 'unplanned urban settlement' and 'informal settlement' both imply a lack of organisation and control. There is considerable evidence, however, to show that systematic controls are very often exercised by the community, even though they may not be evident in the built form of the settlement.

There are three main models for settlement formation and growth, which are influenced by the origin of the occupants, their economic status and their urbanisation history. The first, and most common, is the 'accretion' model. This typically takes place with the unauthorised occupation of a piece of land by a small number of people. These people stake a moral claim on their immediate environment and exercise control over the subsequent development of the settlement. In this model, control may take two forms — the traditional exercise of leadership by the elders, as in the rural areas, which gives consent, mostly 'verbal,' to applicants to occupy the space of their choice (while exercising some constraint on land use), and the modern control of assets in a systematic way, which allocates a standard plot with a 'title', usually for a fee.

The former example is well illustrated in Swaziland, where traditional leaders have controlled the occupation of land, whether in the rural or urban areas. Chiefs are very highly revered by their communities, and they decide who lives in the settlement, when, where, and for what purpose. Even though this system is breaking down in the face of very high pressure in urban areas, there are still settlements within each of the country's 11 cities and towns where this model remains the norm.

Similarly, in Nairobi's squatter settlements, the village 'elders' — usually selected from among the earliest occupiers of the land — grant permission for the occupation or transfer of land, with the tacit approval of the formally

appointed chief. There is usually a 'fee' associated with the granting of use rights, even though the land belongs to someone else and there is no legal agreement.

The second model, the land invasion model, is one that has been used in many different contexts. In the examples with which we are familiar, the action originates with representatives of landless people establishing a committee that then acts as a developer — identifying land and demarcating roads and plots for settlement.

One of the well-documented instances of this was in George compound in Lusaka, Zambia, where an accretive settlement needed space to expand. In this instance, the leadership annexed some nearby land and allocated plots using a standard grid layout. The interesting aspect of this was that the settlement was led by the ruling political party who, defying government prohibitions, created and expanded unauthorised settlements.

Another interesting case is made by the 'illegal' settlements in Addis Ababa, Ethiopia (see box 1). In the face of land shortage, artificially induced by restrictive government regulations and a dysfunctional housing market, people are finding their own solutions. Landless households — in groups ranging from 20 to 200 — are increasingly organising into housing 'cooperatives' (without any legal recognition), buying 'use rights' of land from farmers on the periphery of the city (which was formerly farmland), developing plans, allocating plots for house construction, and even acquiring infrastructure services (water, electricity, telephone connections) offered by the parastatal agencies. As shown in box 1, the skill and organisation of these efforts is impressive.

The third model is where owners of title to the land develop it in a (technically) unauthorised way. In so doing they are also acting as developers, either by selling land for development, building housing for sale, or building housing for rent. This could be labelled the capitalist mode of development, in which the motivation is income generation by the owners. In addition to home-based businesses (bars, restaurants, shops) and construction of new structures for expanding households (married children), there are many examples of this type of development.

In Nairobi, a common practice is selling land (with only informal land rights) for development, or building housing ('rooms') for rent. The centralised economy of Kenya has resulted in a high demand for affordable housing that is close to jobs. Limited supply of formal sector housing for low-income families has made the rental business extremely lucrative in informal settlements. And, although severely under-serviced and overcrowded, it works for lack of a better solution — as a low-risk/high-return investment and regular source of income (particularly in the face of high unemployment) for landlords, and a cheap housing solution for tenants (see box 2).

Box 1:   Illegal settlement in Addis Ababa

Developed by unlicensed 'housing co-operatives' on 'illegally' purchased land, such settlements are on the rise in Addis' peripheries. The developers have planned the layout in accordance with the building standards of the city — for example, the plot size is exactly equal to the minimum prescribed size — in the hope that one day they will get legalised.

Source: Field research, July 2004.

Box 2: 'Informal' rental housing in Nairobi

Most 'informal' settlements in Nairobi, particularly those with some notion of legal tenure, have a very strong rental housing market. Monthly rent for these rooms (typically 3 m by 3.5 m) varies from Ksh 400–800 (US $6–11) for a temporary mud structure to Ksh 1 500–2 000 (US $20–29) for a permanent structure. Toilets are usually shared, with anywhere between 15 and 40 households sharing one latrine. Electricity and water cost extra, if available.

Owners of contiguous plots sometimes form associations: We saw an example of a landholding of seven absentee landlords, who had collaboratively built some 150 one-room units on a half-acre plot.

Source: Field research, February 2005.

Another interesting example of this model is the *kebele* housing in Ethiopia. The difference, however, is that the owner of the land and the housing in this case is the government, and the living conditions are bad. In Addis, *kebele* housing comprises nearly half of the 'informal' housing stock, and a third of the city's total 'legal' housing stock. Box 3 illustrates *kebele* housing and the creative ability of people to meet their housing/spatial needs despite restrictive regulations.

Box 3: 'Legal' kebele houses in Addis
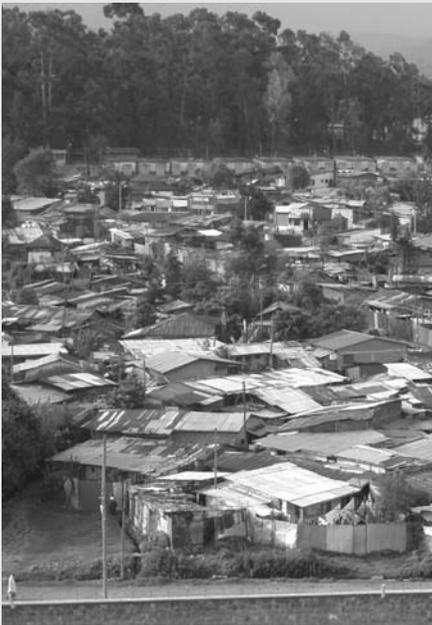
A *kebele* is a single room, typically 3-4 metres wide and 4-5 metres long, accommodating between five and 10 people. The large majority of houses are of traditional *chika* construction (mud and wood or straw). Toilets in these settlements are shared or public facilities, if available at all. Drainage and garbage disposal is non-existent. Some settlements have benefited from NGO programmes that have installed communal water points.

▶

Despite the fact that the government has been unable to manage the upkeep of these rental units, the *kebele* councils do not permit occupants (tenants) to make major renovations to the houses. Many families have circumvented this restriction by building mezzanines/lofts, about a metre in height, *within* their single-storey structures and are visible from the outside, to meet the additional need for sleeping space (see below).

Source: Field research, July 2004.

There is no space here to illustrate other models, but the premise of this chapter is that, in general, informal settlements are not the spontaneous occupation of land by the landless, but organised and deliberate acts exercised within the constraints of a specific interest group. In other words, settlement is undertaken within a system that has been established by the occupants of the land, usually through their leadership.

Social capital in informal settlements

Social capital represents the values that link a community. *Bowling Alone* (Putnam, 2000) describes the importance and scope of social capital in a very interesting and

relevant way. These values are used in the exercise of support and control of the community's members. A society with much social capital is one which that values, and uses them positively. A society without social capital is one in which anarchy prevails, and in which individuals pay no respect to any persons who might try to control their behaviour.

Perlman (2003) has shown with devastating effect how the social capital of the *favelas* in Rio de Janeiro has been weakened by the dominance of gangs who answer to no one, whose values and loyalties are to the gang alone, and whose motivation is related only to defending the interests of their gang against those of competing gangs. This will strike a chord in South Africa where the gangs of the Cape Flats, for example, have destroyed the social values of whole communities.

However, although there are negative examples, we should point out that the process by which informal settlements are formed (the systems described above) predisposes people to relationships that foster social capital. In other words, the relationship between land user and land controller is a personal one, a relationship strengthened by the common bond of acting in defiance of conventional author-ity. In Ethiopia, for example, households in squatter settlements will often get together and communally build a religious structure — a church or a mosque — to legitimise their occupation of the land, so to say, and protect them from potential demolition.

This is not to say that exploitation cannot occur within a settlement, or that there will not be change as the original occupants are displaced either by selling or sub-letting their interests. Indeed, over time, and especially in locations that attract tenants, social capital will be reduced unless the settlement is under threat. This is illustrated in box 4 with an example from Nairobi.

Box 4: Breakdown of social fabric: A case in Nairobi's 'planned' settlements

The case of Dandora, a sites-and-services project in Nairobi, reveals that, despite all the seemingly right steps to establish a planned settlement for low-income families, something failed. Nearly 30 years after its establishment, it is today one of the most crime-ridden areas of the city. The streets are deserted after dark, and there is much theft, frequent muggings and even shootings. Residents blame this partly on the unemployed and 'idle' youth, but more on the breakdown of the social fabric resulting from the large increase of transient/short-term renters who are unknown to the long-term residents. In response, the local community had made several attempts at establishing local vigilante groups, although with little success as the criminals are allegedly operating with the support of the local police (through bribes).

Source: Field research, February 2005.

Achievements through community-based governance in informal settlements

While the act of settlement requires activities outside formal government (control of settlement patterns and land usage by the residents — locally based governance) the need for such measures does not stop at the construction of housing units. It is not difficult to picture the circumstances in which control is necessary: the case where one household, in erecting a fence, appropriates land that its neighbour perceived as belonging to him or her, or where a dwelling is turned into a rowdy bar, or where a person builds a latrine right next to a public well.

It is fairly well established that communities exercise such controls; and although these controls may not necessarily be exercised with scrupulous fairness, the fact that the community has mechanisms to deal with issues of such nature indicates that its internal self-government system is working. How the control is exercised may depend very much on the power relations in the community and between the persons involved.

An example of constructive governance exercised by community leadership is the way in which the leadership educated the residents to deal with their garbage in Lusaka. Unlike the cases where garbage removal has broken down in a conventional urban setting, resulting in mounds of rotting waste, in the informal settlement of Chawama in Lusaka, the residents buried their waste in the pits adjacent to their houses. The pits were originally dug to excavate mud for building. By burying their garbage in pits, the residents ensured that the pits did not become breeding grounds for mosquitoes or flies (examples of this communal self-governance are in Andrew, Christie, and Martin, 1973: 16-24).

There are higher-order examples that illustrate the way that control is exercised. Like a formal developer who specifies the materials and style of housing to be erected on his or her subdivision, the leaders of George Compound in Lusaka, when annexing land for expansion, decreed that all buildings erected on these new plots would have to be built with concrete blocks — not the sun-dried soil blocks hitherto in common use. In addition, the houses were to be built in straight lines, as compared to the typically organic layout used elsewhere in the settlement. Not only were these precepts used, but they were seen as a demonstration of people power which, in a sense, rendered the intervention of the city council unnecessary.

Possibly one of the most difficult fields in which to draw upon social capital is that of money. The opportunities for corruption and mismanagement around community-funded projects are obvious. As a result, people will not willingly contribute to community fund-raising schemes unless they are convinced that the cause is a good one and the organisers are honest. But there are multiple examples of fund-raising to buy land or services in connection with land invasion, as well as funds for social facilities such as schools and clinics (see box 5).

Box 5: Social assistance from the local leadership in Nairobi's informal settlement

Gitare Marigu, an informal settlement in Nairobi, presents an example of community support and communal living. Residents claim that during times of dire need or adverse circumstances, such as the death or serious illness of a household member, they seek the assistance of the leadership in collecting funds from the community members. The interviewees quoted several incidents; a striking example was a situation where the roof of a house collapsed on a young child. The leadership collected funds to pay for the child's serious medical condition in one of the major hospitals of Nairobi, and made a formal request to the authorities to waive the fee. Similarly, the leadership helps rally support from the community members to assist families for funerals, educational scholarships, etc.

Source: Field research, February 2005.

While the achievements of a group are much more significant in the present context than those of the individual, it is nevertheless important to recognise the skill and experience of the unschooled and unrecognised craftsmen living in an informal settlement. A study of the design of houses in George (Martin, 1976) provided us with material for analysis in terms of the efficiency and effectiveness of the people's architecture.

In brief, this demonstrated that the houses erected by squatters in Lusaka were superior to those built by the formal sector, particularly in terms of the following criteria:

■ the closeness of fit between form and function; for example, doorways reflected the size of the family members using them, and bedrooms were exactly the width of a bed,
■ the efficiency with which very limited space was used; for example, storage took place at multiple levels within a room,
■ the ease with which changes could be made when circumstances required them, and
■ the cost and value for money.

A similar efficiency applied to the layout of the settlements. In our studies, it became evident that people were much more efficient in land use without the help of architects and planners like ourselves. They achieved high densities without a sense of overcrowding, by means of simple devices such as overlapping uses and layouts around common areas. These layouts had the advantage of a concept that later received much attention — defensible space — while also recognising the right of householders to have land for their exclusive use. The defensible space would be used for social interactions between the households, an area where children could play in safety, women could chat while doing household chores, and families could relax in the evenings. By permitting multiple uses, the defensible space also enriched itself. For example, the occasional car owner would park the vehicle in front of his house: but the route he used was not sterilised as 'road'. This overlapping of multiple uses has been well exemplified by the Dutch '*wonerf*', which has succeeded in taming road spaces through the use of planting and street furniture, while allowing cars to enter on the terms of pedestrians. Meanwhile, the modestly dimensioned exclusive use areas in the informal settlements would be used for vegetable gardens, toilets and suchlike.

The densities achieved in such areas were substantially higher than those prevailing in conventional housing layouts, which politicians stridently defended as the highest acceptable. But, when left to themselves, the residents took the decision that effective use of limited space was paramount, thereby allowing more people access to the land.

Upgrading perceived as imposition of a new order

We have tried to show how the residents of existing settlements demonstrate, in many cases, competence in organising their activities, in land use, in governance, in planning and in house building. While an evaluation of these skills is essentially subjective, the fact is that they have demonstrated a capacity to solve their problems unaided — indeed, sometimes in the face of opposition and control. From their perspective, therefore, while they are well aware of the limitations of their environment — typically in terms of poor water supply, bad roads and lack of security lighting — they also value what they have and how they have achieved it. Placed in a situation of imminent upgrading by internal or external forces, the people who have established a settlement, designed the layout, designed and built the housing are likely to ask questions.

Who will be in charge?

In a community that has established systems for governance and decision making, the prospect of new leadership structures is not a welcome one. This will be partly in terms of a struggle for control, but also a conflict in terms of how leaders are selected and how they operate. Such contrasts are obvious in societies where traditional values are very strong — Swaziland is an obvious example — but similar situations can arise in the urban areas. For example, incorporation of a settlement into the urban framework can mean its incorporation into the political system, and its political representative (such as a councillor) may not even live within the particular settlement.

How will decisions be made?

Intricately related to the above matter is the issue of which body will, within the framework of upgrading and the future, take responsibility for decisions regarding the settlement. The concern could be expressed thus: Will we continue to make decisions about our own welfare and organisation, or is everything going to be decided in City Hall? Even if upgrading is to be undertaken in consultation with the residents, which leadership structures will be responsible, and how will such decisions be taken?

What rules will apply?

If a settlement is to be upgraded, will it be incorporated into the urban boundaries, and if so will it be subject to the same controls as the rest of the city, for example in terms of planning, building and similar controls?

What will be the impact on our business and lifestyles?

One of the beneficial aspects of informal settlements is that by being outside the controls of the formal system they allow and encourage the emergence of small business. Because the barriers to entry are almost zero, they become an opportunity for training and experimentation in entrepreneurial skills. Will the upgrading bring with it formal controls that may impede the formation of new businesses and affect the management of existing ones? Will businesses that are not a hundred per cent legal, such as shebeens (informal bars, typically within private houses), be permitted to continue?

Another category of economic activity, which is not typically viewed as a business, but which often operates as such, is the letting of accommodation. Will upgrading inhibit landlords' freedom to raise rents, evict tenants, etc? Increased controls over home enterprises and sub-letting would have implications for life style and social relations within the settlement.

What costs will we have to pay?

An obvious point of conflict is the question of cost recovery. Since the Thatcher/Reagan era of market-led governance, the official starting point in many countries is likely to be 'no subsidies: people must pay for what they receive, and all costs must be recovered'. The experience has been that this objective is practically impossible to achieve, and many jurisdictions are honouring the principle in the breach, while others (such as South Africa) use cross-subsidies to finance the utility costs of low-income families.

But, however the official policy is implemented, the residents will almost certainly be expected to pay, and if they do not pay there will be penalties. Whether such penalties are in terms of charging interest on overdue accounts and charging a fee, for example, for re-connection, or simply cutting off the service, such penalties are new and unwelcome. In Swaziland, if a householder in an upgraded settlement does not pay the rates (property taxes), he or she may have his or her property sold to settle the debt.

The question will therefore be: What costs will be imposed, how will they be assessed and collected, and what penalties will be incurred by those who do not pay? Quite often, these implications are not understood at the time, and it is only later that the conflict emerges.

Official motivations for upgrading

Before looking at ways of handling these concerns that might result in conflict, it

is useful to examine why upgrading is undertaken. We may distinguish three quite different motivations.

The political angle

Politicians elected by residents of informal settlements will clearly wish to demonstrate that they have brought development to their areas. Building roads, water systems and street lighting will bring them the recognition needed for re-election.

The social responsibility angle

Some wealthier sections of society feel uncomfortable about the presence of slums and sub-standard living conditions within their city, and will press for these disadvantaged areas to receive at least the minimum standard of service that an urban resident should expect (clearly, the way in which this is defined will be a local issue).

The control angle

The third angle focuses on control. This is control with regard to public health, and it was this motivation that first inspired the slum clearance schemes in Europe in the last century. Control is also considered necessary to prevent illegal occupation of land, use of land for inappropriate purposes (such as moving people away from river banks, areas zoned for industrial development, or areas where soil conditions may be dangerous). Last, control is viewed as a means of preventing eyesores which blot the reputation of the city. A perfect example of this is the Crossroads settlement in Cape Town, which is right next to the road to the city from the airport. The first step in such control is to hide it from view, to be followed by an upgrading package. This will trigger the other controls referred to above in terms of planning and building. The imposition of these controls, it is often claimed, will result in a drop in the crime rate, as informal settlements/slums are the seat of crime. Indeed, we could say that this motivation is specifically designed to address the existence of the 'two nations' phenomenon: one being the formal and the other the informal. The latter is, by its very existence, a threat to the good order and stability of the former.

'Physical' versus 'social' in the design of upgrading programmes

The discussion so far has been based on the premise that informal settlements are not the haphazard, spontaneous, disorganised communities they are often made

out to be. Still, the fact remains that the living conditions in most of these settlements are far from acceptable. Poverty, unemployment, and HIV/Aids are a serious problem, particularly in Africa. These are social and economic problems that bear a direct implication on the design of improvement programmes.

Conventional upgrading projects have thus far focused largely on the physical interventions in informal settlements — housing, roads, water supply, sanitation, street lighting, school and health facilities (physical structures), and so on. Very often, however, these physical solutions fail to address — directly or indirectly — the other pressing social and economic aspects in these settlements that, at the very least, impact on the design (on issues such as affordability and cost recovery) and the sustainability of upgrading efforts. Just as the design of a water supply system does not stop with the laying down of pipes but rather on the actual delivery of water, similarly, the emphasis on social services should be on their delivery, not merely on the physical structure. For example, what good is a youth centre to a community where the majority of the youth is involved in drug and alcohol abuse, unless there is a coordinated programme for rehabilitation and job training?

The assumption is mostly that other agencies are working in these sectors, but that is often not the case. This was indeed revealing from several examples of recent fieldwork in Nairobi: attempting to enrol a 38-year-old alcoholic in a training programme with an NGO that is apparently 'very active in the area', only to be told that their programme does not cover people older than 22 years (which is the age-group most in need of such training and job opportunities); and similarly, discovering that treatment for a simple case of diarrhoea in a local health centre, which has apparently been 'built by a local CBO for the poor people', costs nearly two months of the patient's salary.

It is no wonder that upgrading efforts so commonly result in beneficiaries 'selling out': How will they pay for the house when they do not have a job, for instance, or the potential to get one, or if a family member is HIV-positive and unemployed? We do not claim that an upgrading programme can or should solve all the problems, but greater sensitivity and better linkages to address these very real problems comprehensively — physical, social, and economic — would better serve the purpose of upgrading.

Process: Formation of a representative body

By listing the negatives above, it is not intended to show that upgrading is undesirable, nor that it is impossible to do it successfully. But we are raising warning flags in connection with the system used in implementation.

Probably the most helpful way to look at the problem is from the point of view

of politics. A properly-run political system will distribute resources through a process of negotiation with the interest groups affected.

The approach used in the typical top-down system, whereby once a person has been elected, he or she may exercise mandated power without further reference to the electorate, is not appropriate. It will not work in an upgrading situation because the elected representative will be entirely unable to represent the competing interest groups within the settlement. These interest groups will need to speak through their own structures and through the local-level leadership. They will, very probably, expect to see a new leadership system emerging in order to represent their interests — a leadership that is broader-based than that which had been managing the day-to-day governance of the settlement.

Thus, while the existing leadership structures must be respected for the work that has been done in the past, new structures will be required to coordinate the many interest groups and mediate between their demands.

There will be difficulties, particularly where there are well-defined commercial interests whose beneficiaries will try to demonstrate financial loss if they are adversely affected. For this reason, an essential first stage is to involve all interest groups in such a way that they feel they have the opportunity to have their interests considered on an objective basis. How this is done is crucial. It must, on the one hand, not undermine the existing structures. On the other hand, it must be different from these structures, as upgrading poses totally new and more complex challenges. Who takes the initiative in the formation of such a structure, and how its role and powers are thrashed out, are further subjects for debate and negotiation.

Recognising the existence of interest groups and giving them a hearing is most important; but it is how these interests are reconciled that will determine whether the process succeeds or fails. Box 6 illustrates another case in Nairobi where an upgrading project failed despite best intentions and a sound design. Miscommunication and misunderstanding, sparked primarily by special-interest groups, led to violent protests and vandalism of a newly built healthcare centre, and 10 years after project commencement the work remains incomplete.

Conflict is bound to occur, and it can be bitter, but the adversarial models of community participation in Europe and the US are not of direct value to the situation in the Africa with which we are familiar. One of the strengths of African society is that private interests are willingly subjugated to public interests in the desire to maintain harmony and social capital. In the Lusaka case, the participation and decision-making process was based on the principle of achieving consensus between the interest groups.

Box 6: Conflict in an upgrading project: Nairobi

The Mathare 4A Development Programme was initiated by the KfW (German Development Bank), and supported by the Catholic Church. The project was essentially an upgrading effort to improve the water supply, sanitation, drainage and roads in the settlement. It was carried out in phases. A project management agency, Amani Trust, was established to oversee the project and also serve as the trustee to the land. Within a few years of the start of the project, the misunderstanding started. Community leaders blamed the 'poor quality' of the houses on the 'changing stances' of the trust. They claimed the upgrading project was sold to them as a rent-to-own scheme, which was later changed by the trust to rental only. The trust alleged that the misunderstandings were a result of instigation by a 'thug-politician to strengthen his vote bank'.

Due to the conflict between the community and the trust, the project was stopped in 2000, with only about half the work complete. However, the project brought remarkable improvements. The stark contrast between the 'before' (above) and 'after' (below) is clear from the photos.

▶

Source: Field research, February 2005.

By presenting issues in a way that unites people rather than divides them, the value of settlement is emphasised. As Nyerere (1968) said, 'we talk until we agree'. The importance of this cannot be overstated: He did not say that we talk until everyone has been heard, and then we vote; but we talk until consensus is reached.

This drive for consensus is very important in terms of process and structures. The need for unity among the residents affected by upgrading is their strength, and can be used to enormous effect in negotiations about how to deal with the questions posed above. This exhibits the value of social capital, and it reinforces the centrality of social capital in making the transition between the settlement before and after upgrading.

Paradoxically, if social structures within a settlement are weak, the best way of strengthening them is for the authorities to threaten the settlement. For example, a notice that the settlement is to be bulldozed and the people removed to a site far from town will quickly generate a leadership with strong support from all residents. While this example is not one that could seriously be advocated, it points to a feature of social mobilisation that must be recognised. Skilled community workers can use such forces for good, for example by pointing out the negative impact of divided and directionless leadership.

Conclusion: The resolution of conflict, and the role of negotiation

Once a representative body has been established, it has to negotiate the terms and the conditions of the process through which upgrading will be undertaken. In so doing, issues such as decision-making structures, the imposition of rules and

regulations, the imposition of charges, and the incorporation of the settlement within a formal system have to be discussed in detail.

This is one of the stages where the 'clash of civilisations' may occur. If both the formal and informal sides are communicating properly, it is likely, indeed healthy, that clashes may take place. If not, it is quite possible that, in an effort to reduce conflict, difficulties will be quietly ignored or brushed under the carpet.

Thinking of conflict resolution brings to mind famous successes: Kissinger's shuttle diplomacy in the Israel/Egypt conflict was the first successful high-profile event. But, while we think, in negotiation terms, about fixed positions (conflicts between people, between individuals or groups who fear losing face or power, in which 'giving in' is seen as the worst outcome), this is hardly a good model for relationships between informal settlements and the agency (usually the local government) that is to 'take over'. There is one case, Hong Kong, which is little talked about, but which has fascinating resonance with our situation in that it was adopted as a separate but integrated part of China. By drawing this example back to that of informal settlements, they can be treated similarly: 'You have your rules and we have ours. We shall take you over, but we shall allow you to run affairs your way — provided that you acknowledge that we are in charge'.

Such a system was used in early Zambian upgrading projects. Settlements to be upgraded were gazetted as 'Statutory Housing Areas' (Government of Zambia, 1974). Within such areas, conventional controls in terms of planning and building regulations were suspended, and very much relaxed rules and regulations applied. Security of tenure was provided by a system of licences that did not require elaborate survey and title deed registration.

When selecting models for upgrading processes, we should be conscious of their impact on the long-term governance and social capital within the community. It is our view that the 'clash of civilisations' can be managed if the community retains responsibility for essential elements of its own governance by exercising the controls and developmental tools that it has developed informally.

An important component in such a model, however, is that we resist the temptation for instant transformation of informal settlements into the formal urban system, and instead take an evolutionary approach. History offers us useful insights into just such a modus operandi. The majority of the urban areas of Europe were essentially informal settlements, constructed without formal controls in terms of planning and building regulations. But they were, like today's informal settlements around the cities of Africa, used as a starting point from which have emerged cities that are tourist attractions. As formalisation takes place, so do the systems evolve: land titling, certificates of compliance and other instruments of the formal system will gradually be demanded as the economy requires.

Acknowledgements

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eight

An HIV and Aids lens for informal settlement policy and practice in South Africa

Cecile Ambert

Introduction

HIV infection thrives in conditions of socio-economic vulnerability and inequality, and this is also where the impact of Aids is most severe. Conditions of socio-economic vulnerability and inequality are also a driver of informality as a strategy for accessing and maintaining access over land, services and shelter. Yet, in the main, development policy makers and implementers alike still see HIV and Aids as simply falling within the ambit of the public health sector's realm of responsibility. At best, HIV and Aids are allocated to the ubiquitous 'special needs' portfolio, alongside gender, the disabled and the youth.

This chapter explores some aspects of the complex relationships between HIV, Aids and informality as a basis for a discussion of policy responses in the area of housing and settlement development. The chapter, in particular the section exploring recommendations, draws from the author's recent experience in developing the HIV, Aids and Housing Strategy of the Gauteng Province.

HIV and Aids impact on the sustainability of communities and their development conditions. Conversely, development conditions affect HIV prevalence and the impact of Aids on individuals, households and communities. Poor housing and settlement conditions have been correlated with high HIV prevalence. Inadequate access to services, to secure tenure and to housing makes HIV-positive individuals particularly vulnerable to opportunistic infections. Such conditions do not provide an appropriate platform for care and support of the sick and frail. HIV and Aids fuel fluidity in household formation patterns, which find expression in increased informality and therefore the perpetuation of informal settlements. Institutional capacities and budgetary resources, mobilised to respond to conditions of informality, are themselves vulnerable to the impacts of HIV and

Aids. This raises questions about the government's ability to halt the production of new informal settlements and achieve the planned eradication of existing informal settlements over the next 10 years.

Acknowledging the cyclical nature of the relationships between HIV, Aids and informality is only the first step in framing a coherent response. A much greater challenge lies in conceptualising and operationalising responses that are aligned with the current and changing realities of HIV and Aids, at the settlement scale. This chapter proposes strategic and operational priorities for informal settlement interventions in contexts where HIV prevalence and Aids impacts are particularly severe.

Setting the scene: The numbers game

The Nelson Mandela/Human Sciences Research Council's (HSRC) *Prevalence Study* (HSRC, 2002) estimates that between 10% and 12.7% of the South African population was HIV positive in 2002. This amounts to 5.1 million persons. It found that close to 15.6% of adults, aged between 15 and 49, were HIV positive (HSRC, 2002). In the whole of South Africa, it is estimated that approximately between 16.2% and 26.5% (average 21.3%) of all persons living in urban informal settlements of all age groups were HIV positive in 2002 (HSRC, 2002). In the age group 15 to 49, average prevalence was 28.4% and ranged between 22.8% and 36% across the country. In contrast, 15.8% on average of those in the same age cohort living in formal urban settlements were HIV-positive. In tribal areas and farms, prevalence was found to stand at 12.4% and 11.3% respectively.

Informal settlements and housing conditions have been correlated with particularly high HIV prevalence. Overcrowding is likely to be a contributing factor, as it compromises sexual privacy, which, in turn, leads to a decrease in the age of sexual debut (HSRC, 2002). Similarly, in settlement environments where policing is limited (such as informal settlements), gender-based violence and specifically rape present a propitious context for the spread of HIV. Where access to safe water is limited or non-existent, exclusive formula feeding of children born of HIV-positive mothers, to reduce vertical transmission, may not be possible. Infection with helminths (worms) is inevitable when the environment is polluted by human faeces, as is often the case in conditions of poverty, overcrowding and lack of sanitation (MRC, 2001). Susceptibility to HIV infection may be higher in those infected with worms, and the risk of transmitting HIV to babies may increase when mothers have worms (MRC, 2001). In addition, the concentration of the pandemic in informal urban settlements is associated with a concentration of the predictors of HIV such as high levels of migration, gender and prevalence of

the sexually active age group among the residents of informal urban settlements (Tomlinson, 2005).

Certain settlement and housing conditions, especially those where access to water, sanitation and environmental health are either lacking or compromised, increase the likelihood of contracting opportunistic infections such as TB among those who are immuno-deficient and those who are not HIV-positive alike (see Thomas, in this book: chapter 14). Inadequate access to water, sanitation services and energy compromises the provision of home- and community-based care. Such settlement and housing types include free-standing and infill informal settlements, backyards, overcrowded formal housing and hostel accommodation.

Beyond the numbers, critical aspects for understanding the relationship between HIV, Aids and informality

Although it conveys an indication of scale, this quantitative picture hides most of the characteristics of the spread and impact of the pandemic. Focusing on the number of those infected hides the systemic nature of the factors that drive HIV prevalence and Aids impacts. To gain a more insightful grasp of their implications for informal settlement interventions, a number of characteristics of the impacts of HIV and Aids must be emphasised.

Exacerbating poverty and socio-economic vulnerability

The pandemic makes the relatively well-off poor and the poor destitute. The protracted nature of HIV illness and the lengthy depletion of household resources lead to profound and enduring hardship.

An important aspect of socio-economic vulnerability resulting from HIV illness and Aids is the decrease in formal and informal income-generation opportunities among those who are sick and those who care for them. The pandemic has been shown to change expenditure patterns in affected households. When people become sick, additional food and medicine has to be purchased and transport to medical facilities has to be obtained (Booysen, Bachmann & Van Rensburg et al., 2002). Burials place an enormous drain on the extended family and household economy (Booysen et al., 2002). Sheltering orphans, and ill or destitute relatives and friends, incurs costs. Even if income remains constant, HIV and Aids increase household expenditure. In turn, this forces people to turn to survival practices, such as the sale of movable and immovable assets, using up savings, and borrow-ing from family, friends, employers and lenders (Booysen et al., 2002). In short, a

context of HIV and Aids is one in which ability to afford housing is systematically undermined.

Vulnerability to loss of tenure rights

Because it leads to early mortality among beneficiaries, Aids fundamentally challenges the informal settlement intervention policy framework of the past 10 years. The application of this framework has registered (at considerable costs) individual ownership rights. Aids mortality forces a new issue onto the informal settlement development agenda: transfer of ownership rights from the first beneficiary to others much sooner after initial transfer than conceivably anticipated. Current mechanisms are not attentive to the re-registration of state-subsidised tenure rights. If formal registration of change of ownership does not take place, the formal 'asset' is lost to the 'owner', the integrity of the Deeds Registry is undermined, and the sustainability of subsidising the range of planning and legal costs associated with individual ownership will increasingly be threatened.

Aids mortality also forces practitioners to consider the law of succession and the legal status of minors. Practitioners have become aware of the vulnerability of orphaned minors and common or customary law spouses to practices of land and housing snatching by unscrupulous relatives or even complete strangers, in places where housing projects have already been or are in the process of being implemented (see for example Cross, 2002). However, this is also a threat facing those who have not yet benefited from the housing programme, as well as those who may not as yet be considered to be part of the housing 'demand'.

Increasing poverty exacerbates vulnerability to loss of tenure rights for all. Even those with ownership rights can be subjected to a range of informal and formal eviction and expropriation processes (Development Works, 2003). Those with informal tenure arrangements or with tenure rights accessed through a third party (such as backyard dwellers, sharers and sub-letters) become particularly vulnerable to this process (Cross, 2002).

Depleting social capital

Strong social networks offer protection to households facing hardships associated with HIV and Aids. Community mobilisation provides a platform around which to mitigate successfully the socio-economic impacts at the household and community levels. Yet, in communities that are cohesive, community-level impacts may amount to more than the sum of the impacts on households within a given community, thereby turning social assets into social liabilities (Development Works, 2003). In particular, borrowing from friends and neighbours is common

in the face of hardship. Family and friends are expected to provide guardianship and foster support (Khayamandi, 2001). The social custom of providing material and emotional support to bereaved persons can deplete social assets held in resource-poor communities. Even households that are not directly affected by the death of a member come under strain in order to support households that are affected (Economic Policy Research Institute, 2002). In such an ultra-vulnerable context, the ability of communities to engage with settlement development processes, systems and procedures can be severely undermined.

Socio-economically vulnerable individuals and households have different requirements from government systems and services and different abilities to engage with these. In particular, they may be unable to engage with the bureau-cratic procedures and requirements associated with the Housing Programme as the primary vehicle for informal settlement development interventions. Stigma remains a challenge for infected individuals as well as their households. This undermines their ability to engage with the existing mechanisms for participation associated with municipal and settlement planning and development activities.

Fluctuating household profile and increasing informality

Current household trends indicate an increase in household numbers and a decrease in household size, as large households are unbundling into smaller house-hold units (Tomlinson, Abrahams & Gildenhuys, 2003). The demographic impacts of HIV and Aids will affect this trend in multiple ways. Although some households can accommodate vulnerable family members, not all households can carry this burden. For many, 'coping' with this additional burden requires that vulnerable family members (including orphans) are passed around households for short periods of time. Managing the economic hardship requires the spreading of household members spatially, in order to improve access to economic opportu-nities and social services across the urban landscape.

Some orphans may also find themselves in a situation where they do not have fostering opportunities. In 2002, less than 1% of households in South Africa were headed by minors, although this is likely to increase (HSRC, 2004). It is worth noting that child orphans are not the only demographic group whose household situation is dramatically disrupted by HIV and Aids. Some research findings have identified the emergence of a range of household profiles where young adults have joined one another, even temporarily, as a means to weather the impacts of HIV and Aids and poverty (Cross, 2002). What is important is that these new forms of household are not necessarily recognised within the current housing policy frame-work as beneficiaries of the title deeds in terms of phase four of the new Informal

Settlement Upgrading Programme, which is otherwise very inclusive (see Huchzermeyer, in this book, Chapter 3).

The above paints a picture of increased fluidity and diversity in household composition. This is associated with increasing mobility of individuals affected by HIV and Aids. Coupled with decreasing housing affordability, this is likely to give further impetus to the perpetuation of informal settlement and housing development processes.

Impacts of HIV and Aids on the supply side of the housing and settlement development sector

Delivery agents participating in the development of housing across all race and socio-economic groups are being affected. In 2001, close to 16% of persons working in the low-income housing development sector were HIV-positive (Development Works, 2001). This figure was expected to rise to 24% by 2015, almost one in four employees. HIV infection levels were modelled across occupational categories and were found to be concentrated among unskilled, semi-skilled and skilled construction sector labour as well as construction materials manufacturers and suppliers, although other occupational categories, such as on-site and support professionals and technicians were also affected (Development Works, 2001).

This level of infection among delivery agents is increasingly translating into increased workforce costs of up to 4.5% by 2006. Although subsidy entitlements have a ceiling, which deflects some of the short-term costs associated with HIV and Aids, the underlying cost increases could lead to sustained declining quality in the construction of housing. Increases in Aids-related costs are proportional to the baseline cost of the subsidised housing product. The more expensive the housing product delivered, the higher the Aids-related costs. In addition, HIV and Aids aggravate intrinsic vulnerabilities in the administration and implementation of the housing subsidy system, ranging from capacity constraints and inefficiencies in procedures to provincial anomalies in terms of norms and standards (Development Works, 2001).

Beyond recognising the relevance of HIV and Aids to the informal settlement development agenda: Towards action

The government has committed itself to the eradication of informal settlements over the next decade (see also Huchzermeyer, in this volume: Chapter 3). Because of this commitment, the government will literally be targeting a significant part

of its operations in settlement environments where HIV and Aids are hitting the hardest.

Informality, HIV and Aids have complex drivers and impacts. All three are intimately related to conditions of poverty, inequality and vulnerability. Informal settlement interventions cannot resolve all drivers and impact factors, but can contribute to mitigating a number of them. Regularising tenure arrangements by granting ownership rights does not deal with the underlying economic factors that lead people to move to places of employment and services. However, proactively enabling individuals and households to maintain and sustain their access to land, housing and services can contribute to mitigating some of these factors. In addition, these interventions can make a substantial contribution to alleviating, even partially, the significant duress brought about at the household and community level by HIV and Aids illness, as well as death.

Owning up to the role that settlement development can play as a contribution to the government's overall response to HIV and Aids is not a trivial matter. Indeed, it goes beyond simply setting up an additional HIV and Aids programme or squeezing in HIV and Aids into the agenda of an already poorly defined special-needs programme. The spread and systemic impacts of HIV and Aids mean that a discrete and separate intervention can no longer be justified. Dealing only with people living with HIV and Aids is simply the tip of the iceberg. The settlement and housing requirements of the affected cannot be resolved in terms of a dedicated housing or tenure type, including the building of ramps or wide doorways.

The numbers speak for themselves. Acknowledging the average of 28.4% of those between the ages of 15 and 49 living in informal settlements (presumably current or future head of households) estimated to be HIV-positive means acknowledging that the core 'client base' of informal settlement development interventions is affected. Therefore, business as usual in informal settlement interventions is simply not an option! This calls for a review of the overall strategic approach guiding informal settlement interventions to ensure that it is compatible with and responsive to a context in which HIV and Aids permeate society. The core mandate of delivery agents involved in informal settlement interventions must be made to align with the requirements of increased socio-economic vulnerability, prioritising access to water and sanitation, tenure security and environmental health, and supporting greater accessibility to social services (including HIV and Aids care).

The characteristics of the pandemic highlight the systemic issues that give rise to and entrench socio-economic vulnerability. In turn, such vulnerability provides substantive guidance about where to aim and at what level to pitch informality-related interventions. As such, it represents an opportunity to review and energise

the settlement development agenda by placing systemic issues, in particular poverty, vulnerability and inequality, at the top of the list.

The responses to HIV and Aids must match the scale and impact of the pandemic. The systemic impact of HIV and Aids means that policy responses need to address the various levels of impact, which may be described as follows:

■ person infected with HIV, ill with opportunistic infections and Aids-defining conditions, or dying from Aids,
■ affected households and extended families, friends as well as employers,
■ affected communities and economic sectors, and
■ affected settlements/cities, supply systems and urban economies.

HIV status, on its own, is not an appropriate criterion according to which access to the 'benefits' of informal settlement interventions (that is, subsidised tenure, services and housing improvement) should be prioritised. Prioritisation is appropriate on broader socio-economic grounds, and, accordingly, socio-economic vulnerability (including but not limited to vulnerability brought about by the impacts of HIV and Aids) must remain the primary lens through which decisions about providing prioritised access to resources and services in informal settlements are made.

Recommendations

The following section highlights the strategies and recommendations for integrating HIV and Aids in informal settlement development policy and practice (Development Works, 2004). It discusses specifically the imperative of ensuring that the strategic orientation of informal settlement policy aligns with and responds to a context of high HIV and Aids prevalence and impact. Second, it explores how to conceptualise and operationalise the institutional and financial preconditions for an HIV and Aids response. Finally, it discusses what measures must be taken to ensure that the practice of informal settlement development is compliant with the requirements of HIV and Aids.

Strategic priorities

There are six strategic priorities for a housing sector response to HIV and Aids. These priorities are critical from the perspective of individuals and households both directly and indirectly affected by HIV and Aids.

(1) Ensure that all persons living in informal settlement environments have sustained, reliable, affordable and sufficient access to potable water, sanitation

and energy. Access to potable water is particularly important in the light of its role in supporting measures associated with the prevention of mother-to-child transmission (that is, formula feeding), care and treatment of those ill with opportunistic infections and Aids-defining conditions (Tomlinson, 2005). This priority includes providing access, through some form of capital investment, and ensuring that access is sustained over time. Currently, the institutional responsibility for the capital and operating costs of housing is shared across a range of parties including, but not limited to, national and provincial housing departments, municipalities and users. HIV and Aids have substantial systemic impacts on the socio-demographic and socio-economic conditions of users. Assumptions underlying existing mechanisms for financing the capital and operational costs of providing and using services, such as the Municipal Infrastructure Grant, the Equitable Share and the Free Basic Services framework, might be at odds with the reality on the ground, as users may increasingly be unable to pay for services.

(2) Protect the tenure rights of vulnerable individuals and households, including informal rights from arbitrary eviction or displacement. Individuals and households affected by HIV and Aids are increasingly vulnerable to eviction and/or land-snatching, irrespective of the tenure form through which they occupy land, and thus need more protection. In practice, the tenure form that vulnerable individuals and households hold (whether ownership, leasehold or informal arrangement) does not necessarily protect them from eviction and/or land snatching. Existing legal and regulatory mechanisms must be used, and revised if required, as a means to protect vulnerable groups from formal and informal eviction and/or usurpation. Such mechanisms include the *Extension of Security of Tenure Act, No. 62 of 1997* and the *Prevention from Illegal-Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998*. These mechanisms introduce a blanket protection of vulnerable rights and legal recourse in the case of arbitrary deprivation of rights. However, for these instruments to be effectively applied, potential vulnerable groups (including but not limited to those affected by HIV and Aids) must be made aware of these instruments, and an effective and affordable referral mechanism must be established for linking up vulnerable groups to legal representation and protection.

(3) Improve environmental health in all settlements, including air quality and solid waste management, to minimise exposure of HIV-positive and HIV-negative persons to opportunistic infections. Typically, this has historically been a local government function. Yet, it is unclear how municipalities have, to date, been able to provide and support such services in informal settlement environments. In many respects, municipalities are using concerns over environmental health as a means to counteract and 'remove' informal settlements. The challenge

is not only about a required attitudinal shift towards informality (the new Informal Settlement Upgrading Programme calls for such a 'paradigm shift' — see Huchzermeyer, in this book: Chapter 3), but is also about ensuring that appropriate institutional and financial mechanisms are established to ensure that environmental health services are effectively provided in such settlements. This means that the responsibility for providing and sustaining services in informal settlements must be shared and resourced by all settlement development role-players, including municipalities.

(4) Improve the affordability of land, housing and services for users and providers. This priority is by no means only relevant in a context of HIV and Aids, and has already received much attention. Nevertheless, in a context where the supply system associated with the delivery of land and housing is being undermined by the impacts of HIV and Aids, this priority needs to be further emphasised. Under the current dispensation, the primary approach to affordability has been the provision of a subsidy instrument. However, there has not been sufficient consideration of what constitutes an affordable 'product' or how to sustain access to this product over time.

(5) Increase accessibility of housing services to users, including the demand and supply side of housing and settlement development, by making the supply system more robust in the face of HIV- and Aids-related operational disruptions and shocks. Government's concerns about accountability and 'proper' management of financial and other resources are justified. In the South African context, these concerns are being addressed by reforming public expenditure systems and regulating development practices. As a result, the regulatory environment governing public expenditure entrenches a technocratic approach to settlement development, where complex and time-consuming procedures and mechanisms rebuke even the most intent of users.

(6) Enable alternative informal settlement interventions that span beyond individual land, services and top structure benefits. This may be the most critical priority. The new approach to informal settlement development of the Department of Housing, as captured in the *'Breaking New Ground'* housing plan (Department of Housing, 2004), introduces flexibility. However, the real challenge of informal settlement development in a context of HIV and Aids lies in acknowledging the fact that prevalence and impacts are fundamentally varied and complex. In turn, this means that what constitutes an appropriate informal settlement development practice in one settlement may not be appropriate in another. This calls for flexible approaches and practices.

Yet, experience suggests that even where flexibility is built in, implementers are wary of deviating from the 'norm'. Acknowledging difference and variety also

means that settlement-level priorities in a context of HIV and Aids will not be met by an intervention that is only about infrastructure development. Responding to supply- and demand-side impacts and achieving multi-sector interventions will, in turn, require a fundamental restructuring of practices on the ground. The much used and abused words 'integration' and 'participation' do not even begin to adequately convey the meaning of the institutional restructuring required. Because Aids affects institutional capacities, it highlights the urgency of governance through partnerships and the participation of role-players across all sectors of society. This emphasises the significance of changing not only the 'what' of informality-related responses, but also the 'who' and 'how' of such responses.

Institutional and budgetary preconditions for an HIV and Aids response

Certain institutional and financial preconditions must be met to ensure that settlement development role-players and stakeholders are institutionally ready for performing their sector-specific roles in the response to HIV and Aids. First, the responsibility for championing the vulnerability agenda (including that related to HIV and Aids) must become entrenched institutionally and given sufficient internal authority to shape informal settlement interventions meaningfully. This is not about adding the responsibility for HIV- and Aids-related matters to a 'special needs' portfolio. Instead, this is about ensuring that those who are currently responsible for leading the strategic agenda and operational practices arms are made accountable for enabling their sector's contribution to the response to HIV and Aids.

Second, dedicated interventions are necessary to mitigate HIV and Aids impacts on the supply side of informal settlement development. Key among those is the need to address the intrinsic vulnerabilities of the supply system and the urgency of broadening the notion of who is a role-player in informal settlement development interventions.

The development sector is particularly prone to addressing issues by identifying a budget item with the name of the issue to demonstrate responsiveness. This is an approach of convenience. It alleviates the pressure for transformation that might otherwise be required in order to respond adequately to issues on the ground. Given the varied landscape of HIV and Aids, setting aside a fixed quantum of capital budgets for hospice-type or orphanage accommodation would be misguided. Given the scale of the epidemic, meeting the shelter needs of people living with Aids and Aids orphans through institutionally based interventions may not be feasible. The departments of Health and Social Services are not geared to take on the operating costs of institutionalisation. Instead, the national approach aims to take forward a partnership approach to HIV and Aids that aims to share the

responsibility of care and support across civil society and public and private sectors, which includes home- and community-based care (Department of Housing, 2003).

Ideally, HIV and Aids would be so well integrated in policy, programmes and projects that there could be no need for a dedicated HIV and Aids fund (Elsey & Kutengule, 2003). However, responding to HIV and Aids has operational budget implications, in particular to provide for the required institutional mobilisation and to pay for the range of activities that are associated with integrating HIV and Aids in sector policy, programmes and projects, such as allowing for adjustments to procedures and regulations (Elsey & Kutengule, 2003). The operational budget implications of institutional gearing must be covered primarily from within the existing operational budget of the institutions.

The notion of 'partnership' is critical to crafting the financial instruments required for implementing multi-sector responses. Role-players must resist the temptation of initiating add-on and *ad hoc* activities that do not form part of their core mandate, in place of fundamentally reviewing and adjusting their core activities to a changing demand and supply-side context. Resourcing such activities ensures that those whose core mandate is to provide those services actually do so. Only where service gaps are confirmed should role-players consider seeking out additional financial resources.

HIV- and Aids-competent settlement development

The manner in which informal settlement upgrading programmes are conceptualised and implemented, as well as their outcome, must be compatible with a context of HIV and Aids. This is called HIV and Aids competence (adapted from Kimaryo, Okpaku, Githuku-Shongwe & Feeney et al, 2004). This subsection identifies and discusses some of the characteristics of HIV- and Aids-competent housing and settlement development, in terms of

- development planning and design issues,
- project planning,
- relocation practices,
- tenure form and arrangements,
- nature of basic services, and
- nature of the housing structure.

These characteristics are particularly relevant for informal settlement development interventions, but they also apply to other forms of settlement and settlement development. They must inform a review of existing programmes and practices.

Development planning and design issues

Although they will not unilaterally resolve the issues affecting susceptibility to HIV infection and vulnerability to Aids impacts, development planning and design practices can contribute to alleviating them.

Settlement planning and design activities can make a substantial contribution to the response to HIV and Aids. Ease of movement and mobility can play a supportive role in terms of community- and home-based care activities. It can enable access to health and education facilities and services (including STD management as well as HIV- and Aids-specific services), and opportunities for economic activity (including informal economic activity). Safety and security within the settlement must become an important concern, especially to minimise residents' exposure to gender-based violence and child abuse.

Accommodating informality as a livelihood strategy must become a feature of township planning and design. This includes economic uses on residential erven, which may include rental, trading and subsistence urban agriculture. In addition, excessively onerous standards and restrictions for top-structure development are inappropriate in a context of HIV and Aids. Indeed, such improvements are a manifestation of people's own initiatives to mitigate socio-economic duress. For instance, an additional shack could be used to shelter HIV- and Aids-affected individuals, including fostering orphans or temporarily isolating sick household members to avoid the spread of certain infectious diseases within the household. Informal additions may also ensure that household members have a level of privacy, including sexual privacy.

Project planning

Participatory and consultative activities to be undertaken in the project planning process must include engagement with social workers, community-based organisations active in HIV and Aids counselling, care and support, and local clinics. These can help in identifying the overall HIV and Aids situation in a given settlement and existing networks of care and support to be protected. The information gathered will inform both the process and outcomes of the housing development initiative. In addition, people living openly with and affected by HIV and Aids must be included in settlement planning, design and implementation.

Where child-headed and other highly vulnerable households and individuals are encountered, these must be referred to the municipality and the departments of Health and Social Services. A decision on how to accommodate the tenure,

shelter services and care requirements of such households should be taken jointly between affected parties.

Relocation practices

It must be a priority to avoid relocations altogether, or, where absolutely necessary, to minimise the negative impacts of relocation. Where a housing intervention entails relocation from a housing structure, site or settlement, the person(s) being relocated should not be negatively affected by the move in terms of the nature, ease of access, cost, sufficiency, sustainability and reliability of the housing structure and of access to services including social and HIV- and Aids-specific services, such as anti-retroviral coverage, antenatal clinic services or monthly check-ups. This presents a particularly difficult challenge to role-players in settlement development, as it requires that responsible service providers are able seamlessly to extend their services in new locations to people affected by relocation.

Tenure form and arrangements

In the light of Aids mortality and continued practices of informal sale of subsidised housing, alternatives to individual home ownership must be investigated for informal settlement upgrading activities. This investigation into suitable alternative tenure arrangements for informal settlement upgrading must be undertaken with a view to the costs and benefits associated with various tenure forms. This will need to include the initial capital costs of regularisation, the ongoing costs of tenure arrangements, the operating and maintenance costs of services, the costs associated with early beneficiary mortality, formal and informal transfers, and the long-term costs of conversion to ownership.

Nature of basic services

Planning for, implementing, managing and maintaining basic services must consider sufficiency, accessibility, reliability and affordability. In a context of HIV and Aids the following services are critical (in order of priority):

■ potable water and sanitation,
■ energy, and
■ solid waste removal.

The section in this chapter on strategic priorities in a context of HIV and Aids

highlights the specific challenges associated with providing and sustaining basic services in a context of HIV and Aids.

Nature of the housing structure

The definition of what constitutes adequate and inadequate housing in a context of HIV and Aids needs reviewing. All top-structure development processes, whether formal or informal, which alleviate overcrowding and ensure a reasonable level of shelter and protection from the elements, must be encouraged. Where the implementation of a housing programme includes the development of a top structure, adequate attention must be given to supportive design aspects that are conducive to sound environmental health, such as air quality and ventilation, and privacy, including sexual privacy.

Conclusion

Informal settlement environments are places where HIV and Aids are hitting the hardest. Residing in an informal settlement makes one more vulnerable to the multiple socio-economic impacts of HIV and Aids. The pandemic introduces further dynamism and fluidity in household formation patterns, which find expression in increased informality. Institutional capacities and budgetary resources that may have been mobilised to respond to conditions of informality are themselves vulnerable to the impacts of HIV and Aids. The strategic and operational reviews of informal settlement policy and practice that have taken place, to date, have either tended to ignore or compartmentalise HIV and Aids issues as part of the poorly defined special-needs agenda. This is understandable, given the sheer scale and complexity of HIV and Aids and their multi-dimensional implications for informal settlement interventions. Nevertheless, ensuring that the fundamentals of informal settlement policy and practice effectively respond to the implications of HIV and Aids has now become unavoidable.

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The market and security of tenure

nine

Barking dogs and building bridges: A contribution to making sense of Hernando de Soto's ideas in the South African context

Lauren Royston

Editor's note:

This chapter comments on the book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* by Hernando de Soto, President of the Institute for Liberty and Democracy (Lima), and a former economic and political advisor to the president of Peru. The book, published in 2002, has received a great deal of attention by both scholars and government leaders. In this book, de Soto proposes that lack of progress in capitalism in developing countries is related to a lack of well-defined systems of property law and records. He contends that, when people own assets informally, they cannot use these assets to secure capital. He proposes that the formalisation of property rights will unlock what he calls 'dead capital' and contribute to economic development in the third world and former communist states. In Lauren Royston's words:

> De Soto calls for a legally integrated property system that entails fathoming a single system from the separate, loose extralegal property arrangements, in short 'the people's law' or one all-encompassing social contract. De Soto and his colleagues call this 'the capitalisation process' and provide a formula to decode, discover and cost the extralegal arrangements, put in place the legal and political mechanisms for change, and devise operational and commercial strategies for bringing capital to life. In short, a way of making capitalism work for the poor in developing countries. (Royston, 2004)

For his central thesis, de Soto uses an image of a bridge from the extralegal and dead capital to the legal sector and living capital.

Introduction

Initially, the intention of this chapter was to expose Hernando de Soto's ideas about formalisation of property rights as highly inappropriate for the South African context. Using research and field experiences gathered by the Legal Entity Assessment Project (Leap) and Development Works (a development organisation based in Johannesburg, specialising in urban land tenure and housing among other things), the critique was going to be highly practical. However, in writing the chapter, it was realised that a much greater ambiguity needed to be exposed and addressed.

After the publication of de Soto's book *The Mystery of Capital* in 2000, there was a flurry of irate responses. Commentators such as Fernandes (2002) and Gilbert (2001) have noted that de Soto did not acknowledge the work of hundreds of other individuals and organisations that recognise and promote the action that people take to house themselves and create their own shelter under very adverse circumstances. There can be little doubt that there is a very rich tradition to draw on, which de Soto does not credit.

However, de Soto has done a spectacular job of advocacy, the likes of which we seldom see in the camp of practitioners, researchers and academics who have committed months and years to understanding these informal housing processes, how they work and what can be done to improve the livelihoods and security of the people who make them work. He does this very cleverly, by offering recognition and hope. He offers recognition for the extralegal practices that poor people live by to survive, and more. As one journalist points out: If de Soto's book is what it takes to get recognition on the US bestseller charts that globalisation is not working for five-sixths of the world's population, then 'more power to his elbow' (Bunting, 2000: 1). De Soto also offers hope to national governments, and those that support them financially, that there is a simple mystery (unveiled by him) and a simple solution (proposed by him) about the means to get capitalism to work for the poor. To consultants in the game of ideas (whose best ideas are worth nothing unless someone wants to buy them), it must be striking how good this approach is. In the words of one reviewer: 'While economists call him simplistic, third world leaders just call him' (Miller; 2001: 2). Perhaps we could learn a lesson in advocacy.

In South Africa, de Soto's ideas have found favour in recent investigations into township residential property markets (Rust, 2004) and in *'Breaking New Ground'*

(Department of Housing, 2004), the new national housing plan. The objective of making residential property markets more functional relies heavily on de Soto's thesis of dead capital.

Not only does De Soto argue from within the status quo of capitalism, but he claims to provide a solution to making this status quo work for the poor. For this reason, he is widely embraced, and is often the recipient of conservative endorsement. This makes it uncomfortable in some quarters to recognise so much of what de Soto describes as happening in the 'extralegal' economy as apt, appropriate, and well put. Attempting to overcome this ambiguity, this chapter starts with the rather more humble approach advocated by Leap of exploring arrangements that help to secure tenure, access to services and livelihoods for the poor in diverse urban and rural contexts. It then looks to de Soto for what he has to say about our tenure concerns. This approach does not directly comment on whether de Soto offers a 'third way' as a solution to the problem of poverty. Instead its focus is on property titling, which he argues will lead the poor out of poverty.

The title of this chapter may need explanation. De Soto's book, The *Mystery of Capital*, has so captured the imagination of readers — detractors and supporters alike — that reviews, critiques and replies have taken his title and the essence of his idea and played with it. One finds titles and section headings such as the following: *Demystifying de Soto* (Culpepper, 2002); *The Charms of Property* (Madrick, 2001); *The Mystification of Legal Property* (Von Benda-Beckmann, 2003); *The Mystery of Credit* (Calderon, 2002). This approach is so appealing that this chapter follows it too.

The reference to 'barking dogs' comes from de Soto's description of how he had no idea where the property boundaries were, when strolling through rice fields in Bali: 'Every time I crossed from one farm to another, a different dog barked. Those Indonesian dogs may have been ignorant of formal law, but they were positive about which assets their masters controlled' (De Soto, 2000: 170-1).

Reading this, it is not hard to respond: 'But the people probably also know — just ask them.' It is not entirely fair to quote de Soto out of context, especially when his point is how to determine who owns what in the extralegal sector. One should ask whether Association for Rural Advancement (AFRA) fieldworkers working with the community to 'demarcate' sites in Ekuthuleni (a rural community in the South African province of KwaZulu-Natal, with about 224 households currently living on state-owned land, but in the process of acquiring the land in group ownership through the land reform programme) were listening to the dogs? They may or may not have heard them. What is certain is that they listened to the people who told them exactly what they needed to know: We know exactly where our land is, including commonage and public land; we can identify

boundary disputes, disputes about the correct rights holder, and properties that have more than one household in occupation (Hornby, 2004). Regarding the bridge building part of the title — this chapter's fundamental concern is to review de Soto's notion of a 'bridge'.

A problem of selective listening

While de Soto may have had his ears open to barking dogs in Bali, one of the biggest problems with the receipt of de Soto's ideas in our own context may be that of selective listening. We all tend to hear what grabs us, but there is a very real danger that his message of integration of the extralegal into the legal is lost in the simple attraction of making the extralegal legal, without doing much about the legal system itself. To address this, at a very minimum, one must understand how the extralegal systems work in all their variety and analyse why they work in the way they do. Though encouraged by researchers, such understanding is seldom embraced by policy makers.

In *The Mystery of Capital*, de Soto adds his voice to an already substantial conversation about the 'extralegal sector'. His is a rather loud and ostentatious addition, but an important one nevertheless. In South Africa, evidence of disregard of the legal requirements of title dates as far back as the colonial era. Kingwill (2004) records how in Grahamstown, in the British colony of the Cape of Good Hope, individual title holders tended to disregard various conditions pertaining to individual title, especially the legal requirement to transfer title through conveyancing and registration. The first survey for individual title was undertaken in 1852. There were subsequent grants in freehold in 1855 in rural areas and, between 1855 and 1857, in urban areas in Grahamstown. This continued into the 1860s and 1870s.

In 1894, the *Glen Grey Act* introduced strict conditions against alienability (or ease at which rights could be removed and transferred to others) without the prior consent of the Governor General. Later, with the *Black Administration Act*, *No. 38 of 1927*, this was extended to cover those titles that had been issued prior to the *Glen Grey Act*. The intention behind the *Black Administration Act* was to regulate alienation of all land owned in individual title by black owners, to minimise the prospect of individual titles reverting to informality or being easily alienated for debt. These trends were ongoing throughout the century in situations of quitrent (a highly conditional form of ownership issued by the Dutch settlers in parts of the Eastern Cape) and freehold. This mirrored the intentions of the initial regulation in the *Glen Grey Act* itself, which arose in response to the experience of a high incidence of mortgaging and sale of property in execution of debt, or to recover

debt (in that period particularly as a result of indebtedness to local white traders). This puts into question the supposed benefits of using property as collateral for credit, as promoted by de Soto. It also highlights the vicious cycle of extralegality or informality-formalisation-reversion into informality in terms of which an individual or household may transfer newly formalised property, and return to an informal environment. Similarly, the land itself moves into the realm of informality if such a sale is unregistered.

What does this mean for our challenges today? In a study of what she calls alternative extralegal land markets in Folweni, von Riesen (Rutsch Howard Consortium, 2004) describes how well-structured and functional the market is. Folweni is a former homeland town (formally referred to as R293) on the south-western side of eThekwini (the Durban metropolitan area). Von Riesen describes how Folweni residents constructed a land transaction system for themselves, because they held lesser forms of tenure and held land outside of the main market. One of the characteristics of this system identified by von Riesen is its adaptability. For example, the original influence and status of the traditional authorities as the brokers in peri-urban land transactions has waned with the extension of local government to the area. Elected local councillors have taken over this role. Theirs is now a critical role in the brokering and validation of informal land sales. Von Riesen reports that residents in Folweni would prefer to conduct their sales formally and in a legal fashion, if the current system would meet them half way. This is a similar point to that being made in Ekuthuleni, except that the Ekuthuleni experience (which I discuss below) shows that there does not currently seem to be a way to achieve this mid-point.

Recent research undertaken by Development Works for the Johannesburg-based NGO Planact in Zandspruit and Zevenfontein, in two informal settlement communities in the north of Johannesburg, provides more evidence of what we know to be widespread in informal settlement environments — there are rules and regulations for the purchase and resale of land, for allocation and demarcation, and for recording. These are varied in nature and in their codification and enforcement. For example, in the Zandspruit public transit camp, there has been an 'official' process, undertaken by the municipality, of registering residents operating alongside (possibly superseded by) another one, evidenced by a mismatch between the register and what is on the ground. Recordal, or evidence of rights, takes numerous forms including 'green cards', 'A' and 'B forms', relocation letters and, in the case of the formal extension to the transit camp, title deeds.

In the four privately owned sites that have been progressively more informally occupied, where official recognition is less obvious, there seems to be considerably less coherence in the manner in which access is managed, tenure is less secured and

people have 'purchase receipts' as their only evidence of ownership. A market in land exists, although its extent is uncertain at this stage. In fact, this market has some characteristics of a futures market, as informal sale seems to take place not only on the basis of sites but on the future possibility of a site. Periodically, it seems, the municipality provides stickers to indicate some form of official recognition and qualification for formal housing. Somewhat bizarrely, this has led to a market in stickers. Residents therefore describe (with considerable rancour) how some people have stickers on suitcases, as well as stickers on shacks.

In Zevenfontein, the stakes surrounding the registered list of residents is much higher, as it has created insiders and outsiders, with immediate ramifications. 'Approved beneficiaries' of the government housing subsidy will go to Cosmo City, a long-awaited mixed-use and mixed-income development in relative proximity to the current site. As a result, the community leadership restricts access to the settlement for newcomers. This is justified to the existing residents (who at times would like their friends or relatives to set up new shacks in the settlement) by guaranteeing certainty of relocation for those who qualify for the government housing subsidy. Maintenance of the register, and the process of sale and acquisition, has therefore become a community responsibility. De Soto makes the point that capitalism is the only game in town. In the case of Zevenfontein, the government housing subsidy is the only game in town.

Can a bridge be built between the formal and the informal?

Informal land management processes go back a long way and they are still evident today, as the examples in the previous section demonstrate. An obvious question that stems from this is: Why has this not been recognised? De Soto calls for recognition of the extralegal processes and the assets that the poor hold via the processes that he calls 'representation' and 'capitalisation'. We need much greater attention in South Africa to describing these extralegal processes, in all their variety. Such recognition should be as much de Soto's influence as his operational proposals for titling and his proposals for legal reform. It should be the starting point for any interventions to make residential property markets work for the poor.

De Soto's graphic illustration of his central thesis is the image of a bridge from the extralegal and dead capital to the legal sector and living capital. In Leap we are finding that one of the most perplexing questions in this tenure work is the following: Can the informal and the formal be bridged? We are debating whether or not this is possible or in fact desirable.

It is a question that comes up again and again in reading de Soto's book. In Leap,

we have been asking this question quite aside from de Soto. It seems to be the critical issue for land reform, for access to housing and for security of tenure. If de Soto's bold and breathless work helps focus the minds of decision makers on this critical question, it may well be a good thing that they are reading him, provided of course that the message of integrating the informal into the formal is heard and the work attendant on that integration is understood.

I turn briefly to de Soto's version of the bridge-building process and then discuss this in relation to an experience in South Africa. De Soto argues that the bridge takes you across the extralegal–legal divide, from the extralegal and its attendant problems, into the formal. In the process, your capital comes to life. But what if the grass is not greener on the other side? The formal might not be all it's cracked up to be. For one thing, it may be hard to stay put. De Soto's argument is that the bridge-building process is actually a process of integration. However, his metaphor may be faulty. If it is about integration, it is not so much a question of getting from one side of a bridge to the other, but instead a matter of creating something new (and integrated) out of the imperfect status quo.

This might be too sympathetic a reading of de Soto. He fundamentally accepts the status quo of capitalism, which he describes as the only game in town. Therefore, the metaphor of a bridge is necessary. However, the complex issue of legal reform, which de Soto promotes, does imply a degree of integration.

De Soto's evidence of what happened as the United States made the transition from informal arrangements to an integrated, formal property system is a clear demonstration of how long it takes to recognise the extralegal. Describing the recognition and integration of extralegal property rights in the United States as 'a revolution in rights to property rights' (De Soto, 2000: 156), he identifies this task as being neither easy nor quick, nor without violence. He begins in the sixteenth century with the migration of western Europeans and, with them, antiquated British law, and moves quickly through the way in which squatting became common practice and the introduction of various kinds of social contract (such as 'tomahawk rights' and pre-emption), concurrent with federal government attempts to marginalise and penalise the squatters. By the early nineteenth century, he describes the property system as being in a state of disarray. Tracing developments in both the legal and extralegal to open up formal property systems to all since then, he argues that property systems have been open to all for only 200 years and that the full impacts of the transition have yet to emerge. Assuming for a moment that the bridge can be built (and political will is important here), we need to be clear on what happens while it is being built as it may take a very long time, as de Soto's presentation of the US history vividly demonstrates. Quan (2003) makes the point that, in the meantime, the costs of formal property ownership and

the debt burdens that are created when property is mortgaged are not appropriate for the poor. Therefore, until the bridge is built (assuming it can be built), we need to be clearer about what should be done in the meantime.

Here, it is not mysterious that the clues can be found in more intermediate approaches to tenure and land administration — those that propose a midway meeting point between two systems, rather than a bridge between one that is inaccessible and inappropriate and the other, which may not offer enough opportunity or protection. Two examples may be initial ownership (an intermediate tenure en route to individual title, provided for in the *Development Facilitation Act, No. 67 of 1995*, but as yet unused) and local land registers. Were we to go down these roads, we may find the intermediate solutions to have a lot of staying power. This is a fundamental point about purpose, objectives and the implications of where policy attention and energy for legal reform are placed. Returning to the metaphor of the bridge, we may find the answer to securing tenure (in a manner that supports access to services and sustainable livelihoods) somewhere on the bridge, rather than on the other side.

However, in the Ekuthuleni experience (Hornby, 2004), Leap and AFRA found that there are no stepping stones for the poor to begin to enter the world of the formal economy, bureaucratic planning and service delivery, without also entering a property system that does not work for them. For access to the economy and for access to services, the poor at Ekuthuleni must give up a functional tenure security that works for most of them, in exchange for a formal property system that does not because they are unlikely to maintain it. Hornby (2004) reports that people are not asking for a replacement of their informal property system by the formal one, but to be incorporated into official systems in a way that works for them. Primarily, they want to be visible in the eyes of those who determine and allocate resources. The challenge coming from Leap's engagement with AFRA at Ekuthuleni is to create an intermediate form of property management, which moves people into visibility.

What would be the implications of integrating the extralegal into the legal?

The Ekuthuleni experience is not an isolated one. For example, there is growing anecdotal evidence of how the poor in housing projects land up back in an informal system. But consider for another moment that de Soto's bridge can be built, that the process of legal integration can and does happen. What would the consequence be? One specific benefit from legal integration, central to de Soto's argument, is access to credit. It is widely understood that there are major obstacles

for poor people to access formal credit. Putting that convincing argument aside for another moment, and supposing people do access formal credit or credit by another means, using their property as collateral, we must recall how risky this proposition was in Grahamstown way back in the 1850s. We know from Kingwill (2004) that there was a high incidence of sale in execution for debt. This was a continuing phenomenon, so much so that the colonial government sought to protect its black colonial subjects by regulating resale. Today, in all the excitement about the prospect of capitalism working for the poor, we do not hear enough about the implications for the poor of property as a collateral base.

The flip-side of the great benefit of collateral is foreclosure. Khuyasa Fund, a micro-finance lending facility operating from Cape Town, notes that you cannot compare a fridge and a property when it comes to foreclosure (Van Rooyen, 2004). Their credit model borrows heavily from existing practice in the furniture industry. And yet there is a problem with collateral base, the very thing that is being vaunted by de Soto and others. It is one thing to send your heavyweights to collect the fridge — this is acceptable practice — but quite another to foreclose on a house. Property is the collateral base for the lenders who are brave enough to step over the 'red line' ('red-lining' being the practice adopted by some lending institutions in terms of which specific geographic areas are assessed as being too risky to lend in), and non-payment means repossession.

In recent research on social housing tenure options for the Social Housing Foundation (Development Works, 2004), there is further evidence of reluctance to use property as collateral. In that research, a high-income share-block scheme (a form of group ownership in terms of which shareholders have exclusive-use rights to identified areas and rights to common property) in a nature reserve bordering the Kruger National Park was investigated. In discussion with one of its directors of the share-block scheme, the board's position on raising finance was striking. Under no circumstances were they prepared to use the property as collateral. It was simply considered too risky. Largely, this reflected the problem with a collective form of credit and collateral of putting the group at risk to a defaulting shareholder. But it also demonstrated how risky the notion of property as collateral for credit is perceived to be by a group of people with a very different income profile from those whom we are concerned about here.

Approaching de Soto's claim (that formal titles provide access to credit) from another angle, there is further evidence that questions the precondition of formal title for access to credit. In de Soto's Peru, a study was done that compares households in areas with formal title with those without and finds in fact that those without formal title had greater access to credit (Calderon, 2002).

In short, there are at least three reasons to question the claim about access to

credit. Lenders do not lend to the poor; if they do, it is risky for the poor; and, in cases where credit is extended to the poor, formal title appears not to be a pre-condition. There seems to be a great deal more myth than mystery here.

To continue with de Soto's argument, what will follow if title does indeed give people entry to the formal market? It seems that this unanswered question is the greatest weakness in his argument. Access to the formal market is not enough. Poverty is more complex than mere lack of formal title. There are other factors than lack of title that prevent capitalism from working for the poor, and these prevented the poor from entering the market in the first place. De Soto's analysis lacks the political-economic consideration of whose interests are served by maintaining the status quo. It is these interests that make the prospect of legal reform, required for a more appropriate, accessible and sustainable formal system, highly unlikely. Its absence in de Soto's argument means that there is little recognition in his work of power relations and political imperatives. Without such recognition, the chances of the failure of imposed formalisation — the seemingly simple and standardised solution that de Soto promotes — are exceedingly high.

In addition, surely the objective needs to be at least as much about sustaining access to the formal market as it is about gaining entry in the first place? What often happens in practice is that, as soon as that formal system is applied to informal and especially communal areas, it breaks down (Leap, 2004). One issue at play here is that service delivery, land administration and planning, at least in South Africa, are fundamentally linked to the cadastre. Many of the land tenure functions are currently undertaken, and best understood, on land supported by the Deeds and the Cadastral system of showing extent, value and ownership of land for taxation (the 'formal system'). When the cadastre is inadequate or unravelling, the land tenure functions do not happen at all. Or, they happen in a haphazard, inappropriate or inequitable manner that might ride roughshod over people's rights (Leap, 2004).

There seem to be a few practical options for taking these questions forward:

- *Bringing capital to life:* De Soto's approach includes legal reform to create a property system based on what he calls 'people's law' as a means to bridging the extralegal–legal divide. This means that both systems are reformed to integrate the extralegal and the legal contracts, rules and procedures, to suit what people need from them.
- *Two worlds:* The formal system is ignored or disregarded by people in certain circumstances. This option recognises this reality, but addresses the problems of invisibility of the poor to the authorities by creating something intermediate. A suitable starting point may be the tenure option and land registration.
- *The bridge:* This is not de Soto's version of the bridge, which is something of a

faulty metaphor, as argued previously. Here the approach is to create the possibility of something less absolute and more appropriate to people's needs. It is about being in the middle and about moving towards visibility.

It appears that there is a flaw in the formula for capitalisation (for bringing capital to life), if capital dies again. The Finmark Trust research into township residential property markets in South Africa (Rust, 2004) found evidence from South Africa's larger cities of the informal, unregistered resale of Reconstruction and Development Programme (RDP) houses (developed post-1994) and property in site-and-service areas (developed pre-1994), potentially 12 and 14% respectively (Rust, 2004). The Urban Sector Network (USN) and DW, in a scoping study for the UK's Department for International Development (DFID), identified unregistered owners as a growing phenomenon (USN & Development Works, 2003). Evidence from Cape Town (Robins, 2003) identifies a process of re-informalisation in Joe Slovo Park in Milnerton, manifested in the construction of backyard shacks and extensions to formal RDP houses. In the Development Works and Planact research in progress, mentioned earlier, there is evidence of mismatch between the official register in the Zandpsruit transit camp and reality on the ground, indicative of informal resale.

The risks associated with using property as collateral and the reality of reversion to informal sales take us back to the basics of sustainable tenure security. Unfortunately, there is no easy answer, no 'one size fits all' solution. Reality *is* complex. This is the policy and advocacy challenge. Simple *is* seductive. But, the poor are not a homogeneous group (see Smit, in this book: Chapter 6) in possession of assets that can uniformly be described as 'dead capital'. Land functions in various ways, which the notions of use and exchange value denote (see Huchzermeyer, 2003). This variety is helpfully conceptualised along the lines of Leap's notion of a continuum (Ziqubu, 2002; Royston, 2004). In an informal context, land functions more as a livelihood-supporting asset, while towards the other end of this conceptual continuum, in a formal environment, land functions more as an economic asset for wealth accumulation. The concept of 'dead capital' has limited application to land or housing in the more informal contexts.

In addition, there is not a shared or common interest in formal title within any one community, and, because of resulting conflict of interests, it might not be technically feasible to register formal titles. Robins (2003) observed in the late 1990s how advantageous informality or extralegality was to certain interest groups. In the early 1990s, we made similar observations in the Phola Park informal settlement in Johannesburg (Royston, 1998). At the height of ANC/Inkatha political conflict in the Tokoza township on the East Rand of Johannesburg, Phola Park was an ideal place to hide and to engage in unlawful activities of various

kinds, including gun trafficking. The prospect of formal title threatened the more vulnerable groups and the groups who wanted to remain hidden within the urban system, and conflict was the end result.

The interests of circular migrants in South Africa, who continuously move from one location to the next, and back to their rural home, may be a secure place to live in as cheaply as possible while in employment in the city. In contrast, foreign migrants may be interested in a relatively safe place to live and hide in as 'illegals' within the urban economy, in opportunities for participation in the informal economy, or in refuge from poverty, drought or war in countries of origin (Royston, 2003). For poor households, interests may be in opportunities for informal activities in environments that are affordable by their very informality, while others may have the conventionally assumed interests in permanent urbanisation, and the promise and expectations of formalisation (Royston, 2003). This complex reality of heterogeneous interests gets lost in de Soto's sweeping claim to make capitalism work for the poor. Seduced by de Soto, there is a very real danger of forgetting the more humble notion of securing tenure, not as a means to integration into formal capitalism, but as a means to development opportunities and sustainable livelihoods.

We have to ask the inevitable question: What matters more — market access through individual title, or sustainable tenure security? Are these two approaches so distinct that they cannot talk to one another's gravest concerns? On the one hand, there is the offer of entry into the capitalist system in a way that works for the poor. This promise of poverty alleviation is dependent on market access (and on this access being maintained over time) through the instrument of individual title. On the other hand, there is the offer of access to development and sustainable livelihoods. The latter promise of poverty alleviation is dependent on secure tenure.

We cannot afford to have the discourse on these matters get lost somewhere between the approach of making markets work for the poor and a rights-based and sustainable livelihoods approach. We need to (re)assert the importance of tenure security, which involves a range of possible options along a continuum of tenure arrangements, not only individual title as currently configured in our centralised system of deeds registration. Options are not important in themselves. The social legitimacy of tenure arrangements is what matters most.

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ten

Forced evictions, development and the need for community-based, locally appropriate alternatives: Lessons and challenges from South Africa, Ghana and Thailand

Jean du Plessis

Bulldozers have been turned into an instrument of governance and it is the ordinary people who are suffering — Wole Soyinka (BBC, 2005)

Introduction

It is an urgent imperative for any person or institution concerned with human development to confront the problem of forced evictions. Every year millions of people around the world are forcibly evicted, leaving them homeless and, in the process, entrenching patterns of poverty, discrimination and social exclusion. Forced evictions take place in both rich and poor countries, although those affected are almost as a rule the poorest and most vulnerable segments of society.

There has been sustained international attention given by the Western media to the illegal dispossession and eviction of a few thousand commercial farmers in Zimbabwe a few years ago, and more recently to the forced eviction of hundreds of thousands of residents of informal settlements in Harare, Bulawayo and elsewhere. This stands in striking contrast to the general indifference to the fact that many millions of poor people are evicted annually around the world, without consultation, compassion or compensation. During the time this chapter was written, many hundreds of thousands of forced evictions took place in a variety of locations, including Beijing, Shanghai, Mumbai, Jakarta, Phnom Penh, New York, Nagoya, Port Harcourt and Johannesburg. The overwhelming majority of these evictions were officially justified in the name of 'development'.

In the context of globalisation, forced evictions have seemingly become an

accepted part of the development process, in spite of the fact that they clearly constitute a human rights violation in terms of international law. Forced evictions can have catastrophic consequences for the affected individuals, families and communities, including physical and mental trauma, homelessness, loss of wealth and assets, loss of jobs, loss of access to health, education and other services, and destruction of survival networks. Many evictions are brutal and include intimidation, rape, beatings, torture and even murder.

Forced evictions do not only constitute violations of human rights. They also, invariably, run counter to genuine human development. They tend to form part of intervention strategies that shift developmental problems from one place to another, instead of addressing their causes and solving them *in situ*. The end result is, all too often, perpetuation rather than elimination of poverty and slums (COHRE, 2005a; Leckie, 1995: 29-30; Ismail, 2002: 10-11, 71-72; Wilson, 2003).

The focus of this chapter is empirical rather than theoretical. It describes the causes and effects of forced evictions, with specific reference to the situation in South Africa. It shows how the 'public interest' and 'development' are often cited by governments as justifications for forced evictions. Two case studies, from Ghana and Thailand, are presented to illustrate why this approach is so problematic, and why the development of community-based, locally appropriate alternatives is so important.

Global context, local impact

Forced evictions can be caused by one, or any combination, of the following:

- development and infrastructure projects, often funded by major international financial institutions,
- large international events, including global conferences and international sporting events such as the Olympic Games,
- urban redevelopment initiatives, aimed at drawing investment into previously neglected areas and creating world-class cities,
- property market forces, often supported by government intervention, resulting in systematic gentrification of areas, usually at the direct expense of the poorer residents,
- the absence of state support to the poor under deteriorating economic conditions, and
- political conflict resulting in ethnic cleansing of entire communities and groups.

Forced evictions are a global phenomenon. Many evictions are counted not in

thousands, but in tens and hundreds of thousands of people. Recent mass evictions include the following:

- In July 2000, nearly one million people were evicted in Rainbow Town, Port Harcourt, Nigeria (Amnesty International, 2006).
- In early 2004, around 150 000 people were evicted in New Delhi and 77 000 in Kolkata (Calcutta), India (COHRE, 2004b).
- In Beijing, China, an estimated 300 000 people have lost their homes as a result of preparations for the 2008 Olympic Games (COHRE, 2004b).
- In 2003–2004 in Jakarta, as part of an effort to clear various areas of informal occupation, over 100 000 were either evicted or threatened with eviction (COHRE, 2004b).
- In India's Narmada River Valley, the ongoing Narmada Sagar and Sardar Sarovar dam projects will, when finally completed, have displaced over 250 000 people (Badiwala, 1998).
- In 2004 and 2005, more than 300 000 residents were forcibly removed from slums in Mumbai, India (ACPP, 2005).
- In various locations in Zimbabwe, an estimated 700 000 residents of informal settlements were forcibly evicted in June and July 2005, as part of the government's 'Operation Restore Order' (Inter Press News Agency, 2005; COHRE, 2005d; Tibaijuka, 2005). In addition, up to 30 000 informal traders were arrested.
- In July 2005, up to 50 000 people were evicted from Mau Forest in the Rift Valley, Kenya. (COHRE, 2005b)

Such evictions continue to happen, despite the fact that international law explicitly recognises the right to adequate housing; and has repeatedly declared the practice of forced eviction to be a gross and systematic violation of human rights.

The *International Covenant on Economic, Social and Cultural Rights* (CESCR) is the key legal source of housing rights under international human rights law. Article 11(1) of the Covenant explicitly recognises the right to adequate housing. Article 11(1), as interpreted in General Comment No.4 and General Comment No.7, also prescribes legal protection against forced eviction, at least for those 150 countries that have signed and ratified the Covenant (CESCR 1991, 1997; UNHCHR, 2004). General Comment No.7 indicates that 'the State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions'. It states that '[e]victions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights'; and prescribes procedural protective mechanisms for evictees

in those highly exceptional circumstances where eviction is unavoidable (CESCR, 1997: 8, 14-16).

In addition, in 1993, the UN Commission on Human Rights declared that 'forced evictions are a gross violation of human rights' (UNCHR, 1993: para.1). And, in 1998, the UN Sub-Commission on the Protection and Promotion of Human Rights reaffirmed that

> the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment. (UNCHR, 1998)

The consequences of forced eviction for families and communities, and particularly for the poor, are severe and traumatic. Property is often damaged or destroyed, productive assets are lost or rendered useless, social networks are broken up, livelihood strategies are compromised, access to essential facilities and services is lost, and violence, including rape, physical assault and murder, is often used to force people to comply (COHRE 2003a; Du Plessis, 2005; Leckie 1995: 27-30; UNHCHR, 1996; Weru, 2000).

A recent example of this is found in an informal settlement on the outskirts of Harare, Zimbabwe:

> On 2 September 2004, riot police, war veterans and members of the youth 'militia' reportedly went to Porta Farm to forcibly evict some 10 000 people, many of whom have been living there since 1991. The police were acting in defiance of a court order prohibiting the eviction. According to eyewitness testimony the police fired tear gas directly into the homes of the Porta Farm residents. (Amnesty International, 2004a: 1)

Eleven people died, five of them children under the age of one (Amnesty International, 2004b).

Indeed, the prospect of being forcibly evicted can be so terrifying that it is not uncommon for people to risk their lives in an attempt to resist, or, even more extreme, to take their own lives when it becomes apparent that the eviction cannot be prevented. According to Human Rights Watch (2004: 4), 'a wave of almost daily protests [in opposition to evictions] swept [through] cities across China from September to December 2003'. This opposition included a number of suicides and attempted suicides, including the following:

In August a Nanjing city man who returned from a lunch break one day to find his home demolished, set himself afire and burned to death at the office of the municipal demolition and eviction department. In September, resident Wang Baoguan burned himself to death while being forcibly evicted in Beijing. On October 1, China's National Day, Beijing resident Ye Guoqiang attempted suicide by jumping from Beijing's Jinshui bridge to protest his forced eviction for construction related to the 2008 Beijing Olympics. (Human Rights Watch, 2004: 3-4)

Similar incidents have occurred elsewhere, for example in Lahore, Pakistan, a man recently tried to burn himself to death in front of the Chief Justice, in despair at 'having lost his life savings when the highways department demolished his house as an encroachment' (Dawn Newspaper Group, 15 September 2004). And in South Africa, on 14 January 2005, a protesting Pietermaritzburg hawker drank almost a litre of paraffin fuel and swallowed some tablets, when she realised that the police were going to confiscate the shelter in which she ran her pavement tuck shop. The hawker had been trying for two years to get a trading licence. Another hawker on the scene said, 'I have been a target for so many years that I have lost count. I am not here out of boredom — I'm here because I have a family to support with the money I make' (*Witness Echo*, 2005).

Recent evictions in South Africa

The world, and in particular Asia and Africa, is facing what could fairly be described as an epidemic of forced evictions, on an unprecedented scale. In this context it is important for every government regularly and thoroughly to re-assess the situation in its country with respect to forced evictions, and to take urgent steps including passing laws, formulating policies and implementing pro-grammes to ensure that the types of injustice described are eliminated (CESCR, 1997: 19). Similarly, corporations such as banks, developers, mining companies and others, and parastatals such as electricity utilities, should be obliged by law and regulation to take stock of the effects of their activities on the housing rights of families and communities, and to take appropriate action where necessary to ensure that there are no negative impacts or consequences. Finally, it is important for all civil society organisations and groups concerned with human rights and development to identify the effects of forced evictions on their spheres of work and constituency groups, and to form alliances and develop methodologies to counter these.

It is worth looking in more detail at the South African example, as it offers an instructive illustration of the persistence of the problem of forced evictions, even

in a country hailed for its progressive housing policies, laws, jurisprudence and programmes. Of course, a South African audience would not need reminding of the effects that forced evictions can have on families and communities. Most South Africans are fully aware of how this brutally blunt tool was systematically used — initially to serve the ends of colonisation and later, under apartheid, to manipulate and engineer the demographic, political, social and economic landscape of the country, to the benefit of a racial elite. In the process, a high price was paid by millions of people across many generations, and is still being paid today (Platsky & Walker, 1985; Field, 2001; Badsha & Hughes, 1985). In the words of Don Mattera:

> Armed with bulldozers
> they came
> to do a job
> nothing more
> just hired killers
>
> We gave way
> there was nothing we could do
> although the bitterness stung in us
> and in the earth around us
>
> 'The day they came for our house'
> (Don Mattera, 1983)

Given this bitter legacy, and given the widespread awareness in South Africa of the consequences of forced removals on the lives and livelihoods of the affected people, it is most surprising to find that the practice is still a regular occurrence in South Africa. Although on a smaller scale than during the pre-1994 era, and although on the basis of more diverse ideological justifications, forced evictions are being implemented on a daily basis in South Africa, by private landowners and companies and by various levels and spheres of government.

Accurate numbers are difficult to obtain, and will remain elusive until comprehensive eviction monitoring systems are put in place. Yet some disturbing trends are beginning to emerge. In rural areas, high numbers of farm dwellers are being evicted from their homes due to such factors as gaps in protective laws, a lack of awareness among farm dwellers as to their rights, lack of adequate support or appropriate legal redress from the justice system, labour disputes, restructuring of commercial farming operations, mechanisation, changes in land use, and coercion by farm owners (Agriculture and Land Affairs Portfolio Committee, 2000; PLAAS, 2004; Statistics South Africa, 2004; Wegerif, 2001: 6, 8).

According to Judge Dunstan Mlambo (Rural Legal Trust, 2003: 1):

Although evictions, exploitation, degradation and abuse have no place in our fledgling rainbow nation, these abhorred facets of apartheid-era life continue unabated for many of our rural communities.

In urban areas, informal settlers, tenants and homeowners are being evicted for a variety of reasons, including inner city regeneration projects, alleged criminal activities, health and safety conditions in buildings, and alleged illegal occupation. In addition, evictions are increasingly being tested as a method of recovering unpaid rents, rates and utility bills (ANC, 2001; Butler 2004; COHRE, 2005a; Housing Portfolio Committee, 2001; Huchzermeyer, 2003; *Sunday Times*, 2001; *Witness Echo*, 2004a; 2004b).

In the case of Johannesburg, the extended spate of evictions in the inner city is officially justified in the name of the Johannesburg Inner City Regeneration Project (ICRP). The strategy underlying this ambitious project is complex, with many cross-cutting components. Key among these is the clearance of an estimated 235 'bad buildings', which are seen to be at the centre of developmental 'sinkholes', perceived hotbeds of degeneration and crime. According to the ICRP, these 'sinkholes' need to be eliminated, or turned into socio-economic 'ripple ponds', which should then be incrementally linked with each other, 'gradually cleaning up the city, block by block', thus spreading an upward spiral of confidence and meeting the overall goal of 'raising and sustaining private investment leading to a steady rise in property values' (Garson, 2004; Fraser, 2003). Turning around the fortunes of the Johannesburg CBD is perceived as essential in the process of re-establishing confidence in the province and, indeed, the country on the world stage.

From the perspective of this chapter, the danger is that, in the process, the end can begin to justify the means. As a result, the rights of ordinary people can be severely compromised. The Johannesburg inner city evictions will affect an estimated minimum of 25 000 people. If present practice continues, which includes using urgent applications for eviction in terms of health and building safety laws, few if any of the evicted are likely to be provided with any alternative accommodation, or compensation for loss of personal belongings, nights spent on the pavement, or any of the other effects of being evicted. There is no dispute that some of the buildings in question are indeed 'unhealthy' or 'unsafe', and at times do serve as bases for criminals. Yet research clearly shows that the vast majority of the affected people are, quite simply, ordinary poor people, trying to earn a living on the streets of Johannesburg. Indeed, they are themselves very often the victims of crime, unprotected by an under-resourced police force, rather than the

criminals they are made out to be. In the name of clearing these depressed areas, they are being evicted with no credible alternative housing or tenure options being provided (COHRE, 2005a).

Interestingly, the language used to explain forced evictions in Johannesburg has a similar ring to the language used in many other large eviction projects around the world. The reasons given are often highly technical, and are invariably connected with notions of 'development' and the 'public interest'. The rhetoric used in speeches, official website pages and powerpoint presentations is frequently compelling. The implication is that questioning, criticism or resistance to the evictions amounts to disloyalty to ideals attached to the 'greater good' of Johannesburg. Who, after all, would want to argue against the cause of redeveloping the inner city of Johannesburg?

The search for alternatives

Leckie (1995: 27) notes that

> virtually no eviction is carried out without some form of public justification seeking to legitimize the action. Many of the rationale behind the eviction process are carefully designed to create sympathy for the evictor, while simultaneously aiming to portray the evicted as the deserved recipient of these policies — a process appropriately labelled 'bulldozer justice,' by the retired Indian Supreme Court Justice Krishna Iyer.

And, indeed, what reply could the group of Indian villagers, facing imminent displacement by the Hirakud Dam in 1948, possibly have had to the great Jawaharlal Nehru when he told them: 'If you are to suffer, you should suffer in the interest of the country' (Roy, 1999: 1).

There is of course great merit in accounting publicly for courses of action that will affect people's lives. Explanations by the authorities as to why specific evictions are planned open up the possibility of public dialogue on the merits of planned evictions. However, what is very interesting about most official discourse around evictions is the virtually total absence of attempts by authorities to prevent the evictions through creative alternatives. Once a planned eviction project has been decided on, discussion usually turns to the more logistical issues of why, how and when, and seldom about possibilities of averting the evictions through community-based, locally appropriate alternatives. This unfortunate gap in thinking and practice relates to the fact that the input to be made by the affected groups is almost universally underrated, and is discounted against the technical expertise commissioned by the implementers of such eviction projects.

This is a dangerously short-sighted approach. For example, those villagers displaced by the Hirakud Dam in India would have had many things to say about the dam, about the effect it would have on their livelihoods and their traditions, on their river and, indeed, on the 'natural order of things'. To listen to these stories would have taken time, and to hear them properly would have taken skill. However, had the implementers, experts and politicians taken the time and developed the skills to listen to those villagers, they may have been able to pre-empt and prevent some of the massive mistakes subsequently made. But, living at a time when development and other experts were singing the praises of mega-dams, the affected villagers had no audience among decision makers.

In the end, it would take more than half a century of mistakes before the lessons that those villagers could have taught were finally being learnt, the hard way. In November 2000, the World Commission on Dams concluded after a two-year investigation, which included intensive public consultation, that, while

> dams have made an important and significant contribution to human devel-opment, and benefits derived from them have been considerable . . . in too many cases an unacceptable and often unnecessary and high price has been paid to secure those benefits, especially in social and environmental terms, by people displaced, by communities downstream, by taxpayers and by the natural environment. (World Commission on Dams, 2000; Williams, 1998)

What follows are two brief case studies illustrating, in quite different ways, the importance of developing community-based, locally appropriate alternatives to evictions, one from Bangkok, Thailand, and the other from Accra, Ghana.

'A loss more significant than they think': Pom Mahakan, Bangkok, Thailand

Pom Mahakan is a small community of approximately 300 residents residing next to Mahakan Fort, between the old city wall and the canal in central Bangkok. In January 2003, the residents were served with an eviction notice by the Bangkok Metropolitan Administration (BMA). Residents were offered relocation to a place 45 kilometres away, on the outskirts of Bangkok.

The community had to make way for a public park, as part of a 'conservation and development' plan. The residents had lived at Pom Mahakan for up to six generations. Forced eviction from this area would amount to a violation of housing rights, and would, at the same time, mean the death of what the anthro-pologist Herzfeld (2003) described as a 'vibrant, cohesive community with a remarkable sense of collective responsibility and mutual support'. In addition, the demolitions would mean the end of 'a rare complex of vernacular architecture',

including beautiful old teak structures, well worth preserving in rapidly modernising Bangkok (Herzfeld, 2003: n/a).

The Pom Mahakan residents organised themselves and tried to prevent the eviction, using all the well-known methods. They staged protests, delivered petitions, built barricades and organised a night-watch system to guard the community. In the words of Tawatchai Woramahakun, a Pom Mahakan community leader, when pointing out a barricade in the main gate to the settlement:

> The reason we put up this barricade is to prevent the Bangkok Metropolitan Administration from coming into our community and destroying our houses. This is the only thing we can do to protect ourselves because the BMA is determined to evict us and they can come in at any time with bulldozers and officials to do it'. (COHRE, 2003b: interview recorded on DVD)

But they did not leave it at that. What is most interesting about this resistance by the residents is that they supplemented it with a number of additional, pre-emptive activities. Working with a coalition of NGOs (including the Centre on Housing Rights and Evictions — COHRE), professionals and human rights activists, they put forward a highly innovative land-sharing plan as an alternative to eviction and relocation. The plan included the renovation of the older buildings and the integration of the residences into an historical park (Bristol, Eorsongkomsate, Jantamas, Kunvaja, Nirutiruk & Wanneevechasilp, 2003). It was to be a vibrant 'park with people', the sort of place that would attract visitors, rather than the sterile, empty park planned by the authorities. The residents even started implementing aspects of their plan by creating meandering pathways among the buildings and ancient trees, and turning the oldest house in the settlement into a museum and exhibition area for their proposals. In response, many outsiders rallied to their support (Du Plessis, 2005).

Yet, despite the public support for the land-sharing plan, repeated invitations for dialogue, petitions and pleas, the Bangkok Metropolitan Administration failed to appreciate the enormous value of this community-driven initiative, and refused to seriously consider the proposals put before them. In August 2003, an administrative court ruled that the eviction was legal and could go ahead (*Bangkok Post*, 2003). In January 2004, the authorities started work on the unoccupied areas of Pom Mahakan, including moving the canal pier and excavating certain areas.

In April 2004, the authorities again announced their determination to implement the eviction of the residents. That month, the owner of the house that was being used as a museum and community centre lost hope and sold it to an outside

buyer. Within a few days, this ancient double-storey teak structure, which had become a symbol of the anti-eviction struggle of the community, was dismantled and taken away (*Bangkok Post*, 2004).

The most recent reports from Pom Mahakan indicate that the other houses are still there and that the people are still holding on to the hope that somehow the BMA will change its mind. However, the large vacant area that had served as meeting place, car park and market, has been turned into a manicured lawn with concrete pathways, closely resembling the 'grassy void' predicted by Herzfeld (2003). Despite all the warnings and pleas, the area has been transformed into the type of place that few people, whether Thai or tourist, would care to visit.

The community is still attempting to negotiate with the authorities in a bid to prevent its eviction. The new Bangkok Governor, Mr Apirak Kosayodhin, has shown more openness than his predecessor to resolving such issues through negotiations, which is a hopeful sign. However, the fact that the community area has been cut off from the park with a (hopefully temporary) metal fence is a much less promising development, and indicative of a growing list of missed opportunities. In the words of Tawatchai Woramahakun:

> I want to send this message to the BMA: the people of Pom Mahakan hope the BMA will take care of them, take them into account in its development plans and allow them to work with the BMA in developing Pom Mahakan. I believe that if the BMA does take care of the community and allows the community to work with it, then there will be lots of good ideas and solutions — not just removing people from their community. But if the BMA follows its original plan to evict, the loss will be more significant than they think. I look forward to an offer from the BMA to allow the community to work with them in developing Pom Mahakan. (COHRE, 2003b: interview recorded on DVD)

The case of Pom Mahakan illustrates how a small community of 300 people, through action and innovation, have tried to open up spaces for the formulation and consideration of creative alternatives to their own eviction. Yet, despite all its efforts to cooperate with the authorities and to preserve and protect its heritage, the community may soon become yet another victim of forced eviction. It is, however, not too late for the authorities to adopt a novel approach and work towards a situation that would benefit all parties, including the community, and — potentially — many other Thai communities like it.

If the authorities fail to take the opportunity, the loss could be immense. As Graeme Bristol of the KMUTT Architecture Program in Bangkok has warned: 'The BMA has a rather narrow view of what constitutes history. They are not

alone in that. As a result, we often wind up losing a lot of any city's history by defining it out of existence' (Bristol, personal communication, 14 October 2004).

Also as a result, one might add, the BMA stands to lose an excellent opportunity to find new, pro-poor ways of making history, of shaping the future with the needs and interests of the affected communities at the centre of the process, instead of at its fringes.

The case of Agbogbloshie/Old Fadama, Accra, Ghana

In contrast to the small community of Pom Mahakan, the Agbogbloshie/Old Fadama settlement is bigger and faces problems of a larger, more complex scale. The settlement consists of approximately 30 000 people living under very difficult conditions on the left bank of the Odaw River, in the upper reaches of the Korle Lagoon in Accra, Ghana. Depending on the exact area being referred to, or the attitude that the speaker has towards the community, the community is variously known as 'Agbogbloshie', 'Old Fadama' or 'Sodom and Gomorrah'. The latter, derogatory name is mostly used by the settlement's detractors, who are calling for its demolition and the removal of the people (COHRE, 2004a).

On 28 May 2002, the residents were served with an eviction notice by the Accra Metropolitan Assembly (AMA). This followed the completion of a series of studies and the formulation of a project known as the Korle Lagoon Ecological Restoration Project (KLERP), designed to restore this vital marine and river system to a cleaner and more natural ecological state. At a public meeting that was part of the environmental and social impact assessment study (ESIA), one of the consultants conducting the study had 'urged the government to declare Sodom and Gomorrah a national disaster site and resettle the people'. He said the place was the most deprived in the whole country and 'if immediate steps are not taken to resettle the people in that area, the KLERP would be a waste of resources' (GRi Newsreel, 2001: 1). The recommendations of the ESIA report were to be particularly influential in official thinking on KLERP.

In response to the eviction notice, letters of protest were written by a number of organisations (including COHRE) to the Government of Ghana and the AMA. The COHRE letter outlined the international legal obligations that would be violated if the forced eviction of the Agbogbloshie community were to occur, and identified the following transgressions: All feasible alternatives to the planned eviction had not been considered, the May 2002 notice had provided too little advance warning, residents had not been consulted throughout the process, and alternative housing or adequate resettlement sites had not been provided.

In addition, the residents, with the assistance of the Centre for Public Interest Law (CEPIL) based in Accra, responded with an appeal to the High Court for an

injunction to restrain the AMA from following through on the eviction. However, on 24 July 2002, the Accra High Court rejected the community's application, and authorised the AMA to evict. There was an initial intention to appeal, but mainly due to internal organisational reasons in the community, this was not followed through. Since that time, there have been repeated assertions by the government that the eviction will definitely go ahead, but deadlines have come and gone. The last deadline that was set was in January 2004, when a Tourism Ministry official was 'emphatic' in stating that by 'September this year Sodom and Gomorrah would be empty' (*Evening News*, 2004).

In cases of this complexity, litigation strategies have their important but limited place. The organisations assisting the residents soon realised that, in addition to looking at questions of legality, it was important to try to understand the rationale behind the eviction plan, and to grapple with such issues as internal community dynamics, the concerns of previous occupants of the area (members of the locally powerful *Ga* tribe, who had been removed to 'new' Fadama in 1965), and the feasibility of *in situ* slum upgrading. A counter-study by an engineer and slum upgrading expert was therefore commissioned by COHRE to focus on some of these issues. The COHRE study found that, despite many legitimate concerns about living conditions in the settlement, the ESIA had grossly overstated the case against continued settlement in at least parts of the area, for example by 'concluding that Agbogbloshie is the major contributor to the Lagoon's pollution load'. The COHRE study found that, 'upon closer scrutiny, it is clear that the Assessment exaggerated the negative impacts of the settlement, and in some instances made demonstrably false statements'. In fact, instead of the community being the main contributor, the COHRE study determined that 'Agbogbloshie accounts for less than five percent of the Lagoon's pollution load' (COHRE, 2004a: 7).

On the basis of this and other findings, the COHRE report concluded the following:

- Agbogbloshie could in fact be developed *in situ*, given the political will.
- An upgraded Agbogbloshie could co-exist with the KLERP.
- The development of Agbogbloshie could provide the government with a model for informal land development that could be of major benefit to the future development of Accra. (COHRE, 2004a: 60)

The report 'strongly recommended that the Government of Ghana ought to carefully reconsider the issues in this case. In addition, given the importance and significance of these issues for the future of both the Agbogbloshie community and the city of Accra, it is further proposed that the Ghana office of the UNDP,

non-governmental organisations and community-based organisations should urgently come together to explore the [various concerns raised], and to formulate constructive proposals' (COHRE, 2004a: 8).

A significant feature of the above is that Agbogbloshie was clearly being treated as a 'special case' by the AMA and the Ghanaian government, different from the many other informal settlements in Ghana. According to the COHRE report:

'[t]here is a contradiction in the attitude of the Government of Ghana towards Agbogbloshie. There are many forms of illegal settlements in Accra, involving both land and housing, and the Government takes a toler-ant and progressive attitude to these. Yet the Government maintains an uncompromising position toward the community of Agbogbloshie'. (COHRE 2004a: 59)

The plan to evict residents of Agbogbloshie, with all the political, financial, time and other costs such action inevitably entails, is in fact quite startling in a context where the population of the City of Accra (which more or less coincides with the area of jurisdiction of the AMA), is expected to grow by up to 4.4% annually between 2000 and 2020, from an estimated 1.7 million in 2000 to 4 million by 2020 (Grant & Yankson, 2003: 65).

The plan also contradicts the relatively high level of services that have been provided to the community by the AMA, implying some form of *de facto* recog-nition; and the well-known fact that the community effectively runs Accra's main fresh-produce market, plus numerous other entrepreneurial operations including vehicle servicing, scrap metal, timber, housing construction and bulk processing of, for example, palm-nut oil (Braimah & community members, personal communication, 2004; COHRE, 2004a).

The reasons underlying this 'special' treatment are vital in developing an under-standing of the crucially important role the residents could and should play in resolving the situation. It is evident that the government of Ghana is under immense pressure with respect to the implementation of KLERP, including the removal of Agbogbloshie, for at least three reasons.

First, it appears that, under the terms of the loan funding for KLERP (report-edly by the Arab Bank for Economic Development in Africa, *Agence France de Développement*, and others), protracted delays to the project, caused by the com-munity's refusal to leave, will have serious negative cost implications. According to Accra Mayor Stanley Nii Adjiri Blankson, this is something that Ghana, with its classification until recently as a Highly Indebted Poor Country (HIPC), can ill afford (Accra Mayor, personal communication, 2004).

Second, there is local pressure on the government to remove the Agbogbloshie

community. This pressure comes particularly from amongst Ga youth living in overcrowded conditions elsewhere in Accra, who regard the area as belonging to the Ga people. For example, on 19 April 2001, a year before the serving of the eviction notice, it was ominously reported that

> [p]lacard-bearing youth from the Ga–Adangme Youth Association on Wednesday protested against the proposed resettlement of people living in Sodom and Gomorrah, a slum in Accra. They contended that the settlers do not need to be resettled neither should the squatters be compensated because they had been warned about the place being a project site before they became squatters. About 20 000 [sic] squatters live at Sodom and Gomorrah, an area marked as part of the Korle Lagoon Ecological Restoration project (KLERP). The youth mounted several placards, some of which read: 'Give us back our land — Ga Youth', 'Beware of potential bloodshed', 'No room for squatters', 'Ga land keep off'. (GRi Newsreel, 2001)

Consequently, there is genuine fear among politicians that delays in the planned eviction could spark off ethnic tensions. According to the Accra Mayor, 'Ghana is one of the most peaceful countries in the region. If ethnic violence broke out in Ghana it would "spread like wildfire"' (Accra Mayor, personal communication, 2004).

Third, there is a genuine (and fully justified) concern about the conditions under which people are living. However, there is no vision of how to deal with this, other than the option of relocation of the people 'back to where they came from'.

Whatever the AMA and the Government of Ghana decide to do with respect to the complex challenge of Agbogbloshie, it is inconceivable that they can do this successfully without the sustained and intensive involvement of the affected people themselves. On the basis of expert advice, they embarked on a legitimate and important river and marine rehabilitation programme. Yet they made the serious error of accepting, at face value, the necessity and inevitability of removing a community consisting of up to 30 000 people. In the process, they met with resistance, confusion and threats of violence. The fact that they have not taken any decisive action to implement the eviction — despite hard rhetoric in the media and despite having a court order in their favour — may be indicative of their unease at the possible consequences of the eviction. It also offers an opportunity to all concerned to explore other ways of resolving the situation.

There are local groups that have recently started working with the residents to begin to do exactly that. According to Farouk Braimah of People's Dialogue in Accra (personal communication, 2004), the methodology being followed is to

open up space within which the residents can negotiate directly with the government. A key objective, according to Braimah (personal communication, 2004), is 'to make sure that we avoid the situation of people being evicted without alternatives'. The methodology used is to mobilise the energies and resources of the residents through the creation of joint savings schemes. Weekly meetings are held, at which a variety of issues are discussed, including the threatened eviction. Confidence and unity is built up through participation and on the basis of shared beliefs and principles, and through jointly held financial resources through which additional funds can be leveraged in the form of loans or grants. In the process, according to Braimah, a platform for negotiations with the government is being created. The groups are planning a comprehensive population enumeration exercise, to commence in December 2004, to inform the negotiations process and also to assist with future planning (Braimah, personal communication, 2004).

Whether or not the eventual outcome of this process is relocation or *in situ* upgrading, or a combination of the two, will, according to Braimah (personal communication, 2004) be decided during those negotiations. However, he senses a potential split between those who would be prepared to move, provided adequate alternatives are made available, and another group, mostly younger men and women, who are directly tied to activities and incomes derived from the Agbogbloshie market.

The spaces being opened up by communities and their support organisations through actions such as this are vital, yet they will remain small and limited while the threat of eviction is in place. The AMA and the Government of Ghana would do well to declare a moratorium on the evictions, pending the outcome of intensive negotiations with the residents on their future, through a process that will allow them to be properly heard, and directly included in the planning process. Until such time, all possible strategies to open spaces for dialogue, even while resisting the planned eviction, should be continued (COHRE, 2004a; SDI, 2004).

Conclusion

When considering eviction cases such as those described above, one is confronted by two kinds of question. The first is: *Is this right*? Moral and legal issues arise, which can be looked at from many angles including international law and standards, national laws, standards and policies, and the impact of the eviction on the residents. The second is: *Will it work*? Is there a realistic chance that the outcomes promised by the proponents of the project — those broader objectives for 'development', 'regeneration' and the 'public good' — will come to fruition? Can the proposed process be concluded without major conflicts, delays or setbacks? Will

the outcome be sustainable, or will the land simply be reoccupied later, as more and more newcomers settle in the city? And what, in the meantime, has happened to the people evicted: Did they return to rural areas, or did they simply settle again, informally, on another piece of unguarded land, in fear of yet another eviction?

Of course, these issues do not arise in neat compartments. They are inter-mingled in a complexity of challenges which, if not properly understood and dealt with, can push the parties down a path of action and reaction resulting in worse situations than before.

On the positive side, it is encouraging that communities all over the world are, through daily struggle, trying to open up spaces to be heard, and to be directly involved in the formulation and implementation of strategies to achieve their security and well-being. And some governments have, to their credit, recipro-cated. For example, in 2001, the government of Brazil passed the *Statute of the City,* a federal law of urban development 'which sets the instruments and the orientation towards a democratic (participatory) management of the cities' (Saule, Velasco & Arashiro, 2002: 14), opening up invaluable avenues for community involvement in the realisation of housing rights and prevention of evictions (UN-Habitat, 2004: 3).

In 2003, the government of Thailand launched a national community-upgrading programme that would support 200 'cities without slums programmes' (Boonyabancha, 2004: 51). In Nairobi, Kenya, there have been encouraging signs that the government will desist from its threats, made in early 2004, to forcibly evict more than 100 000 Nairobi residents living on land reserved for road devel-opment, powerlines and railway lines, and promises have been made that the government will work closely with the affected communities to find viable alternatives (COHRE, 2005c).

In South Africa, significant policy advances are in the process of being imple-mented under the banner of '*Breaking New Ground*' (Department of Housing, 2004). In terms of this revised policy, new funding and implementation mechan-isms for informal settlement upgrading are to be established, local authorities are to play a more important role in implementation, social inclusion and integration of poorer communities is to be promoted, and evictions should only be used as a last resort (COHRE, 2005a: 28–32). As part of this new approach, the Minister of Housing recently paid tribute to self-help and partnership approaches to housing development in poor communities, and pledged renewed support for the Utshani Fund, a bridging finance facility that complements shack dweller savings schemes (SDI, 2005).

Such examples are indeed positive, yet are still too few to represent any turning

point in the global struggle against forced evictions and for community-based alternatives. They also lack the consistency required to make any decisive, lasting impact.

In Brazil, for example, forced evictions continue to be reported, particularly in rural areas, with the minority Quilombos group a particularly vulnerable target (UN-Habitat, 2005: 77-83). In Thailand, the eviction of the Pom Mahakan community could be implemented at any time, in spite of the launching of the national 'cities without slums' programme. In Kenya, there is no guarantee that the planned evictions in Nairobi will not, at some future stage, be revived. Nor is there any viable plan in place to offer security of tenure on scale to the hundreds of thousands of tenants in slums such as Kibera, many of whom have lived in the same place for decades, offering little comfort for the long-term future of residents of informal settlements in urban Kenya (COHRE, 2005c).

In South Africa, in spite of all its excellent laws, policies and programmes, a glaring gap remains between policy and practice. This has prompted residents of numerous communities to take to the streets in mass protest in recent months, demanding housing, facilities and services (Centre for Civil Society, 2005). In addition, a recent COHRE study of the situation in Johannesburg found that informal settlement relocations are preferred to *in situ* upgrades, often at the expense of informal settlers' livelihoods and access to services, and often taking place with little or no genuine consultation. In the inner city, slum clearances on health and safety grounds are preferred to genuine attempts to re-accommodate people who live in slums precisely because of 'their inability to afford safe, habitable accommodation elsewhere' (COHRE, 2005a: 97).

It is clear that, in spite of some progress in a few countries, a great deal of distance has yet to be covered before the importance of eliminating forced evictions and replacing them with viable, community-driven alternatives will be generally recognised, and built into the foundations of housing development and slum upgrading interventions. The importance of doing this should never be underestimated.

Postscript

Since the time of writing, a number of developments have taken place that illustrate and emphasise the observations and arguments of this chapter.

First, forced evictions have continued apace, particularly in Africa. In Nigeria, local organisations report the forced eviction of between 800 000 and one million people from homes and businesses in the Federal Capital of Abuja. Evictions started in November 2005 as part of the re-initiation of a Master Plan drawn up

in 1976. This has included the demolition of homes, schools, hospitals, churches, mosques, and businesses without consultation with communities and without providing adequate notice, compensation, or resettlement. These demolitions are still continuing, and reports are that the government intends to evict a total of more than four million people from 49 communities (Women Environmental Programme, Justice Development and Peace Commission, Community Action for Popular Participation, & Social and Economic Rights Action Centre, 2005; International Alliance of Inhabitants, 2005).

In Zimbabwe, the forced evictions, officially dubbed 'Operation Murambatsvina' (a Shona term meaning 'drive out trash'), that commenced while the chapter was being written, resulted in over 700 000 people losing their homes and being forced to live in areas far away from services and income opportunities. According to public statements by President Robert Mugabe, this urban clean-up programme would rid urban areas of allegedly illegal settlers and black-market traders in order to promote 'urban renewal' and the emergence of a 'new breed of organised entrepreneurs'. In June 2005, a ZANU-PF lawmaker explained that such hardships were a necessary price for a promised economic turnaround: 'These are just temporary things and they are necessary for a long-term turnaround' (*Mail & Guardian*, 2005).

Second, national leaders failed to speak out or act against these extreme and brutal examples of forced eviction. For example, in the Zimbabwean case, in spite of a public outcry and sustained pressure from over 200 international and African NGOs on all African governments to intervene (Amnesty International, COHRE, Zimbabwe Lawyers for Human Rights and others, 2005), little was said or done, with the result that these evictions are now *fait accompli*. Observers were dismayed when, at the height of the controversy over 'Operation Murambatsvina', the then Kenyan Minister of Housing, Amos Kimunya, told a workshop of African housing ministers held in Cape Town that 'However painful, evictions are necessary ... In Kenya's experience, slum dwellers would move only when they saw a government bulldozer' (*Business Day*, 2005).

Third, arguments against forced evictions and for the housing rights of the poor in the inner city of Johannesburg were endorsed by the High Court of South Africa, in a ground-breaking judgement handed down on 3 March 2006. Judge Mahomed Jajbhay ruled a number of pending forced evictions in Johannesburg illegal. He also ruled that the City of Johannesburg's housing policy failed to comply with the Constitution of South Africa. The Judge ordered the city to devise and implement a comprehensive plan to provide adequate housing for people in the inner city who are in desperate need of accommodation. He also made it clear that, regardless of the imperatives of inner city regeneration, the City

must provide alternative accommodation in the inner city area, if the City wanted to evict people from buildings considered unsafe. The judgement went further to make a link between protection against forced eviction and the fundamentals of human development, including the right to work and the right to life (Jajbhay, 2006).

Fourth, it became abundantly clear that there is a long road yet to be travelled before political leaders and administrators begin to realise that forced evictions are not only wrong, but invariably counterproductive to genuine human development. In the Johannesburg case, the City has appealed the Jajbhay judgment. However, whatever the outcome of the appeal, the comments made by City Mayor Amos Masondo — along with remarks such as that by Minister Kimunya cited above — indicate a gap in understanding of the nature and impact of forced evictions. Speaking in the aftermath of a tragic fire in an inner city building, which had resulted in the death of 12 people and the injury of many others, Masondo criticised those opposing the City's strategy to evict residents of such buildings, and went as far as saying that the tragic incident 'illustrated the lack of common sense in a recent judicial ruling that occupants were better off in unsafe buildings than living on the streets' (*Business Day*, 2006). NGOs responded by pointing out that the City of Johannesburg was under a constitutional duty to devise and implement a plan to provide basic shelter for those in the inner city in desperate need, and that it was their failure to provide alternatives, not constraints on their power to evict residents, that had left the inner city poor vulnerable to disasters such as the fire (COHRE/CALS, 2006).

Johannesburg is, as much as any other third-world city, under severe demographic pressure, posing huge challenges to managers and inhabitants alike, including the rapid growth of informal settlements. In South Africa, a key factor behind this pressure has been high levels of displacement and eviction, as illustrated in a seminal report on forced evictions in the rural areas of South Africa, published in December 2005. The report showed that over the 20-year period from 1984 to 2004, a total of 4 183 427 people had been displaced and 1 679 417 evicted from South African farms. More disturbingly even, the report showed that between 1994 and 2004 — a period characterised by land reform policies and programmes designed to deal with a legacy of landlessness, insecurity of tenure and rural evictions — displacements from South African farms had in fact increased by 28.3%; while evictions from farms had increased by 27.8%, compared with the previous 10 years. (Wegerif, Russell & Grundling, 2005).

The biggest challenge of all is perhaps to recognise, understand and act upon the connections. Many of the residents living in the informal settlements and inner city slums of Johannesburg have been evicted before. The answer to their situation

is not to forcibly evict them, but to work closely with them in order to realise their right to adequate housing, to work and to life. That it is possible to shift official attitude on this question was aptly illustrated in the case of Pom Mahakan, one of the case studies of this chapter. In December 2005, after a long process of struggle and many attempts to evict the community, the Bangkok Governor finally agreed to let the community remain and to work with them on developing the area. On 19 December 2005, the Bangkok Governor officially confirmed that negotiations between the community, the Bangkok Metropolitan Administration and the university had resulted in an agreement to preserve and to develop the area as an 'antique wooden house community' (Kosayodhi, 2005).

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Market-driven evictions and displacements: Implications for the perpetuation of informal settlements in developing cities

Alain Durand-Lasserve

Introduction: Forced evictions and market evictions

Current dynamics accompanying the liberalisation of land markets in many developing countries, and nationwide land titling programmes carried out in the name of economic development and poverty reduction (World Bank, 2003), are increasing the market pressure on urban low-income settlements. This is in a global context where resources generated by economic growth are rarely allocated to housing and resettlement projects for the low-income groups. Many of the evictions that result from these dynamics are not recorded as such, either because they do not require the use of force or because some form of compensation is paid to the displaced households, regardless of how fair and equitable this compensation may be. This frequently results in a deterioration of the economic and housing conditions of the evicted, and ultimately in the formation of new slums. This is what we call 'market-driven displacements' or, in some circumstances, 'market-driven evictions'. It concerns primarily informal settlements, and especially 'slums' as defined by the United Nations (UN-Habitat, 2002). It encompasses all situations where displacements are the direct or indirect consequences of a development aiming to make a more profitable use of the land.

Forced evictions, as well as negotiated 'market-driven displacements', are closely linked with market pressures, except in cases where evictions are the consequence of expropriations for public interest (need for land for infrastructure), or are justified for safety or public health reasons (sites exposed to hazards and/or unsuitable for urbanisation). Although no reliable figure is available, in

most cities the scale of market-driven displacements or evictions clearly overrides that of forced evictions.

In the case of formal settlements, whether the occupant is a tenant or the owner of his or her dwelling unit, evictions may take place if the occupant does not comply with an administrative or a court expropriation decision. In such cases, expropriated owners are entitled to receive compensation corresponding to the market value of their property as assessed by the administration and, in case of dispute, by a tribunal.

Occupants in informal settlements are in a different situation: Their irregular situation regarding planning, development and/or construction norms (in the case of informal commercial land subdivisions) and, more important, their tenure status, means that they are not entitled to claim compensation for the replacement cost of their land and dwelling unit. They can be evicted with or without compensation or resettlement options. Evictions may follow formal/legal procedures. However, empirical observations show that many evictions do not have full legal basis, or are not carried out according to legal procedures.

The level of tenure security depends on the evidence that the occupants of any settlement can provide. Occupants in informal settlements do not usually have any real rights such as a property title or a lease. In many cases, other documents such as administrative permits, deeds of sale, receipts, invoices or ration cards may be accepted as evidence of quasi-ownership, but with a lower value than real rights or leaseholds.

In some cases, the terms of the negotiations between communities living in informal settlements, public authorities and land owners or developers can be considered as being fair: Compensation paid or alternative resettlement options offered to the households concerned do not result in any significant deterioration in their housing conditions or expenditures. This is usually the case when concerned communities already enjoy some form of *de facto* security of tenure, have access to information, have the benefit of political protection, and are able to mobilise resources to protect their interests.

In many cases, however, especially when the tenure status of households or communities does not provide them with sufficient protection against eviction procedures, or when their incomes, their cultural background, inequality in access to information, social status, or the prevailing political environment do not provide them with sufficient protection, the terms of the negotiation are distorted: Their negotiating/bargaining capacity is weakened and they tend to accept arrangements that will result in a deterioration of their housing situation and welfare.

Furthermore, this may be the case when households have been allocated land

under the administrative 'permit to occupy' (PTO) regime, which is still the most common occupancy status in sub-Saharan West African cities. With few exceptions, PTOs are temporary documents, granted conditionally, and they can be unilaterally revoked by the administration whenever it considers that the permit holder has not fulfilled his or her obligation and/or that it can make better use of the land.

In short, those who have settled on land whose value has increased over time, and who cannot provide sufficient evidence as to their rights on the land, are exposed to "market evictions", as they are not necessarily entitled — in strictly legal terms — to be paid compensation corresponding to the replacement cost of the dwelling unit in the case of eviction. In such cases, everything depends on the balance of power at local level, and ultimately on political decisions.

Based on a series of observations made in a large number of developing cities throughout Sub-Saharan Africa, South and South-East Asia and Latin America over the last two decades, this paper places emphasis on two recent case studies in Kigali, Rwanda and Phnom Penh, Cambodia. It does not deal with 'forced eviction' processes, but with particular forms of displacement, usually under the pressure of market forces.

The global context: Urban poverty and slum populations

Urban poverty is increasing: 43% of the population of developing cities are living in slums (28% in North Africa, 71% in sub-Saharan Africa, 42% in Asia and 32% in Latin America) (Lopez Moreno, 2003; UN-Habitat, 2003b). According to recent UN estimates, 924 million people — nearly one out of three urban dwellers — were living in slums in 2004. Of these, 874 million are from low- and middle-income countries (Millennium Project, 2005). By 2020, this figure is expected to increase to 1.5 to 1.7 billion, depending on estimates. Recent estimates (Cohen, 2004) suggest that about 2.8 billion will need housing and urban services by 2030. The slum population is expected to increase from 32% of the world population in 2001, to about 41% in 2030.

So far, no satisfactory solution for addressing the challenge of slums has been found. Conventional responses are usually based on the combination of three main types of intervention:

- *in situ* upgrading in existing informal settlements,
- evictions followed by resettlement on serviced sites on the periphery of cities, and
- the preventive provision of low-cost serviced plots for housing. (UN-Habitat, 2003b)

These responses have achieved limited results. Despite some major successes where political will and continuity, economic development and mobilisation of resources in sufficient quantities have made possible the implementation at national level of innovative policies for housing the poor (e.g., South Africa, Brazil, Tunisia, etc.), scaling up remains a major problem. Most slum policies are simply treating the symptoms and cannot be considered as structural and sustainable policies. The Millennium Development Goal is to achieve a significant improvement in the lives of 100 million slum dwellers by 2020 (Millennium Project, 2005). This target would represent only 6% of the slum population in 2020.

Informal settlements, market-driven displacements and evictions: Current trends, and trends at global level

Eviction mechanisms and trends must be analysed with reference to the global context of the persistent imbalance between demand and the supply of land for housing, the scarcity of prime urban land for development, increases in the market value of urban land, and increasing commodification of informal land markets (Durand-Lasserve & Royston, 2002). Although there is a continuum between forced evictions and market-driven displacements or evictions, each has its own specific characteristics. The most common cases of forced evictions in developing cities are commonly observed in the following situations:

- A landowner has, in the past, authorised tenants to settle on his or her land and now wants to develop it or to sell it to a developer. He or she refuses to collect rents and asks the occupants to move out (case of inner-city slums in Bangkok during the last 30 years).
- An investor buys land suitable for development from a private landowner with the intention of developing it. If tenants or squatters already occupy the land, and if the investor cannot persuade them to leave through negotiation, he or she may obtain an eviction order from a court.
- Public authorities launch an expropriation procedure, by power of eminent domain, in order to build infrastructure or carry out urban renewal, a redevelopment scheme or a beautification project.
- Public authorities sell to private investors land from the state domain (public land that can be alienated) which is already occupied by tenants or squatters (case of cities in transition where land is being privatised, with pressure of emerging land markets). The sale of public land aims to increase their revenues

in the absence of land taxation and other fiscal resources. The Kigali and Phnom Penh case studies are a good illustration of such methods.

■ Public authorities recover land that had been allocated to occupants under a temporary PTO regime in order to carry out a development project, usually in partnership with private investors (case of sub-Saharan African cities where the PTO regime still prevails).

In all these cases, occupants of the land will ultimately be exposed to forced evictions. However, *de facto* security of tenure in informal settlements usually provides protection against forced evictions. This may compromise the success of legal actions to evict occupants, and may force private investors or public authorities to negotiate.

Negotiated market-driven displacements or evictions are usually the result of an actual or anticipated investment in a property that is already informally occupied, and which cannot be developed as long as it is occupied. The aim of the investor is to buy the land or immovable property at a price below market value, and to sell it back at a higher price with or without development. Four main factors bring down the market value of the land:

■ Tenants or squatters already occupy the land or the immovable property (this is the most common case).
■ The tenure status of the land being transferred is uncertain, and obtaining a real right may require time and financial resources.
■ The land is not suitable for development because of its physical characteristics.
■ Existing land use regulations preclude development.

If the investors succeed in obtaining the required land rights or manage to carry out the land development, or can expropriate or evict occupants (tenants or squatters), such transactions may produce a higher profit/return than that obtained in conventional development projects, where vacant land suitable for urban development is purchased at normal market price.

Market-driven displacements may also result from *in situ* tenure regularisation, settlement upgrading and basic service provision without community organisation or appropriate accompanying social and economic measures (such as credit facilities, advisory planning or capacity building at community level). This may give rise to increases in housing expenditure that the poorest segment of the settlement population is not able to meet. When combined with increases in land values and market pressures resulting from tenure regularisation, the poorest households will be tempted to sell their property and settle in a location where

accommodation costs are less. This commonly observed progressive form of displacement results in the gradual gentrification of inner city and suburban low-income settlements.

Market-driven displacements are frequently observed when several types of property rights coexist, and each has a different value depending on the type of protection it affords, with the result that the economically weaker households are exposed to market pressures. This usually happens when tenure situations are covered by a dual legal system, with various forms of reinterpreted 'customary' laws and practices inherited from the pre-colonial period coexisting with 'modern' law, as, for example, in Rwanda and many other Sub-Saharan African countries (Kreibich & Olima, 2002; Durand-Lasserve, 2003), or when multiple forms of tenure status and occupancy rights are recognised (legal titles coexisting with other types of documentation with varying degrees of legitimacy, such as administrative permits to occupy, deeds of sale, bills, ration cards, registration books, etc.). Such situations are common when there are no appropriate land records or land registers, or when existing land-related information systems are not available or no longer operate because they have not been updated or have been destroyed, thus leaving the way open to arbitrary interpretations as to the legal basis of tenure rights. This happens, for instance, when urban land and houses have been occupied in a post-war emergency context by refugees or returnees without proper government control, or when private ownership rights have been introduced with insufficient regulatory measures following years of state monopoly on land, as can be seen in former socialist countries (Cambodia, Vietnam, China, etc.).

Compared with forced evictions, market evictions are usually a long-standing process. However, they may also take place in a very short period of time. The systematic land titling and registration programmes currently being promoted in many developing countries, with the objective of setting up mortgage finance systems, securing investments and mobilising 'dead capital', may accelerate market eviction processes if they are not incrementally implemented or accompanied by appropriate measures to provide protection for the poorest households.

Settlements exposed to market eviction may be located on private or public land. Those living on prime land or land located in areas suitable for profitable housing or commercial development projects are particularly vulnerable to pressures from the administration or investors, especially if they do not have full security of tenure. Poverty and weak community organisation usually increase the risk of market eviction. In all cases, households headed by women are more vulnerable to market-driven forms of displacements or evictions than those headed by men (Benschop, 2003).

There are no figures for market evictions. Although forced evictions are well

documented by an efficient network of NGOs and slum dwellers' associations — the Centre on Housing Rights and Evictions' Global Survey on forced evictions in 60 countries found that 6.7 million people were evicted from their homes in 2000-2002 and that 6.3 million were under threat of forced eviction in 2003 (COHRE, 2004) — there are no figures for the scale of market-driven displacements. Yet, in cases that have been documented, the number of market-driven evictions is much higher than the number of forced evictions. Market-driven evictions are usually seen as a normal consequence of urban development, a kind of 'creative destruction', as defined by Schumpeter (1975), which necessarily accompanies economic development and modernisation processes. Another set of problems encountered in attempts to identify the scale of market-driven eviction is in the lack of agreed definitions. As long as negotiations between the involved parties take place, whatever the terms of the negotiation, eviction is usually considered as a voluntary removal. To illustrate this, we shall refer to recent observations made in two different urban, social, cultural and economic contexts: Phnom Penh (Cambodia), and Kigali (Rwanda).

Two case studies: Kigali (Rwanda) and Phnom Penh (Cambodia)

Historical, social and economic backgrounds are different in the two cities Kigali and Phnom Penh, but they share some similarities.

Cambodia and Rwanda have national populations, respectively, of 13 million and 8 million, both of which are predominantly rural. Urban population represents only 20% of the total population of Cambodia, and 16% in Rwanda. In 2004, capital cities had a population of 1.2 million (Phnom Penh) and 0.7 million (Kigali). The rate of urban population growth is around 3.5% to 4% in Phnom Penh and 7% in Kigali.

Eighty percent to 85% of the urban population are living in informal settlements in Kigali, and 25% in Phnom Penh (250 000 people, scattered among 500 settlements: squatters on public land and in the urban-rural fringe, slums on private land, rooftop dwellers). Tenants represent more than 50% of the population of Kigali and about 20% to 25% of the population of Phnom Penh.

The two countries are characterised by the gradual re-introduction of property rights in a post-war/post-genocide context necessitated in both cases by the destruction of land registers and records during the Cambodian war of 1971 to 1975 and the Rwanda genocide in 1994. Following the war and the genocide, these two cities were confronted with the massive arrival of 'returnees'/war refugees. This phenomenon had a major impact on the tenure and occupancy status of the population. In both countries, the emergence of a land market was accompanied by the implementation of a nationwide land titling and registration

programme. The cadastre of Phnom Penh is currently being set up and is expected to be completed within five to six years. In Kigali, emphasis is being put on the creation of GIS (geographic information system) data, for planning and fiscal purposes.

In Kigali, the land remains the exclusive property of the state. The right to use, develop and occupy the land is granted by the government under the 'permit to occupy' regime. The state retains the eminent ownership of the land. It is entitled to take it back if leaseholders of plots of land for housing in urban or suburban areas cannot develop the land within five years, according to construction standards set out by public authorities. In rural and peri-urban areas, customary rights were recognised, and the subdivision and allocation of land by customary owners was either recognised or tolerated before the genocide. Combined with self-help housing construction, this gave rise in the 1980s and early 1990s to the rapid extension of large urban low-income settlements. In 1994, 80% to 85% of the population of Kigali were living in these so-called precarious settlements. The adoption of a new land law in November 2004 did not put an end to the state monopoly of land, but recognised private land ownership and opened the way for a privatisation of land markets.

In Phnom Penh, private property was abolished by the Khmer Rouge regime, which was in power from 1975 to 1979, and the population of Phnom Penh was forcibly displaced to rural areas. From 1979 onwards, following the fall of the Khmer Rouge, the city was gradually reoccupied. All property rights prior to 1979 were abolished. Those working for the new government were allowed to settle in vacant land and abandoned buildings in Phnom Penh with their families. They were granted only a right of use but were allowed to transfer their land or dwelling unit by inheritance. They did not have to pay rent, but they had — in principle — to register with the government authorities and they received a 'card' that authenticated the legitimacy of their occupation. The land and house remained the property of the state. According to the 1981 constitution, 'no one is permitted to buy, sell, mortgage or lease a land' (Article 17). However, during the 1980s, one could observe the development of an informal property market, which included the subdivision and sale — without titles — of apartments in city centre buildings. Increased population pressure, combined with insufficient land and housing supply, led to the accelerated development of squatter settlements in Phnom Penh.

Market-driven displacements and evictions in Kigali

Between 1991 and 2002, the proportion of the urban population jumped from 6% to 17% of the total population of the country. This increase is due to the combined

effects of natural growth, rural–urban migrations, and the return to the country, mainly to Kigali, of Rwandan refugees living in the neighbouring countries (Perouse de Montclos, 2000). Each year, during the last five years, about 48 000 people have settled in Kigali. This would require an annual provision of 8 500 dwelling units, in addition to the units that would be needed to cope with the existing backlog.

Before 1994, the supply of urban land for the low–income population was mainly provided by 'customary owners' on the urban fringe. Government authorities tolerated these practices and, especially in the late 1980s and early 1990s, tried to streamline and regulate them by implementing some regularisation projects (République Rwandaise, 1987). The new government that came into power following the 1994 genocide did not recognise the customary land market but did not suggest any alternative policy for housing the poor, and took a series of actions to prevent the formation of new slums. This situation has resulted in a growing pressure on existing informal settlements, mainly for rental housing (République du Rwanda, 2004b).

The land and housing development policy currently implemented by the City of Kigali is pushing the majority of the urban population into illegality. Until the new land law adopted in November 2004 is implemented, land remains the property of the state, or, if it lies within the City of Kigali administrative boundaries, it remains the property of the City of Kigali, which allocates land required for any development project (République du Rwanda, 2004c).

Development and construction norms and standards are an obstacle to the provision of land and housing for the low–income groups. According to the National Housing Policy defined by the government (République du Rwanda, 2004a), the only settlements recognised as legal are 'planned' settlements, as opposed to 'spontaneous' ones (République du Rwanda, 2004d).

In urban areas, any development must be based on an approved 'development plan'. Any other development is considered illegal. Individual housing construction is authorised on land leased by public authorities, provided it conforms to the same set of norms and standards. Few households can manage this. Most have no choice but to rely on informal land markets, and are thus exposed to eviction. At present, restrictive planning and development standards are directly responsible for the exclusion of 75% to 80% of households from legal access to land and housing (République du Rwanda, 2004b).

Although upgrading projects are envisaged in a limited number of settlements, most are not entitled to regularisation because they have not been developed according to formal norms and standards, especially regarding the minimum plot size required. The main objective of the City of Kigali is rather to carry

out urban renewal projects in order to make prime land in the central and peri-central area available for development (Republic of Rwanda, 2002).

Expropriations and evictions result from the combined intervention of public authorities and private investors. The City of Kigali evicts households from irregular settlements in order to carry out infrastructure, development and urban renewal projects, especially in the central part of the city. Expropriation can also take place in formal settlements that have not been developed according to official norms and standards.

In addition to the risk of expropriation by the public authorities, the insecurity caused by the pressure of the market on urban and suburban land can be added to tenure insecurity. Informal settlements may be the target of a development project initiated by private investors (individuals, associations, cooperatives, developers) who can obtain approval from the City of Kigali for a development project on a site already informally occupied, and negotiate the 'voluntary departure' of the occupants or their eviction. The City of Kigali only intervenes if the parties cannot reach agreement on the amount of compensation to be paid. Compensation paid by private investors will later be deducted from the price of the land investors will have to pay to obtain a land title, after the development project is completed.

This practice generates a large number of conflicts: In 2003, 96% of conflicts brought to the attention of the national ombudsman concerned land tenure, and of these 75% concerned Kigali. Eighty per cent of households in Kigali are potentially exposed to this form of expropriation or market-driven eviction. According to official sources, about 1 280 households were evicted and paid compensation by the City of Kigali in 2003 and 2004. If the number of households evicted by the City of Kigali represents only a quarter to a third of displacements following private investor interventions, as estimated by the city authorities, the total number of evicted households over the last two years would be in the range of 3 840 to 5 120, corresponding to a population of 17 300 to 23 000 persons.

The compensation issue is a key dimension of market eviction processes. The compensation paid to households corresponds to the cost of the dwelling unit built on the plot, as assessed by the city council, but not the cost of land, which remains the property of the state or of the City of Kigali. In the case of eviction by public authorities, or of displacement initiated and negotiated by private investors, the compensation paid is based on the rate laid down by the City of Kigali in 1996, and not updated as of December 2004.

Moreover, only households who own their dwelling (42.7% of households in Kigali in 2002) can receive compensation. Those who rent (47.2%) receive nothing at all and are therefore in a much more precarious situation. The cost to a household of gaining access to another dwelling unit is very much higher than the

amount of compensation it receives. For example, in 2004, the minimum cost of a dwelling unit constructed according to the minimal norms recognised by the authorities is 3 million Frw, to which must be added the annual land rent. Between January 2002 and July 2004, the average amount of compensation paid to evicted families was less than 0.7 million Frw.

If the compensation rate were to be re-evaluated, the city of Kigali would not have the required resources to compensate and resettle expropriated households. The risks and negative impact of the land and housing policies currently being implemented in a context of land market privatisation must be highlighted, as they may result in the large-scale transfer of land that currently belongs to the state to high-income groups and investors, thus increasing the risk of massive market-driven evictions.

The resettlement of displaced or evicted households on serviced plots might be an appropriate response. However, the provision of serviced plots does not meet the demand. In cases where resettlement sites have been identified, the size of the plots, the administrative transfer costs incurred, the amount of rents and the norms and timeframe imposed for their completion are far beyond the ability of the displaced households to pay.

The registration system currently used, which gives a much higher priority to the question of tenure regularisation and access to ownership than to security of land tenure, is tending to worsen the situation. Therefore, there is a risk that it will only be accessible to those who can afford it, thus benefiting the richer households while penalising the poorest, as registration is on a voluntary basis and depends entirely on the ability of the individual to bear the cost.

Limited resettlement alternatives offered to evicted households are worsening the impact of market eviction processes. The practice of eviction without fair compensation or without offering resettlement options is creating a population of homeless families. The current land and housing policy implemented in Kigali has resulted, in the last few years, in the departure of a large number of evicted families, who have settled in small urban centres outside the City of Kigali administrative boundaries. However, there are a certain number of factors that limit the magnitude of the eviction drive: Most urban land still remains the property of the state, thus limiting the development of a speculative land market; there are still limited investment capacities in formal housing development, and conditions for the emergence of a property development sector are still far from being in place; and, for social and political reasons, the city services do show a degree of restraint in carrying out evictions.

Market-driven eviction processes in Phnom Penh

During the Khmer Rouge regime, all private property was abolished in Cambodia and most documents were destroyed. After the fall of the Khmer Rouge in 1979, returnees to Phnom Penh were selectively authorised to occupy buildings on a first come, first served basis and were given a 'temporary permit' by the authorities, but all property remained in the hands of the State (Fallavier, 2003). The right to own land was reintroduced in 1989, allowing farmers to claim possession rights to plots of up to five hectares, and households to obtain ownership titles to residential plots of up to 2 000 square metres.

From 1989 onwards, the government took a series of measures to address land issues and ensure efficient land privatisation and management. These were the enactment of the 1992 land law, the recognition of right to ownership of legal private property by the National Constitution of 1993, the decision to issue land titles, in 1995, and the adoption of the Statement on Land Policy in May 2001 with the objective 'to strengthen land tenure security and land markets, prevent and resolve land disputes' and 'to promote land distribution with equity' (Royal Government of Cambodia, 2002: 12).

There are, in practice, only two types of document used for claiming land ownership: receipts, acknowledging a person's claim to land, and certificates, which are state authenticated documents certifying land ownership. However, as noted by Sik (2000), land transactions involving certificates constitute only a small proportion of total land transactions. Although few people have official title, they have been actively transferring land on the market. Sale agreements that are signed and stamped by District Chiefs are considered by most people as official enough to certify the ownership transfer. Lack of clarity regarding land titles and rights is increasing the vulnerability of small landholders in the rural–urban fringe of Phnom Penh to market pressures. A recent housing situational survey (Ministry of Land management, Urban Planning and Construction, 2003), points out that, while 71% of those surveyed indicated that they owned their land, only 5.4% had a land certificate. A majority of people believe that if they are occupying land without conflict or controversy it is legally theirs, irrespective of whether they formally possess land papers (Chan & Sarthi, 2002).

Since 1992, the number of households living in informal settlements has rapidly increased, thus limiting capacity to accommodate any additional population. Three surveys over the last 10 years by Solidarity for the Urban Poor Federation (SUPF, 2003), a local CBO, confirm this trend: 130 000 people were living in 187 poor communities in 1994; 375 000 were living in 569 communities in 2003. Poor communities include squatter settlements on public or private land, and

settlements where low-income families have a recognised occupancy status that gives them some security of tenure but no ownership rights.

Geoff Payne (2004) identifies, from the least to the most secure, nine types of land tenure in the current situation in Phnom Penh:

■ pavement/mobile dweller,
■ unauthorised occupation of state public land,
■ unauthorised occupation of state private land,
■ unauthorised occupation of private land,
■ family registered book,
■ court order after dispute,
■ government concession,
■ certificate of possession, and
■ certificate of ownership.

Although most land and property transactions have taken place outside formal market procedures over the last 10 years, free access to land and housing is becoming much less frequent than in the 1990s. All observations confirm the increasing commoditisation of informal markets. The survey carried out for the Municipality of Phnom Penh in 1994 by the Urban Survey Group (USG), a local NGO, indicated that 58% of the households in informal settlements had paid to be allowed to settle. Only 42% had free access to the land or dwelling unit. Another survey carried out in 1998 indicates that 61% of households had to pay the previous occupants to buy or rent the dwelling unit (Clerc & Rachmuhl, 2004).

The first forced evictions carried out by the Municipality of Phnom Penh for the construction of infrastructure or city beautification projects accompanied the development of squatter settlements in Phnom Penh between 1990 and 1996. Evicted families were rarely given compensation or resettlement options. Evictions were also initiated by private investors/developers on land occupied by households who could provide some form of documentation. The land would then be sold on to the developers, but the price paid to occupants depended on the 'value' of the documents they were able to provide. This procedure involved thousands of families, combining forced eviction and market-driven displacement processes.

The attitude of the public authorities gradually evolved under pressure from local and international NGOs. Between 1996 and 2001, more than 6 000 households benefited from 160 small-scale upgrading projects. A new 'concerted resettlement policy' was gradually defined and implemented by the Municipality of Phnom Penh between 1998 and 2003. About 9 000 households were relocated to 21 sites on the urban fringe of the city. Land was provided by the government

or the Municipality of Phnom Penh, and infrastructure construction and service provision were usually funded by foreign aid agencies. Initially, concerted resettlement projects involved only a few households. However, between 2001 and 2003, the number of resettlements increased drastically in order to respond to an emergency situation: 5 000 out of 7 000 households were relocated, without proper consultation, following fires of criminal origin in several poor settlements in Phnom Penh.

In quantitative terms, the concerted resettlement policy was unable to cope with the demand from low-income families: It resettled 1 800 households per year, but, during the same period, informal settlements had to accommodate 5 000 additional households per year.

In May 2003, just before the elections, Prime Minister Hun Sen announced the government's commitment to put an end to evictions and to launch an ambitious programme aimed at upgrading 100 urban poor settlements per year over a five-year period. This would mean that nearly all of the 569 poor settlements identified in Phnom Penh in 2003 would benefit from this programme. This announcement was enthusiastically welcomed by NGOs and federations of poor communities in Phnom Penh as a major political victory (UPDF, 2003a; 2003b).

After nearly two years, the *in situ* upgrading policy has achieved very limited results. None of the four *in situ* redevelopment projects based on land sharing had been completed in January 2005. (Land sharing is a process by which the legal owner of a piece of land that is occupied by squatter communities agrees to sell or lease part of this land to the community — usually below market price. In exchange, the community will clear part of the land that has the highest commercial value so that the owner can develop it.) Negotiations between community representatives, public authorities and investors took much longer than expected. Profitability objectives were pushed to the fore, to the detriment of social priorities, and land sharing turned into a form of public-private development partnership.

Over the last five years, intense land speculation and a spiralling increase in the market price of land in urban and suburban areas have accelerated large-scale market-driven displacements or evictions at city level.

'Social land concession' is a legal mechanism to transfer land from the state private domain for social purposes to the poor who lack land for residential and/or family farming purposes. The sub-decree on Social land concession would — in principle — enable displaced households to be resettled (Royal Government of Cambodia, 2003) and could be seen as an appropriate alternative for those households that could not benefit from *in situ* upgrading projects. However, implementation is not possible because no public land has been made

available for such projects, and the public authorities do not have sufficient resources for land acquisition. Market-driven displacements and evictions are taking place in a context in which the government and the Municipality of Phnom Penh have no defined policy regarding public land reserves, and in which public land cannot be made available in sufficient quantities for low-cost land or housing development.

The Government of Cambodia and the Municipality of Phnom Penh own large tracts of land on the periphery of the city that could have been used for resettlement projects (Ministry of Land Management, 2003). However, the inventory of public land reserves — especially of land owned by government ministries — and their use for resettlement has always been problematic in Phnom Penh, with profit-making development projects increasingly competing with socially oriented ones. In many cases, the proceeds of the sale of land of the private domain of the state by government administrations and government agencies are not returned to the treasury. Sharp increases in urban land prices encourage these practices.

Poor inner-city settlements are usually located in prime areas with a high commercial value. For this reason, investors are exerting steady pressure on municipal authorities to develop these areas. In some cases, development projects can be based on land sharing or any other form of public-private partnership, without displacement of at least part of the poor residents. In other cases, development projects will require the displacement of the whole community. This can be an eviction, but it is usually presented as a voluntary or negotiated displacement. The terms of the deal then depend on the negotiating ability of the community or households concerned (including their organisational and lobbying capacity, their political protection, and their tenure status).

A recent illustration of pressures brought to bear on informal settlements concerns the case of the Koh Pich area community, which lives on public land that the Cambodian Bank and its parent company, the Overseas Cambodian Development Corporation, want to develop. While independent appraisal indicates that the land on Koh Pich is worth a minimum of US $24-26 per square metre, the current offer by the city to compensate residents is at the rate of US $2.50 per square metre. With no public land reserves being made available for low-cost projects on the urban fringe of the city, poor households do not have affordable resettlement options if they move out of their inner-city settlement. The new *in situ* upgrading policy implemented from May 2003 onwards, although seen and presented as a major success by NGOs and poor community federations, had in fact an unexpectedly perverse effect by restricting access opportunities to alternative resettlement sites.

Market eviction also concerns rural households on the periphery of Phnom Penh. Interviews carried out in Sangkat Chon Chao, Khan Dank Kor, in March 2004 confirm this dispossession process. Sangkat sources estimate that between 40% and 50% of the farmland in the Sangkat has already been sold off by small landholders to foreign and local investors, mainly during the last five years.

Cases of forced sales have also been reported in the Sangkat when landholders were unable to provide a property title. This is a common situation, as many households who received land in the 1990s believed that they enjoyed sufficient security of tenure and did not apply in due time for a property title.

Main implications and policy responses to market evictions

Market evictions are considered a normal phenomenon, as long as they result from market mechanisms and are not 'illegal' with regard to international legislation. Yet they concern tens of millions of households in cities throughout the world (they also concern rural populations, especially when titling programmes are implemented).

Disguising a forced eviction as a 'negotiated displacement' is usually seen as 'good governance' practice. It is less risky, in political terms, than a forced eviction; it is less brutal and accordingly less visible as it can be achieved following individual case-by-case negotiations. Most observers consider that the very principle of negotiating is more important than the terms of the negotiations, especially regarding the compensation issue, even when the compensation is unfair and detrimental to the occupant.

In this context, there is a need for a better understanding of the mechanisms and processes involved in market eviction or market-driven eviction. So far, a great deal of attention has been paid to forced eviction issues and the relationships between various forms of removal, eviction, and resettlement. In order to assess policy responses to market evictions, it is necessary to identify those mechanisms and legal and regulatory frameworks and tools that could help to limit or streamline market eviction processes.

Market eviction processes are tending to replace the forced evictions that prevailed in the 1990s, with similar effects on the poorest segments of the communities concerned. Although no figure is available at global level, empirical information clearly indicates that the magnitude of various forms of market-driven displacement now surpasses that of forced evictions. This can be seen and interpreted as a normal phenomenon: It forms part of the natural dynamics of change in every city. The arrival of better-off households in poor urban

settlements may have a positive impact on local economic development, may generate new employment opportunities and may increase potential for further community-driven development.

At city level, a high rate of economic growth may have two contrasting/ conflicting types of impact on urban informal settlements. On the one hand, new employment opportunities and increases in earned income must be considered as a precondition for poverty reduction and consequently for improving the housing situation for the urban poor. On the other hand, it may have a negative impact as it is usually accompanied by rapid increases in land prices and market pressures on informal settlements located in urban areas suitable for development, thus accelerating the pace of market-driven displacements or evictions. The land development strategies employed by property developers and the land tenure and land market patterns on the periphery of the city, combined with the steady increase in the price of urban land, are drastically restricting any room for manoeuvre available for housing the urban poor. If they have some form of secure tenure, they are in a good bargaining position and may be tempted to sell their property. If they do not, they are vulnerable to pressures from investors and will be in a weak position to negotiate and obtain fair compensation.

Without proper resettlement options, fair compensation and/or appropriate accompanying measures, market-driven displacements or evictions have two main impacts: (a) They lead to the establishment of new informal settlements on the periphery of cities, far away from city centres, where informal land markets still operate and can provide low-cost accommodation arrangements, and (b) they tend to increase population pressure and density in informal inner-city settlements that are not — or not yet — targeted for development. This usually results in deterioration in housing conditions and/or increases in housing expenditure and commuting costs for displaced households. Thus, policy responses to market-driven displacement and eviction processes should focus on three main sets of issues: access to land for resettlement programmes, compensation, and accompanying measures for communities benefiting from *in situ* upgrading programmes.

Conclusion and recommendations

So far, little attention has been paid to making land for resettlement programmes available to displaced or evicted households. One major bottleneck is the availability of land — especially of publicly owned land — for resettlement. In most cities, lack of transparency in the management, use and allocation of public land reserves favours the upper segments of the demand, to the detriment of the

low-income groups, through various forms of public-private development in which commercial objectives override socially oriented goals.

The issue of compensation is at the core of market eviction processes and is itself linked with (a) the market value of the titles/evidence provided, which determines the ability of poor households to resist market pressures and negotiate fair compensation, (b) the role and practices of government institutions involved in land management and administration, (c) the role of courts and tribunals, and (d) the role of NGOs and CBOs. The amounts of compensation paid should be reassessed in a context of accelerated commoditisation of land markets and increases in urban land values. In most cases, resettlement grants or compensation paid to displaced or evicted households do not correspond to the replacement cost of the dwelling unit, but to its value as assessed by government. This rarely incorporates the cost of land, nor does it take into account the actual market value of land in alternative resettlement sites in suburban areas.

Planning measures, procedures and tools can limit market pressures on informal inner-city settlements. These include various forms of protection against forced and market-driven evictions (such as the special zones of social interest in Brazilian cities), simplified planning procedures and a revision of norms and standards. Especially in informal settlement upgrading (tenure upgrading and the provision of infrastructure and services), incremental processes should be promoted as they leave communities time to adapt to new situations and be less vulnerable to market pressures (United Nations, 2003a; Christiensen, Hoejgaard & Werner, 1999).

In both resettlement programmes and *in situ* upgrading, particular emphasis should be placed on tenure issues. Security of land tenure must be dissociated from access to land ownership, and a wide range of alternatives to individual land ownership should be made available in order to limit market pressure on poor settlements (Durand-Lasserve, Fernandes, Payne & Smolka, 2002). In many cases, collective rights should be provided rather than individual rights, at least for a certain period of time, in order to limit pressure from investors on those settlements that are being regularised (Payne, 2002).

Community organisation is a key element for limiting the negative impact of market pressure on poor communities, as it usually gives them better negotiating or bargaining powers at settlement and city levels. It is a prerequisite for participatory planning and for the implementation of accompanying measures in cases of slum upgrading or of displacement and resettlement. In this respect, the action of national and international NGOs is of particular importance for the advocacy planning services and legal advice they provide to community-based organisations (Mitlin & Satterthwaite, 2004; Imparato & Ruster, 2003).

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City level experiences

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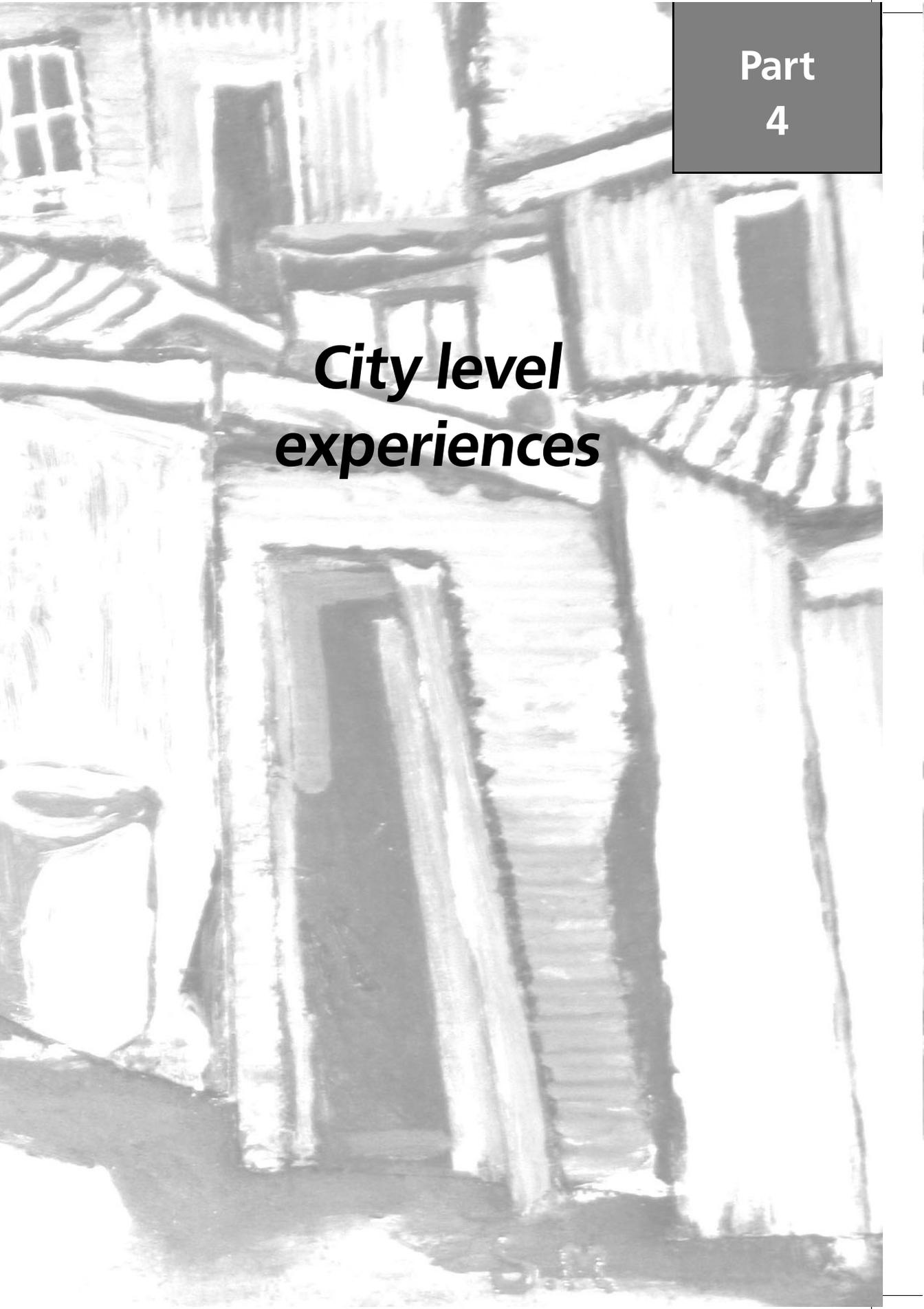
Informal settlement upgrading in Cape Town: Challenges, constraints and contradictions within local government

Nick Graham

Introduction

Since 1994, the South African Government's national housing policy has aimed to eliminate informal settlements through the relocation of residents to formal housing (Department of Housing, 1994; Khan & Thring, 2003). Although informal settlement upgrading, defined broadly as the incremental formalisation of settlements in their original locations, is increasingly becoming accepted practice worldwide (Van Horen, 2000), South African authorities have displayed a 'general reluctance to embrace incremental housing as a legitimate housing process' (Engelbrecht, 2003: 292). The new housing strategy ('*Breaking New Ground*'), unveiled by the national Department of Housing in September 2004, indicates a new direction and includes a programme specifically for informal settlement upgrading (Department of Housing, 2004). The new approach 'envisages that municipalities will play a significantly increased role in the housing process' (Department of Housing, 2004: 10). This responds to the obligations placed on government by the landmark Constitutional court case ruling in 2000, known as the 'Grootboom case', which found that the national government's long-term plan to deal with informal settlements by delivering formal housing was not an adequate response to the Constitutional right to access to adequate housing by those living under desperate conditions (Huchzermeyer, 2003a). The ruling also reinforces the responsibility of local government in relation to informal settlement communities (*Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC)). Thus, local government now has a political mandate, as well as a legal obligation, to upgrade informal settlements as part of a formalised housing

programme. However, there are indications that an amenable policy environment may be insufficient for the successful implementation of *in situ* upgrading of informal settlements at the local level.

Much of the literature on informal settlement upgrading in South Africa focuses either on national policy (Huchzermeyer, 2003b; Marx, 2003) or on the relations between the local municipalities and communities or NGOs at a project level (Pickholz, 1997; BESG, 1998; Huchzermeyer, 1999). Local government is considered a significant actor in the upgrading process, yet the factors that inform policy interpretation and project design at the local level are often ignored in the literature. Inadequate consideration is paid by researchers and practitioners to the institutional structures, capacity constraints, financing mechanisms, internal relations, and social dynamics within which local government has to operate. It is these factors, more often than not, that determine what is or is not possible in terms of state intervention in urban settlements. There is thus a need to gain a clearer understanding of the nature and effects of these constraints in order to incorporate city-wide informal settlement upgrading into the national housing solution.

The City of Cape Town ('the City') has recently undertaken the Emergency Servicing of Informal Settlements (ESIS) Project as the first phase of a broader plan for *in situ* upgrading throughout the City. This chapter uses the ESIS Project as a case study to explore the complex factors that motivate or constrain the City's responses to upgrading informal settlements. In-depth interviewing with key informants was the primary research method used, and 47 semi-structured interviews were held over a five-month fieldwork period in 2004. The largest group of stakeholders interviewed (16 respondents) consisted of officials from the City of Cape Town who deal directly with informal settlement policy or projects. Other stakeholders who were interviewed included senior local government politicians, ward councillors, provincial government officials, members of community-based and civic organisations, NGOs, private sector consultants and academic researchers. The author was based in the City of Cape Town's offices for three months, during which time the planning and implementation of the ESIS project was observed.

The first section of this chapter describes the political context for informal settlement interventions in Cape Town and provides a background to policy formation and project design in the City. The main features of the ESIS Project are presented, before an analysis of the factors that shaped and constrained the implementation of the project is undertaken. The chapter will go on to argue that, although these challenges and constraints are significant and cannot be ignored, they are underpinned, and in some ways superseded, by three deeper

contradictions within local government that will continue to affect *in situ* upgrading at the local level. These contradictions relate to the political vision for the City, the governance of informal settlement projects, and the struggle between bureaucrats and politicians over power to shape the city.

Background to policy formation and upgrading initiatives in Cape Town

Prior to the announcement of the '*Breaking New Ground*' housing policy, no specific national policy existed regarding informal settlement management and upgrading. Informal settlement proliferation was believed to be the result of a shortfall of formal housing delivery, and therefore the responsibility for addressing the situation fell to the national Department of Housing. Local governments were only involved in housing provision at the level of implementation and had very little input into policy formulation. As the national housing programme between 1994 and 2004 failed to keep up with informal settlement growth, local governments were inevitably left to deal with the problem of a lack of basic services in these growing settlements, but had no specific mechanism through which they could fulfil this task.

The attitude of the City of Cape Town towards informal settlements changed noticeably between 2002 and 2004 after two significant events. First, the Grootboom judgement in 2000, which had its origin in the Wallacedene settlement in Cape Town (see figure 12.1) (Huchzermeyer, 2003a), placed responsibility for addressing the immediate needs of informal settlement residents living in desperate conditions on all three spheres of government, including the City of Cape Town (then the Cape Metropolitan Council). Second, the political context in the City changed when the African National Congress (ANC) secured control of the City Council for the first time in October 2002 and the provincial government in 2004. Until 2004, the constant transfer of power between the ANC, the Democratic Alliance and the New National Party in the City and the province created much policy uncertainty and inconsistency with regard to informal settlements. In 2003, the ANC mayor introduced an 'unashamedly pro-poor' agenda to the City (Councillor Mfeketo, in *Cape Argus*, 29 May 2003), which was further cemented when all three tiers of government became politically aligned in 2004. One of the new priorities to emerge in Cape Town, in line with the new priorities of the national Department of Housing, was the 'eradication' of informal settlements through upgrading.

While the changing political environment meant that no concrete policy on informal settlements existed in the City, officials were still faced with an

increasing percentage of the population living in informal settlements without access to basic services. The response from the City was a series of *ad hoc* servicing projects to address these urgent service needs (water, sanitation, drainage and refuse removal) (Pottie, 2003), usually in reaction to the frequent fires and floods that plague these settlements (Van Niekerk & Hugo, 2002; *Cape Argus*, 28 August 2004). Interim policy documents show how officials in the Western Cape have tried to reconcile these *ad hoc* initiatives with the formal housing programme through promoting incremental upgrading as a pragmatic response to the scale of the informal settlement problem (WCHC, 2002; WCDOH, 2003; 2004; City of Cape Town, 2003; 2004a, 2004b). For the last five years, City officials have attempted to implement a long-term incremental servicing programme (City official 1, personal communication), but this has always been hindered by the lack of a suitable policy instrument or by political opposition. However, in 2003, political will shifted to support informal settlement upgrading and officials were instructed to develop a comprehensive strategy for informal settlement improvement in the City (City official 2, interview). Although the City had already provided basic services in many informal settlements, the process was only begun as a coherent, city-wide project known as the Emergency Servicing of Informal Settlements (ESIS) Project in early 2004.

The Emergency Servicing of Informal Settlements (ESIS) Project

The ESIS Project is the first phase of the three-phase incremental upgrading plan outlined in the City's Framework for Upgrading Informal Settlements (City of Cape Town, 2004b) — a plan that preceded the national Department of Housing's Informal Settlement Upgrading Programme. It aimed to provide the following basic services to all informal settlements within the City:

- ◼ a potable water supply to within 200 m of every dwelling,
- ◼ a minimum level of sanitation equivalent to (or better than) one 'container' toilet for every four dwellings, to be collected by the City once a week, and
- ◼ a weekly refuse removal service.

For the purposes of the project, settlements were divided into (a) those that are suitable for further upgrading, and (b) those that are located on 'encumbered' land (land not suitable for permanent settlement, because it is located in a flood plain, in an electricity or pipe servitude, on an old landfill site, etc.).

    In the first phase of the project, settlements in the latter category were to be provided with 'temporary' emergency services only, consisting of removable water reticulation and container toilets. Those in the former category would be

provided with a slightly higher 'rudimentary' level of service, in the first instance consisting of a permanent water reticulation laid according to a future development plan and waterborne sewerage in some cases. 'Upgradeable' settlements would receive full services and tenure (the form of which was to be decided at a later date) in the second phase of the project and formal housing in the third phase.

Implementation of the project was undertaken by the City's Development Support Directorate, a small group of specialist engineers and project managers, over six months beginning in early 2004. The rate of service delivery changed dramatically when the Mayor of Cape Town, in her budget speech on 26 May 2004, pledged that all the informal settlements in the City would be serviced by 30 June 2004 (Mfeketo, 2004). This announcement was made without consulting the officials responsible for its implementation, and their immediate reaction was that it was 'obviously unachievable' (City official 3, interview). The mayor stood by her promise, and threatened officials with dismissal if the targets were not met. The project shifted from the provision of services in a 'logical order' (City official 2, interview) according to a prioritised list of settlements, to the desperate servicing of all settlements to the absolute minimum level of service within the shortest possible time. This 'absolute minimum' level of service meant that a potable water supply was provided in the vicinity of the settlements and that container toilets were provided at a minimum ratio of one toilet per 10 dwellings.

By the end of June, the City had achieved basic service provision to over 90% of all accessible settlements (City Official 3, interview; *Cape Argus*, 9 July 2004). Inaccessible settlements were defined as those that were physically too dense to gain access with construction vehicles, or where settlement residents had refused the City entrance, although no figures were given as to how many informal settlements fell into this category. The lack of supply to the few remaining settlements was mostly due to 'community politics' and difficulties gaining permission from private landowners to service settlements on their land (City official 3, interview). Although the media mildly criticised the mayor for not meeting the targets, the project was hailed as 'one of the fastest upgrades in the city's recent history' (*Weekend Argus*, 11 July 2004). While officials admitted that the figures represented a certain amount of 'window dressing' as many of the services provided fell below the original project aims, an official in charge of implementation considered the project 'a total success', exceeding even their greatest expectations (City official 3, interview).

While the last remaining settlements are receiving services under the ESIS Project, plans are being made for the implementation of the second and third phases of the longer-term upgrading programme, involving the provision of permanent services, tenure and housing. This larger incremental upgrading

programme is significant for two reasons. First, it represents the only comprehensive strategy for all informal settlements in the City, and second, it would seem to correspond with the objectives of the national Department of Housing's new Informal Settlement Upgrading Programme. However, officials admit that the short-term strategy of installing temporary services was relatively easy compared with the challenges foreseen in providing full services and tenure in all 'upgradeable' settlements: 'We are only at a rudimentary stage now, so we can't even contemplate the enormity of the incremental process' (City official 3, interview). The anticipated challenges perceived in wider scale upgrading are due to a number of constraints that officials experienced or perceived during the ESIS Project. These constraints are discussed below.

Constraints faced by the City of Cape Town during the ESIS Project

The fast-tracking of the project highlighted the constraints that the City faces when attempting rapid service delivery. The dominant constraints that emerged during the interviews with officials, listed in order of importance, were

- lack of additional land,
- community politics,
- bureaucratic 'red tape', and
- difficulties in accessing finance and resources.

Evidence from the interviews shows that both state and non-state stakeholders consider the lack of available land for de-densification, relocation, and the construction of new housing to be, at the least, one of the most critical issues for informal settlement intervention in Cape Town. The City seems now to have reached a deadlock over the land issue, with any further housing or upgrading initiative dependent on the identification and location of suitable land. This constraint could be greatly aided by the new national housing policy's provision of a separate fund for the purchase and/or rehabilitation of well-located land (see Department of Housing, 2004: *'Breaking New Ground'*). While a senior ANC politician stated that the political will now existed within the City to release well-located land for housing, the evidence in practice is contradictory. Prime sites have been allocated for high-income commercial development, while new housing projects continue to be located on the periphery (Turok & Watson, 2001; Todes, Pillay & Kronje, 2003). This tension over the highly political land question is rooted in the lack of planning and vision for informal settlements in the City, discussed later in the chapter.

The constraint labelled by officials as 'community politics' refers to disagreements between the City and the community leaders over levels of service and location of services, claimed by residents to be the result of a lack of consultation. Officials noted that a striking feature of the ESIS Project was how many disruptions were caused to the delivery process by disputes over opportunities and payment for casual employment of settlement residents during the installation of services. The universal expectation that any manual labour involved in upgrading must be recruited from the settlement involved has become an accepted feature of state projects across South Africa. Residents in a number of settlements were willing to disrupt the ESIS Project and sacrifice the benefit of basic services in order to get jobs, or to be paid more for these jobs. There is thus an interesting shift in emphasis from the residents' perspective, with their primary demand for basic services being superseded by the demand for jobs, at least in the short term, which may have implications for the form and viability of future projects. The City acknowledges that a lack of data and knowledge around livelihood strategies, incomes and affordability levels in informal settlements affects the extent to which intervention can be made appropriate and sustainable (City official 1, interview; City official 6, interview). It aims to address these issues through socio-economic surveys in upcoming upgrading projects, but lacks critical capacity and experience in this type of research. The gap in understanding around livelihoods in informal settlements is inextricably linked to the City's problematic and contradictory culture of engagement with these communities. The tensions caused by this process of engagement are discussed in the next section.

Most of the bureaucratic constraints during the ESIS Project related to procurement processes and the accessing of funds. However, when the officials insisted that they could not meet the mayor's deadline unless political action was taken, the funding was made available and some of the normal procurement procedures were waived for the period of the project (City official 4, interview). These *ad hoc* measures were justified because of the 'emergency' nature of the project, but will not be possible for a city-wide informal settlement upgrading programme. Once again, these bureaucratic constraints are linked to the lack of suitable policy mechanisms and forward planning for informal settlements at the local level.

To date, the scope of all informal settlement interventions in Cape Town has been determined by the availability and accessibility of funding. However, additional funds were made available at short notice to fund the ESIS Project because of the political backing that the project enjoyed. The City has now (at the time of writing, late 2004) allocated 21% of the current capital budget to informal settlement upgrading, and the restructuring of the housing subsidy system to enable the funding of informal settlement upgrading without allocating individual

subsidy beneficiaries would also suggest that a dramatically increased source of funding is available for future upgrading. However, officials remain concerned that the financial support for upgrading is strongly linked to the continued political support for upgrading, which may disappear at any time (City official 3, interview). A further concern is that the City's entire budget for the ESIS Project and the further phases of upgrading has been dedicated to capital costs, and there is no operational budget to maintain the services installed. The uncertainty around how much money is available and its inevitable inability to match the scale of the problem is the reason for much of the conservatism of the City officials and frustration at the 'unrealistic' promises made by politicians to the media. There is a clear disjuncture between what the politicians at both the local and the national levels envisage for informal settlements and what the officials believe is possible and sustainable given the available resources. This tension points to an underlying contradiction in the City's upgrading approach whereby the officials, who are responsible for a large part of project design and implementation, have a very different agenda from the politicians who initiate, drive and sustain the projects.

Contradictions within local government that may shape the City of Cape Town's future responses to informal settlements

The constraints that were experienced during the ESIS Project, as mentioned above, have all been linked to deeper contradictions within the City that raise questions about the purpose and role of upgrading in Cape Town. The three contradictions are discussed individually below and relate to the political vision for the City, the City's approach to community engagement and the transfer of power across the political/administrative interface.

Contradictory approaches within the political vision for Cape Town's informal settlements

A common criticism of Cape Town's informal settlement interventions, and much of the reason for their *ad hoc* nature, is that there is no strategic, guiding policy, both in terms of the objectives of upgrading and the location of new permanent settlements. According to the *Local Government: Municipal Systems Act, No. 32 of 2000* (Republic of South Africa, 2000), this type of spatial and developmental guidance is to come from the City's Integrated Development Plan (IDP). While the IDP '. . . recognises informal settlements as an intrinsic, legitimate part of Cape Town . . .' (City of Cape Town, 2003: 23) and outlines *in situ* upgrading as one of its six development strategies, these plans do not

necessarily correspond with political opinions expressed in stakeholder interviews and in the media. A senior official believes that the City Council's Mayoral Executive Committee still adopts slum clearance as the preferred model (City official 1, interview).

Sentiments expressed by senior politicians and officials clearly show that there is little or no political support for incremental upgrading as described in the IDP; the emphasis is rather on once-off, capital-intensive projects that aim to eradicate informal settlements through the provision of formal housing on individual plots (City official 5, interview; Councillor 1, interview; Councillor 2, interview). This contradiction is evident in the two different approaches taken in the New Rest Pilot Project and the planned N2 Gateway Project (see figure 12.1). The New Rest Pilot Project is an innovative project undertaken over the last seven years by officials and academics in partnership with the residents of New Rest. This is the only such project in the City and was intended to serve as a model for an expanded upgrading programme in Cape Town. However, it is seen to be too slow, not adequately dense for its prime location, and the 'shacks will be there for too long to call it a success' (City official 3, interview). This last point illustrates a common point of view that, as long as shacks remain, a settlement remains 'informal' and therefore unacceptable.

The contrasting approach is that taken for the planned N2 Gateway Project, which aims at rapid delivery of formal housing without any community input into the project, or connection to the informal settlements that it aims to replace. While some of the housing is to be built on the sites of well-located informal settlements, many of the residents will be relocated to 'greenfield' developments on the urban edge (Khan, 2004). The New Rest Project falls within the geographical area covered by the N2 Gateway Project, and is now considered part of this latter project, but the approaches taken to the 'upgrading' of the settlements in each of the projects could not be more different. A national political directive for much higher densities in upgraded settlements closer to the City has forced officials to abandon plans for *in situ* upgrading in favour of higher density housing forms such as four-storey 'walk-ups' (City official 3, interview).

A perception among many external stakeholders is that the political aversion to an incremental upgrading process is the result of unwillingness among politicians to tolerate any degree of informality. There is a strong emphasis on the aesthetic impacts of informal settlements, with less attention paid to ways in which informality supports the livelihoods of the poor (Consultant 1, interview; City official 6, interview). The following illustrative comments were made by the mayor and the provincial Minister of Housing and Local Government respectively in relation to the informal settlements that line the N2 national road:
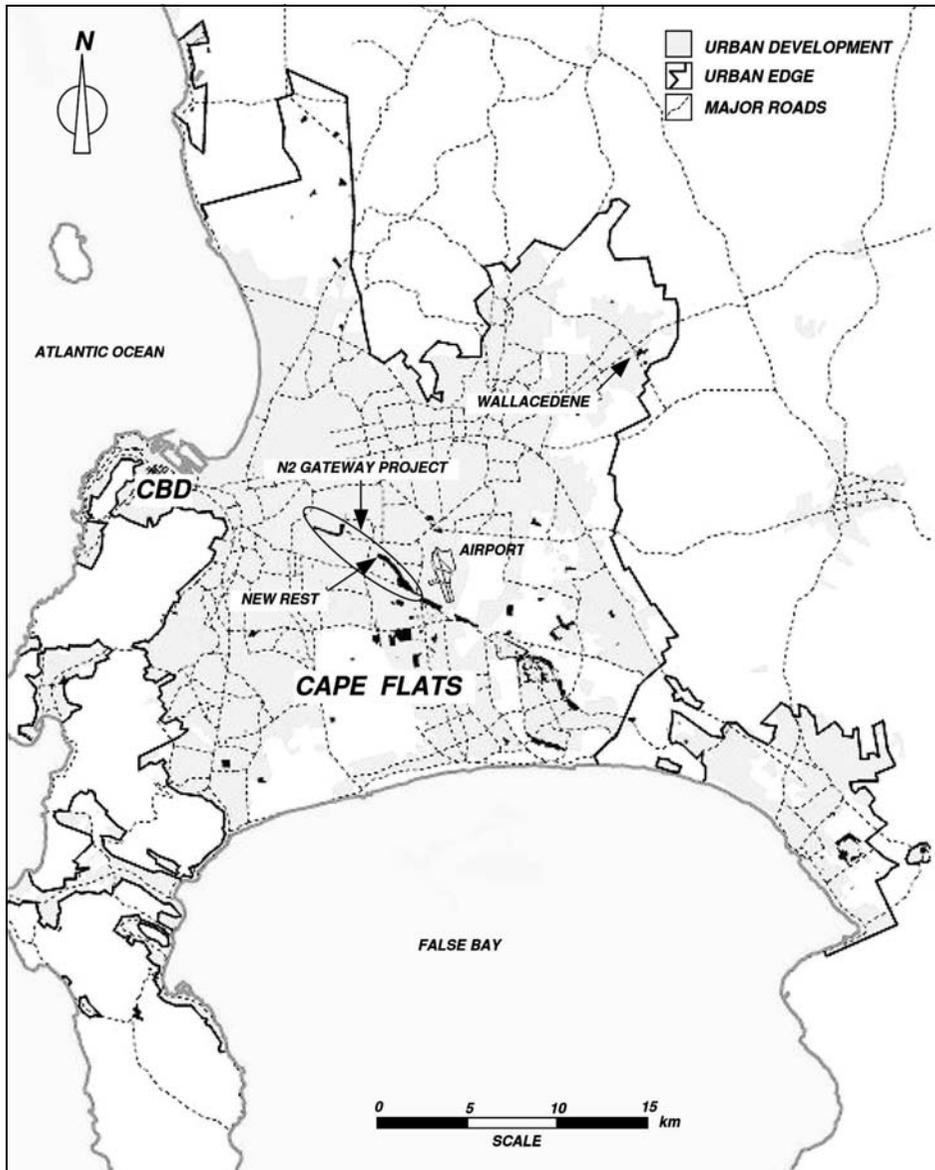
Figure 12.1: Map of CapeTown contextualising the N2 Gateway Project

Source: Base map by Nick Graham.

- ■ 'The area is a billboard for our city' (Councillor Mfeketo, *Cape Times*, 19 August 2004).
- ■ 'With the 2010 Soccer World Cup coming to Cape Town, we have to deal with the informal settlements along the N2' (MEC Fransman, *Cape Times*, 3 May 2004).

While the perpetuation of shacks on serviced sites is undesirable in the long term, the retention of some shacks is a short-term consequence of following an *in situ* upgrading strategy. This reality is incompatible with the political vision and rhetoric of 'eradication' articulated at both the national and local levels.

Political support for *in situ* upgrading in Cape Town is thus weak and unstable — an apparent contradiction if one recalls the mayor's firm stance during the ESIS Project. However, the level of service provided during this first phase did not require any commitment for further upgrading. Thus far, only eight of the City's 170 settlements have been earmarked for full services to be provided as the second and third phases of the ESIS Project (City of Cape Town, 2004b). The identification of 'upgradeable' settlements relies on the narrow, technical, and allegedly apolitical concept of whether land is 'encumbered' or not. However, this concept is sufficiently vague to justify the relocation of most settlements in the City, if so desired.

It is not surprising that political plans for eradication of informal settlements and resettlement of residents to serviced sites find favour with some 'old-style' officials who are accustomed to top-down interventions (City official 6, interview). Greenfield projects are technically easier to plan and faster to implement. In contrast, the engineers at Development Support have shown willingness and capacity to upgrade settlements *in situ*, but require the resources and consistent political support for this type of intervention. Thus, the changing political imperatives, the lack of genuine support for informal settlement upgrading, and a lack of a strategic approach to informal settlements contradicts and undermines the City's stated intention to upgrade existing settlements *in situ* (City of Cape Town, 2003).

Mismatch between the City's governance policies and its approach towards community engagement in informal settlement interventions

Community participation was considered by all stakeholders interviewed as a necessary component of any settlement intervention, but what form it should take in practice is highly contested. The nature of *in situ* upgrading means that it cannot be externally designed and it requires extensive negotiation and participation with the settlement residents (City official 7, interview; Engelbrecht, 2003). The City of Cape Town has typically taken a guarded, managed approach to community engagement. In the planning phases of the ESIS Project, consultation sessions were held with ward councillors and community leaders to generate cooperation for the project, but feedback from these sessions did not seem to have any real effect in the project execution. Consultation or participation was not extended to the implementation of the project. When asked whether residents

of a particular settlement had any input into the ESIS Project, a ward councillor replied:

> They are made aware of what is going to happen. They participate and local labour is used, but it is not like they are given options to choose from. This is very rudimentary stuff — there is no money available to provide anything else. It is just information, not consultation. (Councillor 3, interview)

It could be argued that the budget and time limitations of the project were so severe that there was very little over which to negotiate. However, disputes between communities and the City frequently arose due to an alleged lack of communication. The most common reason given by officials for this 'distanced' approach to participation is that they do not want to raise expectations among the residents that they will be receiving something the City cannot provide (City official 4, interview; City official 7, interview). This, in the City's experience, can lead to bitter confrontations and resentment between communities and the City. As the City bears ultimate responsibility for the functioning and mainten-ance of the services the officials provide in the long term, they are justifiably reluctant to relinquish decision-making power to residents, who have very different priorities. A carefully designed and managed community consultation/participation process is thus seen by officials as a means of gaining the necessary cooperation from residents, while at the same time ensuring that the City's interests are protected.

There is unexpected agreement between this approach, taken by officials, and the approach taken by senior politicians. The '*imbizo* (mass meeting) model' of participation is used by the ANC nationally, but has also found particular applica-tion in the housing sector in Cape Town. The national Minister of Housing recently held a 'Walkabout' in some of Cape Town's informal settlements (*Cape Times*, 12 August 2004) and the Mayor of Cape Town undertook an extensive 'Listening Campaign' in 2003 (*Cape Times*, 29 May 2003). While the effectiveness of these forums as means of consultation with the grassroots support base is not being questioned here, it does have worrying consequences for the design and management of informal settlement projects. Imbizos are used as a mechanism for garnering a mandate from the people. However, the 12 000 con-tributions to the mayor's Listening Campaign were politically interpreted into a list of only eight priorities for the City (City of Cape Town, 2004c), one of which is the need for 'land and housing'. How this need is to be addressed is to be determined technocratically: The people have spoken, a plan must be devised and houses must be delivered. Any further input is limited to consultation and information sharing in order to gain acceptance of the proposals. Some comments

made by politicians regarding the form of future informal settlement interventions in Cape Town illustrate this approach:

- ■ 'People are tired of telling the government what they want. They want the housing issue to be solved. We have heard the people. Now we must go away and do that' (Provincial government spokesperson, personal communication).
- ■ 'The people are tired of talking to officials. They consult with them so much, but nothing happens — they want implementation. They are "over-consulted"' (Councillor 4, personal communication).
- ■ 'The people want the government to provide them with finished houses that they can move into' (Councillor 5, personal communication).

This model of governance opens a space for officials to determine the form of settlement intervention without requiring any further community input, so long as it fulfils the political mandate. As officials perceive participation to inherently slow down service delivery (NGO member 1, interview), this model allows for rapid service delivery, which in turn satisfies the politicians but succeeds in perpetuating the legacy of top-down service delivery in South Africa (Parnell, 1992). It also ignores the ability of residents to stop the upgrading process, as was evident with the ESIS Project.

Although the City argues that its principled approach to upgrading has always been bottom-up (City official 3, interview), it can be seen why NGO commentators would claim that the City's approach to date has been top-down (NGO member 1, interview; NGO member 2, interview). The City has very little experience in working with CBOs and NGOs on a project level, and officials acknowledge that community participation is an area in which the City is particularly weak (City official 3, interview). The level of community participation varies from project to project, and there are some cases where the City has conducted intensive consultation successfully. However, in the City's general approach there is very little evidence of the type of participatory governance processes envisioned in recent housing and local government legislation (Department of Housing, 2004; Republic of South Africa, 2000). The City has yet to show any commitment for meaningful partnerships with other stakeholders or any willingness to delegate decision-making power. This creates a contradiction between the City's approach to community engagement and the extensive participation that is required if settlements are to be upgraded *in situ*.

Conflicting agendas for informal settlements across the political/ administrative interface

The political/administrative interface is characterised by complex relationships of power and interdependence that exist between senior councillors (who are elected

politicians) and senior administrative officials. The transfer of power across this interface determines the form of interventions in the City. There are two trends that have affected the locus of this power with regard to informal settlements. The first is the introduction of the ANC's developmental agenda that has made informal settlements one of the City's major priorities. The City has dedicated significant funds to the ESIS Project, and the mayor has taken personal responsibility for its success. The second trend is the centralisation of decision-making power to the executive mayor and her Mayoral Executive Committee (Mayco). The result of these two trends is that high-level politicians have become increasingly involved in determining the specific form of upgrading projects. However, a consistent view among officials is that there is a lack of understanding of the complex issues involved in informal settlement upgrading and that the politicians' opinions are uninformed. Bold public statements about informal settlements, such as that by the mayor regarding the targets for the ESIS Project, have tended to change the scope of existing projects, shorten project schedules, and place intense pressure on officials to meet deadlines. The mayor regarded the impressive results reported for the ESIS project as evidence that political pressure on officials works, saying: 'It proves that if you tell them to do it and don't take any excuses, it can be done' (*Weekend Argus*, 11 July 2004). The response from officials was mixed, with one official claiming that 'it was good in one way because it got us moving fast', while another stated that 'we say that we want the Mayor to consult with us so that we can achieve realistic objectives, but if we achieve, she is just going to become more unrealistic'. A third official expressed frustration at the lack of understanding from politicians: 'Politicians don't understand or want to hear that some of the settlements can't be serviced — as long as the numbers make them look good, they're happy' (City official 3, interview).

Some officials have observed that these sentiments are due to a shift in the role of the professional in government housing discourse and practice (City official 6, interview; City official 7, interview). The historical role of the professional was that of advising politicians on policy options and the consequences of pursuing certain options. Now their role is strictly that of implementing political directives. An official's perspective on this shift was that 'the politicians have been unwilling to take a long-term comprehensive look at the problem of informal settlements and to act on the data flowing out of the analysis' (City official 8, interview). Another official stated that 'analysis is not informing praxis, ideology is informing praxis. Truth and facts have no impact whatsoever' (City official 6, interview).

Under apartheid, significant power was vested in built-environment professionals (planners, engineers, architects) within the bureaucracy to plan and shape the cities in a technocratic manner according to a separatist ideology (Robinson,

1992). It is clear that this power has now shifted dramatically towards the political sphere. This shift is summarised in a statement by an official, referring to the state of Cape Town's informal settlements: 'All this mess is because of high-handed decision making. Fifteen years ago it was the officials who were high-handed and got taken to task about it. Now the politicians are doing it' (City official 7, personal communication).

According to politicians, this is necessary in order to correct the dysfunctionality of the 'apartheid city' and to implement their strong mandate for basic service delivery. Bureaucratic inertia and resistance to change hinders the developmental local government agenda. A senior councillor remarked that 'officials have looked at the issue of land in a negative and backward way' (Councillor 1, interview), referring to the willingness of officials to continue to justify locating the poor on the urban periphery according to technical constraints, thereby ignoring the ANC's social and political project of integrating cites. Officials argue that autocratic political decision making results in impractical plans that are unachievable and that ignore the longer term consequences of such action. Thus, the struggle for power over the ability to shape the City is played out between officials and politicians at the local level, hindering many positive informal settlement interventions.

Conclusion

The scale of the informal settlement challenge in Cape Town is visible for all to see. The ESIS Project is considered a success in so far as it achieved near universal basic servicing over a short time, and thereby discharged the City's legal obligation to extend basic services to the poor. However, this is only a stopgap measure until a more comprehensive programme of housing provision and/or upgrading takes place to reduce Cape Town's housing backlog. This chapter has shown that officials faced considerable constraints during the implementation of the ESIS Project. Many of these could be avoided or overcome in the short term, but will continue on into future upgrading interventions. There are more significant factors, framed here as three contradictions, that may shape the City of Cape Town's future responses to informal settlements.

First, the policy laid out in the Integrated Development Plan (IDP) and other City documents to upgrade informal settlements *in situ* is contradicted by a lack of political support for incremental upgrading. This is symptomatic of a lack of a long-term strategic vision for informal settlements in the City. The result is that informal settlement projects will continue to be *ad hoc* and subject to the imperatives of short-term political agendas. Any longer-term upgrading programme

will be vulnerable to disruption if political control of the City or the province changes once again, and is therefore likely to lack continuity. A concrete, strategic plan for the settlements would help to circumvent many of the constraints to upgrading, including the difficulty in accessing land and improving the perception of funding insecurity. Therefore, it is necessary to define exactly what is meant by 'upgrading', under what specific circumstances it should be undertaken, and, most important, what its ultimate objective is.

Second, there is a clear disjuncture between the City's current reluctant approach to community engagement and the extensive community participation and re-negotiated governance arrangements that are necessary for incremental upgrading. The ESIS Project has illustrated that community groups have the power to stop servicing projects if the intervention does not suit the needs of the intended beneficiaries. The short-term imperatives for rapid service delivery perpetuate a top-down, technocratic approach to governance and implementation that has been shown to be unsuccessful in the past. The City needs to compensate for the gap in its understanding of the role and mechanisms of informality and improve its capacity for community engagement through partnerships with NGOs and CBO networks. The restructuring of governance arrangements for upgrading projects and programmes requires a paradigm shift within local government regarding the importance and great potential benefit of consistent and meaningful community involvement.

Third, informal settlement interventions seek to serve the different, and often contradictory, ends that are being worked towards by officials and politicians. Political promises that are difficult to deliver upon create tension between politicians and officials on the one hand, and between the City and the informal settlement residents on the other. This has tended to stall any momentum that had begun to be generated through previous upgrading initiatives. The result is that plans that have been developed over many years can be abandoned in favour of a new alternative, or that officials will resist the implementation of a plan that they do not regard as viable in the long term. There is a need for more consultation and informed decision making by politicians, but combined with a 'politicisation' of the bureaucracy to avoid a technocratic approach to an issue that is inherently political. The contestation for power 'behind the scenes' of upgrading projects invariably affects the impetus and sustainability of city-wide projects.

This chapter has argued that these three contradictions are overriding constraints to the implementation of a city-wide informal settlement upgrading programme in Cape Town. They are related to, but are largely independent of, the national housing policy and need to be addressed by the City before any

serious attempt can be made to integrate informal settlements into the urban fabric of Cape Town.

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thirteen

Local governance and social conflict: Implications for piloting South Africa's new housing plan in Cape Town's informal settlements

Catherine Cross

Introduction

Housing is probably one of the government's three most central concerns in its struggle against poverty in South Africa. Housing delivery is normally the vehicle that provides not only access for the poor to services, but also the vehicle that gives households moving into the urban economy a platform on which they can accumulate assets, allowing them to become functioning citizens of the developed economy. Wanting to move forward on the housing front, government has been well aware of rising urban in-migration, and also that the share of South Africa's population accommodated in shacks is increasing in spite of relatively strong housing delivery. The government has recognised the contradiction that, although housing delivery has been successful, protests over housing are on the rise.

This chapter is based on the recent experience of the Crossroads community in Cape Town, once the Cape's major locality of anti-apartheid struggle. The Greater Crossroads area (see figure 13.1) now includes the original settlement area called Old Crossroads, as well as the New Crossroads township, which accommodates many of the people expelled from the original settlement in the 1980s. Boystown is an area of informal housing across the northern boundary of Old Crossroads. In this chapter, it is taken to be one of the Crossroads settlements, although it is officially not part of the township. Crossroads is located along the N2 highway near the Cape Town international airport and is part of the government's 'N2 Gateway' housing project (see figure 13.2), a pilot project of the new *'Breaking New Ground': Comprehensive Plan for the Sustainable Development of*

Human Settlements (Department of Housing, 2004). This plan is intended to lead the way to the complete eradication of shacks from South Africa by 2014. The inclusion of Crossroads in the N2 pilot project emerges from the total stoppage of housing delivery in Crossroads from 2002 up to the time of writing (July 2005). This has resulted in the loss of unknown millions in housing subsidies.
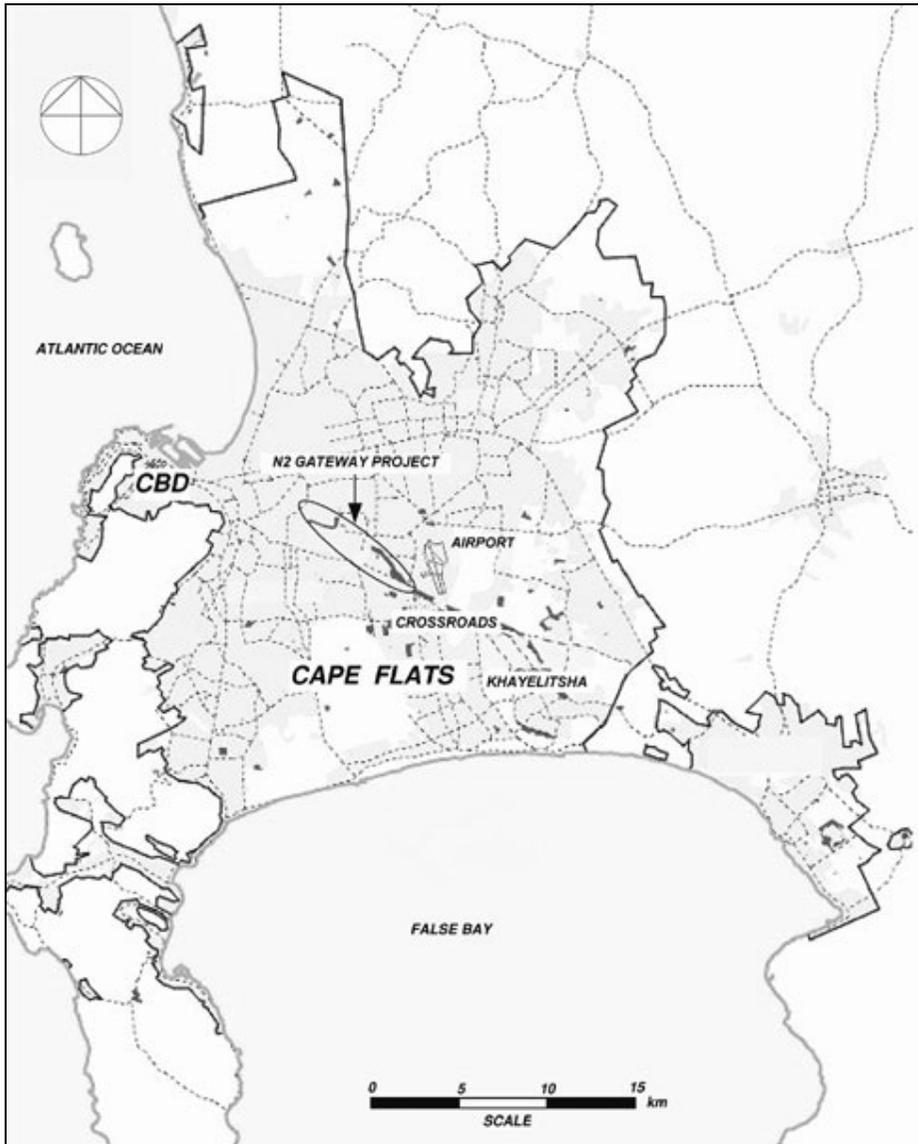
Figure 13.1: Map of CapeTown indicating the location of Crossroads in relation to the N2 Gateway Project

Source: Base map by Nick Graham.

Recapitalisation and further delivery have only become possible with the advent of the N2 Gateway project, which will enable housing delivery in the area to receive replacement funds and for construction to be resumed. In the planning for the pilot projects of the '*Breaking New Ground*' housing plan, Boystown is put forward as the lead pilot of the 18 planned across all the provinces (Department of Housing, 2005). However, this chapter questions whether the underlying crisis at community level, which caused the stoppage in the first place, will be resolved by new funding.

In 2003, before the release of the '*Breaking New Ground*' document, the Human Sciences Research Council (HSRC) carried out eight area case studies of development at grassroots level for the Presidency's Ten Year Review, commissioned through the Department of Social Development. The case studies involved roughly 40 key informant interviews, in person and by telephone, street interviews, one focus group meeting with residents and one with the area councillors, a mini-survey of 20 households, and extensive use of official statistics and municipal data. Based on the area case study of Crossroads (Cross, 2004), this chapter argues that it will not be enough to deal narrowly with the housing subsidy. Instead, if delivery is to be successful, it will be vital to address the governance side of the problem, and to consider whether the new thinking in housing policy offers a realistic process in these and other terms.

Institutional shortcomings in local governance have historically been given little attention in housing policy statements in South Africa, although they have consistently been at the root of many of the problems experienced. One of these problems, on which the Crossroads experience sheds some direct light, is the extent to which outright conflicts can block housing and service delivery. This chapter interrogates the cause of these conflicts, an interrogation that has become urgent since the Crossroads area study in 2003. Violent conflicts relating to control over access to the benefits of housing and service delivery have taken place in low-income communities across South Africa. Before the end of apartheid, these were sometimes hard to distinguish from the political violence of apartheid itself. Post apartheid, this kind of conflict is more social than political, although — as President Mbeki has noted — it traces direct links to the heroic struggle against apartheid (Patel & Pithouse, 2005). More specifically, it connects to tension between bureaucratic delivery processes and what communities on the ground want, need and demand.

Formal decentralisation of infrastructure delivery in South Africa took place in 1996, when the government's first approach — grand centralisation through a national Reconstruction and Development Programme (RDP) office — was reconsidered (Oranje, 2004). In that year, the new Constitution gave local government new powers and responsibilities in line with its new role as the

main development arm of government, supported by provincial coordination and by national government norms and standards (Oranje, 2004). However, actual implementation at local government level has often been unsatisfactory, and local government institutions are acknowledged to be weak in many cases.

Delivery protests across South Africa in 2005

The delivery-related popular protests, in some cases violent, that have broken out across the country since the Crossroads events that led to the housing stoppage in 2002, have unsettled national government. In its public statements, the government sounds seriously worried and sometimes baffled, with the president calling for an end to the street demonstrations (Patel & Pithouse, 2005). Street protests over delivery delays reportedly began in Cape Town early in 2005 and spread to KwaZulu-Natal in March and April. By May, 13 Harrismith service-delivery protesters were charged with sedition, which carries a minimum sentence of 15 years, and one was shot dead by police (Tabane, 2005). By then, violent protests were spreading in the Free State, and again in Cape Town:

> For the second week running, angry Cape Town residents have protested violently at unfulfilled promises from government of a better life for all, especially decent housing. Yesterday . . . Ocean View resembled a war zone as women and youths fought running battles with police trying to stop a protest that had started off peacefully . . . About 100 people . . . had barricaded the main road with rocks, tyres and tree trunks and hit back at police, hurling small rocks . . . Later the youths shot back at police with distress flares as police arrested several of them. (*Pretoria News,* 2005)

Reported grievances have focused on inadequate housing and the poor quality of homes provided to subsidy beneficiaries, as well as paralysis in the provision of promised housing and service delivery to the poor. As one of its responses, government appears to have stepped up its efforts to eliminate corruption (*Pretoria News,* 2005). The government is also reaching out to people on the ground, holding *imbizos* (mass meetings), report-back and listening sessions, and actively seeking feedback on its planning. In terms of housing delivery, it has become imperative to take closer account of the way in which housing needs relate to protest and violence at community level.

This chapter first considers the demographic and economic factors behind the situation of the informal housing, and how the Crossroads housing stoppage of 2002-2005 played out. It will then touch on how the N2 Gateway pilot scheme has begun to unfold in Cape Town. In conclusion, the chapter asks some questions

about how the evident contradictions can be resolved, and how the housing circle can be squared to increase satisfaction with public delivery.

The context of informal housing in South Africa

South Africa's demography of urbanisation is becoming a race for housing. Access to adequate housing offers the only viable mechanism to organise youth into the social fabric so as to allow them to become full urban citizens and escape the risk of permanent exclusion, hardship and crime. Should informal settlements expand out of control, South Africa's cities may be crippled by a welfare burden. Government clearly sees this threat. The Department of Social Development (2004) notes that the national urbanisation rate is up to 7.3% as of 2001, while in the major metropolitan cities 20% or more of the population is made up of new migrants. Household size has declined, resulting in a 30% increase in the total number of South African households from 1996 to 2001. All these households require housing, services, and income. The Department of Social Development (2004) further comments that youth unemployment is now significantly more severe than unemployment for the population as a whole, and the the gap between the two is widening. It is clear here that youth are particularly at risk of socio-economic exclusion.

The general counter-strategy of the metropolitan municipalities seems to be to make use of government housing subsidy funding to bring the in-migrant population into full housing and services even if they cannot access jobs. The assumption appears to be that providing poor households with housing as a platform for accumulation will overcome exclusion, enabling them to stabilise their finances and invest in their own futures, so that their children at least will be able to stay in school and eventually enter the knowledge economy. However, most jobless youth will never marry, and cannot achieve full adult standing: many will be unable to sustain home ownership (as accessed through the housing subsidy), and will fall back into the informal settlements.

As they apply to the Cape Town context, these underlying social and demographic conditions determine the chances for the success of the new housing policy (for an outline, see Huchzermeyer, in this book: Chapter 3) and specifically for the lead N2 Gateway project. Realising the declared goal of eradicating informal settlements altogether by 2014 (Department of Housing, 2004) will require providing perhaps 1.4 million formal houses to nearly 5.2 million people. This ambitious objective may not be unrealistic given that over the past 10 years, and after a slow start, the Department of Housing has delivered 1.6 million houses to seven million South Africans (*Bua News,* 13 September 2004).

The goal of informal settlement eradication is well in line with the Cape Town municipal priorities, as outlined to the researchers of the HSRC Crossroads study in May 2003 (see Cross, Eva & Van Rensburg, 2003). The mayor's office acknowledged the difficulty of bringing housing delivery abreast of the Western Cape's rate of in-migration, but also underlined the depth of the commitment of the African National Congress (ANC) to decent housing for all, such that no ANC municipal policy could accept the continued existence of informal settlements.

Crossroads: History, conflict and disillusion

Against this background the 2002-2005 events at Crossroads provide context in terms of realities on the ground, and offer a number of lessons. What is now the Old Crossroads township in the Western Cape is located on the site of the former Crossroads transit camp, renowned in the 1980s as the vortex of Cape Town's violent anti-apartheid struggle (Cole, 1986). Up to 1986 the transit-camp shack settlement of up to 90 000 people was the last surviving informal foothold of in-migrating Xhosa-speaking workers in Cape Town, and it faced intense state pressure to exclude the militant informal residents and drive them out of the Western Cape. Against youth resistance, groups were forced out one after another by government pressure, until Johnson Ngxobongwana, the main shacklord who allocated building sites in return for levies and militia service, changed his allegiance to the side of the apartheid government. Once the shacklord's grip weakened, he seems to have led the police-supported shack burnings and expulsions of 1986, and was reportedly later declared Mayor of Crossroads under the *Black Local Authorities Act* (Cross, 2004).

With about a third of the shacks destroyed and their occupants driven away, Crossroads' struggle was effectively over. But peace was not achieved, with resurgent turbulence occurring at intervals throughout the 1990s, before and after the election of the democratic government. The post-apartheid government tried to square the social–political debt by delivering housing and services in Old Crossroads, while factional groupings reportedly fought each other in the streets over their still-unresolved stakes in the area (Cross, 2004). Housing delivery continued during periods of relative stability, until conflict appeared to subside in the early 2000s.

Forced out, the survivors of the progressive struggle moved mainly into what became the New Crossroads township and the nearby informal settlements, and have not returned to Old Crossroads in any significant numbers. The present population seems to represent first- and second-generation formerly rural people from the Eastern Cape, and particularly from the southern part of the area

formerly known as Transkei. Verbal reports, municipal information and the HSRC's 20-case mini-survey (Cross, 2004) suggested that the majority of Crossroads households with housing and full services are also extremely poor, subject to unemployment that may run above 60%, and very heavily dependent on pensions and social grants for survival.

The current Crossroads situation is one of mainly formal housing, in an ocean of back yard structures, and some surviving pockets of freestanding informal shack settlements. Shack housing is found especially in the large informal pocket of Boystown, which lies just across the northern boundary of Old Crossroads itself.
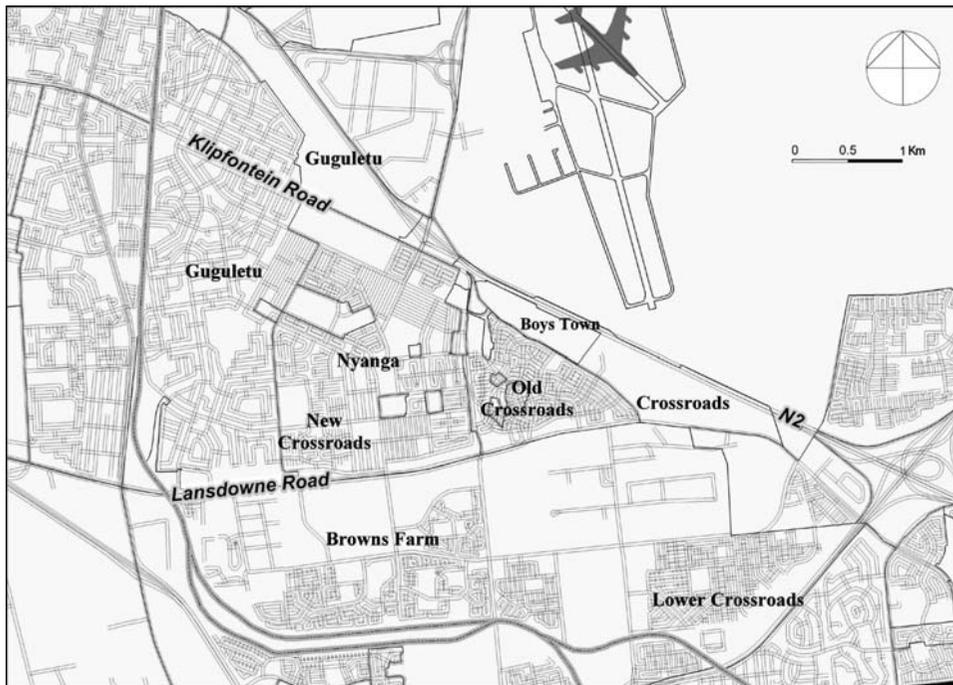
Figure 13.2: Map of the greater Crossroads area

Source: Rehana Moorad, Human Settlement Services Deparatment, City of Cape Town

Boystown and the ward conflict: The housing stoppage

The events of 2002–2005 in Crossroads have been dealt with in detail elsewhere (Cross, Eva & Van Rensburg, 2003; Cross, 2004; 2005) and are only briefly outlined here. They draw attention to the vulnerability of project-driven mass housing delivery to social and institutional factors on the ground, and to any overall decline in services which affects the legitimacy of local institutions. In particular, project-based mass delivery is vulnerable to any break in its forward momentum, as the case of the massive Alexandra Urban Renewal Project in Johannesburg confirms (Roefs, Naidoo, Meyer & Makalela, 2003).

In 2003, before the local elections, 1 500 housing units were to be constructed in Boystown. This would have completed the overall planned housing scheme for the township. However, an aspiring local shacklord was able to gain political traction by joining the Democratic Alliance (DA), an opposition political party at the time in control of Cape Town's outgoing administration. His new status was understood on the ground to mean that he now had political protection or immunity.

Following the political elevation of the alleged shacklord, threats were made against the team developing the housing at Boystown, and shortly afterwards shots were reportedly fired at the construction crews (Cross 2004). The police stated that they did not have the strength to provide protection, and delivery stopped in its tracks. Subsidy money of about three million rand already paid to the contractors was lost. Construction did not resume, and has not resumed three years later.

Around the same time, in the southern section of Crossroads, a second, smaller development scheduled for new youth households under the Integrated Serviced Land Project (ISLP) programme was stopped by the outbreak of violent conflict. Here violence broke out over which of two newly split wards would take control of roughly 300 scheduled housing units, which both wards understood had been promised to them. The respective councillors were said to be involved in the outbreak of fighting, and the 40 completed houses remained formally vacant for more than a year, though used by criminals and vandalised.

After a period of time, the southern ISLP development was able to go ahead and was completed and occupied. However, the Boystown development was now wholly or partly unfunded due to the conflict, and needed recapitalisation if it was to go ahead. From 2003 to 2004 it was uncertain whether the Provincial Government of the Western Cape (at the request of the City of Cape Town) would abandon these housing projects or would provide new funding. Recapitalisation of the Boystown housing projects was eventually scheduled to take place under the N2 Gateway pilot project, with the incomplete Boystown development

as a lead project. However, as events have unfolded, the locus of action in the N2 Gateway project has shifted to the re-housing of the shack fire victims in the Joe Slovo informal settlement bordering on the township of Langa (Joe Slovo was among the highly visibly informal settlements implicated in the president's call in 2003, following a visit to Cape Town, to clear shacks along the N2 highway — this call led to the N2 Gateway project). It appears that the Boystown housing project has still not been re-initiated.

The social context: The collapse of services

In 2003, while housing delivery in Boystown was standing still, the general social conditions in the area that depended on effective and continued delivery were arguably eroding. The reappearance of shacklordism in Crossroads seems to have been closely linked to a downward spiral caused by disappointment and anger in the community, resulting from deteriorating services and public safety (with a rise in crime rates). These conditions damaged the perceived legitimacy of government, in particular municipal/local government. It appears that such urban conditions were among the precursors to the delivery protests across South African townships in 2005.

Adequate health, education and policing services at municipal level are probably the most important aspects of government delivery in relation to decent community life, and these mainly follow in the wake of housing delivery. However, these services are not ensured by once-off delivery — they require continuous 'operational' delivery. For Crossroads in 2003, the decline in policing services, which contributed to a rise in crime levels in the community, undermined safety and security for residents, and had knock-on effects in health and education.

In addition, an extremely high level of youth unemployment appears to be a factor underlying many of the new social problems: Violent robberies rose sharply in the Nyanga policing area where Crossroads is located, with an increase of 306% in robbery with aggravating circumstances from 1998 to 2001, and a rise of 160% in residential burglaries. Vandalism, a crime that suggests social anger, went up by 110%, and car hijacking by 245%. By comparison, during the same period, public violence increased by only 33%, and rape by 48% (Central Police Statistics, 2003).

In the public context, street robberies by armed youth gangs were a daily occurrence, though not one that normally resulted in injuries. Teachers and schoolchildren were targeted outside school gates. School invasions by robbers occurred but were not common at Crossroads, perhaps because in at least one case the learners severely beat up the intruders as they retreated. The Nyanga police

station, responsible for Crossroads, pleaded lack of capacity in dealing with crimes that were making the streets unsafe (anonymous police interview, May 2003).

The steep increase in hijackings and vehicle crimes targeted health and development staff in particular. Though health professionals once worked without threat due to public respect for their work and their role as government's frontline workers, youth criminals now targeted them as rich outsiders. According to the municipal Health Department, it had become difficult to oblige nurses and doctors to commute into Crossroads because of car hijackings. In mid 2003, a series of thefts of windows, equipment and fittings was serially dismantling the Crossroads clinic. Frustrated and frightened health workers enforced a temporary closure until the Health Department paid for private security (Cross, 2004).

Worsening social conditions and popular disillusion contributed to the strain and contention around the housing question. Underneath the decline in public safety, the population of the township increased steadily, with pressure on housing coming from the newly formed households as well as from rural–urban migrants. The construction of backyard shacks and invasion of vacant land within the township seem to have expanded in response.

By 2003, the near exhaustion of informal options for internal densification in Crossroads increased the demand for formal housing. While community members insisted that new areas be opened up for expansion, very little space for further housing remained in the immediate area. Housing was now an increasingly scarce and contentious resource.

The councillors and housing delivery

The overall situation in Crossroads put intense pressure on municipal local government, and on its local councillors. The result was a crisis of unfulfilled housing-delivery promises and conflicting housing-allocation promises. Because the Crossroads housing development was overseen by an outside consultant (an anonymous interviewee), it is not clear to what extent the new local government administration was aware of the situation on the ground. The administration may also not have been aware of rising tensions following the political decision to split the key ward in the area — one of several that were split around that time in a major re-demarcation — so as to accommodate the new councillor.

At a focus group meeting in 2003 after the renewed violence, five of the local-area councillors indicated that they thought internal densification could not continue indefinitely without a risk of conflict. The councillors at the meeting expressed that they felt marginalised themselves, and were not kept in the administrative information loop or informed in advance of Ministerial visits

and other initiatives affecting their areas. They had felt embarrassed and under-mined when constituents asked them the eligibility criteria for food parcels.

Street interviews, the residents' focus group and the mini-survey (Cross, Eva & Van Rensburg, 2003) indicated that the councillors were perceived by commu-nity members as the local face of government. As such, they were widely suspected of corruption and also held accountable for the general decline in public order and for the events around the housing stoppage. Local opinion also appeared to hold that government, through the councillors, had ultimate responsibility for employment in the absence of private sector jobs and should be arranging enough development projects to employ the jobless.

The community considered the councillors responsible to the city and to their political party for reporting needs, representing their constituencies administra-tively, and maintaining good order. In the understanding of rural-born council-lors, their ideal role had fairly rural roots: their stated ambition at the focus group meeting was to be assigned land to allocate, on which they could establish their own local housing projects.

Councillors had significant formal power over existing projects and over how resources allocated to their areas were assigned, but seemed to have limited power to motivate from the bottom up for new resources or new development work. Likewise, it seemed the communities saw government as all-powerful, and were often unaware of how time-consuming and difficult it can be to mobilise devel-opment funding and get all components of the delivery machinery into move-ment. At the same time, the mini-survey revealed that people held the councillors responsible for failing to ensure housing and jobs and to keep promises, and for corruption and the decline of policing and public order in Crossroads.

Shacklords as the competition: Communal governance

These conditions of partial societal breakdown seemed to encourage quasi-political leaders, claiming to stand for locating governance at community level, to challenge the councillors and city administration for control over development delivery. Such pre-emptive strikes by aspiring shacklords have taken place in Crossroads, as well as in informal settlements in Durban and other urban areas throughout South Africa. These efforts to wrest control of housing delivery away from the city's administrative bureaucratic structures seem to represent attempts to informalise land and housing delivery so that they fit with rural/customary land administration principles, and meet the expectations of people of rural origin for whom inaccessible bureaucratic processes are fundamentally wrong to start with.

Using the slow pace of housing delivery and unsatisfied community demand to mount an attempted takeover of the process, Crossroads' emergent shacklord

leaders have co-opted themselves into the formal political parties. This has been done by disrupting municipal housing development violently, in order to show clout and obtain allegedly untouchable positions with the DA, ANC and the South African National Civic Organisation (SANCO). This strategy by a few to obtain position, influence and a livelihood has cost millions in forfeited housing subsidies, and has dramatised some of the risks to the post-apartheid housing policy.

In settlements like Crossroads, the development process itself is often the central arena for engagement between citizens and government. Housing delivery may be held hostage to conflicts that arise when high unemployment coincides with contestation over scarce benefits. Housing is the key issue here, because of its centrality to the delivery of all other services. There has reportedly been little analytical attention to housing allocation as a policy issue, though it has consistently resulted in major problems, and there are no national policy guidelines for allocation. The Crossroads case teaches that conflict over housing is likely to be linked to delivery failure on a broad front. If policing fails to protect the fragile civil order, faultlines and divisions easily develop into open criminality, opening the way for individuals who claim to represent the community's interest to try to seize and informalise city housing delivery.

'Communal governance' is defined here as an informal system based on face-to-face relationships and individual patronage, run from the grass roots upwards. It stands on the rural principle that land with building rights is allocated within the community, by local people, using social criteria on a flexible and accessible basis. It is therefore essentially an anti-bureaucratic system of informal institutions, which competes directly with formal institutions. Always potential in a community of rural origin, it becomes active in situations where community-level institutions are weak, or are not delivering.

This is now the characteristic urban land allocation system throughout Africa: elsewhere on our continent there are currently very few working systems of bureaucratic urban land administration. Today, most African cities operate on quasi-traditional informal land allocation, sometimes called 'neo-customary tenure' (Durand-Lasserve & Royston, 2003), which can involve rural chiefs or their representatives superseding bureaucracy as urban allocators of land and shelter.

In South Africa, developmental local government needs to resolve the widespread local housing-allocation conflicts such as those in Crossroads to deliver housing quickly, and at scale. If this undertaking fails, not only will public disturbances or protests follow but communal/neo-customary institutions will be waiting to replace the current system of party-list councillors and ward committees with quasi-rural governance through shacklords.

The 2005 services protests across South Africa testify to rising impatience. The Crossroads situation of two years earlier bears witness to the extreme difficulty of keeping up the momentum of formal project-based housing delivery if services are weak. It also testifies to the risk of housing delivery collapsing entirely if momentum breaks down in the face of local conflicts around who is to be in charge. Both risks point to possible difficulties for the new housing policy.

Cape Town: The N2 Gateway pilot

In the '*Breaking New Ground*' document (Department of Housing, 2004), and in the City of Cape Town's planning (*Delivery*, 2005a), the N2 Gateway pilot is intended to house the people of the informal settlements clustering along the N2 highway. The city's main concentrations of shacks lie transversely across the highway, west and south of the airport. Boystown and Crossroads are in the middle of this cluster, with informal parts of Khayelitsha further to the south-east. The informal settlements locate around the older city townships of Nyanga and Gugulethu in order to take advantage of their rail transport infrastructure and other
amenities.

In the 1990s, the City's response to the spatial exclusion of the poor was to try to carry out the compact city policy, encouraging greater densification confined within current city limits, and trying to transplant the poor from the periphery into the city core. By 2003, municipal staff reported (see Cross, Eva & Van Rensburg, 2003) that compact city models were being abandoned in the face of practical difficulties, and city policy was turning towards transforming the peripheral settlements into decent communities. The N2 Gateway pilot aligns with this new approach.

The N2 route itself is the city's main rapid mass-transport spine. With support from the national Department of Transport, it is scheduled to become a high-speed transit corridor from Khayelitsha to the CBD, intended to bring the people of the marginalised poor settlements along the N2 closer to the city's opportunities (Cross, Eva & Van Rensburg, 2003). However, little has been heard about progress on this key mass-transit project since the planning was announced in 2003. Without it, peripheralisation effects will be serious for the poor housed along the highway.

As it has been planned, the entire N2 Gateway housing pilot itself will build 22 000 homes, and is reportedly expected to accommodate around 100 000 people. Such a large project has been described as problematic in itself, and the project principle of providing rental housing is also likely to carry difficulties. The numbers as reported are not consistent. Based on statements published in a *Delivery*

magazine article giving the Cape Town administration's views (*Delivery*, 2005a), Cape Town seems to be working on a household size of 3.4 for its in–migrant population. On this estimate, 22 000 units would only accommodate about 75 000 people, potentially leaving an overspill of 25 000 if the estimated population of the intended beneficiary areas is 100 000.

Declared goals of the N2 Gateway pilot project

Several official objectives have been put forward for the pilot (see interview with the Housing Minister, *Delivery*, 2005c), in addition to testing the overall '*Breaking New Ground*' approach and housing the shack population of the N2 settlements. The primary goal is that of *sustainable human settlements,* decent communities situated in a housing market and equipped with full amenities. On the one hand, the Minister has referred to the housing policy goal of unlocking the frozen asset value of housing for the poor by promoting an active housing market and providing easily negotiated title deeds. On the other hand, there has been official mention of the need to promote racially integrated neighbourhoods through housing policy, with the old District 6 — a racially mixed low-income, largely rental housing area near the inner city of Cape Town, demolished by the apartheid government in the early 1970s — as a partial model. The pilot also emphasises the housing policy goals of keeping existing communities together and providing for participation and consultation. None of these objectives will necessarily be easy to achieve, and some of them may be in competition.

Promoting the housing market

The present informal market in RDP housing tends to trade units at prices far below what they cost to supply. For instance, a house in Crossroads valued by the City of Cape Town for rates purposes at R50 000–R60 000 (approximately US $8 000-$9 700) costs about R17 000 (US $2 740) in subsidy money to construct, yet may trade for R4 000–R5 000 (US $650-$800), if the market has remained at the level recorded in 2003 (Cross 2004). Similar pricing levels were reported for the township of Inanda in the *Ten Year Review* study of Durban (Hemson, 2003).

   Government has a strong interest in bringing up the level of house pricing in the informal market so as to provide the poor with a real asset and to help stabilise the urban population (Department of Housing, 2004). However, at present levels of supply and demand, the market process does not sustain higher prices. The '*Breaking New Ground*' housing plan (Department of Housing, 2004) tries to address the problem by providing for larger, more expensive and better quality

housing units, to encourage people to see value in their largely free-of-charge units.

Racial integration

In her May 2005 interview for *Delivery* magazine (Delivery, 2005c), the Minister of Housing, Lindiwe Sisulu, puts considerable emphasis on the potential of the N2 Gateway pilot scheme to create racially integrated communities, on the example of historic District Six. It is not fully clear how a project-based delivery model tied very strongly to community delivery and community participation would lend itself to accommodating people of different races. Not only do most poor communities in South Africa tend to be self-selected single-race settlements with distinct cultural understandings of the housing process, but the major shack settlements in the airport vicinity of Cape Town — where Crossroads is located — also tend to be African-only in their composition (Cross, Bekker & Eva, 1999). Since the apartheid clearances of the 1950s to the 1970s, there remains some tension between the African and Coloured communities in the Western Cape generally, which, though it might be overcome, is not helpful to residential integration in the first instance.

Keeping people in their home areas

A third declared policy objective of the housing pilot is that of moving people from their present areas only when absolutely necessary, in recognition of the importance of the livelihood networks that depend on micro-location and co-residence. However, the method of observing this principle in practice does not seem to be fully clear as yet.

The intention of the original pilot project planning necessarily included de-densifying many of the closely settled shack areas around the airport. Land for settlement is now very short in these areas, and the original '*Breaking New Ground*' plan at Boystown called for low-rise, walk-up construction. It looks doubtful whether all the people packed into the pilot shack areas can be accommodated in ordinary houses using only the land available in their own present localities. Although space might be found in other areas along the N2, in order to keep the entire shack population in their present areas high-rise occupation might be the only option, and high-rise occupation for the poor is often a problematic and unwanted alternative.

Consultative range of housing choices

A final goal which underpins the entire new housing policy as well as the Cape

Town pilot is that of offering a participatory process, with a range of housing design and delivery choices. These choices would apparently be on offer only at community level, but would allow considerable freedom to the beneficiaries to say what they want by way of housing. However, the mayor notes in her interview with *Delivery* magazine (*Delivery*, 2005a) that to date the pilot process has not been strongly participatory, and the leaked rental occupancy plan of May 2005 would have largely excluded community participation in choosing type of housing.

By their nature, mass projects try to limit the process of consultation and choice because of the potential for delays and for running up costs. Likewise, the more time that is absorbed by any one project, the greater the delays before other communities can receive delivery, and the longer the national project will inevitably take.

Allowing individual communities to exercise a complex process of choice on a collective basis would presumably require achieving consensus before delivery could begin. Intensive facilitation could be needed over a period of up to two years per large community, as was reportedly the case in Gauteng Province, with the Cosmos City project (Planact, 2004).

Rural-to-urban migration is running at over 4% a year in major metro contexts, leaving little time for in-depth consultation with individual communities unless the current limited supply of skilled facilitators can be vastly increased. Tomlinson (2002) argues that consultation-intensive approaches such as the People's Housing Process (the government's self-help housing programme) will always be too slow to make any real impact on housing needs, and that the rapid project route is the only realistic choice. From the opposite view, Rust (2002) notes that the project focus is inimical to households' incentive to improve their homes, and that it tends to constrain participation. As of 2005, it is not clear that either the new housing policy or its Cape Town pilot project has yet mapped out an approach that allows both rapid mass delivery and intensive community consultation. While the Informal Settlement Upgrading Programme under the new '*Breaking New Ground*' housing plan makes provision for community empowerment and participation (see Huchzermeyer, in this book: Chapter 3), planning for informal settlements does not appear to be progressing in that direction.

Delivering on the N2 Gateway pilot

The N2 housing pilot is formally a joint initiative of national, provincial and local government, with national and local government as lead actors. The national Housing Department is providing finance of R2.3 billion in addition to the

housing subsidy (which currently stands at around R30 000 or US$4 300 per household). At the local government end, the City of Cape Town is responsible for implementation, and has also contributed about 10% of the roughly US$2 billion (R14 billion) spent so far (Delivery, 2005a).

Although the N2 Gateway pilot project was signed off by Parliament in September 2004 for intended completion by the end of April 2005, the delivery of the total pilot — the 22 000 units — has been rescheduled to be completed by mid 2006, following various delays in getting construction started (Merten, 2005b). This date also now looks out of reach. Some of the factors here are a shack fire in the Joe Slovo settlement in January 2005, and delays involved with failure to reach agreement on the nature of the housing units in advance of any in-depth consultation.

The original approach of emphasising Boystown and District Six as the pilot's lead sub-projects (see Department of Housing, 2004) has been partly deflected by the massive shack fire at Joe Slovo settlement at the start of 2005, which reportedly displaced the inhabitants of 3 200 shacks — some 11 000-12 000 people. This sudden loss of shack housing created a local crisis around where the victims were to be temporarily housed, while the resources committed to the pilot were hurriedly diverted to help with construction of temporary and permanent accommodation (Merten, 2005b). It appears that little delivery aimed at the pilot itself had gone forward as of mid-2005.

Construction for the fire victims was moving ahead at the time of writing. Several temporary accommodation options were found in the area, following protests from nearby communities demanding to know why the Joe Slovo residents were being officially helped to jump the queue. However, in May 2005, many families were still in tents (Merten, 2005b). At the same time, the *Mail & Guardian* (2005) reports that only about 100 of the 700 homes earmarked for the victims of the Joe Slovo fire would be ready by end of June 2005 as specified in their government tender.

In terms of official delivery and implementation planning, some difficulties remain. Although the Mayor's Office (*Delivery*, 2005a: 50) maintains that 'Cape Town's new integrated human settlement strategy is fully aligned to the directions contained in the national policy *"Breaking New Ground"*', there appears to be some uncertainty in the way the new approach is to be applied in relation to the pilot.

As of early May, the national Department of Housing was reported to be unhappy with the proposals for relatively high densities for the N2 Gateway pilot, which stipulated relatively high occupancy of small rental units as the standard allocation. In a recent document leaked to the *Mail & Guardian* (Merten, 2005a), the proposed delivery framework for the pilot would be 70% rental

accommodation, with three people per one-room bed–sit unit and six people per one-bedroomed flat.

This plan would have the advantage of being able to accommodate the numbers in the current communities, assuming multi-storey construction, but it is likely to prove very unpopular. As quoted in the *Mail & Guardian* (Merten, 2005b)*,* housing researcher Ted Baumann questioned whether this kind of accommodation would be any better than the shacks themselves, other than in its public appearance. The standard of housing that the N2 Gateway pilot project delivers would reportedly be inferior to the standard under apartheid (two-bedroomed units on Cape Town's Cape Flats), and there is no sign that the standard was arrived at through participatory or consultative methods. Home ownership rather than rental is usually a very strong priority for families of rural origin.

The Cape Town Executive Director for Development and Infrastructure was quoted (Merten, 2005b) as saying that there were a number of options for housing types under consideration for the N2 pilot project, but that the proposed density was in line with the new human settlements plan and with enumeration studies in the area. These remarks seem to suggest a top-down approach for the density plan, which seems to have come from the city's outgoing management team. As of May 2005, the plan had not received the needed approval from the minister, the MEC and the mayor, whose public reaction to it was negative (Merten, 2005b).

No way forward seemed to be clear at the time of writing (July 2005). With the housing and services protests continuing unabated nationwide, the latest official position appears to be that much more consultation will take place. However, the outlook for intensive community consultation is uncertain.

From the standpoint of the national Department of Housing, improved regular free-standing (one-house-one-plot) housing stock rather than majority rental units seems to be the expectation for the pilot project. The department has researched a plan for a new model of government house, which would deliver three bedrooms for about R25 000 (US \$4 300), with an unstated floor area. According to the minister's interview in *Delivery* (2005b), it is expected that the City of Cape Town will use this new housing model (to be known as a subsidy house and not as an RDP house) rather than any local design.

Although it is generally believed that Cape Town's Mayoral Office and the national Department of Housing have worked closely together to drive the N2 Gateway pilot, Minister Sisulu commented to *Delivery*:

> When it comes to the delivery part, which is the municipality's responsibility . . . we need to align the plans, and they've had to change the way that they do things. In Cape Town, for instance, we found ourselves bogged down by the way the municipality does things. They have 124 tenders to go through.

> They have their own engineers. They have their own architects. They actually do the planning of the houses. This is at variance with our plan, because the plan of the house is part of the totality of what we want to change. We want to change the shape of the house, we want to change the way we do things, and we want to ensure that all the departments responsible for delivery work together . . . (*Delivery*, 2005b: 44)

Elsewhere in the article, the minister adds that the N2 project will 'have various phases, and it's going to be with us until we are quite certain that we have drawn out all the lessons that we can. And if you're not included in the first phase, you certainly will be in the second or third phase' (*Delivery*, 2005b: 44). Her comments make it sound as if the timeframe of a few months for the original pilot project is extending into a longer project, which could increase consultation options. However, with population coming into the metropolitan municipalities at a rate of 4% a year and above, time for participation processes in individual projects is a vital but vanishing resource.

From the standpoint of the City of Cape Town, the need for coordination as noted by the minister was acknowledged in the 2003 HSRC interviews (Cross, Eva & Van Rensburg, 2003), but delivery to the people in the shacks was reportedly effective. As of 2003, City of Cape Town had just received a new ANC administration, which was engaged in a major reorientation of city planning and spending, focusing on redirecting housing and service delivery into the marginalised poor communities. The rolling change of the planning framework was frustrating to city officials who were interviewed, but communities' assessment of service standards was reportedly relatively good. As of 2005, the City of Cape Town has continued an aggressive policy of immediate interim servicing to all new informal settlements that look likely to remain in place for more than three years, and claims to lead the country in this respect.

At the time of writing, it looked doubtful whether the *ad hoc* delivery approach — informal, and relying on personal networking among individuals in different service departments — that Cape Town was taking during its planning transition in 2003 would be able to take forward a major housing initiative on the scale of the N2 Gateway. However, it is also not automatically clear that a centralised and coordinated national-level planning approach could work smoothly on a large enough scale to deal with the escalating national need. In this situation, current frustrations at community level may continue to generate violent protest.

Conclusion: Community processes and the new housing policy

Several points come out of the development experience in Cape Town and in

Crossroads in particular, revolving around the interrelatedness of delivery with social conditions and the tendency for local government delivery planning not to take account of governance-related institutional factors that can undercut mass housing delivery. The level of demand for housing in South Africa's cities is vast, and increasing. Cape Town's N2 Gateway pilot project reflects a number of city and national delivery issues concerned with decentralisation and with the question of where *de facto* control over housing delivery will be located. These issues shape the problems experienced in finding an acceptable delivery model, and also relate to how much actual consultation the new national housing plan can accommodate. There may be fundamental issues here that could lead to revisions in the '*Breaking New Ground*' housing plan, and perhaps of the N2 Gateway pilot project.

Constructing large numbers of small rental units for a population of rural origin, not used to this form of housing and tenure, may meet with resistance from beneficiaries, as well as from officials, including the Cape Town Mayor and the national Minister of Housing. Three-bedroom housing seems more acceptable, but would involve a great deal of displacement out of present areas in order to accommodate the houses on the available land. The contradictory objectives of accommodating people of different races and economic levels — through a community-defined delivery project with effective consultation, yet also fast-tracked and with limited land and financial resources — have not been resolved or thoroughly debated. It is likely that the various disjunctures in the N2 Gateway pilot project will lead to significant *ad hoc* changes before the final handover can take place, and therefore it is difficult to predict an outcome. Among the most significant outcomes of the N2 Gateway project initiative will be the future relationship between the national Department of Housing and the powerful Cape Town municipality, so that intergovernmental relations regarding decentralisation and control over delivery approach and product are at stake. In a late development, N2 Gateway delivery outside Joe Slovo has been reassigned from the metro to provincial level.

Further, the recent history of Crossroads questions the conditions under which housing delivery can go forward on the ground. The case presented in this chapter suggests that the present institutions linking the developmental local government and the grassroots are not functioning well. Local government departments in 2003 were backing away from direct contact with the grassroots because of the tensions on the ground, although officials were aware of the serious delivery problems. There was little or no oversight of key linkages by the City of Cape Town.

In view of nationwide dissatisfaction with delivery rates, the tendency by government to take local/community governance institutions for granted is

perhaps a major unrecognised contributor to delivery protests. There are two issues here, first around effective housing delivery under current conditions, and second, around the future for the new housing plan:

■   *The new housing policy will not be able to deal with the demand it is taking on by using the project-driven mass delivery approach alone*. A wider range of approaches may have to be considered. These would include informal settlements upgrading, and might also include more options for individual owners.

■   *There is a need to review local-level representative institutions in depth*. These structural weaknesses are entrenched just at the point where the delivery chain meets conflicting urban and rural expectations and comes under greatest strain.

Toward recommendations?

Considering a housing situation that is both explosive and poorly understood, any recommendations at this stage have to be open to question. However, it seems clear that there are problems at community delivery level and in connection with informal settlements generally, that go beyond poverty and housing finance narrowly defined. There are also difficulties in the wider policy sphere. These problems and difficulties include the following:

(1) Ten years of heroic efforts by government to house the poor in free, fully-built housing have not been entirely successful, and informal settlement has been increasing. Abolishing informal housing entirely is probably unrealistic as long as rural-to-urban migration continues, because government on its own, using formal processes, is not able to deliver ready-built houses at the speed, volumes and locations that will be needed. People without jobs cannot afford formal renting. They are not helped by waiting lists but need immediate housing. Owner-managed self-upgrading options for existing, but also for new, informal settlements must be brought on stream to deal with the scale of inflow to the cities. Some of these options are covered in the new Informal Settlement Upgrading Programme, but more options for individual owners need to be developed. As argued by Huchzermeyer (in this book: Chapter 3), self-help or self-management in the top-structure phase of the Informal Settlement Upgrading Programme is still underdeveloped and subject to contradictions.

(2) Because of land price economics, shortage of land supply and lack of jobs for the poor in central business districts, as well as the need to maintain the city core areas as engines of South Africa's economic expansion, a compact-city policy is unlikely to succeed. For the majority of rural–urban migrants arriving in the city, housing will probably continue to locate on the periphery of the expanding metropolitan cities. Therefore, accepting this point would call for mass transport

as a priority. Access to mass transport would attract informal housing, and could therefore achieve guided informality.

(3) More generally, owner-built entry-level houses, even if these are shacks, have to take their place as part of housing delivery policy rather than be eliminated. Therefore, site and service could be reconsidered for inclusion in the policy, coupled with the upgrading of existing informal settlements. Upgrading of the top-structures could be supported by making available affordable building materials.

(4) Finally, the question of community-needs representation needs to be re-examined. Locally chosen community housing committees with involvement of youth may have a place as a level of grassroots representation. Provision for regular and effective institutional oversight and provision for whistle blowing to control corruption are important priorities, regardless of the form of representation. Further, more effective policing at local level will be a key factor in meeting the housing need.

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fourteen

The local government challenge of healthy development in informal settlements especially in a time of HIV/Aids

Elizabeth Thomas

Introduction

Communities living in informal settlements make up nearly a fifth of the urban population in South Africa. Given the historic backlog in the development of adequately serviced areas, many households continue to live in conditions that compromise their health and safety. While the provision of basic services can go a long way in improving the quality of life of informal settlement residents, there is a need for these communities to gain access to a broader range of urban facilities and opportunities such as clinics, libraries, etc. Local government is now facing an ongoing challenge to be 'developmental' (in terms of the 'White paper on local government', March 1998), and the implications of this responsibility in the context of informal settlements have not yet been adequately considered. Further, informal settlements have the highest rate of HIV infection, and the impact on households and communities of high numbers of infected people living in poorly serviced areas needs to be grappled with.

This chapter proposes that proactive local government responses in informal settlements with respect to the provision of accessible and affordable basic services, as well as the facilitation of access to a range of other resources and helping to build social capital, can go a long way towards improving the quality of life of those living in informal settlements in a time of HIV/Aids.

The South African urban development and health policy context

Rapid urbanisation, increasing poverty and expectations of a better quality of life have resulted in South African urban areas becoming increasingly the focus of

policy makers' attention. In 1994, the need for the integrated management of urban areas and their rural hinterland resulted in a change to wall-to-wall local government across the country. Ten years on, the '… principal challenges confronting local government have been identified as policy refinement and clarification, full implementation of existing legislation and policy and attending to and extending the coverage of basic service delivery' (Project Consolidate, 2004: 3). Tasked with implementing development, post-apartheid local government has become the responsible agency for meeting many of the basic needs of all residents.

The provision of basic services such as water, refuse removal and sanitation, which is the responsibility of local government, has a major impact on public health. These local government services are complemented by the provision of environmental health services by provincial government (National Department of Health, 2004). Given the levels of poverty, inequality and range in levels of basic services available to different communities within and between urban areas, it is not surprising that studies have highlighted the wide intra-urban health differentials. Residents of informal settlements, who have very limited access to basic services, are particularly exposed to poor environmental health conditions. In urban areas, a number of actors are responsible for addressing the range of causes of poor health. Cooperative governance and intersectoral collaboration (promoted through the *Local Government: Municipal Systems Act*, *No. 32 of 2000*) are two important vehicles to contribute to better health and health services.

The provision of health services (preventative and curative) is the responsibility of the district or provincial health service. National health policy has emphasised that both decentralisation and equity in the public health sector should be implemented through a district health system (Thomas, Mbatsha, Okorafor & Muirhead, 2004: 3). Although the principle of equity is accepted, findings from 2003 show that the need for primary health care and the resources available for this care, both within districts and between provinces, are inversely related (2004: 27).

The data reflecting the cause of deaths nationally in 2000 are indicative of the health challenges facing the country. South Africa is undergoing a health transition in which diseases of poverty and communicable diseases are very common. Bradshaw, Groenewald and Laubscher et al (2003) describe a quadruple burden of disease, specifically poverty-related diseases, emerging chronic diseases, injuries and HIV/Aids. In 2000, 37% of all deaths in the country were attributed to non-communicable causes, 21% to communicable, maternal, perinatal and nutritional causes, 12% to injuries, and 30% to HIV/Aids. Since 1990, national HIV prevalence has increased rapidly from under 1% in 1990 to 27.9% in 2003, as measured in antenatal care attendees in public health facilities (Department of Health, 2004).

As the HIV prevalence rate has increased, the pressure to respond has shifted

from prevention to the demand for treatment, care and support. The National HIV/Aids TB (tuberculosis) and STD (sexually transmitted diseases) Strategic Plan (Department of Health, 2000) spells out a range of activities in response to the epidemic. In the plan, all government departments are tasked with integrating responses to HIV/Aids into their core activities. One of the principles underpinning the National Plan is the acknowledged value in addressing issues through partnerships. A detailed plan was released in 2003 for the provision of anti-retroviral treatment (ART) through the public health system. The demand for ART has put a major pressure on the health system and has affected resources available for other pressing needs. The impact of HIV/Aids on the health sector is a major challenge, especially as the demand for ART continues to outstrip the supply — over 500 000 South Africans already had Aids defining illnesses in 2004 (Steward & Loveday, 2004: 6).

Of major concern from a developmental point of view is the impact of HIV/Aids on society. Deaths due to HIV/Aids in 2000 occurred largely in the young, skilled, potentially productive age group (Bradshaw, Groenewald & Laubscher et al, 2003: 31). The loss of a breadwinner/parent to a child, family and community is devastating, both economically and psychologically. HIV/Aids also impacts on national development goals and on the Millennium Development Goals (MDGs) defined and accepted by the United Nations. The MDGs, were agreed upon by nearly 200 countries in 2000, and commit these countries to adopt a comprehensive multi-pronged strategy to make the 'right to development a reality', especially for the poor. There are 18 targets and 48 indicators identified to measure progress towards achieving the eight Millennium Development Goals. Development indicators such as the infant mortality rate and life expectancy at birth are already being negatively affected by HIV/Aids. In poverty stricken communities, HIV further exacerbates their difficult circumstances and social exclusion. Recent research has shown that there are also intra-urban health differentials in HIV infection. National data (HSRC, 2002) show wide disparity by geotype differentiating between formal urban, informal urban, farm and tribal settlements. The HIV infection rate is highest in urban informal areas, followed by urban formally settled areas. The national HIV prevalence rate in 15- to 49-year-olds was found to be 15.6%, with a prevalence rate of 28.4% in informal settlements (HSRC, 2002). The challenge is how we choose to respond to the impact that HIV has on those living in urban areas, and especially in informal settlements.

Policy context: Informal settlements

The marking of 10 years of democracy provides an appropriate point in time to reflect on the quality of life and the state of health of those living in informal

settlements, some of the most vulnerable people in urban areas. While there was much policy debate in the lead-up to and after democracy in 1994, there has been a lacuna in housing policy, specifically with respect to informal settlements. A new direction and focus has recently been identified by the Minister of Housing. The aim is to achieve sustainable human settlements as 'well managed entities in which economic growth and social development are in balance with the carrying capacity of the natural system on which they depend for their existence and result in sustainable development, wealth creation, poverty alleviation and equity' (Department of Housing, 2004b: 11). The housing and services component is to be complemented by resources for the setting up of social and economic infrastructure such as multi-purpose centres (Department of Housing, 2004b: 15) in conjunction with other government departments.

Informal settlements have been identified as areas to be incrementally upgraded and progressively eradicated, and, from the outset, the policy suggests that attention should first be given to consultation and assessment, followed by the delivery of basic services (Department of Housing, 2004a: 14; 2004b: 17) and discussion regarding tenure options and community facilities (Department of Housing, 2004a: 15). The policy addresses in detail the negative impact of migration on the upgrading and formalisation process and specifically discourages voluntary relocation out of the settlement (Department of Housing, 2004a: Section 13.11.10, 57). Although vulnerable groups are seen as an important target group, the new policy fails to make specific mention of HIV/Aids and excludes child-headed households and minors as tenure beneficiaries (Department of Housing, 2004a: 18). The policy also does not consider the possible (or probable) impact of the epidemic on people living in informal settlements or on informal settlement policy. Given the increasing international and national concern with development (and therefore health) outcomes through mechanisms such as the Millennium Development Goals (MDGs), it is appropriate to consider the health and development challenge of informal settlements in a time of HIV/Aids.

This chapter argues that, in a context of HIV/Aids and poverty, special development, housing and health measures are required. Key factors are the need for urgency in the delivery of basic life-sustaining services, the importance of innovative approaches to service provision, and a process of formalisation of informal settlements which will not result in the exclusion of the poorest or those not wanting or able to take up formal home ownership. In the context of poverty and ill health, it is necessary to move beyond naive approaches to community participation in development initiatives.

Access to basic services: A precondition for health

The provision of basic water and sanitation, as well as other environmental health services such as refuse removal, has been long acknowledged as necessary for health. Although South African water and sanitation policy does not specifically highlight the health benefits of these basic services, the lack of adequate access to them has serious health and developmental implications, especially for infants and young children. National and city-wide health and development indicators (such as infant mortality rates) hide the wide disparities across urban areas. Research on intra-urban health differentials has revealed that, within developing country cities, there are wide disparities between spatial areas in terms of health outcomes (Thomas, Seager & Viljoen et al., 1999). The inconsistencies in health reveal differences in access to basic services and poverty levels rather than differences in access to health services. The health outcomes of those living in overcrowded areas with inadequate access to basic services (such as informal settlements, hostels and inner city high-density areas) are more likely to be negatively affected than those living in better serviced areas. Given the above, the better provision of services is critical for the health of those living in informal settlements.

A number of studies in the water and sanitation literature have highlighted the health rationale for the improvement in basic services (Von Schirnding, 2005; Esrey, Feachem & Hughes et al., 1985). In informal settlements, access to potable water is most often through a shared standpipe, resulting in households using some form of onsite water-storage mechanism. In a study in Port Elizabeth, diarrhoea levels were up to 4.8 times higher in households that stored water on site (Thomas, Seager & Viljoen et al., 1999), while similar findings emerged from work undertaken by Umgeni Water (Bailey & Archer, 2004). In addition, diarrhoea levels were also found to be higher in households that shared a tap with more than 20 other households (adults) and six other households (children aged six and under). Likewise, diarrhoea levels were also higher where people shared a toilet with more than five households and where there were puddles around the toilet.

The information above supports findings in the health literature that children are especially susceptible to poor environmental conditions. A quarter of all deaths of children under five living in developing countries can be attributed to diarrhoea (25% of deaths), second only to acute respiratory infections (ARI) and accounting for approximately 27% of deaths of children younger than five years (Millennium Development Goal (MDG) indicators). In the first weeks and months of life, children are especially susceptible to morbidity and mortality due to diarrhoea. The high infant mortality and morbidity rates can be reduced with access to better

quality basic services, education and behaviour change. ARI risk factors include overcrowding, damp, dust exposure, and burning of refuse, which are likewise risks that can be reduced with appropriate development interventions. Meeting the need for basic services can make a big difference in the health and quality of life of the poor.

How does the lack of basic services impact on HIV/Aids?

Having outlined some of the health implications of limited access to basic services, the question needs to be asked: What difference does HIV/Aids make? Accepting that HIV is a virus that results in a compromised immune system, poor environmental conditions (poor water quality and exposure to other diseases) become a further problem for those already immuno-compromised. Children who are infected with HIV are especially vulnerable due to their limited immunity. Further, opportunistic infections such as TB are often rife in overcrowded conditions, such as those found in some informal settlements. Poor environmental conditions make staying healthy much more difficult. Poverty, a lack of nutritious food and stress exacerbate an HIV-infected person's decline in health. In addition, the provision of dignified home-based care is very difficult in a situation where water and sanitation are not readily available. From the above, it is clear that the ability of individuals and households to cope with HIV and Aids is compromised by their living in an area with poor access to basic services. It is further noted that people living in informal areas that are poorly serviced have been shown to have to invest more time in carrying water and meeting basic needs, so they have less time to earn money or rest to take care of their health.

Reasons for the variation in HIV prevalence across the city

The fact that HIV infection rate is highest in urban informal areas, followed by urban formally settled areas, raises an important question: What are the factors that result in those living in informal settlements having a higher HIV prevalence rate? As there is very little research into HIV prevalence by settlement type, it is only possible to speculate. Some research findings point to the complexity of the epidemic. Two key factors found appear to be sexual practice (number of sexual partners) and migration. Regarding sexual practice, twice the percentage of men living in informal settlements as compared to formal areas reported that they had had multiple sexual partners in the previous year (23.5% in informal settlements compared to 10.2% in formal urban settlements). This was very different from the comparative percentage of women who had had multiple sexual partners in the

previous year, where 5.5% of women living in informal settlements and 3.8% living in formal urban areas reported having done so (HSRC, 2002).

Regarding mobility, 2001 Census data (Statistics South Africa, 2003) indicate that those living in informal settlements were more likely to have moved in comparison with the national average. Nationally, 13.8% of people said they had moved in the past five years, whereas, in informal settlements, 19.7% said that they had moved in the same period. Linking mobility to HIV status, Lurie, working with migrants in the Hlabisa area of KwaZulu-Natal, found that migrants who had moved more than four times in their lives (in addition to other factors) were a predictor of HIV status (Lurie, Williams & Zuma et al., 2003).

While sexual practice and mobility are important factors emerging from a few studies, further research is needed, focusing on the behaviour, practices, and knowledge of residents of informal settlements and other high-prevalence areas. Some have speculated that it may be that the prevalence rate of informal areas is a result of HIV-positive people having chosen to move into informal settlement areas for a specific reason, such as relative ease of finding a place to set up a home. Some suggest that living in informal settlements would offer a lower cost of living, especially for those who had lost their jobs due to ill health. Moving to an informal settlement could also provide anonymity for those who had faced stigma and discrimination from their families and from communities elsewhere in the city.

Anecdotal evidence suggests that informal settlements could also have become transitory living areas for people moving from other urban areas or rural areas to gain access to ART not available in smaller centres. Informal settlements could also be easier places for child-headed households to live after parents or other adult household heads have died. Child-headed households were found to occur slightly more frequently in informal settlements than in other urban areas Child-headed households made up 4.2% of households in informal settlements, compared to 3.1% in urban formal settlements (HSRC, 2002). Notwithstanding the speculation in these possible reasons, the fact remains that informal settlements have a much higher prevalence rate than other urban and rural settlement categories (see figure 14.1).

The above analysis, though sketchy, points to the need for housing, urban services, governance and health policy urgently to address the issue of informal settlements in a context of HIV/Aids. In addition, there is a need for further research to clarify and monitor the situation. There is a range of measures that local authorities can take in helping to address the basic needs of those living in informal settlements, especially with respect to the need to access basic services.
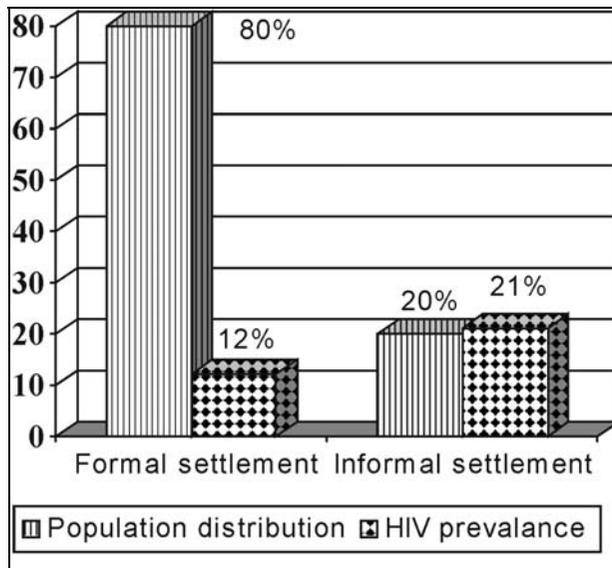
Figure 14.1: Population distribution between formal and informal settlements and HIV prevalence by settlement type in South Africa

Sources: Human Sciences Research Council (2002) & Census data.

Responding to the needs of those living in informal settlements: A developmental approach

Local municipalities in South Africa have been challenged in terms of the 'White Paper on Local Government' to approach their responsibilities developmentally. Their 'new', 'developmental' responsibilities require a shift from the traditional sectoral silo approach in which each department acted independently. Key principles of developmental local government are the adoption of integrated approaches that are sustainable, addressing '... social, economic and material needs and [improving] the quality of ... lives' (Republic of South Africa, 1998: 17). Responding directly to the needs of the poor and vulnerable points to the value of targeting informal settlements in urban areas. These communities are often some of the poorest, are poorly located with respect to job opportunities, and, as discussed, have inadequate access to basic services, and poor access to social services and facilities.

South Africa has a history of informal settlement upgrading which took place before and since democracy. Lessons from these tenure- and service-driven upgrading initiatives provide pointers on approaches that should not be repeated. Huchzermeyer (2004: 151) argues that this '... delivery orientated perspective on

informal settlement intervention clearly does not seek to address the complex social, legal, political and economic realities of poverty as manifested in informal settlements'. The Bester's Camp upgrading in Durban in the early 1990s changed from an integrated developmental approach to a tenure-driven product as demanded by the shift from grant funding to home-ownership-linked individual subsidies (2004: 151). Despite these examples of 'what not to repeat', experiences of working with communities in upgrading has highlighted the need for sensitivity and the acknowledgement of a range of agendas and power dynamics within and between community groupings, as well as the difficulty in reaching and responding to the needs of the most vulnerable. This is not an arena for 'quick fixes' and 'quick wins'; instead it needs the commitment and understanding of all involved in the complexity being addressed.

The identification of some short-term priorities with elected political leaders, department officials, community organisations and local NGOs, plus groups especially set up to nurture the involvement of previously excluded people, could provide the start of an ongoing developmental initiative to target those in special need. Given the high HIV prevalence rate likely to be found in informal settlement areas, there are a number of activities that could be appropriate and could function to build a level of trust among residents in the commitment of the local authority. These activities could include the following:

- rapid provision of services including water tanks at homes, enabling the provision of dignified home-based care to the terminally ill, communal wash areas, regular refuse removal, help in the establishment of food gardens etc. — several of these activities could be undertaken through the Extended Public Works Programme,
- improvement in the provision of health services — often just regular visits by mobile clinics would be valued; depending on the scale of the settlement, there could be justification for the setting up of a permanent clinic,
- ongoing HIV/Aids prevention campaigns linked to regular voluntary counselling and testing for HIV status,
- setting up of a community centre where a range of services can be provided (counselling, grant applications, appointments with social worker, food parcels, skills development, etc.),
- encouragement to all civic actors to play a role in a multi-pronged response, including faith-based organisations, NGOs, burial societies, schools, etc.,
- active support by local leaders, as well as city officials and city politicians, in these campaigns,
- support in the form of care packs (including pain killers, Vaseline, soap and other basic commodities needed for the care of terminally ill people),

- volunteer 'stipends' — a token amount by the health authority — to home-based care organisations serving informal settlements,
- establishment and encouragement of support groups for those infected and affected by HIV,
- funding of capacity development and leadership programmes for emerging small groups and cross-project exchange visits with other local level HIV projects, and
- documentation of 'best practice' in other local authorities/provinces and projects through videos, etc., to further extend the benefits of experience gained elsewhere.

The active involvement of community members and leaders would be necessary to ensure that the services address the priority needs of the community, while also being sustainable. The establishment of a steering committee or an HIV and development forum could allow all stakeholders to work together to achieve a targeted and coordinated response. Lessons from local and international experience may also be helpful here. The WHO's Healthy Cities Movement has provided a framework within which an integrated health-focused development has succeeded at various scales (Harpham, Werna & Blue, 1998). The flexibility of the approach is clear when it is understood that the 'Healthy Cities' concept has been adapted to include healthy 'mega cities', 'healthy islands' and 'healthy villages' in other contexts. Other local-level community development models may also be considered for their usefulness in South African informal settlements. Lessons from other places are always useful, but need to be carefully checked against the local context.

   High mobility rates of people in informal settlements, as well as the limited extent to which there are community-based organisations in the area, need to be taken into account in strategies aimed at building social cohesion and trust within communities. Given the lack of trust of vulnerable and excluded groups in the commitment and the potential of officials and local government to meet their needs, efforts should be made to nurture trust through locally appropriate small-scale activities and honoured promises. Further, given high levels of poverty, depression and ill health (Thomas, 2002), there is a need for caution regarding unreasonable expectations by development facilitators of the enthusiastic active participation by community members in development initiatives. Notwithstanding the above concerns, it is proposed that community health and development initiatives should be one of the entry points into the longer-term upgrading and development of the physical infrastructure of informal settlements.

From ideas to reality: A case study of Johannesburg

The city of Johannesburg is home to 3.2 million people of whom nearly one in five lives in informal housing (City of Johannesburg, 2005). Average household income has increased steadily over the past decade with Johannesburg households being shown to be far better off than households in other cities or in the country as a whole. As shown by the human development index (HDI) — a standard measurement index of poverty, literacy, education, life expectancy, and other factors — as a means of measuring wellbeing, especially child welfare (see wikipedia.org/wiki/Human_Development_Index), welfare varies enormously between cities in South Africa. Johannesburg has the highest HDI in the country (greater than 0.72 in 2002 compared to the national average of 0.58) (City of Johannesburg, 2005: 22). The city whose economy is based on gold mining, and which is known affectionately as 'Egoli' (Place of Gold), is however characterised by wide inequalities in income with 54% of the population reporting incomes of less than R800 per month and 38% reporting being unemployed (City of Johannesburg, 2005: 38). Despite the high level of unemployment, the city is continuing to grow at a rate faster than natural increase due to in-migration, leading to an increase in demand for services and a growing number of households living in informal housing.

The income inequalities in the city are also reflected spatially, with poverty and urban growth in informal settlements being concentrated largely on the periphery of the city (City of Johannesburg, 2005: 52). African children and households headed by African women are over-represented in the poorest households (City of Johannesburg, 2005: 27). Poor children often have the least access to resources and, as discussed earlier, are exposed to a range of health, social and environmental risks in their living environments. Due to the allocation of household responsibilities, women and children are often the most disadvantaged in accessing basic services and are often exposed to health and security burdens in the process of accessing these services.

Johannesburg is located in Gauteng Province, the wealthiest province in the country. The HIV prevalence rate for the province (at 30% in 2003) is one of the highest in the country (Department of Health, 2004), despite an aggressive HIV prevention initiative by the province. Although no data are available on the prevalence by settlement type across Johannesburg, drawing from the national study undertaken in 2002 by the HSRC (see figure 14.1), it is likely that the prevalence of HIV in informal settlements in Johannesburg would be nearly double that of the formally settled areas (HSRC, 2002). Given the higher prevalence among women, the vulnerability of younger women to infection and the impact of

HIV on household income and vulnerability, special consideration has been given in the City of Johannesburg's *Human Development Strategy* (City of Johannesburg, 2005) to addressing HIV/Aids as a cross-cutting developmental issue (I was fortunate to be a member of the Johannesburg Human Development Strategy Reference Group in 2004/2005).

The Johannesburg Human Development Strategy outlines the city's new strategy for the poor (City of Johannesburg, 2005). Acknowledging that the people are the biggest asset of the city, the strategy sets out to support and encourage people to realise their potential to become fully-fledged citizens (City of Johannesburg, 2005: 2). Responding to the socio-demographic and poverty context of the city, the strategy is also aligned with the internationally accepted MDGs. The aim of the strategy is to create an enabling environment for Johannesburg residents to enjoy long, healthy and creative lives. The plan has the following three strategic directions:

■ *championing rights and opportunities*, which help to respond to the inequalities among Johannesburg residents,
■ *building prospects for social inclusion*, responding to the social exclusion of residents, and
■ *safeguarding and supporting poor and vulnerable households* by responding to poverty in the city.

The strategy provides a number of indicative programmes, and acknowledges that the implementation of the strategy and reaching the aim are dependent on a multi-pronged approach. This will help the poor to gain access to the social package; it targets the most vulnerable such as women, children and youth, and it promotes sustainable settlements and implementation of a pro-poor urban management programme. Targeted spatial strategies are also included, such as mobilising social and other resources for under-served areas such as informal settlements (City of Johannesburg, 2005: 105). Clearly, several of these actions (such as accessing grants) need to occur in partnership with other government agencies, business and relevant NGOs and CBOs.

The Johannesburg Human Development Strategy outlined above provides the policy framework within which a community-driven HIV and Aids project of the Johannesburg Health Department, 'Jozi Ihlomile' (meaning 'Jozi Empowered'), has been conceived. In contrast to the informal settlement basic services delivery-focused development strategies of the past 20 years, the Health Department has decided to target informal settlements in the city with its initial integrated HIV response programme. While in its very early stages, the 'Jozi Ihlomile' strategy allows for a health and development initiated approach to be launched in six pilot

communities, informed by a volunteer-managed baseline needs survey. Targeting multiple needs identified in the baseline study, such as nutrition, welfare support, job creation, support groups, and early childhood development, the 'Jozi Ihlo-mile' programme provides a flexible framework through which a number of activities and actors can be integrated and implemented in one community. This approach to health and development is entirely in line with the 1976 'Health for All' conference in Alma-Ata (USSR) where the pioneering primary health care approach was originally adopted (WHO, 2002: 3). While the upgrading of basic services is a key component in responding to informal settlement communities' health needs, the health and development focus allows for a more integrated approach.

The manner in which this approach is linked with the national informal settlement upgrading programme and the Johannesburg *Informal Settlement Strategy* in the six pilot 'Jozi Ihlomile' projects remains to be seen. With appropriate guidance, it may be possible that the City of Johannesburg's HIV strategy in informal settlements, if based on the principles outlined above, will provide some fruitful lessons for informal settlement upgrading in the city and beyond.

Conclusion

The new national programme for informal settlement upgrading (see Huchzer-meyer, in this book: Chapter 3) clearly integrates lessons from the past experiences of *in situ* upgrading initiatives and includes a number of good ideas. However, the approach adopted in the policy would appear to be largely technical and project-management driven. Community consultation and the ongoing involvement of local stakeholders in the process is given less emphasis, and the mechanisms to involve various actors such as other government departments are not spelled out clearly. Further, the installation of social infrastructure is not conceived of as an upfront activity around which trust between the key role-players could be built, nor is it conceived that these investments could possibly function as a community resource from the outset.

While the implementation of the programme could in reality be 'softer' and more focused on community and capacity development — whether the result is services 'in the ground' or an empowered and healthy community — will depend on the skills, enthusiasm and confidence of the officials involved. I suggest, how-ever, that it may well be worthwhile to keep a watching brief on the progress and activities of 'Jozi Ihlomile' and the implementation of the *Human Development Strategy*. It will be exciting to see what lessons can be gleaned from an approach to informal settlements that does not solely rotate around engineering services but

rather focuses on community health and development needs, especially on the needs of the vulnerable and excluded in a time of HIV/Aids.

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fifteen

Slum upgrading in the complex context of policy change: The case of Nairobi

Alfred Omenya and Marie Huchzermeyer

Introduction

This chapter examines the political and policy environment for informal settlement or 'slum' upgrading in Kenya, exploring the limits of actions and intentions. It discusses the dynamics of political and policy changes that have undermined slum upgrading efforts and have ensured that the undesirable status quo of the Nairobi slums — characterised by layers of exploitation of the poor, physical decay and lack of participation in upgrading processes — has been maintained. The chapter attempts to illuminate why various initiatives to upgrade Nairobi slums have been ineffective. It compares the recent and present policy environments, seeking to identify why results for slum dwellers remain limited and the slum situation appears to be perpetuated.

The chapter draws on the authors' review and analysis in July 2004 of slum upgrading policy and initiatives in Nairobi, as part of a COHRE (Centre for Housing Rights and Evictions) investigation into slum evictions (COHRE, 2005), and on one of the co-authors' current research towards a PhD on aspects of self-help housing in Nairobi (Omenya, 2005). The chapter begins with a synopsis of informal settlement conditions in Nairobi, and then reviews past and current slum upgrading initiatives in that city, finding no clear evolution from slum clearance to participatory *in situ* upgrading projects, as UN-Habitat and other organisations have promoted internationally. The chapter then turns to the policy environment of the last decade of President Moi's Kenya African National Union (KANU) rule and the policy initiatives since his replacement in 2002 by President Kibaki of the National Rainbow Coalition (NARC). While highlighting policy advances, the chapter identifies ongoing problems such as uncoordinated and at times drawn-out policy making, conflicting stakeholder agendas, and duplicating

policy initiatives. The chapter relates these policy-making challenges to shifts in Kenyan politics and international donor priorities, and ties these pressures and dynamics back to the slum redevelopment approach of the Kenyan National Slum Upgrading Programme (KENSUP), which is being piloted in Nairobi's largest slum, Kibera (figure 15.1). The chapter concludes with scepticism on the extent to which the current KENSUP programme, in contradiction to and in the absence of effective policy, may relieve the informal settlement situation in Nairobi.
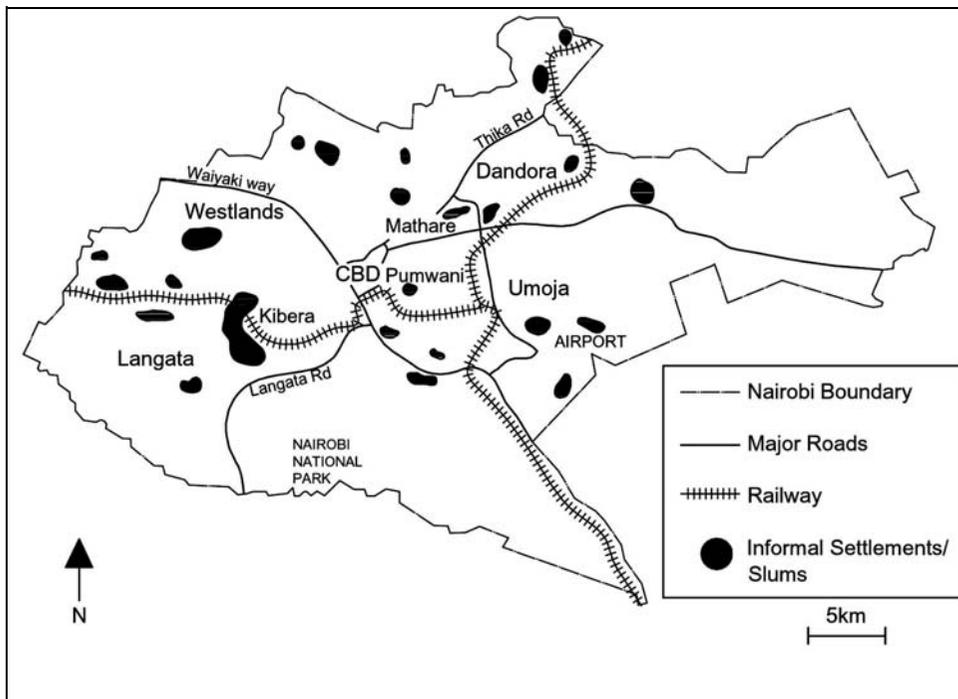
Figure 15.1: Map of Nairobi, indicating informal settlement or 'slum' areas

The alarming conditions of slums in Nairobi

The City of Nairobi, with its current estimated population of at least 3 million people (based on 1999 census data assuming a 5% annual growth rate), has 55-60% of its population residing in informal settlements, which in the case of Nairobi are referred to as 'slums' (Republic of Kenya, 1997; Syagga, Mitullah & Karirah-Gitau, 2001: 66, 67; Bodowes & Kwinga, 2003: 221). These slums take up only 5% of Nairobi's land (Bodowes & Kwinga, 2003: 221; Mitullah & Kibwana, 1998: 200), sometimes with densities of up to 250 dwelling units per hectare

(Syagga, Mitullah & Karirah-Gitau, 2001) (see figure 15.1 above). These densities are achieved through continuous rows of rooms along narrow walkways that double as wastewater collectors, which seldom drain.

Dense housing rows in Kibera, with paths doubling as open sewers

Nairobi's largest slum, Kibera, which has the reputation of being the largest and most densely populated slum in Africa (COHRE, 2005: 26), is estimated to house over 600 000 people on 110 hectares of land (Government of Kenya, 2004b). Kibera, though physically one continuous stretch of settlement, socially consists of 13–16 'villages' or separately named areas. The village on the south-eastern end of Kibera, 'Soweto' (named after the famous South African township) (COHRE, 2005: 95), has been selected for the current high-profile piloting of KENSUP, to which we return in the following section. Soweto houses some 60 000 people in 12 000 structures, on 24 hectares of land (Langford, personal communication; COHRE, 2005: 95).

In the absence of any wider circulation routes through Kibera, the 600 000 residents walk and trade on the Nairobi-Kisumu railway line, which crosses the settlement, and which is claimed back for its original purpose only through the regular, though cautious, passing of a train. This informal arrangement is the result of many decades of neglect and ineffective governance, having resulted in an almost symbiotic pragmatism on the side of both residents and utility. With the current externally driven privatisation of Kenya's railways, a 60-metre rail reserve has to be cleared, irrespective of the *de facto* land use (COHRE, 2005: 55). Forceful evictions in Kibera to this end, among others, led to the COHRE investigation into slum evictions in July 2004 (COHRE, 2005).

Use of the Nairobi-Kisumu railway line for pedestrian circulation in Kibera

The high dwelling-unit densities in Nairobi's slums are coupled with the lack of dedicated land set aside for civil engineering infrastructure and social facilities. Where these do exist, they have been provided by religious organisations, community-based organisations (CBOs) and non-governmental organisations (NGOs), and are cited as important assets and sources of pride of the slum

communities (Government of Kenya, 2004a). Despite 700 such organisations having been identified to be operating in Kibera (2004a), the reach of such infra-structure and facilities remains limited in relation to the number of residents in the slum. We return below to the proliferation of NGOs and implications for slum intervention. In the dominant absence of sanitation, the residents have resorted to defecating into plastic bags and throwing these out into the clogged drainage ditches in the narrow walkways or on steep slopes where rooms could not be constructed. This desperate form of sanitation, referred to as 'flying toilets', has serious health implications.
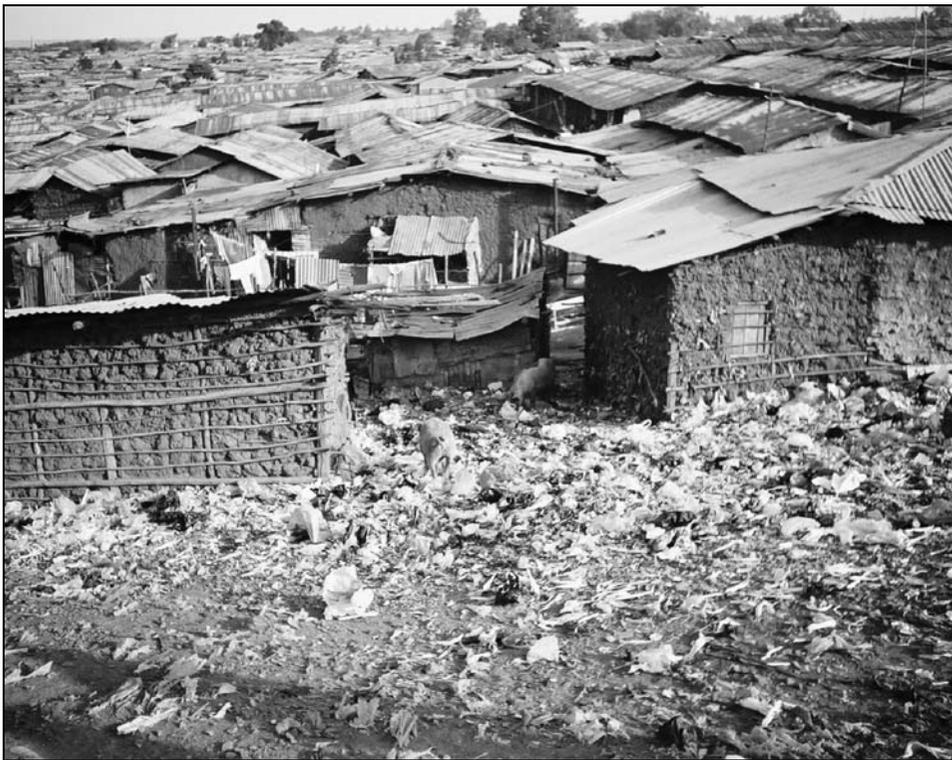
Disposal of 'flying toilets' in Kibera

Unlike the dominance of owner occupation in informal settlements in South Africa (see Huchzermeyer, 2004), in Nairobi, a situation has evolved whereby most informal settlement or slum residents are tenants. A 2000 analysis of Kibera found that 80% of the resident households were tenants at the time (Olima & Karirah-Gitau, 2000: 28). Structure owners range from those who have invested their life's savings in constructing one or two rooms to rent alongside their own to those who make a comfortable living in formal Nairobi by renting out many units

in the slums (Syagga, Mitullah & Karirah-Gitau, 2001: 125). An analysis of land-lords and tenants in Kibera highlights that the cost of investment in rental stock in these slums is not only determined by the cost of construction, but also by the illegal payment demanded by corrupt so-called chiefs in the Provincial Adminis-tration (Syagga et al., 2001). Any structure improvements or repairs by landlords also require a payment to these 'chiefs'. This is enforced by patrolling vigilante youth groups operating on behalf of the 'chiefs', and this accounts in part for the overall state of neglect of the rented structures.

Land 'ownership' in Nairobi's slums is largely informal. This occurs either through land grabbing or informal sale as a consequence of complicated land transfer processes (see Syagga, Mitullah & Karirah-Gitau, 2001: 83; Olima, 1997: 327-28; Republic of Kenya, 2002a: 91). Difficulty in access to land has resulted in a situation where those who own the housing structures are often neither the owners nor the renters of the land (see Syagga et al., 2001: 17; COHRE 2005: 63). In Kenya, only 6% of the total land area has been registered under individual titles (Konyimbi, 2001: 50). This has meant that there are groups whose land rights have not been resolved for years, the Kibera Nubians being a good example. They were initially allocated 1 699 hectares, which has now been reduced to only 121 hectares (COHRE, 2005: 31). Further, Nairobi's informal settlements have strong ethnic divisions. With the unresolved land issue, attempts to upgrade ignite real fear among these groups of losing entitlements to land.

An evolution of Nairobi's slum upgrading initiatives?

There have been various attempts to solve the problems of slums in Nairobi over the decades. While, internationally, there has been a broad evolution from slum clearance in the 1960s to cross-sectoral, integrated and participatory slum upgrad-ing approaches in the 1990s (UN-Habitat, 2003), an evolution in this direction is not evident in the slum interventions in Nairobi. Government housing pro-grammes in the 1960s, after independence in 1963, echoed pre-independence poli-cies, namely the demolition of informal settlements coupled with subsidised construction of public rental housing at a rate that did not meet the housing needs of those displaced by the demolitions. Slum clearance in the 1960s was undertaken in Pumwani and Grogan (see map of Nairobi in figure 15.1) (COHRE, 2005). The National Development Plan 1970-1974 put a halt on demo-litions 'until the housing shortage had been eliminated' (Government of Kenya, 2004b: 1.3, cited in COHRE, 2005: 23). New projects were initiated under the National Development Plan of 1974-1978, but the impact of housing develop-ment at the time was limited by a rigid minimum housing standard of a fully

serviced 38 m^2 unit, and requirements for full cost recovery by the beneficiaries. This was increasingly promoted in the 1980s in the context of debt and structural adjustment (COHRE, 2005).

The early slum 'upgrading' initiatives of the 1970s and 1980s were associated with the National Housing Corporation (NHC). Most of these were selected high-rise redevelopments in slum areas. Examples are the 'Pumwani-Majengo Slum Redevelopment' in the Kamukunji area in Nairobi in the 1980s. The NHC's upgrading initiatives were based on cost recovery through provision of secured loans to the beneficiaries, who were permitted to rent out rooms in their two-bedroomed units to finance the loan repayments (NHC, 2005). In the Pumwani-Majengo project, the targeting worked relatively well. However, in the later 'Nyayo High Rise Estate' mentioned below, which was intended as a redevelopment of the Kibera slum, units were sold to middle-income households. By the 1990s, the NHC had developed 42 340 units of rental, tenant purchase, site and services and mortgage housing nationally, at a cost of US $40 million (Rimber, 2002: 15; Syagga, Mitullah & Karirah-Gitau, 2001). The scale is negligible compared to '. . . about 750,000 households in urban areas and 1.5 million households in rural areas that need to be housed' (Republic of Kenya, 2003: 3).

The 1990s saw a range of intervention approaches, from slum demolition and redevelopment to upgrading. In 1991, slum demolitions in Muoroto and Kibagare areas of Nairobi displaced 30 000 people (Weru 2004: 48), some of whom were resettled in Dandora on greenfield sites with no services. They occupied plots measuring 8 by 17 metres. Eight to 10 households were resettled on each plot. The community, through the Urban Development Programme supported by the Nairobi City Council (NCC), upgraded the area minimally, by building 77 pit latrines for 220 families living in this area (Fransen, 1999). The area remains in a state of neglect to date.

In the early 1990s, the Nyayo High Rise development was initiated in the Kibera slum, funded by the National Social Security Fund (NSSF) and implemented by the National Housing Corporation (NHC). It was intended as a slum upgrading initiative to benefit the people of Kibera. However, political interference in the allocation of the construction contract resulted in building costs that could not be recovered by the intended beneficiaries. Instead, through further political interferences, the units were traded to middle-income households (Sudi, Awalla & Nyongesa, personal communication).

A more consistent attempt to pilot slum upgrading in Nairobi was the Mathare 4A project in the early 1990s. It was funded through the German Development Bank (KfW). The programme covered an area of 17 hectares, with a population of 26 000 people consisting of 8 000 households (Kusienya, 2004: 2). The first pilot

ran from 1992 to 1996, replacing wattle-and-daub structures with 1 400 rooms. In addition, 1 700 households were enabled access to basic infrastructure and services (Kamau & Ngari, 2002). Phase 2 catered for a further 4 300 households (Kamau & Ngari, 2002). The decision to provide one-roomed units (built using stabilised earth blocks) rather than flats was to discourage down-raiding by middle-income groups, and indeed targeting in this project was more successful than in projects that sought to replace slums with multi-roomed flats. Nevertheless, several problems arose, including fights between tenants and structure owners in the original slum (see Martin & Mathema, in this book: Chapter 7). Opiata and Bodewes (1999) link the problems of Mathare 4A with the following shortcomings in its implementation: inadequate representation of the residents in the decision making; the use of forceful mechanisms to ensure implementation; and corruption in allocation of units. Additionally, Kusienya (2004: 5) noted the problems of slumlords, rent defaults and political interference.

The 1990s was marked by massive evictions from slums, not as part of development programmes, but merely as a result of land disputes. Occupied land was allocated by the ruling party 'to reward political loyalty' (Olima, 1997: 327-28) and with an increasing politicisation of ethnicity, ethnic land conflicts emerged (COHRE, 2005: 24). A 1997 moratorium on demolitions, issued by the Nairobi Informal Settlements Coordinating Committee, was not respected (2005: 25).

There were some modest upgrading initiatives by NGOs in the 1990s. Slum Dwellers International had initiated contacts with Kenyan informal settlements residents in 1995, leading to the formation of *Muungano ya Wanavijiji* (Villagers' Association) assisted by another Nairobi NGO, Mazingira Institute. One hundred savings groups in 60 settlements bringing together 10 000 savers have since been formed (Weru, 2004: 56). The scale of upgrading through this initiative is still small, with work having begun only on 39 houses in Huruma, an informal settlement with 2 309 households living in densities of up to 604 households per hectare (see COHRE, 2005: 130; Weru, 2004: 60). The success of this initiative can only be assessed in the future.

Outside of Nairobi, the Tanzania-Bondeni upgrading is cited as one of the most successful slum upgrading initiatives in Kenya to date. It was supported by the German Agency for Technical Cooperation (GTZ) through the Small Towns Programme in 1991 (GTZ, undated). It is located in Voi, a small town in the Coast Province. Several factors contributed to its success, despite the fact that it took 12 years to complete. Central among these was the adoption of communal land tenure. Land was owned through a Community Land Trust (CLT). This ensured that beneficiaries do not sell their units. Additionally, the upgrading programme was participatory. Twelve representatives were elected to represent

the women, youth and tenants in various committees. The councillor, the chief and the local authority representatives and representatives of various government ministries were also involved. The University of Nairobi's Housing Architecture and Building Research Unit (HABRI) provided technical and research back-up. However, it must be noted that the settlement is relatively small, with only 350 households, 60% of whom own their structures (COHRE, 205: 131). Besides, most residents had similar backgrounds, having been immigrants from the former Tanganyika (Tanzania) around 1940 (GTZ, undated).

The most comprehensive plan to upgrade slums in Nairobi is that of KENSUP. It was initiated in 2000 through a Memorandum of Understanding between the Government of Kenya and UN-Habitat, and was renewed with the NARC government in January 2003 (Kusienya, 2004: 7). It intends to produce 45 000 housing units annually at a cost of Ksh 35 billion (US \$440 000) (2004: 7). Because of the general lack of information about slums, several detailed technical reports have been commissioned, the most comprehensive being the *GoK/UNCHS Slum Upgrading Initiative: Nairobi Situation Analysis* (Syagga, Mitullah & Gitau-Karirah, 2001). The preparatory phase of KENSUP seems to have been informed by positive policy values and concepts recommended in these situation analyses, including *in situ* development based on minimum standards and on effective collaboration. The programme proceeded with specific working groups, including residents, NGOs, government, the private sector and international agencies. In January 2003, the KENSUP agreement was renewed between UN-Habitat and the NARC government, with UN-Habitat's role spelled out as facilitating advisory expertise, specialised equipment, capacity building, study and training, assistance into the provision of basic infrastructure, helping in mobilising resources and establishment of a trust fund (Republic of Kenya, 2003).

A decision was made by the Kenyan government to pilot KENSUP in Soweto, the 24-hectare 'village' on the eastern tip of Kibera (Kusienya, 2004: 8). While there were attempts to incorporate various policy-making departments within government in KENSUP, and in spite of UN-Habitat's involvement in the policy making, there is no evidence that the lessons from earlier slum initiatives, in particular the Mathare 4A project, or recommendations from the recent situation analyses, were incorporated into the pilot project approach. The Kibera-Soweto pilot project was launched by UN-Habitat on World Habitat Day in October 2004, with extensive media coverage of a graphic projection of an end product of orderly blocks of flats with fully serviced 50 m^2 units replacing the dense and decaying slum (*East African Standard*, 2004a). Incidentally, 80 m^2 is the minimum standard for lower middle-income housing in Kenyan Housing Policy, whereas the minimum standard for low-cost housing is 36 m^2 (Republic of Kenya, 2002b).

The new KENSUP units in Soweto, Kibera, will cost Ksh 2 000 to Ksh 2 500 (approximately US $26-33) monthly in rent-to-buy payments. This will require residents to have a steady income of at least Ksh 6 000 for 15 to 20 years. Most Kibera residents have irregular incomes from the informal sector, and on average are able to pay monthly rents of Ksh 500 (approximately US $6.60) for an unserviced wattle-and-daub room (Syagga, Mituallah & Karirah-Gitau, 2001). It is understandable that Soweto residents feared that, once removed to the project's initially proposed transit/'decanting' site in Athi River, 23 km from Kibera (where the Government of Finland, in a debt-swap arrangement, has made available land for this purpose), they would have lost their right to reside in Kibera (COHRE, 2005). However, this plan has been shelved through political intervention of the area Member of Parliament, the Hon. Raila Odinga (Langford, personal communication).

Memory and consciousness of past slum intervention failures appear to be stronger in the minds of residents (see COHRE, 2005) than of elected politicians, government and UN-Habitat officials. 'We do not want a repeat of what happened in Pumwani, Mathare and parts of Kibera in the 1990s' a resident of Kibera Soweto said (*East African Standard*, 27 March 2005). During the COHRE investigation in July 2004, residents expressed fears of corrupt interests behind the pilot project approach (COHRE, 2005). Various incidences of corruption have since been reported in the media. The *East African Standard* of 27 March 2005, for example, reported that: 'Residents say a civic leader is the mastermind of the scandal, in which those in need of houses are paying Ksh 20 000 each as protection fee to ensure that they are entered in the register of allottees'. Allegations of corruption have not been limited to local politicians and officials but have extended to UN-Habitat. It was reported in a section of the press that an official of UN-Habitat was involved in canvassing for a contractor to develop the initially proposed transit site in Athi River (*Sunday Nation*, 2005). The allegation was later reported as being false (Langford, personal communication).

It must be asked whether an organisation such as UN-Habitat has a contribution to make as partner to governments at project management level, and whether this level of involvement does not compromise its 'watchdog' function, which UN-Habitat has recently fulfilled in relation to development-related evictions in Harare, Zimbabwe. The predicted and feared affordability-related displacements from Kibera might well be violations of similar weight as those in Harare. Indeed, the Kenyan Minister of Housing recently officially sympathised with the Zimbabwean government's complaint that people don't listen until the bulldozers arrive (see also Du Plessis, 2005; in this book: Chapter 10). COHRE (2005) subtly captures this concern in the title of its Nairobi report: '*Listening to the Poor*?'

While the December 2004 Kibera–Soweto project document (Government of Kenya, 2004b) mentions that a secure tenure zone will be created for Kibera, there is no evidence as to the means by which affordability will be adjusted to ensure tenure security. Even if affordability were to be addressed, there is little evidence for Kibera residents that their fears of corrupt allocation of the new units in Kibera — and therefore their permanent displacement from this central part of Nairobi — are unfounded. It is also likely that conflict will arise, given that the programme does not engage with the issue of compensation of dispossessed structure owners. The approach also does not ensure the protection of community and individual investments, provision of basic and emergency services and non-disruption of residents' livelihoods.

Though referred to as 'participatory slum upgrading' by UN-Habitat, the participatory structure for the Kibera–Soweto pilot project crudely considers tenants, structure-owners and community organisations (NGOs, CBOs and religious organisations) as three separate silos or 'interest groups'. Rather than working with existing representative structures, each 'interest group' was requested to elect a very limited number of representatives onto the Settlement Executive Committee (five representing 50 000 tenants, two representing structure owners, two representing civil society, and two representing the disabled). The Location Chief (provincial administration officer in charge of a location) and the District Officer (provincial administrator in charge of a district), who have been known to have corrupt interests in land allocation and structure improvements, were appointed as members, though without voting powers.

Funding arrangements for KENSUP remain undefined, with the assumption that UN-Habitat will mobilise donors to fund the implementation. In July 2004, at the time of the COHRE investigation, there was no evidence that alternative funding mechanisms were being explored other than UN-Habitat envisaging a revolving loan programme, and attempting to develop a mortgage guarantee mechanism that will enable formal financial institutions to give housing loans (COHRE, 2005). The government has since pledged to fund 20% of the KENSUP programme (Kusienya, 2004: 6), but this is yet to be reflected in the national budget.

Therefore it is evident that, despite UN-Habitat presence and involvement, slum intervention in Nairobi has not evolved from slum clearance and redevelopment to more sensitive multi-sectoral and participatory *in situ* upgrading. This current situation leads us to ask questions about Kenya's land and housing policy, and its effectiveness with regard to slum intervention in Nairobi.

Policy and political context up to 2002

Kenya's policy and legislative environment before 2002 was fragmented and outdated, creating the conditions for uncoordinated slum initiatives. Throughout President Moi's rule (which lasted from 1978 to 2002), Kenya relied on the independence constitution, which is deemed to have outdated governance structures and is also weak on citizen rights. For example, it did not incorporate a right to housing. President Moi resisted all demands from civil society and opposition parties to create a new constitutional order.

The most comprehensive policy on housing that existed in Moi's era was the 'Session paper No. 5 of 1966/7: Housing policy for Kenya' (Government of Kenya, 1967), which was inherited from the pre-Moi government. This policy, which promoted slum clearance and public housing (see Mitullah, 1992: 187), generally went unimplemented. Moi's government was reluctant to develop its own housing policy (Syagga, Mitullah & Karirah-Gitau, 2001). In 1987, as a result of pressure from UN-Habitat, the *National Housing Strategy to the Year 2000* was developed by the Ministry of Public Works and Housing. It focused on the enablement paradigm towards housing, thus promoting market provision of housing rather than direct government expenditure on slum upgrading. There is no evidence that this strategy was translated into action (Kore, 1996). However, the *Draft National Housing Policy, 1996* (Government of Kenya, 1996) had slum upgrading as a central area of focus. Direct concern for slums was also reflected in the 1997 multi-sector *Development Strategy for Nairobi's Informal Settlements* (Republic of Kenya, 1997). The principles it outlined in regard to informal set-tlement upgrading in Kenya included provision of security of tenure, access to land, the right to adequate housing, and access to infrastructure and basic services. These were again reiterated in the 2000 'National report on the review and apprai-sal of the implementation of the Habitat Agenda and the National Plan of Action on Shelter and Human Settlements' (Republic of Kenya, 2000). Most of these principles found their way into the 'Sessional paper on housing policy for Kenya' (Republic of Kenya 2002b), which eventually materialised into the new *National Housing Policy for Kenya* in July 2004.

While there appeared to be a gradual progression of housing policy towards incorporation of slum upgrading, the policy was not finalised or adopted during the KANU regime. Instead, an *ad hoc* policy environment was perpetuated through establishment of commissions of enquiries into the causes and potential solutions of problems, which could have been resolved within a legislative, constitutional and policy framework. This is the context that gave rise to such commissions as 'The commission of enquiry into the land law system of Kenya on the principles of a national land policy framework and new institutional

framework for land administration', also known as the Njonjo Commission (Republic of Kenya, 2002a,) and later the 'Ndungu commission on illegal land allocation' (COHRE, 2005: 105). Their recommendations are yet to be implemented.

For Nairobi specifically, various initiatives were to support a policy on slums. In 1993, an extensive database was developed on Nairobi slums, with support from the United States Agency for International Development, Regional Economic Development Services Office for East and Southern Africa (USAID/REDSO-ESA), and conducted by local consultants, Matrix Consultants (Matrix Consultants, 1993). Other initiatives included the 1997 Nairobi Informal Settlements Coordination Committee to develop an overall strategy for dealing with informal settlements in the city (see Republic of Kenya, 1997; Syagga, Mitullah & Karirah-Gitau, 2001: 132-133).

Within this context of available data and formulated recommendations, but no adopted policy, most of the slum-upgrading initiatives in Nairobi, in the Moi era, were the result of so-called roadside policies. These were spontaneous presidential declarations that were often made with no reference to legal and policy frameworks. An example is the case of the rent declaration in Kibera, when President Moi and the area member of parliament were accused of inciting residents not to pay rent. Fifteen people were killed (*Daily Nation*, 2001). Another example is in December 2001, when the president directed that 100 000 members of the Korogocho community be settled on the land they had occupied informally. The tension between structure owners and renters has not been fully resolved to date (see Weru, 2004: 50). It is in this context that KENSUP was founded in November 2000 through a Memorandum of Understanding between UN-Habitat and the Kenyan Government. UN-Habitat at the time regarded the KENSUP agreement as an important commitment by the Kenyan government to resolve the slum situation, and attached its highest level of support to this initiative (and, with the renewal of the agreement in January 2003, continues to do so).

In terms of physical planning for Nairobi's slums during the Moi presidency, the Nairobi City Council (NCC) relied on the Strategic Plan of 1974 (which also predated Moi's coming into power, in 1978). The city's physical master plan was inherited from colonial times, with only minor amendments to extend the city's boundary (see Obudho, 1997).

Coupled with the lack of physical planning, Nairobi suffered unprecedented national political neglect in the last decade leading to the 2002 elections. In part, this could be attributed to the fact that Nairobi was governed politically by the opposition, while the national Government was in the hands of President Moi's KANU party. KANU had a tendency to portray the failures in management and

service delivery in Nairobi as indicative of the ineptitude of the opposition parties. This contributed to lack of political commitment at national level in dealing with Nairobi's urban problems relating to housing, basic service provision and conditions in the slums.

The policy context beyond 2002

In a continuation of uncoordinated activity, evictions in Nairobi's slums in 2004 were being carried out in order to implement the 'bypass' road construction of the 1973 *Nairobi Metropolitan Growth Strategy* (City Council of Nairobi, 1973) (no longer bypassing but running though developed parts of the city), while, at the same time, a new city plan was being commissioned.

The year 2002 was an important year in Kenyan politics due to the election campaigning and subsequent victory by the coalition of opposition parties (National Rainbow Coalition — NARC). During the election campaigns, both the ruling party at the time (KANU) and the coalition of opposition parties (NARC) campaigned on the need for a new constitution, which the latter promised to deliver in 100 days. There were also promises of broad socio-economic reforms, supported strongly by civil society. The introduction of a right to 'accessible and adequate housing' was one of these, as reflected in Chapter 6, Section 63, of the draft constitution (Republic of Kenya, 2004a). At the time of writing, the Constitution of Kenya Amendment Bill was expected in Parliament in August 2005, and a national referendum was planned before the end of 2005. However factional conflicts on the issue within NARC remain unresolved.

The current policy context for slum upgrading in Kenya is characterised by an inherited and incomplete political reform, inherited and unresolved political divisions, and increased donor and private sector pressure and priorities (we return to the donor context in the next section). As observed earlier, the land reform process, which is expected to deal with the harmonisation of land law, illegal allocation of land, security of tenure, land ownership and use of public land, remains incomplete. The tension between target-driven delivery and socially oriented slum upgrading remains at the centre of slum upgrading efforts. Where policies do exist, these tend to be 'paper policies', with no clear mechanisms for implementation. The housing policy illustrates this well.

The proposals of the earlier Nairobi Informal Settlements Coordination Committee, approved by the Nairobi District Development Committee (Republic of Kenya, 1997) found their way into the new *National Housing Policy*, finally passed in July 2004. However, the principles of the *New National Housing Policy* (Republic of Kenya, 2004b) are yet to be translated into KENSUP.

The new housing policy (Republic of Kenya, 2004b) acknowledges the need

for slum upgrading through provision of security of tenure, basic infrastructure and services, the incremental improvement of housing, and the improvement of the socio-economic status of the community. The policy encourages participation in slum upgrading. It commits itself to poverty alleviation, income generation and encouragement of owner occupation. The destruction of existing housing stock is to be avoided, and private sector investment in housing is encouraged. The policy provides for protection of means of access to livelihoods. It further calls for continuous revision of standards, by-laws and regulations to meet basic needs of the poor. Other principles in the policy are incremental housing development and compensation for loss of assets in the event of relocation. The policy recognises the need for easy access to land as one of the ways of improving informal settlements. The policy shows appreciation for the complexity of slum upgrading. However, it does not deal explicitly with the issue of tenancy and rents.

The housing policy also does not contain a clear funding regime, save for generalities on private, public and informal sector finances. It does not commit the government to subsidise housing development or slum upgrading. Consequently, as in the past, the government has not provided a budget to implement any of the recommendations that have been developed with respect to slum upgrading. The only major funding mechanism that was initially considered in any detail was the private sector funding sourced through the Kenyan National Housing Corporation (NHC), via a bond issue and negotiation with private sector investors, such as the USA-based company Overseas Private Investment Corporation (OPIC). According to newspaper reports (*East African Standard*, 2004b) the Kenyan Treasury did not support the bond issue. This kind of funding is inappropriate for slum upgrading and basic infrastructure provision, as it is unlikely that costs can be recovered. Housing needs in slums are, to a large extent, welfare needs, requiring government subsidy. Instead, the new housing stock envisaged through these funding mechanisms is suitable for middle-income households, with permanent jobs. As mentioned above, the fear of Kibera residents is that the so-called slum upgrading will make way for their displacement from the well-located slum by middle-income households.

The influence of donor priorities

The NARC government since 2002 has focused mainly on the two priorities of liberal economic reforms and anti-corruption, with campaigns driven by international donor agencies led by the World Bank and the IMF, and largely supported by the business community. Social development and a role for communities in development have been relegated to the back door. Fortunately, both the local authorities and national government are now run by the same party,

making policy alignment possible. At national level, there is a stronger focus on Nairobi and its development than was the case in the previous regime.

Before the 2002 elections, persistently high levels of corruption, poor governance and resistance to economic reform in the Kenyan government had resulted in the World Bank and the IMF advising many donors to abandon the country. During this time, the donor community that remained committed to development in Kenya mainly channelled its resources through NGOs. This resulted in the proliferation of NGOs in Kenya in the 1990s (Syagga, Mitullah & Karirah-Gitau, 2001: 136). They were well funded, and in fact replaced the government in delivery of social services. However, most of these donor-funded activities were project oriented, and they often duplicated efforts and lacked coordination (Syagga, Mitullah & Karirah-Gitau, 2001).

Donor activities changed after the 2002 election. The new government's commitment to economic reforms and to stamp out corruption resulted in a donor scramble to fund various activities by the newly elected government. For its first two years in office, the NARC government has been preoccupied with attempts to meet donor-lending conditions. The donor scramble led to a situation where there were several donors working in the same policy area, often in direct conflict with one another. A case in point was land policy formulation, which initially had many actors duplicating efforts, as well as working in different directions. These were brought together in March 2004 through a forum that included actors in the public, private and NGO sectors, as well as UN-Habitat, alongside representatives of the donors, such as the Swedish International Development Agency (SIDA), German Agency for Technical Cooperation (GTZ) and the British Department for International Development (DFID) (Ministry of Land and Settlement, 2004: 21-34).

Attempts at donor coordination have been followed by a strong alignment of NGOs with donors' primary interests in implementation. There was a divide between pragmatic donor-driven NGOs that wanted to see things change on the ground, irrespective of whether the roots of the problems were being dealt with, and those NGOs (dwindling in numbers) that deal with basic rights and lobby around policy and legislation. Most NGOs working in Nairobi's slums continue to be involved in service provision, rather than engaging with more fundamental socio-economic rights of the individuals living in the slums. There has not been significant change in NGO activities in the post-Moi era, even though there is less harassment by the government (see Weru, 2004). Some donors are still not satisfied with government reforms; for example, the British High Commissioner to Kenya, Edward Clay, claimed that corruption had cost Kenya US $188 million since President Kibaki took office in 2002, a position supported by the European Union, Germany, the USA and Japan (BBC, 2005). As a result, NGOs are still likely to get favourable donor support in the foreseeable future.

Rights–based NGOs were often considered as obstacles in implantation and implementation of programmes — see Syagga, Mitullah and Karirah-Gitau (2001: 137-139) on 'Government fear of organised poor and suspicion of NGOs'. However, the NGO Coalition in Nairobi has been able to help engage with some rights-based issues in post-Moi Kenya. The Coalition incorporates rights-oriented NGOs such as the Kenya Land Alliance and *Kituo Cha Sheria*. It also has a good relationship with the state-sponsored National Human Rights Commission. Another member of the NGO Coalition, *Pamoja* Trust, which was initiated in 2000, helps mobilise the poor in line with the principles of Slum Dwellers International, as discussed earlier. Pomoja Trust was initially formed in 2000 (Weru, 2004: 47) to help the poor oppose evictions (therefore to some extent a rights-based organisation), while simultaneously supporting the poor in finding their own solutions to housing problems. It is noteworthy that the previous government tried to close down *Pamoja* Trust (Weru, 2004: 50). However, on the whole, NGOs are more focused on programme implementation than on rights.

The drive for implementation irrespective of policy was nowhere more evident than in UN-Habitat's involvement in the Kibera-Soweto KENSUP pilot project. Here, UN-Habitat supports a slum upgrading approach that contradicts the adopted national policy. UN-Habitat is involved directly in implementing the slum upgrading pilot. The UN agency has a project management office on site, and its officials fulfil a role that would normally be that of a firm of development consultants. When interviewed in July 2004 about the principles and impacts of the programme (as part of the COHRE investigation), a UN-Habitat official contradicted UN-Habitat policy by dismissing the human rights organisations that were 'interfering' by giving voice to the community's fears of eviction, displacement, corruption, conflict and loss of assets and livelihood through the slum clearance and redevelopment. Thus, rights-based voices were thus being seen as obstacles to professionalised and technocratic processes.

Conclusion: Perpetuation of the existing, inappropriate order

The limits of slum intervention in Nairobi, and persistent preoccupation with slum clearance and redevelopment rather than participatory *in situ* upgrading, cannot be understood without unpacking the political process in Kenya. The gradual, though protracted, evolution of housing policy to incorporate the principles of participatory slum upgrading is not reflected in projects implemented in Nairobi's slums, including the current high-profile Kibera-Soweto pilot project of the Kenyan National Slum Upgrading Programme, KENSUP. This is indicative of the ineffectiveness of the housing policy. A dependence on donors to fund

the slum upgrading, and consequent influence of pragmatic, technocratic (yet uncoordinated) donor agendas is evident, given that the policy does not contain a workable financial regime.

While the slum conditions and challenges for Nairobi are well documented, and insightful recommendations have been formulated in government-commissioned studies and initiatives, these are largely being ignored by the current high-profile KENSUP pilot project in Nairobi. Serious social consequences such as conflict (particularly relating to dispossession of structure owners) and despair (resulting from large-scale displacement, loss of assets and livelihoods and loss of community cohesion) are likely to mark future politics in Nairobi. The KENSUP experience undermines a substantial number of voters' trust in the new government, and could lead the poor to continue finding their own precarious, informal and probably illegal solutions (and illegal landlords/structure owners to continue exploiting the housing need), rather than seeking a formal solution through the state.

UN-Habitat is caught in the difficult position of giving its highest level of support to the KENSUP project, yet contradicting the basic principles it promotes internationally in relation to participatory slum upgrading. If permitted to be analysed and debated, this experience might blemish UN-Habitat's reputation in the future. While the United Nations Millennium Development Declaration and its targets urge governments to engage in implementation, this analysis of the situation in Nairobi suggests that lasting solutions can only be guaranteed if an effective policy (and budgetary) framework is in place to guide projects and implementation.

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