

## 2. THE POOR AND URBAN LAND

The objective of the scoping study is to identify key issues and gaps for possible interventions in favour of the interests of the poor. It is therefore important that the needs of the poor with regards to urban land are looked at and the varying ways in which urban land is used by the poor are unpacked. This chapter consists of the following sections:

- Categories of the urban poor in terms of their access to land
- Value of urban land for the poor/ sustainable livelihoods

It is important to note that there are a range of different types of urban settlements, and land issues may differ between different types of settlements. The South African urban hierarchy can be regarded as consisting of four broad types of urban settlement (as per CSIR, 1999): metropolitan areas/cities, large towns, small towns and displaced urban settlements. 33% of South Africa's urban population lives in metropolitan areas/cities, 11% in large towns and 10% in small towns (no separate population figures are available for displaced urban settlements – they are largely included in the population figures for metropolitan areas/cities).

*Table 1: Typology of urban settlements*

Type of urban settlement	Number of settlements	Approximate population	Examples
Metropolitan area/city	10	500 000+	Johannesburg, Cape Town, Durban, Pretoria, Ekurhuleni (East Rand), Emfuleni (Vaal/ Vereeniging), Port Elizabeth, Bloemfontein, East London, Pietermaritzburg
Large towns	42	50 000+	Nelspruit, Kimberley, Krugersdorp, Grahamstown, Stellenbosch
Small towns	-	<50 000	Beaufort West, Musina, Mooi River
Displaced urban settlements	-	varies	Atlantis, Botshabelo

Source: based on CSIR, 1999

*Table 2: Urban/rural populations of provinces*

Province	Metro areas/ cities	Large towns	Small town*	Rural**	Total
Eastern Cape	1 351 000	361 000	593 000	3 998 000	6 303 000
Free State	512 000	800 000	495 000	827 000	2 634 000
Gauteng	6 075 000	581 000	474 000	218 000	7 348 000
KwaZulu-Natal	2 920 000	500 000	208 000	4 789 000	8 417 000
Limpopo	0	342 000	199 000	4 388 000	4 929 000
Mpumalanga	0	687 000	408 000	1 706 000	2 801 000
Northern Cape	0	226 000	363 000	251 000	840 000
Northwest	0	440 000	732 000	2 183 000	3 355 000
Western Cape	2 557 000	480 000	479 000	441 000	3 957 000
Total	13 415 000	4 417 000	3 951 000	18 802 000	40 584 000

\* Urban population from 96 Census less metro/city and large town populations

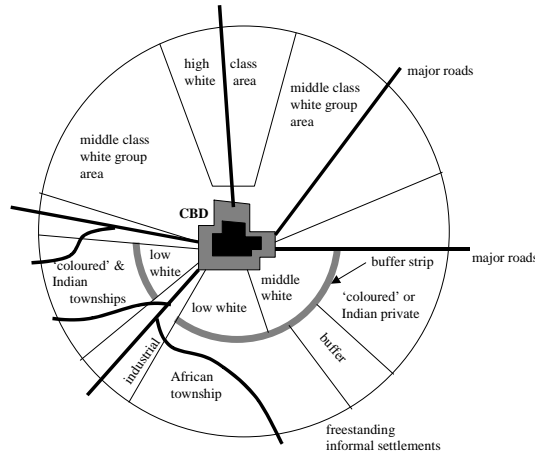
\*\*Non-urban population from 96 Census

Source: USN, 2003, from Municipal Demarcation Board figures.

Within urban settlements there are also distinct types of areas. South African urban settlements are characterized by apartheid spatial patterns, with largely racially segregated residential areas and with the urban poor generally living on the periphery of urban areas (see diagram below). Although there has been a

limited amount of integration and spatial restructuring since 1994, new low-income housing delivery (with a few exceptions, e.g. Cato Manor in Durban) have tended to reinforce these patterns. Table 3 shows the types of areas where the urban poor typically live. Urban plans introduced post-1994 have had a number of objectives, most notably compaction and integration, in order to get better functioning, more equitable urban settlements where all residents can have adequate access to urban opportunities. Key tools of urban plans have typically included setting “urban edges” to contain urban sprawl, and promoting the densification of “activity corridors” along major public transport routes. It is generally agreed that spatial planning has only had a limited effect on post-apartheid urban spatial development, however (e.g. Watson, 2003).

**The Apartheid City**



After R.J. Davies, “The spatial formation of the South African city”, *GeoJournal* (Supplementary Issue 2, 1981).

*Table 3: Typology of low-income areas in South African cities*

Type of area	Sub-type of area	Description
Urban core (close to CBD)	Inner city high rise flats	Areas comprising high proportions of medium and high rise rented and owned flats close to CBDs, e.g. Hillbrow in Johannesburg and Albert Park in Durban.
	Core townships	Formal mass-built settlements (old or new) within towns or cities, including backyard shacks, with short travel distances to places of employment, e.g. the formal Alexandra township in Johannesburg, or a township adjacent to a small town.
	Core informal settlements	Previously or currently illegal, unplanned (often infill) settlements within towns or cities close to places of employment, e.g. parts of Cato Manor in Durban and parts of Alexandra in Johannesburg.
Urban fringe (<25 km from city centre)	Fringe townships	Planned, low cost settlements, including 1960s townships, backyard shacks and flats, new starter housing, and sites and services, with moderate distances to places of employment, e.g. Soweto in Johannesburg, Umlazi in Durban, and Khayelitsha in Cape Town. Also typically within fringe townships are collective dwellings (hostels and similar institutions housing single people or households who rent from their employers or the municipality), and infill informal settlements on vacant land between formal development.
	Fringe informal settlements	freestanding, previously or currently illegal, unplanned settlements whose inhabitants commute moderate distances to places of employment, e.g. Ivory Park in Midrand, Wallacedene in Cape Town.
Displaced urban settlements (>25 km from city centre)		Townships like Atlantis and Botshabelo, which are essentially completely urban; peri-urban informal settlements where a majority of residents commute to the urban area; former homeland border towns and townships (also known as 'betterment settlements'), sometimes adjacent to industrial decentralisation points.

Source: CSIR, 1999

## 2.A. Categories of the urban poor in terms of their access to land

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Poverty is a multi-dimensional problem. The aspects of poverty include (Navarro, 2001):

- Economic dimension of poverty: “income poverty”
- Social dimension of poverty: “capacity poverty”
- Environmental dimension of poverty: “habitat poverty”

Access to urban land can play an important role with regards to all three dimensions of poverty. Although it is recognized that poverty has many dimensions, and income alone is not an ideal measure of poverty, for practical reasons the “urban poor” are loosely defined in this report as households with incomes of less than R3500 per month (which is the income limit for housing subsidy eligibility). It should be noted that many households in the R3500 – R6000 per month income group, although they cannot be defined as “poor”, are also unable to access land and housing through the formal market due to the lack of access to credit and the lack of an effectively functioning housing market.

It should be noted that poverty in urban areas is often underestimated – it is a common misperception that poverty is always worse in rural areas and that people in urban areas are always better off than people in rural areas (Satterthwaite, 2003).

This section broadly categorises the urban poor in terms of their access to urban land and their urban land needs. It is important to disaggregate the urban poor in terms of their access to land so as to be able to understand their different needs and the differing ways in which actions can impact on them. It should be noted that there is a severe lack of reliable statistical data in South Africa, so it is only possible to quantify these categories to a limited extent.

The main distinction is between those with access to formal security of tenure and those without. It is important to note that security of tenure does not imply ownership – other forms of tenure, such as rental, can also provide security of tenure. It must be emphasized that there is no clear division between formal and informal tenure, so there is a grey zone that exists somewhere between the two ends of the continuum of formality/informality. Table 4 gives simplified examples of the continuum of formality/informality for the rental of a backyard structure and for a brick/block house in a township.

Secure tenure is defined by United Nations HABITAT as “protection from involuntary removal from land or residence except through due legal process” (Herr and Karl, 2002). The security derives from the fact that “the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable” (UN-HABITAT, 2003). “The granting of secure tenure is the single most important catalyst in the mobilising of individual investment in the locality. The insecurity of tenure is, likewise, often associated with the marginalisation of individuals and communities, to a concomitant lack of investment, and as a contributory factor to petty criminality and challenges to urban governance generally” (ibid). UN-HABITAT uses lack of investment in housing as a proxy for lack of security of tenure in urban areas, e.g. people living in shacks in informal settlements (Herr and Karl, 2002).

Although in rural areas there is a shift away from seeing only formal tenure as secure tenure (e.g. Van den Brink, 2003), this is currently largely, though not completely, the reality in urban areas: in urban areas, secure tenure generally means having formal, documented rights that can be proved in court, e.g. a Title Deed, a use agreement (for communal tenure bodies such as co-operatives), or a lease agreement. In many cases, informal tenure can grant *de facto* security of tenure equivalent to or even greater than that of formal security of tenure, but the frequent evictions or threatened evictions of residents of informal settlements and backyard shack dwellers, and the symptomatic lack of housing investment in informal settlements and backyard shacks,

would seem to suggest that is a distinction between the degrees of security afforded by formal and informal tenure. The reality is that households without formal security of tenure, such as households informally renting accommodation, are subject to various stresses that can affect their livelihoods strategies and are also frequently excluded from government development programmes tied to formal security of tenure (Msunduzi Municipality, 2003).

Table 4: Examples of continuum of formality/informality

TYPE OF ACCOMMODATION	INFORMAL →		← FORMAL
Ownership of a brick/block house in a township	“Owner” of a house on an illegally subdivided plot	Unregistered “owner” of a house on a legally subdivided plot informally purchased from the legal owner	Registered “owner” of a house on a legally subdivided plot
Rental of a backyard structure	Tenant of a backyard shack without written rental agreement	Tenant of a “formal” backyard structure (meeting all planning and building regulations) without written rental agreement	Tenant of a formal backyard structure with written rental agreement*

\* A rental agreement does not have to be written, and a verbal agreement can be legally binding, but in practice it is extremely difficult for a tenant to defend their rights if there is not a written agreement (and the Rental Housing Act gives tenants the right to request that the rental agreement be in writing).

Table 5: Categories of the urban poor in terms of their access to land

Informal tenure	Formal tenure
<ul style="list-style-type: none"> <li>• Informal settlement households</li> <li>• Informal tenants/ sharers (backyard shack, house, room in a house)</li> <li>• Irregular subdivisions</li> <li>• Street people</li> </ul>	<ul style="list-style-type: none"> <li>• Individual owners</li> <li>• Tenants (renting a formal unit, with a written rental agreement complying with the Rental Housing Act)</li> <li>• Communal tenure (CPA, Co-op)</li> </ul>
Grey sector	
<ul style="list-style-type: none"> <li>• Unregistered owners</li> <li>• Sub-tenants</li> <li>• Domestic workers</li> </ul>	
New households	
<ul style="list-style-type: none"> <li>• New household formation</li> <li>• Migrants</li> </ul>	

### Informal tenure

Urban poor households without formal tenure (although they may have certain rights in terms of legislation or verbal agreements) include households in:

- Informal settlements, i.e. settlements on unlawfully occupied land. The *de facto* security of tenure can range widely, from settlements on public land that have a degree of formal recognition to settlements on private land faced with the threat of eviction. The 2001 Census counted 1.38 million households (about 7 million people, using the average size of 5 people for African households) in informal settlements.
- Irregular subdivisions, i.e. where land has been informally subdivided, serviced (often through illegal connections into service networks) and developed. No figures are available, but this is probably a fairly small number.
- Backyard structures, ranging from shacks to formal “flatlets”, and overcrowded formal housing, e.g. renting or sharing a room in a house. Security of tenure can vary greatly. The 2001 Census counted

460 000 households (about 2.3 million people) in backyard shacks and 530 000 households (about 2.7 million people) in formal backyard structures and rented/shared rooms within houses, a total of 990 000 households (about 5 million people).

- “Unregistered” occupants of hostels: no national figures available.
- “Street people”: no national figures available; a 1999 survey of street people in Cape Town recorded 4133 people who lived on the streets 24 hours a day (WCHC/DAG, 2003), and there an estimated 4500 street people in Johannesburg (City of Johannesburg, 2003).

Table 6: Households in shacks and backyard structures/structures on shared properties

Category	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpumalanga	Northern Cape	North West	Western Cape	South Africa
Households occupying shack not in backyard	135 567	147 081	448 393	177 212	56 930	92 877	20 438	155 501	142 706	1 376 706
Households occupying backyard shacks	31 205	44 103	185 767	48 613	21 205	24 503	5 355	51 935	46 840	459 526
Households occupying house/flatlet/ room in backyard or on shared property*	50 492	26 142	236 086	90 597	31 902	25 353	6 279	32 349	33 781	532 983
Total	217 264	217 326	870 246	316 422	110 037	142 733	32 072	239 785	223 327	2 369 215

\* Not all households occupying backyard structures or renting/sharing rooms within houses are necessarily urban poor households living in overcrowded conditions with no formal security of tenure, but the majority probably are.

Source: Statistics South Africa, 2003

Table 6 shows that there are probably over 2 million urban poor households (more than 10 million people) without formal tenure in South Africa. Assuming that about half of households in houses/flatlets in backyards or on shared properties and households renting/sharing rooms within houses can be regarded as landless, there were 2.1 million landless urban households (about 10.5 million people) in 2001. Even if only households in informal settlements and backyard shacks are regarded as urban poor households without secure formal tenure, there are 1.8 million of these households (about 9 million people).

### Formal tenure

Urban poor households with formal security of tenure include:

- Legal individual owners: legal owners of properties (sometimes called “freehold title”). Prior to the mid-1980s very few urban poor households fell into this category, but virtually all low-income housing delivery (with the exception of a relatively small number of social housing projects) is now aimed at granting individual ownership. It should be noted that not all legal owners have been officially issued with Title Deeds yet – even in many of the site and service projects implemented in the early 1990s (i.e. about 10 years ago) none of the owners have been issued with Title Deeds yet, which has caused delays for many consolidation subsidy projects. No figures are available with regards to how many owners have not been issued Title Deeds. In the 1990-1994 period, approximately 700 000 households received serviced sites for individual ownership. Since 1994, about 1.2 million households have received new serviced sites/houses for individual ownership and the ownership of public rental housing has been transferred to about 400 000 households. This gives a total of approximately 2.3 million new low-income property owners since 1990.
- Tenants: households with formal rental agreements, e.g. tenants in public rental housing, tenants in non-profit social rental housing, tenants in private rental housing, registered hostel residents. There are

about 300 000 public rental housing units, but this number is decreasing rapidly as units are transferred to individual ownership. Official figures (Department of Housing, 2001) show an estimated 280 000 residents in public sector hostels, but the actual number of residents is likely to be considerably higher than this.

- Communal ownership: members of communal tenure bodies, e.g. Co-operatives, Communal Property Associations. There are only a handful of these institutions, most notably Cope Housing Association's co-operatives in Johannesburg (e.g. Newtown and Troyeville) and Communal Property Associations in Homeless People's Federation green field projects (e.g. VukuZenzele in Cape Town).

### *Grey sector*

Households with tenure rights in the grey zone between formality and informality include:

- Unregistered individual owners: occupants of properties who have informally acquired properties through purchase, inheritance or some other form of exchange (e.g. swapping), but are not the legal owners. Surveys of consolidation projects have shown that between 10% and 34% of residents in site and service projects (with an average of 20%) did not qualify for consolidation subsidies, mainly because they were not the original allocatees (USN, 2003). A survey of post-1994 housing subsidy projects in metro areas/cities/large towns found that the number of informal transfers ranged from 0% to 13%, with an average of 2% (ibid). If these tentative average proportions are applied to all serviced sites and subsidy houses, there could be about 150 000 *de facto* owners of properties who are not the legally registered owners.
- Sub-tenants: Sub-tenants are people renting from tenants. In many cases, e.g. in social housing projects and public rental housing, this is technically illegal. Although not strictly illegal (yet), a small proportion of subsidized houses are also rented out, typically for R300 per month (USN, 2003) – the owner of the subsidized property sometimes lives in an informal settlement while collecting the rent. Many of the tenants are people who would not qualify for subsidies; in one housing subsidy project in Cape Town the majority of occupants are believed to be tenants, but this is fairly unusual – a survey of housing projects across South Africa found less than 1% of properties occupied by tenants (USN, 2003).
- Domestic workers: The tenure status of domestic workers living on the employer's premises can vary. Domestic workers sometimes live in accommodation provided by tenants for years, but the perceived security of tenure is not high (Bamford, 2003).

### 2.B. Value of urban land for the poor/sustainable livelihoods

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The value of land for the urban poor has to be seen within the context of sustainable livelihoods. 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 et al, 1994: 4). Desirable livelihood outcomes can include: more income, increased well-being, reduced vulnerability, improved food security, more sustainable use of natural resource base. Land is an important asset that can play an important role in the sustainable livelihoods strategies of the urban poor, and the potential role of access to land and secure tenure in reducing poverty and vulnerability needs to be understood. The value of urban land (e.g. a private residential plot) to the poor can include the following:

- Land is a natural asset that provides space for other physical assets, such as housing.
- Land provides living/social space (family life, sleeping, cooking, eating, relaxing, studying, socialising, etc.).
- Land can give access to infrastructure (roads, water, sanitation, electricity).

- Land can be an economic asset that can be sold or bequeathed to one's heirs, and that can potentially be used as collateral for credit.
- Land can be used for income generation purposes, for example, through providing space for home based micro-enterprises, for providing the opportunity for generating income through the rental of accommodation, through the renting out of rooms/backyard accommodation, and for providing space for urban agriculture (vegetables, maize, livestock, etc.); for example, a survey of found that 54% of the 170 households surveyed in the low-income settlement of Kings Flats, Grahamstown, had established vegetable gardens and that incidence of vegetable gardens established increased with time; households also kept a full range of domestic animals including cattle, donkeys, goats, pigs, fowls and dogs (Moller, 1991, in USN, 2003). Land can play an important role in "livelihood diversification", i.e. where a household has more than one livelihood strategy in order to reduce vulnerability.
- Land can be a political asset that acts as a key mechanism for accessing rights. Some of the socio-economic rights in the Constitution, e.g. adequate housing and basic services (e.g. free water and electricity), can only be fully accessed by households with formal tenure. In the Grootboom Case (2000), the Constitutional Court specifically recognised the linkage between the right to land and the right to adequate housing (SAHRC, 2003).
- Land can be a social asset: it can be a basis for membership networks of trust and reciprocity, and for membership of community organisations. Social support networks play an important role in the survival strategies of poor households. Social networks can include *stokvels* (savings clubs), burial clubs, church groups, kinship groups based on membership of the same clan, people who speak the same home language or groups of friends (Smit, 2000). Land can play an important social role in that it can provide opportunities for assisting relatives or friends with permanent or temporary accommodation, and also plays a role in hosting certain cultural practices. This cultural value of land goes beyond the value of land for livelihoods strategies. Access to land gives rise to a range of social obligations and relationships. The social relationships resulting from formal tenure are commonly seen by the urban poor as being different from those arising from informal tenure in informal settlements or communal tenure in rural areas. For example, it was noted in the dramatic social changes that occurred when the residents of the Marconi Beam informal settlement in Cape Town were relocated to the adjacent formal housing project of Joe Slovo Park, that the informal settlement had been seen as being rural - an *ilali*, a rural village- and that people's perceptions that it was the same as a rural area shaped their social relations and interaction: residents felt that Marconi Beam "is a rural area and you can borrow whatever you need from someone that you know or feel close to", whereas "Joe Slovo Park is a 'town', one must have [one's] own things..." (Yose, 1999: 82).

It should be noted that access to land as an asset does not depend upon ownership – renting or leasing land can also provide similar benefits (apart from its economic asset value). It should also be noted that there are different types of urban land, depending on what it is used for (or is allowed to be used for):

- "Residential" land (in practice, in low-income areas, "residential" plots are also used for home-based enterprises such as spaza shops, shebeens and crèches, and newly proposed zoning schemes generally recognise this).
- Agricultural land
- Commercial/industrial land
- Local authority-owned land for community facilities
- Local authority-owned public open space
- Municipal commonages: land owned by the municipality which in terms of regulations can be used by residents for livestock grazing (or, less frequently, cultivation of crops); municipal commonages are generally only found adjacent to small towns.

- Communal ownership land (e.g. co-operatives), which may include residential, agricultural and commercial/industrial space.

Whereas in rural areas, communal or public land can be all-important, the value of urban communal or public land to the poor is generally narrower than that of urban private land. Communal or public land still plays a vital role, especially for the urban poor, whose access to private space is often inadequate or cater to all their needs. The value of urban land can include:

- Providing space for economic activities, e.g. markets, urban agriculture (vegetables, maize, livestock, etc.)
- Providing space for social activities/ community facilities, e.g. parks, sports fields
- For improving the living environment of the neighbourhood, e.g. trees, plants
- For cultural reasons, e.g. initiation rites, plants for traditional medicines.

### 3. LEGAL/INSTITUTIONAL FRAMEWORK GOVERNING URBAN LAND

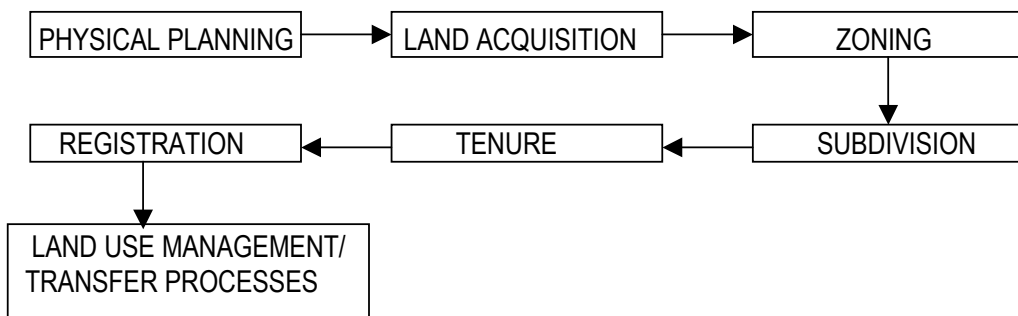
The legal/institutional framework governing urban land is briefly reviewed in two sections:

- Formal and informal processes/organisations
- Delivery programmes

Formal and informal processes and organisations are discussed in greater detail in Appendices 2, 3 and 4 respectively.

#### 3.A. Formal and informal processes/ organisations

There are a number of steps involved in the allocation and use of urban land, as represented by the diagram below. Formal processes, with legislation, regulations and implementing/administering institutions exist for all these steps, but similar steps can also be undertaken informally. For example, in the case of the planned unlawful occupation of a vacant piece of land, the community would select a suitable site, occupy it, informally lay it out and allocate “plots” and communal areas, and *de facto* tenure arrangements would then be regulated by community leaders (as would the subsequent sale and purchase of structures).



#### *Physical planning*

Physical planning involves determining where further urban development will go and the nature of that development. There are an overlapping range of policies and regulations with regard to physical planning from