VOICES OF THE POOR

LITERATURE REVIEW

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1. INTRODUCTION

The topic of access to urban land for the poor is a very complex one as a number of factors impact on the urban poor's ability to access urban land. This literature review is a very modest attempt to capture some of the most important debates and issues with regards to the question of access to urban land. Whilst attempting to draw out the most significant factors, it will also provide some perceptions of poor communities concerning their struggles in relation to these various issues. The review is organized into the following four sections:

- Background and Context
- Historical and other factors Inhibiting the poor's access to urban land
- Factors which influence the poor's access to urban land
- Interventions to assist the poor in accessing urban land

2. BACKGROUND AND CONTEXT

The question of access to urban land for the poor has become a critical issue in post-apartheid South Africa. This is evidenced in the proliferation of community based organizations mobilizing communities around this issue and the intensification of struggles by groups such as the Anti-Eviction Campaign, the Landless People's Movement, the Abahlali baseMjondolo (Durban Shack dwellers Movement) which forms part of the Federation of the Urban Poor and the Vrygrond Action Committee to name but only a few. These struggles are taking place in the context of increasing urbanisation due to significant levels of migration as more and more people move to the cities in search of better economic opportunity and livelihoods. Urbanisation, in 2001, stood at 56.25% and has increased at a faster rate than the national population in the last five years (State of the Cities Report, 2006: 6-3). Migration has been identified as one of the main drivers of urbanisation. Statistics South Africa reports that between 2001 and 2006, three million South Africans migrated from one district or municipality to another (Brown-Luthango, 2006). This phenomenon is in fact a global one as the United Nation's Habitat reports that by 2030, 60% of the world's population will be located in urban centres. On the African continent, it is estimated that the urban population will increase from 39% in 2003 to 54% in 2030, with the most significant growth in urbanisation occurring in Sub-Saharan Africa. Considering this context of rising urbanisation, a study conducted by the Centre for Development and Enterprise in 2005 recommended that there should be a greater focus in South Africa on urban land reform as most of the respondents interviewed during their research views land as a "place to stay" rather than a "place to farm" and therefore seek access to urban land, because they want to be close to employment and other economic opportunities (CDE, 2005).

A more equal distribution of urban land is imperative as poverty is linked to land access (Porteous et al, 2006). Land thus constitutes an important component of a sustainable livelihood strategy for the poor, but is also important to the poor for a number of socio-cultural reasons. According to a scoping study on urban land issues conducted by the Urban Sector Network and Development Works "the value of urban land 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
- 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 or credit
- Land can be used for income generation purposes, for example, through providing space for home based micro-enterprises, through rental of accommodation e.g. rooms or backyard accommodation and for providing space for urban agriculture (vegetables, maize, livestock, etc.)" (USN and Development Works, 2004: 13).

3. HISTORICAL AND OTHER FACTORS INHIBITING THE POOR'S ACCESS TO URBAN LAND

There are a number of factors which impact on the ability of the poor to access urban land. The most significant factors are reflected upon below.

3.1 Legacy of Apartheid and Colonialism

Land distribution and management in South Africa have been shaped by historical processes such as colonialism and the Apartheid system which resulted in large-scale land dispossession of black people. Two pieces of legislation which dramatically changed South African history and left an almost indelible imprint on both the urban and rural landscape are the 1913 Land Act No.27 and the 1936 Trust and Land Act No. 18. These two pieces of legislation reserved the overwhelming share of South Africa's land as well as the most productive and desired sites for the white minority and banished Africans to what was to become "independent" homelands/bantustans. The 1913 Land Act reserved 87% of the country's land for whites, coloured and Indians with the white population being the largest beneficiaries, while 13% of the national land surface was reserved for Africans, who constituted 75% of South Africa's population. This according to Fourie (2000: 1) "is the largest ratio in the world of discriminatory land holding, either between races or 'haves and have-nots'". The 1936 Trust and Land Act placed further restrictions on black people in terms of land ownership. It allowed for more areas to be incorporated into the homelands system in order to remove more africans from South Africa to the homelands thereby eliminating 'black spots" which existed in South Africa (Mabin, 1991 in Sihlongonyane, 2003). This ensured that Africans could only access the city either illegally or as temporary labour.

Apartheid legislation such as the Group Areas Act which reserved certain spaces for specific races resulted in forced removals of African, coloured and Indian people on a massive scale from areas earmarked for the white population. "It has been estimated that 3.5 million people were displaced to accommodate the white government's discriminatory laws. Among these as many as 1.2 million blacks were affected, 670 000 "black spots" removals took place and 834 000 people were displaced under the Group Areas Act (Kassier and Groenevald: 1992 in

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Sihlongonyane, 2003). This Act, according to the People's Dialogue, achieved the systematic and planned separation of different races and "frog-marched" millions of black people into poverty and dispossession. The Group Areas Act was supplemented by acts such as "The Prevention of Illegal Squatting Act" which allowed the apartheid government to legally remove people without any notice and to destroy their homes. This made it extremely difficult and dangerous for black people to access urban areas and "created the context for apartheid-era urban planning in South Africa" (People's Dialogue, n.d.:3).

The apartheid government established the South African Development Trust in 1936 which allocated the 13% of land to Africans. Land titles available to Africans included permission to occupy, 99 year leasehold, customary rights and rentals. Those who still owned land outside of the homelands were forcefully removed to the closest homeland and were given "permission to occupy" (Fourie, 2000). This meant that apartheid urban spatial plans never included Africans and they were never catered for in terms of the provision of infrastructure and services like housing for example. Those who were allowed to stay in the city as labourers were accommodated in "dormitory townships" on the outskirts of the city. The abolition of Apartheid brought an influx of Africans from the previous homelands into the city in search of better economic opportunity and livelihoods. This placed the new government under considerable pressure in terms of the provision of housing and other services as well as infrastructure to African migrants to the city who had never been catered for in the urban context before. The culminating effect of this has been land invasions and a mushrooming of informal settlements as black people are struggling to secure a space in the urban environment. Government is currently struggling to keep up the pace of housing delivery as the housing backlog in Cape Town for example is estimated at 400 000. The recent State of the Cities report (2006) announced that there are currently 2.4 million households living in inadequate housing in South Africa.

The effects of colonial and Apartheid land policies on the South African urban landscape are further exacerbated by the operation of a land and property market which entrenches the exclusion and marginalization of the poor and widens the gap between rich and poor.

3.2 Deregulation, privatization of services and the retreat of the state

Another factor which impacts on the poor's ability to access land, which in the urban context is very closely linked to their ability to access adequate housing, is what Greenberg (2004) calls the "hegemony of a market-driven development paradigm". A market-driven development paradigm means that the market becomes the central tool for the delivery of goods and services. The market-driven development paradigm is based on the principles of supply and demand and usually only those who are in a position to pay the highest price for such goods and services are able to participate in the market. This according to Greenberg, means that "markets are skewed towards the meeting the desires of those with resources, able to pay for commodities" (2004: 3). During the 1980s and early 1990s the apartheid government embarked on a programme of economic restructuring and deregulation. In the urban context, this translated into an "opening up of the urban economy and greater involvement of the private sector in urban

management and planning (Greenberg, 2004: 3). The dominance of the market-driven paradigm was evidenced in the thinking of prominent policy and decision-makers at the time. The Human Sciences Research Council in 1989 in a research document entitled "*Beating the Housing Backlog*" argued that "*if one considers the immense problems experienced with rental arrears, the changing parameters in the market and the complexity of the present administration, a strong case could be made that the state should disengage itself completely from a direct involvement in either building houses, letting accommodation or granting individual subsidies. The success of privatization of welfare functions, like housing, depends on the development of a new business ethic*" (Brown, 2005: 87).

When the ANC government came to power in 1994, contrary to popular expectation, this development paradigm was not abandoned. Rather neo-liberal economic policies were embraced and further entrenched through the adoption of the Growth Employment and Redistribution (GEAR) economic policy in 1996. According to McDonald and Smith (2002) quoted in Desai and Pithouse, GEAR embodied "a fundamental shift away from the statist service delivery models of the past where the state subsidized and delivered municipal services towards a 'neo-liberal' service delivery model where the private sector (and private sector principles) dominate" (n.d.: 5). Central to the neo-liberal or market-driven development paradigm is the concept of 'cost recovery" which is currently framing much of the delivery of social services such as housing, water and electricity to poor communities in South Africa. Cost-recovery is based on the principle that households should pay for services in relation to how much they consume, irrespective of their income. In the area of housing delivery, Greenberg (2004), Brown (2005) and Bond (2000) argue that housing policy in post-apartheid South Africa was strongly influenced by policies introduced by the previous government such as the 1985 White Paper on Privatisation. Post-apartheid housing policy was thus premised on greater involvement of the private sector in housing delivery which according to Greenberg, meant that the outcome of housing policy post-1994 "was little more than a developer-led, site-and-service policy" (2004: 6). This has had serious quality implications as developers have tended to bypass building standards and regulations in a bid to secure higher profits.

In an evaluation of the performance of the ANC government ten years after democracy, in relation to housing provision, the Alternative Information and Development Centre (AIDC) reports that "*of all the houses built under the auspices of the RDP, only 30 per cent were found to comply with the government's own housing regulations in one survey. Most of the houses are poorly planned and built, with roofs leaks, collapsing roofs and walls, doors and windows not opening or closing. The houses are tiny and are mainly built on the cheapest land available, far away from the city centres, where there is often no social amenities such as schools and clinics nearby* (2004)*.* In a research project conducted by Brown (2005) on the housing crisis in Cape Town, which focuses on the experiences of the communities of Valhalla Park and Vrygrond, many respondents expressed dissatisfaction over what they perceive to be the lack of affordability of subsidized housing and as well as the poor quality of the houses provided. Residents were also unable to pay for services like electricity and water with many households reporting arrears on municipal accounts which ran into thousands. These perceptions of the quality of the subsidy houses provided by government are

shared by respondents in a study conducted by Zack and Charlton where the authors found that "the majority of respondents are dissatisfied with the quality of the houses they have received... many households feel that their structures will not last long. They commonly complain about flimsy roofs, cracks in walls, weak doors, as well as the generally unfinished nature of their houses..." (Zack and Charlton, 2003: 23). "It seems clear that the quality of most or all subsidised housing is poor. Beneficiaries' experiences and perceptions of their new houses are almost universally negative" (Zack and Charlton, 2003: 50).

In a context of high unemployment, the issue of cost-recovery and the privatization of social services have had a devastating effect on many poor communities' ability to access adequate and decent housing on well-located land. The commercialization of social services provision also impacts on land use planning and management processes in the urban environment. This means that municipalities favor development projects which would generate maximum revenue for the municipality which often results in housing projects for the poor taking a backseat as prime land is being offered to private developers. Greenberg sites a number of cases where the poor have been forcefully removed or evicted from well-located areas or land which was zoned for commercial purposes. The first example is the Newtown precinct in Johannesburg where a number of informal settlements were destroyed in order to turn Newtown into a "cultural" precinct. This project which attracted considerable investment from government has resulted in huge profits for private landowners as property prices in the area have increased substantially (Greenberg, 2004: 13). In a similar vein, 1750 families were evicted in January 2002 from Mandelaville informal settlement in Diepkloof in order to make way for commercial development (ibid.). In Vrygrond, Cape Town, a site from which a number of Vrygrond residents were evicted, now houses a business park and an up-market housing development. This has prompted the Vrygrond Action Committee to call on government to "stop selling land to private developers and keep it for the needs of the poor" as they perceive privatization as a consolidation of the 'theft of land which' commenced under colonialism (Vrygrond Action Committee, 2005).

These kinds of evictions and forceful removals of poor residents from prime land are continuing unabated. A recent report by the UN Special Rapporteur for Housing reports that "*it appears that many evictions are executed in the interest of gentrifying inner urban areas and promoting regrowth and development and particularly in inner city Johannesburg it seems that the drive to attract private investment has been at the expense of the urban poor who have been living in dilapidated buildings in the inner city close to services and livelihood opportunities for many years*" (2007:3). In Cape Town, thousands of poor households have been removed from well-located informal settlements along the N2 freeway to be housed in temporary structures constructed out of fibre-cement in Delft, a township on the periphery of the city. This in the interest of tourism and private investment. The pervasiveness of the market-driven development paradigm has thus resulted in the entrenchment of existing spatial and socio-economic inequalities and further exclusion and marginalization of the urban poor. This is so because the interest of private capital continues to take precedence over the need and constitutional right of poor communities to access adequate housing located in close proximity to social services, infrastructure and economic

opportunity. This has forced poor communities to find alternative ways to access land.

3.3 Decline of Civil Society

The past decade has seen a gradual decline and evolution of civil society in South Africa. South Africa has a rich tradition of community based organisations (CBOs). Participation in stokvels (savings clubs), burial clubs, church associations and sports clubs helped people to cope with everyday life. In the early 1980s, civic associations, i.e. organisations claiming to represent everybody in a specific geographical area, arose as a result of the apartheid government's clampdown on Black political movements. Due to political parties such as the African National Congress being banned, civic associations in South Africa were in the forefront of resistance against apartheid in the mid-1980s. In the early 1990s South Africa underwent major changes and civic associations increasingly began to be involved in development projects, usually via community based trusts. In 1992 the South African National Civics Organisation (SANCO) was formed (DAG, 2006).

Many community leaders became local government councilors in the 1995-1996 local government elections. This weakened the civic movement which was already suffering under a decline in the spirit of voluntary involvement post the 1994 national election. The civic movement has also been increasingly marginalised by local government, who began setting up development forums and ward committees to facilitate participation in local government matters. The 1990s also saw the rapid growth of organisations such as the South African Homeless People's Federation and other independent housing associations, which acted as community self-help organisations concerned with housing and development issues and which were not linked to the civic movement or political parties. There was also a rise of social movements opposed to particular programmes of the state, such as the Anti-Eviction Campaign, which campaigned against the eviction of people for non-payment of rates and service charges, and the Treatment Action Campaign (TAC), which campaigned for the state provision of anti-retrovirals for HIV-positive people (DAG, 2006).

The NGO sector has also undergone great changes. Non-profit welfare and charity organisations have a long history in South Africa, but the real growth of the NGO movement occurred during the 1980s. Voluntary organisations were formed to support community groups in their struggle against the apartheid state, and many of these subsequently obtained foreign funding, which was fairly accessible at the time. Since 1994, however, much foreign donor funding has been redirected from NGOs to the government. Government has often been inefficient in the use of funds for development, for example, in failing to spend over R1 billion set aside for job creation initiatives and for being very slow and inefficient in channeling funds through the National Development Agency (NDA) and in allocating funds from the national lottery. NGOs continue to play a major role in many government programmes, however, and are able to address the needs of the very poor and pioneer innovative approaches where government bodies are unable to do so (DAG, 2006).

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In the words of the Department of Housing in its latest review of housing expenditure: "In recent years, the number of NGOs that are active in the housing sector has declined, mostly as a result of declining levels of donor funding. In 2005, the Urban Sector Network was dissolved and many of its former affiliates have since been disbanded. This reduces institutional capacity in the sector and weakens housing delivery outcomes because of the absence of advocacy and community consultation capacity" (National Treasury, 2006: 643).

4. FACTORS WHICH INFLUENCE THE POOR'S ACCESS TO LAND

There are a host of issues which have a bearing on the ability of poor communities to access land in the urban context.

4.1 Engagement with the State

Engagement by civil society organizations with the state regarding access to urban land by the poor has, since 1994, generally occurred within the following three contexts:
- The housing delivery programme
- The land reform programme
- Evictions (or attempted evictions)

The housing delivery programme

The housing delivery programme is the main way in which the poor are able to get secure land tenure through formal processes. Government's performance in terms of the housing delivery scheme has been impressive in terms of the number of subsidies approved and the quantity of houses constructed. Since 1994, more than 2 million households received subsidies and more than one and a half million housing units were constructed[1]. The new housing policy, which provided a range of capital subsidies to ensure that low-income households could get access to secure tenure, services and "starter houses", was introduced in 1994. The Project-Linked Subsidy, which assists households with incomes of less than R3500 per month to get access to land, infrastructure and housing on an individual ownership basis in specific projects, is the main subsidy mechanism. The Institutional Subsidy, which assists households to get access to rental and co-operative housing, has been used on a relatively small scale and has generally not been aimed at the poor (although initially targeted at the below R3500 per month income bracket, it is now generally targeted at households in the R2500 – R7000 per month income bracket). Other subsidies include the consolidation subsidy, the People's Housing Process Establishment Grant, the rural subsidy, the Discount Benefit Scheme and the Relocation Assistance subsidy[2].

There are certain pre-requisites attached to the subsidy scheme, which means that many individuals or households who do not comply with these requirements are excluded from the subsidy scheme, notably refugees or immigrants to South Africa,

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[1] http://www.etu.org.za/toolbox/docs/government/housing.html
[2] For a complete description of each subsidy scheme see www.housing.gov.za or http://www.etu.org.za/toolbox/docs/government/housing.html

single people with no dependants, divorced people who might have jointly accessed a subsidy with a previous spouse as well as HIV/Aids orphans. In order to qualify for a subsidy, an individual must:

- Be a South African citizen;
- Be over 21 years of age;
- Have a total household income of less than R 3500 per month;
- Be married or live with a partner or be single and have dependents (children he/she is responsible for);
- Never have owned a house or a property anywhere in South Africa[3]

Most housing projects have been for predefined communities, and community organizations have thus engaged at the project level. In contractor-driven projects, the level of engagement by the beneficiary community has often been minimal, but for People's Housing Process (PHP) projects, which are projects in which the beneficiaries build or organize the building of their own houses, the level of participation has usually been greater.

The demand for subsidized housing has greatly outstripped supply and there has thus often been conflict around the prioritization of housing projects and the selection of subsidized housing beneficiaries. As mentioned before, quality of houses provided has also been a major issue which prompted government to introduce several pieces of legislation, for example the Housing Consumer Protection Measures Act and the Housing Amendments Act, to monitor the quality of houses provided. Other efforts include a re-orientation in housing policy from the delivery of houses to "sustainable human settlements" through the 'Breaking New Ground Housing Strategy" of 1994.

The Land Reform Programme

The new government introduced a comprehensive Land Reform programme aimed at addressing the inequalities brought about by the 1913 Land Act, the 1936 Trust and Land Act and apartheid legislation such as the Group Areas Act. The Land Reform Programme consists of three elements:
- a redistribution element
- a restitution element
- a tenure reform element

The redistribution element attempts to bring about a more fairer distribution of rural land in South Africa, the restitution programme compensates those groups who were forcefully removed from their land either by resettling them on the land, by providing alternative land or through the payment of compensation. The tenure reform element attempts to bring about greater security of tenure through legislation such as the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) of 1998.

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[3] http://www.etu.org.za/toolbox/docs/government/housing.html

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In terms of restitution claims, the Centre for Development and Enterprise reports that by December 2004, 57 257 (or 70%) out of the 80 000 claims that had been lodged by the 1998 deadline had been settled. Government has had some success in urban areas where most restitution claims have been settled through cash payment. Post-settlement support has been identified as a challenge for many beneficiaries though (Hendricks, 2006). For example in the case of the Ndabeni Restitution claim, claimants are still waiting to settle on the land that was awarded to them in 2001. Claimants have expressed their disappointment with what they perceive as a lack of support and will from the Land Restitution Committee and the local authority to deal with the obstacles which are currently preventing them from settling on the land. In the words of one claimant *"We thought that the land restitution commission would lead and show us the way, we thought the City of Cape Town was supposed to be an implementing agent, but there has been no support from them in helping people settle"* (Brown-Luthango, 2006).

Evictions or Attempted Evictions and Forced Relocations

As has been argued before, despite the introduction of laws such as PIE, both urban and rural evictions have continued unabated since 1994. Forced evictions are defined in international law as "permanent or temporary removal against their will of individuals and/or families and communities from the homes and/or land which they occupy without the permission of, and access to appropriate forms of legal and/or other protection (UN Habitat, 2004). Writing about the experiences of residents of Mandela Park in Khayelitsha, Cape Town, Desai and Pithouse describes how the pervasiveness of the cost recovery principle and the privatization of housing led to evictions on a large scale in Mandela Park. In January 2002 evictions occurred on a daily basis and 2000 households faced eviction in Khayelitsha (Desai and Pithouse, n.d.: 13). Mandela Park according to Desai and Pithouse was one of the first areas where housing for the poor was developed by the private sector for private profit (n.d. 3).

According to the Minister of Agricultural Affairs, 8759 people were removed from farms between 2002 and 2006[4]. This figure could however be an underestimate as it might not take into account illegal evictions which often go unreported. A national survey on farm evictions conducted by Nkuzi Development Association and Social Survey Africa, report that between 1994 and 2004, 942, 303 people were evicted from farms in South Africa (Wegerif et al, 2005: 7). Reliable statistics on the scale of urban evictions are hard to come by, but there has been a proliferation of reports of illegal evictions in recent times. Around April this year, residents of three informal settlement communities, Motala Heights, Shannon Drive and Arnott Drive settlements faced illegal eviction by the eThekwini municipality (Abahlali baseMjondolo[5], 2007). A report by the United Nations Special Rapporteur on adequate housing found that it appears that forced evictions in urban areas are widespread. Forced removals of households from informal settlements are also occurring on a large scale. Increasingly the discourses of "health and safety concerns", "environmental impact" or "physical characteristics of sites", are being

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[4] IOL "Massive farm evictions over past few years", 23 April 2007
[5] http://www.abahlali.org/node

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used to justify the forced removals of households. Huchzermeyer (2006) describes how the council has decided to relocate communities of two informal settlements, Thembelihle and Protea South in Gauteng, due to the presence of dolomite. Residence of another informal settlement, Harry Gwala, were being relocated because the site had physical challenges in the form of "shallow undermining, an industrial dump, part of the occupied land lies below the sewer mains, etc. (Huchzermeyer, 2006: 8). In Hout Bay, Cape Town, the Democratic Alliance recently announced that it would remove people from the informal settlement of Imizama Yethu, forcefully if needed, in order to avoid a "health disaster" (Joubert, 2007). In April, 1000 households, were evicted from a piece of municipal land in Musina, which they had been occupying since 2003.

Increasingly these evictions or forced removals have been accompanied by violent clashes between police and residents who try to resist these evictions. In Mandela Park residents faced severe backlash from the state in the face of resistance against their evictions. This has also been accompanied by arrests, especially that of community leaders as in the case of the leaders of the Kennedy Road Development Committee who is affiliated to the Abahlali baseMjondolo. The UN Special Rapporteur on housing on a recent tour of South Africa, reported that "it appears that evictions are being executed in clear breach of procedural requirements and through spurious use of 'urgent eviction' provisions where evictions are justified on the grounds of the "health" threat to the occupants" (2007: 3). These evictions often go hand in hand with assault of occupants and other violations of human rights. One of the most important breaches of legislation is that people are often evicted without any emergency accommodation being offered, leaving households completely vulnerable.

4.2 Tenure Security

Security of tenure, especially in the urban context, has become a major issue around the world in the face of growing urbanisation and rapid expansion of informality. Titling and land administration systems, it is argued, transform an informal relationship to land into "more secure land rights and establish the administrative structures to ensure rights are knowable, recognized and permanent and eventually tradeable" (Wallace and Williamson, 2006: 124). They thus provide some form of certainty and security of tenure to citizens. Tenure security is therefore defined as formal title deed to land and/or residence, enforceable agreement or any document as proof of a tenure arrangement (Herr and Karl, 2002). The United Nations defines tenure security as "the right of all individuals and groups to effective protection against forced evictions" (UN Habitat, 2004). In addition, it is also believed that secure tenure offers households the "possibility of selling and transferring rights through inheritance and the possibility of having a mortgage and access to credit under certain conditions (UN Habitat, 2003: 8). Security of tenure has come to be viewed by international agencies like the United Nations Human Settlements Programme, as an essential strategy to create more "inclusive cities" and to give informal settlement residents "a right to the city" (UN Habitat, 2003). Moreover, tenure security according to UN Habitat could be a way for households to improve their economic circumstances. Tenure security is also linked to broader economic development processes, because it is argued that informality denies local governments access to potential revenue through property

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taxes and service charges which could be used to improve urban living conditions. Insecure tenure thus acts as a disincentive for private investment (UN Habitat, 2004: 6).

Formal tenure options include, individual ownership, leasehold, communal ownership and customary tenure (USN and Development Works, 2004). Individual ownership is where the owner is in possession of a title deed stipulating his/her legal right to a piece of land and/or property. Ownership also allows the owner the right to "alienate the property at will", meaning he/she can sell it or bequeath it to an heir (Smit, 2003: 16). Leasehold is when land or property is rented under contract or specific statutory conditions for a specified period and can be either public rental or private rental (UN Habitat, 2003). Public rental is when dwellings are rented from local government at subsidized rentals and private rental is when a dwelling is rented from a private institution at market rentals (Smit, 2000).Communal ownership involves the joint ownership of land/or property by a group of people which is usually managed by communal tenure bodies like co-operatives or communal property associations. Research conducted by the Built Environment Support Group in 1996 which surveyed four low-income settlements (Klaarwater, Bester's Camp, Geza and Old Dunbar Road) in the Durban Metropolitan found that residents often viewed private/individual ownership as the best and most desired form of ownership as it is perceived as the most secure form of tenure. However, the research also revealed that there was a general lack of understanding amongst respondents about forms of tenure, including individual ownership (Clark et al, 1997: 2). The tenure form which was best understood, but least preferred by respondents due to perceived unaffordability and lack of security, was rental. Similar findings were reported by Magni et al (2002) in their study of Folweni where 90% of the people interviewed preferred individual ownership, although the majority did not understand exactly what this entailed or the responsibilities which comes with individual ownership (Magni et al, 2002: 10). The authors attribute this preference for individual title to a need for security in the light of previous experiences of forced removal and a fear of having the house seized in order to settle outstanding debt (Magni et al, 2002: 10).

There has been a huge debate raging in the international arena around formal titling and whether or not this is necessarily the most secure or desired form of tenure for the urban poor. The one side of the debate, led by Hernando de Soto, is that titling is necessary to give poorer households security of tenure so that they can use their land or housing as collateral to access credit which can be used to generate further income. By not being able to realise the investment potential of their property assets, due to a lack of secure title, poor households in third world countries are in effect holding on to "dead capital" (De Soto, 2000). It is argued that lack of formal, secure tenure has negative consequences for the poor in that:

- The lack of full property rights reduces the informal dweller's aggregate investment
- The property cannot be transferred easily
- The property cannot be used as collateral
- Threats of removal reduces the incentive to invest
- No one is obliged to provide services (Shisaka, 2003: 10).

De Soto's ideas have proved very influential in the international arena, especially in Washington (Gilbert, 2002) and have resulted in a strong emphasis on formal tenure and titling in many developing countries, including South Africa[6]. A number of critics however, have warned that some of De Soto's ideas need to be considered with caution. Whilst agreeing with de Soto that a lack of title can "inconvenience" the poor and can cause considerable insecurity for especially more vulnerable households like female-headed households, Gilbert (2002) argues that titling is not the only way to create security of tenure for the urban poor. Furthermore, in many developing countries large-scale titling programmes have been pursued for the wrong reason, mostly because it is much cheaper than providing infrastructure and services to informal settlements (Gilbert, 2002: 5). The process of obtaining formal title also comes at considerable financial cost to the poor. Gilbert also points out that plenty of evidence suggests that a legal title is not necessarily a pre-condition for the poor to invest in their homes. According to many commentators the "perception of secure tenure" is as significant to the poor as actual titling (UN Habitat, 2004; Shisaka, 2003; Gilbert 2002; Smit, 2000 and Fourie, 1999). In many instances the provision of services and infrastructure to a settlement by government is enough to create a perception of tenure security amongst residents (ibid.). Moreover, a legal title is no guarantee that a household will be able to access credit as formal banking and financial processes often exclude poorer households (FinMark Trust, 2006).

Cousins et al (2005) using evidence from two case studies (Joe Slovo Park in Cape Town and Ekuthuleni, Kwazulu-Natal) argue that in some cases titling can increase, rather than decrease insecurity for households. For example in Joe Slovo, formalizing brought with it new costs for households in the form of rates and service charges which were unaffordable to poor households and contributed to the sale of subsidized houses which meant that often households ended back up in informality (Cousins et al, 2005: 3). This shows that formalization is a difficult and costly exercise to the poor and it is often almost impossible for them to remain in the formal sector. In Joe Slovo, formalisation also contributed to the destruction of informal economic activities and the disruption of social networks as a result of plot allocations which did not take into account existing social networks and relationships between residents (ibid.). In many instances alternative, more appropriate localised forms of tenure arrangements already do exist which are not compatible with formal titling processes, but do provide a sufficient level of perceived security of tenure to residents. Magni et al (2002: 9) warn against blanket formalizing programmes, because:

- The provision of freehold title can inflate housing and land prices making it unaffordable to the poor
- Formalization is a time-consuming and costly process
- There is no guarantee that those who receive title will be able or willing to maintain the title from resident to resident, especially because informality does provide certain financial benefits to landowners

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[6] Government's "Breaking New Ground (BNG)" policy for example argue that the houses which have been delivered in terms of the housing subsidy scheme have not become "valuable asset" for the poor and BNG there emphasizes legal titling as a way for the poor to access the market. However, there have been some delays in furnishing owners of subsidy houses with formal titles.

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- Titling can not happen in isolation of other broader social and economic needs

Considering the drawbacks of formal titling processes, Fourie (1999) argues that "instruments that have conventionally been used to supply tenure security and the way they are presently structured cannot supply security of tenure to the vast majority of low-income groups and/or deal quickly enough with the scale of urbanisation". There is therefore a need for more innovative and appropriate instruments (Fourie, 1999:1). Cousins et al (2005) calls for greater acknowledgement of and support for existing social practices which have widespread legitimacy and do provide a level of perceived security of tenure or what Royston (2004) calls "functional tenure security" to community members. Magni et al suggests a "blending of the systems of registration and land titling with elements of the traditional systems and concepts of land exchange" which they argue would be the basis of a "new South African model of localized land delivery and exchange" (2002: 14). The UN Habitat programme advocates for a more incremental approach to tenure security which could eventually result in individual title. Intermediate tenure options such as temporary occupation licenses, private land leases, certificates of rights, declaration of possession and home owners' associations which have been successfully applied in countries such as Bangkok, Bolivia, Kenya, Colombia and Philippines can provide security of tenure to informal settlements residents and encourage them to invest in their homes, without resulting in huge land and property prices which distort land and property markets (UN Habitat, 2004: 8). Case studies such as those presented by Clark et al (1997) and the Folweni case also illustrate the need for education and training of communities to improve their understanding of different tenure forms and their rights and responsibilities in respect of these.

4.3 Formal and Informal Markets

Functioning of the Land and Property Market

South Africa has experienced a massive boom in the land and property market since 2000. Both residential and commercial property prices have increased significantly. Between 2000 and 2005, house prices increased by an average of 20% per year. In 2004 alone, house prices increased by 32.2%, although it slowed down somewhat in 2005, a still significant growth of 22.9% was recorded. Growth of 15.3% was experienced during the first six months of 2006 (ABSA, 2006). The increase in house prices has put home ownership out of reach of a great proportion of the population. Cape Town has seen the second largest growth in the property market after Gauteng. An analysis of building statistics confirms the growth in numbers and value of property in Cape Town for the period January 2004 to December 2005. The number of plans approved and units completed at the upper end of the property market in the Western Cape increased steadily and was only surpassed by Gauteng during the same period. But this growth in the property market has not been an even process. Growth at the upper end (houses priced at R2.6 million to R9.5million) of the market has far surpassed growth at the bottom end of the market where property prices at the upper end have doubled and even trebled between 1999 and 2005, compared to the bottom end or "affordable market (houses priced at <R226 000)" where price increases have been more

"gradual" (Porteous et al, 2006). Although little evidence is available on the extent of trade as far as subsidized housing is concerned, anecdotal evidence suggests that where these houses have been sold, they have often been sold at prices far below the subsidy value (Porteous et al, 2006, Smit (2007), Royston, 2006, Shisaka, 2003). This has effectively created two "gaps" in the housing ladder, the first between subsidized housing and the affordable housing segment and a second gap between the affordable housing segment and the upper end of the housing market (Porteous et al, 2006).

This affects the housing market in two ways. It results in what is referred to as "downward raiding" where those households who do not qualify for a subsidy house, but can not afford a house in the "affordable segment" of the market buys a subsidy house from a beneficiary of the subsidy scheme who might then again end up in an informal settlement. Another consequence of the gaps in the housing ladder is that is creates "residential immobility and dead capital" where households hold own to their houses, because they can not afford to move into a higher segment of the market. This according to Porteous et al means that "households are unable to realize the 'full' asset value of their housing, which undermines housing as a potential investment for low income households at a time when it is realizing astonishing growth for high income households" (2006: 5).

Land prices also increased substantially over the last few years. Nominal residential land prices increased by 17.3% to approximately R280 200 on average during the second quarter of 2006, compared to 22.9% in the first quarter (ABSA, 2006). Scarcity of suitable land for residential development means that this growth in the price of land is unlikely to slow down in the near future. The scarcity of urban land and the resultant high prices of land have detrimental implications for the provision of housing to the urban poor as well as the restructuring of the Apartheid urban form. High prices of land has meant that subsidized housing have tended to be provided on the periphery of the city where land is cheaper. This has reinforced spatial inequalities where the poor are accommodated in large-scale townships on the margins of the city far removed from infrastructure, services and economic opportunity. The issue of speculation, where landowners hang onto undeveloped, vacant land, in a bid to realise huge properties from the increase in land values, also impacts on the availability of land. In the City of Cape Town alone there are an estimated 27 000 vacant plots of land, translating into R7.2 billion in land value (Meakin, 2007). This means that not only is land kept off the market thereby increasing the price of land, but local government is also losing out on huge potential revenue as vacant land is not taxed to the same extent as developed land. There is thus an urgent need for policies which address unfair and distorting land market practices such as land speculation and to find ways to make well-located land more affordable and accessible to the poor.

Local/Informal market processes

Royston argues that in the context of market and state failure to provide land, the poor "have little option but to resort to the informal sector to satisfy their land and housing needs" (2006: 1). In doing so, they are accessing urban land in ways which are considered "informal or irregular" through what Magni et al (2002) calls "parallel land exchange systems". Both Royston (2006) and Magni et al (2002)

argue that it is imperative that government legislation, policy and approaches which aim at "making markets work for the poor" understand, recognize and acknowledge these informal/irregular systems as according to Royston failure to do so would "run the risk of undermining what already exists to the detriment of the poor and vulnerable (Royston, 2006: 2). The ways in which the poor access land include "occupation, spill-over and encroachment, unofficial subdivision, allocation by local figures of authorities or committees and a variety of local rental practices (Royston, 2006: 6). Land occupation is defined as "a physical utilization of a piece (s) of land by an individual or a group of people in order to fulfill their economic, social or political needs" and can occur either on state-owned or privately-owned land (Sihlongonyane, 2003).

Huchzermeyer (2006) and Smit (2006) link the existence of informal settlements to poor households' need to secure a livelihood and fulfill their human needs. Smit argues that "the formation and continuing existence of informal settlements need to be understood as being part of poor households' livelihood strategies aimed at accessing income, increasing well-being, reducing vulnerability and improving food security (2006: 1). Smit's analysis of six informal settlement communities in Cape Town (Marconi Beam, Imizamo Yethu, Freedom Park, Morkel Cottage, Mocke Road and Kayamandi Zone F) shows how although informal settlements are heterogeneous in terms of their lay-out and design, location and socio-economic profile, most of them develop as a response to poor communities inability access adequate, decent and affordable accommodation (ibid: 9).

Royston and Narsoo (2006) use a three category system to classify the manner in which informal settlements develop and are organised. The three categories include "informal subdivision", "squatter settlements" and "informal rental housing". The authors through a case study of Zandspruit, an informal settlement in Johannesburg, demonstrate the existence of an informal land "market". Here households access land either through informal sub-division where households were renting vacant sites within the informal settlement from the original land-owners for between R150 – R250 or through informal rental where occupants rent out backyard space or shacks to third parties in an arrangement referred to as "backyard shacking" (Royston and Narsoo, 2006: 10). Informal land market transactions can take a variety of forms and usually involve a number of different actors. In some instances the local councilor, community leader or committee, the police or original landowners are the major gatekeepers and can assume great power and authority in assigning access to land use and occupancy "rights". According to the Urban Sector Network Scoping Study of Urban Land Issues "the most typical ways in which shacks or sites are transacted in informal settlements is by gaining the permission of the local civic association committee or community leader, or by "purchasing" a shack from the previous owner" (USN and Development Works, 2004: 15).

In a similar vein, Magni et al (2002) argue that an "informal land market" does indeed exist in informal settlements and that land or sites are transacted through "parallel land exchange systems". Their case study of Folweni, a town located in the eThekwini (Durban) Metropolitan area, shows the operation of an informal land and property market in the town where land is transferred in a number of ways:

- Access to land can be obtained via the local inkhosi who expects to be paid in kind
- During the 1990's private manufacturing companies operating in the Durban area, constructed homes for their workers in Folweni. Workers were expected to take out bonds to pay for these houses and although they were promised freehold tenure, were given "permission to occupy" (PTO). This has created a market in PTO's as some workers who are unwilling or unable to afford to pay off their bonds either sell or rent out their homes
- Following political and administrative restructuring in the eThekwini area where administrative power was transferred from the traditional authority to the eThekwini Metropolitan Municipality, local councilors have taken over authority from traditional authority leaders for the allocation of sites and are increasingly acting as "informal estate agents" (Magni et al, 2002: 6).

These transactions fall outside of "formal legislative mechanisms" as well as government legislation and policy. Magni et al (2006) argue that poor people are "forced" to use these informal or "irregular systems to transact as the formal system is often too expensive, complicated and does not accommodate certain local customs and traditions. Registration costs for a R50 000 home for example can amount to R1 875. It is argued that whilst this might not be a lot of money for a household earning R 10 000 or more per month, for the majority of households who earn far less than this, R1 875 is a huge amount in the face of other competing priorities such as food, transport, school fees, etc. (Magni et al, 2004: 12). Another issue is that of family ownership where the idea of individual freehold tenure is an almost foreign concept and land is occupied by successive generations of a particular family with all members having equal right to use and occupy the land (ibid.).

Wallace and Williamson (2006) however argue that land markets develop through an evolutionary process which consists of different stages and "*informality*" is but one phase of this evolutionary process. They argue for example that "*as the group grows, its system matures enough to facilitate or even encourage trading in land among a broad range of potential owners so that the transaction method reliant on approval by village elders and community ties developed through marriage bond and inheritance shift towards objective evidence of ownership, public and recorded transfer methods and formal identification of land parcels*" (Wallace and Williamson, 2006: 128). Formalisation of land rights is thus a necessary condition for an effective land market to develop. The authors do acknowledge though that land markets are difficult and complex to build and that whilst the existence of a well-functioning land market is important for economic development, countries could achieve greater economic development by focusing on other economic inputs, e.g. labour and production "while it delivers tenure security through instruments other than tenures suitable for a land market by recognition of traditional and informal land arrangements" (Wallace and Williamson, 2006: 133). The authors thus echo Royston and Magni et al's sentiments that governments need to understand, recognize and acknowledge informal/irregular systems through which the poor access land.

4.4 Urban Finance

Access to finance has been identified as a factor which impacts significantly on poor people's ability to access urban land and/or housing. In the formal housing sector, mortgage loans from commercial banks are the main method used by households to finance their homes. Poor households are largely excluded from traditional mortgage finance available through commercial banks, because minimum mortgage loans typically range from R50 000 to R100 000, requiring a minimum monthly income of R3000 – R6000 and stable employment (USN and Development Works, 2004: 40). Very low household incomes make it almost impossible for poor households to service mortgage loans. Strict borrower eligibility criteria such as a restriction on age for example as well as 'redlining" of certain areas also prevent poor households from accessing traditional mortgage finance (ibid.).

In 2003, as part of their obligations in terms of Broad-based Black Economic Empowerment legislation, the financial sector signed the Financial Sector Charter. In the Financial Sector Charter, the sector committed itself to provide R70 billion of development finance between 2003 and 2008. This would include:
- R25 billion of infrastructure finance
- R5 billion for small business finance
- R1.5 billion for rural development and
- R42 billion for housing finance specifically to low-income earners who earn between R1500 and R7500 a month (FinMark Trust, 2006)

Despite this commitment by the bank to extend housing finance to low-income groups, research by the FinMark trust has shown that in fact "only 5% of the target market (income of between R1500 and R7500 a month) currently has access and 53% of households in the target market do not qualify for the privately supplied mortgage products that are available at present (Rust, 2006). The research also found that 12% could access a mortgage, but have not done so, 8% say they don't want a mortgage, 1% do qualify, but can not physically access the product and 20% are too poor to afford mortgage finance repayments. Of the 53% who do not qualify, the overwhelming majority (50%) are ineligible, because of their age (they are over 45 and can therefore not service a 20-year bond) or they are already heavily indebted and can not afford to repay a bond (FinMark Trust, 2006: 4). This illustrates that despite the financial sector's "willingness" to make finance available to low-income households; current mortgage products are not suitable for the needs of low-income households. There is thus a need for greater creativity and innovativeness on the part of the financial sector in designing products which are appropriate for the target market.

In recognition of the need for appropriate financial products for low-income households, non-governmental organizations like the Kuyasa Fund and Utshani Fund have made significant strides in making credit available to poorer households. Loans are offered to households on the basis of a good savings record, are typically R5000 or less and the repayment period is usually 3 years (USN and Development Works, 2004). The Kuyasa Fund has achieved great success over the last seven years. It has disbursed over R28 million to 5800 clients, mobilized more than R16

million in savings and only 10% is written off as bad debts (Kuyasa Fund, 2007). A closer look at the profile of Kuyasa's clients proves rather instructive, 75% of the Fund's clients (borrowers and savers) are women, 74% of borrowers are women-headed households, 44% of its clients are informally employed and/or pensioners and 19% are self employed. Forty-nine percent earn below R1 500 per month. The fact that Kuyasa has succeeded in making credit available to what is referred to as "hardcore poor" households (those earning below R1500) and the most vulnerable households (women-headed, pensioners, informally employed) with only a 10% bad debt record, shows that the poor are indeed "credit worthy" and are able to save. What is needed are appropriate finance products as well as loan servicing processes[7] which are designed with the needs and specific realities of low-income households in mind.

4.5 Gender

Although housing policy in South Africa does not specifically discriminate against women, certain aspects of policy as well as customs and tradition do impede women's equal access to housing and security of tenure. This results in a divergence between women's rights as contained in policy and legislation and women's practical experiences in realizing their right to land and adequate housing. These contradictions were clearly highlighted at a World Habitat Conference in October 2006, hosted by the Development Action Group where women from various communities spoke about their struggles in securing their rights. Some of the most important issues which were highlighted were women's access to the national housing subsidy, religious and customary practices as it relates to women's security of tenure, as well as the availability of housing to women in abusive relationships.

One of the prerequisites for the housing subsidy is that a couple who wish to access the subsidy should either be married or co-habit. Although in these cases the house should be registered in the name of both parties, it is often only transferred into the name of the man. This means that women lack security of tenure and risk losing their shelter when a break-up in the relationship occurs. In addition, polygamy forms part of some religious and customary practices in South Africa. Many incidences are reported of women being evicted by their husbands in favor of a new wife or partner. Other women suffer evictions at the hands of relatives or chiefs who deny their inheritance rights after the death of a husband. The failure of the law to adequately address the vulnerability of women engaged in polygamous marriages leave many women vulnerable, placing the realisation of their right to access housing far out of reach (Brown-Luthango, 2007).

Housing legislation and policies also do not cater to the specific needs of women in abusive relationships who find that their tenure is insecure - they would lose the right to their house should they leave their abusive partner. Furthermore, there are no specific provisions to provide housing and security of tenure to abused women on a temporary or permanent basis (ibid.).

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[7] Kuyasa, for example, employs loan officers who regularly visit and collect repayments from borrowers.

4.6 Urban-Rural Linkages

Another issue which influences the urban poor's access to land and/or housing is that of urban-rural linkages. In many instances those who have moved from a rural area continue to maintain some form of connection to their place of origin. This impacts on how much they are willing and able to invest in a home in the urban area. For example a report by Statistics South Africa found that migration in South Africa has been of a more "circular nature" which means that many migrants move to the city for employment purposes and often return to their rural place of origin upon retirement. Circular migration according to Smit can also involve "multiple rural or semi-urban bases and a number of urban work sites and oscillatory movement between urban and rural homes and, in some cases, constant on-migration" (1998: 79). These migrants still maintain strong linkages with the rural area through remittances for example. This according to StatsSA means that they are less likely or able to invest resources into a home in the urban area and may opt for "low-budget accommodation, e.g. a backyard shack or renting a room in a neighbor's dwelling (Lehohla, 2006 in Brown-Luthango, 2007).

These findings concur with a study by Smit (1998)[8] which investigated the rural linkages of 244 urban households in five low-income settlements (Klaarwater, Inanda Newtown, Bester's Camp, Geza and Old Dunbar Road). It was found that 48% still maintained very strong rural links in the form of a home in the rural area which is visited once a month and regular remittances. Thirty-two percent had weak rural linkages where the rural are was only visited during the holidays and 19% had severed all links with the rural area (Smit, 1998: 82).

4.7 Location

The issue of location and its relationship to sustainable livelihoods for the urban poor has already been touched upon. The sustainable livelihoods approach holds that "land and housing assets in urban areas can improve livelihoods by providing the poor with access to services and the urban economy" (Nemasetoni and Royston, 2005: 4). It is thus important for the urban poor to have access to well-located land. Well-located land is defined as "land that is located close to transport, employment and other urban opportunities. Land should be within urban activity nodes or corridors, but if not in an activity node or corridor, ideally be within walking distance of an existing public transport route, schools, clinics and libraries (Behrens & Watson, 1997 in Tonkin, 2007). This point is clearly illustrated by the case of the relocation of residents of the informal settlement of Joe Slovo in Langa to Delft. . When thousands of households were relocated from the Joe Slovo informal settlement in Langa, Cape Town, to Delft, an area about 15 kilometres away by road, it had a very severe impact on households. Langa is a well-located township within walking distance of job opportunities and has a rail link. Delft, on the other hand, is a stereotypical peripheral low-income housing area, with poor transport links and no job opportunities anywhere close by. A survey of residents showed the severe impact that this relocation had on households' income and expenditure. There was a dramatic decrease in income for 20% of households surveyed due to a member of the household losing their job as a

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[8] This is a follow-up to the study conducted by BESG in 1996 which is mentioned earlier in the review

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result of the transport difficulties in getting to their place of work from Delft. For those who managed to keep their jobs, expenditure on transport increased dramatically (by up to five times in some cases, where people who used to pay R70 per month for a train ticket to travel to work, subsequently had to pay over R350 per month in taxi fares) (Smit, 2007). Location was also as a major livelihoods constraint by respondents in the study conducted by Zack and Charlton. According to the researchers, "respondents often cite distances from shops, schools, clinics and recreational facilities as a problem. They commonly say distance to amenities has a major impact on their household finances: the cost of transport, particularly to places of work as well as schools, is cited as a heavy financial burden" (Zack and Charlton, 2003: 28)

Research done by the Centre for Scientific and Industrial Research (CSIR) which developed a model for measuring and comparing the costs and benefits of different low income settlement locations found that the needs and priorities of low income households differ in terms of location in relation to job opportunities and the researchers warn against a "one size fits all" approach (Biermann, 2004: 1). For example in the case of some of the settlements used to test the model, it was found that proximity to the city centre did not necessarily translate into lower transport costs for residents (Biermann, 2004: 4). In terms of proximity to employment opportunity, a significant finding was that in some instances it was more beneficial for residents to be located closer to middle and high income neighborhoods where they could access domestic employment, rather than to be located closer to formal employment in the city centre (ibid: 8).

This review has shown how the pervasiveness of the market paradigm has resulted in a lack of access to affordable, well-located land for the poor. This highlights the need for the implementation of mechanisms to intervene in the land and property market to facilitate greater access for the poor to affordable, well-located urban land.

5. INTERVENTIONS TO ASSIST THE POOR IN ACCESSING URBAN LAND

This section explores a number of mechanisms which have been used, with varying success, in different country contexts to support the efforts of poor communities to access urban land.

5.1 Expanding housing and tenure options for the poor – Public rental

The pervasiveness of the market-driven development paradigm which makes access to well-located land and housing almost unattainable for the majority of the urban poor; as well as the lack of appropriate mortgage finance products for low-income households, call for alternative housing instruments to be made available. Tonkin (2006) argues that a range of interventions by government is needed in order to provide adequate, affordable housing to the poor on well-located land. These include a modification of government's regulatory framework, the provision of credit programmes and other forms of assistance to support housing production and to improve existing housing stock as well as an expansion of the range of

housing options available to lower-income groups (Tonkin, 2006: 2). The revival and expansion of public rental is crucial in opening up the range of housing options to lower-income households. This is so because a great number of the urban poor are not able to or might not be willing, for various reasons (strong rural linkages for example), to buy a home in the city (Tonkin, 2006).

Public rental in South Africa has been largely abandoned, because it is perceived to be "expensive and inefficient". This is in part attributable to the apartheid rental boycotts. According to Tonkin, the move away from public rental is in line with a global focus on "demand-driven" interventions in which government has relinquished responsibility for housing to the private sector and social housing institutions and is increasingly assuming the role of "facilitator" (2006: 1). However, given the land and housing realities faced by the urban poor, the UN Special Rapporteur for housing recently recommended a re-examination of the public rental option and that government makes a concerted effort to expand the existing public rental stock.

5.2 Capturing Unearned Value/Leakages to assist markets to work for the poor

The point which has repeatedly been made throughout this review is that the operation of the land and property market is excluding the poor and exacerbates existing inequalities. This is incongruent with the notion of the "right to the city" and legislation which protects the right of the poor to adequate housing. It is clear that there is a need for government to intervene in the land and property market in order to make it work better for the poor.

One way of doing this would be for government to enter into a new fiscal relationship with its citizens aimed at capturing unearned increases in land value and directing urban land development for the common good of all citizens.

These unearned increases in land value are brought about by government interventions such as
- Changes in land use regulations for example through rezoning
- Provision of infrastructure to a parcel of land , and
- Growth of the population which creates a demand for land thereby increasing the price of land.

Increases in land value often result not from the efforts of individual landowners, but from government actions outlined above. It is thus only fair that the community as a whole shares in the increase in land value. The creative and innovative utilization of mechanisms to capture unearned land value can provide additional resources which can assist the state in meeting its constitutional obligations. These value capture mechanisms can also assist in addressing unfair land market practices like speculation, bring more land into the market thereby bringing the price of land to more realistic levels. The three value capture mechanisms which will be examined in this review are the land value tax, land banking and land pooling/land readjustment.

Land value tax

A land value tax is a tax on the value of land and excludes the value of the building or improvements on the land. A land value tax could either be a *site value rating*, which is a tax on the value of the land only (mostly urban land), excluding the value of buildings and improvements; or a form of *composite rating*, also referred to as the two-rate system. The two-rate system allows for the value of the land to be taxed at a higher rate than the value of the buildings or improvements, sometimes up to five times more.

The land value tax has many advantages over a property tax which taxes both the value of the land and the building (flat rate system). Solomon (2007) point out some of the advantages of a land value tax:

- It Is adequate, fair, neutral, and economical
- It Intensifies land use
- Value of government investment in local amenities returns to government
- It discourages vacant possession for speculative purposes
- It discourages urban sprawl by bringing unused land into the market
- It encourages access by bringing the price of land to more affordable levels
- It dampens price escalation, but activates market

Dunkley (2007) argues that a land value tax would bring more land into the market by taking away the speculative and opportunity[9] value of land, retaining only the economic value of land. This would make it easier for government to acquire land and could make well-located land more easily accessible to low-income households.

Land value taxation has a long and varied history in many parts of the world. However, the use of pure land value taxes have declined in most parts of the developed world (Department of Land Affairs and World Bank, 2006). Possible reasons cited for this are administrative difficulties and low collection rates (Netzer, 1998). However vested interests also come into play as large landowners will resist the introduction of a land tax as they stand to lose the most. This was the case in Denmark where the land value tax was abandoned, despite the positive impact it had on socio-economic conditions in the country (Leffmann and Larsen, 2000). According to Leffman and Larsen during the period when Denmark had a land value tax in place, the country's economy was in the best state it had ever been, for example the country had "a favorable balance of trade, almost no debt to foreign countries, virtually no unemployment, the highest real wages the country had ever known, and a dramatic increase in industrial production and personal savings and investment" (2000: 5). Yet the land value tax was abandoned when a new political party came into power in 1960 due to pressure from large landowners. In the United States for example Netzer (1998) points out that "large-scale owners of land are now and always have been highly aware of their vulnerability to government actions that can have major effects on the value of the land they own, negative and positive, and therefore have been highly active in

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[9] An extra premium placed on the price of a parcel of land, because of the demand for that parcel of land

politics and campaign financing, especially at the local government level". A conflict of interest, where a number of the most senior government officials were also the owners of large tracts of land, was highlighted as one reason for the failure of the land value tax in Malawi (Ahene, 2000).

In South Africa up until the introduction of the New Property Rates Act in 2004, municipalities had a choice of using a flat rate system, a composite rate system or a site value system to collect property taxes. A study by Dunkley (2000) found that during the period 1951 to 1984, a majority of municipalities in South Africa opted for the tax on the site value. During this period the towns that raised revenue from site value increased from 36 to 98 while the towns on flat-rating declined from 187 to 61. Even more astounding is the fact that in terms of growth in the value of improvements, the cities on site-value rating experienced aggregate growth of 413%, those on the composite rating showed growth of 282% and those on the flat rate showed the lowest growth rate of 189% (Dunkley, 2000; 3)[10]. In fact, of all the major cities in South Africa, only Cape Town and Port Elizabeth still preferred the flat rate. Their percentage growth on improvements interestingly enough, was low compared to the average for the whole of South Africa and particularly those cities on site-value rating (Dunkley, 2000).

Since 1994, the new government has made a systematic effort to restructure the property tax in South Africa. The Property Rates Act makes provision for the establishment of a single system for property taxation on a national basis with the aim of creating a more uniform property tax system (Franzsen and McCluskey, 2004). The new Act makes provision for the levying of a rate on the market value of the immovable improvements on a property. Market value is defined in the act as "the amount the property would have realized if sold on the date of the valuation in the open market by a willing seller to a willing buyer"[11]. The new Property Rates Act has thus effectively done away with land value taxation. Yet, despite the introduction of the new Property Rates Act in 2004, which extends the property tax to agricultural land, municipalities are either not taxing agricultural land or in cases where they were, the tax is based on an outdated 1939 Law (Department of Land Affairs and World Bank, 2006). This law favors owners of large tracts of land and disadvantages smaller farms because the rate charged for small farms is 100 times higher per hectare than for larger farmers, which effectively means that the more land you own, the less tax you pay. This encourages land consolidations and land speculation, because "it makes the cost of holding on to unused or underused land very low and raises the attractiveness of agricultural land as an asset"[12]. The regressive use of the property tax in Mogale City which is one of the municipalities that still uses the old Transvaal province's Local Government Ordinance, 17 of 1939 to tax land, was identified by Berrisford et al (2007) as one of the major impediments which prevented the Muldersdrift

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[10] Dunkley's study covered the 48 largest cities in South Africa, each with a total value of R200 million in 1984. Growth here refers to the increase in capital investment as a percentage over the ten year period, excluding the land values.
[11] Local Government: Municipal Property Rates Act, 2004
[12] Ibid, pg. 25

Home Trust Foundation[13] from accessing land (Berrisford et al, 2007). However there have been renewed calls for the introduction of land value taxes, especially in developing countries that are facing similar development challenges as South Africa[14].

Land banking

Land banking refers to a process in which government acquires land in advance which can be used for future housing projects of infrastructure developments. Land banking has been used successfully in some European countries as well as Asian countries such as Singapore and Malaysia (UN ESCAP, n.d). Some of the advantages of land banking are that:

- "It allows the purchase of land, relatively cheaply, for public purposes
- It provides a tool to influence the pattern of development in accordance to overall planning objectives
- It can also be used as a means to control the land market,
- It can be used to prevent land speculation and to
- Recapture some of the betterment created in connection with rural-urban land development" (UN ESCAP, n.d.)

However, in order for a land banking programme to be successful, it needs to be carefully planned with very clear aims and objectives. If not it, could have unintended consequences such as an increase in land prices which was the case in New Delhi in India, where in stead of regulating land prices, the introduction of a land bank actually resulted in an increase in land values. Both land pooling and land banking also depend very much on the availability of highly skilled municipal officers with excellent negotiating skills in order to negotiate successfully with private land owners as well as sufficient financial resources. According to the UN ESCAP the municipal government should have the necessary capacity in order "to make informed decisions on where, when and how much land to release as well as for what purpose and at what price. It is important to realize that considerable manpower and qualified expertise is required for a land bank to be efficient" (UNESCAP, n.d). .

Land Pooling/readjustment

Land Pooling is also known as urban land consolidation, land readjustment, land re-plotting, and land redistribution. It involves the pooling of a number of small plots of land into a larger plot. The municipality would then provide infrastructure and services to this plot, and subdivide the plot once again. The municipality would deduct the cost of providing the infrastructure and services from the sale of some of the plots, which would mean that the original owners would get smaller plot, but that these would be provided with infrastructure and services (UN ESCAP,

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[13] The Muldersdrift Home Trust Foundation is a community of retrenched workers who have been struggling for ten years to buy a piece of land in the Muldersdrift area which they could use for a mixed-use development consisting of housing and small-scale farming activities

[14] See for example Aller, P (2000) "Land Value Tax: Cure for Poverty and Unemployment", Siochrú, E (2004) "Land Value Tax: Unfinished Business", De Cesare, CM (1998) "Using the Property Tax for Value Capture: A Case Study from Brazil".

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n.d.)) This scheme has been successfully applied in Japan, the Republic of Korea, Taiwan and in some cities in Australia and Canada. This scheme is usually applied when there is a plan for the conversion of agricultural land into urban land.

Land Pooling is useful for:

- consolidating separate landholdings for their unified subdivision for the planned pattern of urban land uses;
- achieving the timely servicing and subdivision of urban-fringe landholdings to a good standard; and for
- financing the cost of providing the road and public utility service networks out of the related land value increases.
- ensuring an adequate supply of land for new housing development by allocating a specific proportion of the land area for sale to the local authority at cost or below cost for the provision of low-income housing [15]

The success of a land pooling project is dependant on very good management and the financial viability of the project. The financial viability of a land pooling project depends on whether or not the provision of infrastructure and services to the plot of land increases the value of the land sufficiently in order to cover the costs of providing the infrastructure and services, whilst still allowing the landowners to realise a significant land value gain[16]. Another potential disadvantage of this method is that it could lead to increases in land value prices (as was the case in Japan and Korea) and encourage speculation. Also in some of the Asian countries where this method has been used, it did not necessarily increase the available stock of low-income housing, since there was no built-in mechanism to ensure the provision of low-income housing. It is recommended that in land pooling projects the municipality should aim for more than cost recovery, but should share equally in the profits generated by the increase in land values brought about by the provision of infrastructure and services (UN ESCAP, n.d).

Inclusionary housing

Inclusionary housing is also referred to as inclusionary zoning or mixed-income housing. Mixed-income housing refers to housing developments which integrate a range of income groups either within the same building or the same development (Schwartz and Tajbakhsh, 1997). Inclusionary housing is when a city planning ordinance requires that a certain percentage (usually 20%) of new residential development be set aside for the occupancy by families of very low, low and moderate income levels (Smit, 2006: 1).

In the US and Canada inclusionary housing in certain instances contributes to an overall goal of regulating and managing urban land development. In these cases inclusionary housing forms part of attempts by local authorities to:

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[15] http://web.mit.edu/urbanupgrading/upgrading/issues-tools/tools/Reg-of-land.html
[16] http://web.mit.edu/urbanupgrading/upgrading/issues-tools/tools/Reg-of-land.html

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- capture increases in land value created by government interventions like the provision of infrastructure and services or through re-zoning,
- encourage developers to contribute to the cost of development which places greater demands on local government in terms of the provision of infrastructure and services, and manage urban development.

After the Housing Indaba in 2005, the National Department of Housing embarked on a process to draft a national inclusionary housing policy for South Africa. The process has still not been finalized yet as government and the private sector, represented by the South African Property Owners Association (Sapoa) are trying to decide on the form which such a policy would take. Property developers have in principle pledged their support for national government's intention to draw up legislation for the implementation of an inclusionary housing programme in South Africa, but according to Neil Gopal, the head of the Sapoa, "the industry was not worried about the proposed legislation for inclusionary housing, but was still trying to persuade Minister Sisulu on incentives rather than penalties"[17] (Boyle, 2006). Recently[18] the CEO of Sapoa, again indicated their preference for a "voluntary, proactive deal-driven approach" rather than the other alternative proposed by the draft national inclusionary housing policy which is a "compulsory but incentivised (CIS) approach" (Wilson, 2007). A number of case studies from the US in particular show that mandatory inclusionary housing programmes are more effective at providing housing for low-income families than voluntary programmes.

Whilst an inclusionary housing programme will not deliver affordable housing at the scale which is required in South Africa to eradicate the country's huge housing backlog, it has the potential to play a role in addressing the after effects of Apartheid spatial planning which are still evident in racial and income segregated communities and the enormous spatial and socio-economic inequalities which exist between these different communities.

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[17] "Plan for low-income homes", 14 June 2006. www.eprop.co.za
[18] 10 April 2007

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Box 1: Ndabeni Restitution Case

The Ndabeni claimants are part of a group of Ndabeni residents who were forcefully removed to Langa between 1927 and 1936. This happened because the land, on which Ndabeni had been built, was earmarked for industrial development. An interesting twist in the tale is the fact that Ndabeni was the site of South Africa's first forced removals at the beginning of the 20th century when five thousand African migrants from the Eastern Cape who were working at the Cape Town docks at the time, were forcefully removed to Ndabeni, then called Uitvlugt. This followed an outbreak of a bubonic plague in the Cape Town docks in 1901[1].

In 1996 a group who formed part of the original residents of Ndabeni lodged a claim with the Land Claims Commission to be compensated for their forced removal from Ndabeni. Some of these claimants were in their 70s and 80s at the time. On 16 February 1998, the claimants established the Ndabeni Communal Property Trust (NCPT) which would represent their interests. Their claim was settled on the 13th of October 2001 - the second largest restitution settlement in Cape Town after District Six. The claimants were awarded 54.8 hectares of the 100 hectares government-owned Wingfield land which is a prime piece of land. Six years later, however the group is still waiting to settle on the land that was awarded to them. The delay can be attributed to a whole number of issues. The first is political wrangling between the ANC provincial government and the Democratic Alliance- led City which has contributed to the delay in the provision of services and bulk infrastructure to the site. Other complications include the fact that the South African National Defense Force (SANDF), the former owners of the Wingfield land, constructed a security wall on the Wingfield site in 2001, after the land had already been awarded to the Ndabeni residents and the fact that the South African Rail Commuter Corporation plans to build a heavy rail road (50m wide) which will cut across the whole site.

The struggle to finalise the beneficiary list has also proved to be a significant obstacle. Some of the original claimants have since passed away and some members of the group have expressed their dismay at what they perceive to be a lack of support and leadership on the part of the City and the Land Restitution Commission. The Ndabeni case illustrates the complexity of the land restitution process which is often fraught with socio-political challenges which can potentially derail the whole process.

Box 2: Informal/local land markets and tenure security – The Case of Folweni

Folweni is a town which is located in the eThekwini (Durban) Metropolitan area, approximately 10 kilometres from the Central Business District, and has a population of about 40 000. The town was established in 1982 to house people who had been forcefully removed from the informal settlement of Malukazi, south of Umlazi. This part of their history is a significant factor in the people of Folweni's perceptions of tenure security. During Apartheid the local Inkhosi played a very important role in allowing people access to sites and in determining their residence status. For example most of the residents of Folweni were given "Permission to Occupy" (PTO's) certificates which gave them the right to occupy sites at the discretion of the Inkhosi. In terms of the PTO's, residents were however not allowed to rent or sell their sites. During the 1990's, private manufacturing companies whose operations were located in Durban constructed homes for some of their employees in Folweni. Employees were expected to take out bonds to pay off their homes. Instead of receiving freehold tenure though, buyers of these homes received "Permission to Occupy" certificates instead. A study was conducted by Magni in which he surveyed 360 households in Folweni. This research identified the existence of a functioning "informal" land market in Folweni. The one dimension of this market is the trade in PTO's where even though residents were not allowed to sell or rent their homes in terms of the stipulation of the PTO's, they were in fact doing so. Magni also found that although the influence of the traditional authority had diminished, this had now been replaced by local councilors who were acting as "local estate agents".

Given their history of forced removals, security of tenure is very important to the residents of Folweni. The majority of those who were interviewed indicated their preference for freehold tenure. Importantly though, very few had a good understanding of exactly what freehold tenure entails. Magni's study found that residents' perception of tenure was often significantly influenced by traditional customs, for example respondents did not perceive tenure as an ongoing process which requires legal prerequisites such as registration of the land. Local traditions and customs also play a role in residents' perceptions of land rights in terms of occupation and ownership. Family ownership for example plays an important role in Folweni where land stays in one family for many generations and all who claim family membership have a right of access to the land. Magni's study of land processes in Folweni thus found that in the context of formal land market processes which are complicated, expensive and often exclude the poor, a parallel process develops which is informal, local and involves a combination of extra-legal and traditional practices.

Box 3: Evictions/Forced Relocations – The Case of Thembelihle, Johannesburg

Thembelihle is an informal settlement in Johannesburg, located in and surrounded by the township of Lenasia, which is a historically Indian township. The informal settlement is well-established and has been in existence since 1984 when rural migrants to South Africa settled in Thembelihle. According to some of the original occupants they settled in Thembelihle with the permission of the previous government and were given materials including zinc sheeting which were to be used to construct informal dwellings. During the 1990's the site were deemed a "transit area" in terms of the "Prevention of Illegal Squatting Act, yet infrastructure such as water, electricity and telephone services were provided to the settlement. This according to Wilson (2005) makes Thembelihle a rather "aberrant case of an informal settlement, because until the municipality attempted to evict and relocate it, it existed with the consent of the municipality (and its predecessor institutions) which owns the land. Attempts to evict or relocate the residents of Thembelihle commenced in 2002, when the municipality proposed that the residents of Thembelihle relocate to a housing settlement in Vlakfontein which is located 8 km from Lenasia. This decision was apparently based on two geo-technical surveys which were done in 1992 and 1998 and revealed the presence of dolomite in Thembelihle.

The community of Thembelihle was vehemently opposed to the planned relocation to Vlakfontein. Much of their resistance was related to the perceived impact that the relocation would have on their livelihoods. For one the community perceived the structures which were going to be provided at Vlakfontein as of a low quality to the ones they had in Thembelihle. Also in Thembelihle they had access to primary and secondary schools in Lenasia, transport to the inner city and job opportunities. The cost of commuting back from Vlakfontein in order to access their employment would've come at a cost of R300 per month for the average household. In June 2002, violent clashes erupted between the municipality and some of the residents of Thembelihle when the Wosani Security Company ("red ants") came into Thembelihle to assist with what the municipality called "voluntary relocations". Members of the community on the other hand, perceived this a "repressive forced removal". In April 2003, the municipality brought an urgent application to evict the entire community of Thembelihle and remove them to Vlakfontein. The community opposed this application to evict them from Thembelihle citing the reasons mentioned above. A re-examination of the dolomite question found that the risk was not as severe as originally stated and that large parts of the Thembelihle site could be upgraded for medium to high density housing, provided that special water management precautions were taken. Huchzermeyer (2006) however reports that despite this finding, plans to relocate the community of Thembelihle were going ahead and that applications for project-linked capital subsidy registration and application were proceeding. Wilson (2005) argues that the relocation of communities such as Thembelihle has to be seen within the context of Johannesburg's Informal Settlement Plan which aims to eradicate or eliminate all informal settlements within the metropolitan area by 2007. This "plan" is executed with little regard for the needs and desires of informal settlement communities and with almost no investigation of the impact that these relocations will have on the livelihoods strategies of the affected households. This illustrates the need for strong civil society engagement with municipalities and a greater focus on public participation processes in order to ensure that affected communities are given a voice.

Box 4: Engagement with the State – The Case of Freedom Park, Tafelsig

The Freedom Park informal settlement was established when residents of Tafelsig in Mitchell's Plain on the Cape Flats invaded a vacant piece of land on the 27th of April 1998. The majority of the residents of Freedom Park were backyard dwellers who were dissatisfied with the overcrowded and poor conditions they were living in as well as their exploitation at the hands of landlords who charged them exorbitant amounts for rental. The group identified a piece of vacant land which had originally been zoned for a school, but which had become a haven for gangsters and illegal activity. Two days after several hundred families had occupied the vacant land, the community learned through a newspaper article that the municipality had applied for an urgent court order to have them evicted from the land with the assistance of the South African Police Service and the South African National Defense Force. In response the community formed the "Tafelsig People's Association (TPA) and elected nine committee members. The association's main task was to enter into discussion with the municipality in order to avert the planned eviction. However, despite discussions between the municipality and the TPA, the municipality proceeded with its plans to evict the Freedom Park community. On the 4th of May 1998 the SAPS and SANDF came with bulldozers to forcefully evict the residents of Freedom Park and demolish their dwellings. However, they were stopped in their tracks by a human chain which had been formed around the settlement. The community of Freedom Park then enlisted the help of the Legal Resource Centre (LRC) to assist with their case. The LRC appealed against the eviction and the municipality agreed to withdraw their case in August of 1998. This was followed by a mediation process between the municipality and the TPA which dragged on for years.

In the meantime, the residents of Freedom Park lived in unhealthy and unsafe conditions with no access to infrastructure and services for a period of three years. These conditions were directly linked to the death of one adult and four children due to diarrhea. Following a health risk assessment as well as a report by the mediator in the case, the municipality agreed to provide rudimentary services to the settlement in June 2001. The pronouncements of the Grootboom judgment also played an important role in the municipality's decision to supply rudimentary services. The announcement of the Urban Renewal Programme in 2001 which included Mitchell's Plain and Khayelitsha opened up new opportunities for the Freedom Park informal settlement to be upgraded. New funds became available through the Urban Renewal Programme and a number of sites in Mitchell's Plain, including the Freedom Park site, were identified for new housing developments. After numerous engagements between the residents of Freedom Park and the municipality, as wells as pressure from outside groups like the LRC and the Development Action Group who had been approached by the Freedom Park committee to assist them, City officials eventually agreed to recommend the inclusion of residents of Freedom Park into the proposed housing projects if they terminated the mediation process. The Freedom Park community agreed, but insisted on the use of a PHP approach for the establishment of their homes. They also insisted on a genuine partnership in which they would share in the decision-making and that DAG would be their support organisation. The City agreed, and on 21 June 2003 the eviction order was officially rescinded. The case of Freedom Park illustrates the uphill battle which communities face in their efforts to access land and housing. It is however also a testament to the tenacity of the residents of Freedom Park and the gains which can be made through a democratic, participatory process and concerted efforts by communities to engage the state.

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