

Changes in residential tenure security in South Africa – shifting relationships between customary, informal and formal systems.

Draft Paper, April 2001

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Introduction

South African democracy promises the resolution of many disabilities faced by those who have suffered under previous regimes. Since 1994 tremendous changes have taken place in many aspects of South African life. There can be little doubt that there have been enormous enhancements of citizenship for the great majority, and that in many cases, access to some basic services has also improved. For example, hundreds of thousands of households have benefited from the distribution of national subsidy funds, mostly through private developers, resulting in the construction of a million new houses – however limited the resource might appear to wealthier observers.

Yet, as in so many other countries, difficult problems remain. Among those is the question of insecurity of residential tenure coupled, often, with poor housing conditions. Every South African settlement contains complex tenure patterns. Whilst some residents enjoy exceedingly secure tenure, backed by survey, subdivision under law, registration of title and elaborate planning, many do not. One reason why security remains elusive for so many is that the terrain changes continuously and sometimes dangerously.

The largest cities, mostly the 'metros' of South African local government parlance, contain most obviously this range. From the centre of a large place like Durban, with something above 3 million people in the area, where mostly formal tenure arrangements hold sway (interrupted by an occasional informal 'favela' type settlement), the complexities of life at the urban fringe are almost unimaginable. At distances of, say, 20 kilometres from the city centre, or more, formal (old and new), informal (renting, subdivision and strong arm) as well as customary (that is, via chiefly allocation) forms of tenure are often inextricably intertwined. And, in the settlements of such urban peripheries, what constitutes urban as opposed to rural life can also be impossible to distinguish with any useful resonance.

More moderately sized cities, like Nelspruit and Pietersburg, the capitals of two of the nine provinces, present many similar phenomena. Here, in sometimes dispersed urban environments with several hundred thousand people, however, the spatial separations resulting from apartheid can be more severe, with urban economic space divided by swathes of rural territory clearly separating the more established towns and centres from segregated formal 'townships', informal settlements, and traditionally-run areas. As one moves out towards the outlying settlements which make up these urban-centred complexes, similar questions present themselves, but the environment becomes, if anything, particularly confusing if one seeks to understand it through categories of urban and rural. Whether the issues which confront residents and aspirant residents as they seek secure residential space are really the same as those confronting metro residents, or different; whether the ways forward should or could be the same or different; and how much (and how rapidly) those issues are changing, are the questions posed in the research project, funded under a Franco-South African scientific co-operation agreement.

The brief for this paper is to examine tenure security and tenancy practices in some of South Africa's informal urban areas and thereby gain understanding of its interactions and relationship with formal settlement patterns within changing frameworks. Residential tenure security in South African informal settlements is often problematic, and depends on the interaction of the formal and informal tenure systems on the ground. Problems with tenure security have very large implications for development and democracy as well as for crime and personal safety. Currently, the degree of tenure security which residents enjoy to remain on the land on which they live is determined by complex interactions between practices which have origins in different 'systems'. Preliminary observations would seem to suggest unsettling uncertainties around whether residents in what appear to be mainly 'informal' or 'customary' settlements are making significant gains on tenure security, or are finding their positions increasingly becoming more difficult. Further, it is not clear how 'formal' arrangements in various locations identified for study are affecting security – either to the benefit or the disadvantage of residents.

What is clear, though, is that the advent of democratisation in South Africa exerts significant impacts on tenancy patterns and security of tenure on settlement patterns inherited from the past. The removal of influx control measures and enshrining of right of movement for all South Africans has opened up opportunities for people to relocate and settle freely. The upshot is that large populations driven more by economic necessity have relocated into settlements designed for smaller populations exerting pressure far beyond what existing infrastructure and services levels can carry. Hence, the paper's examination of these shifting relationships between customary, informal and formal systems which do or do not secure residential land tenure¹. Implicit in the above is the supposition that major changes are occurring in the relationships between these systems leading to new settlement patterns, and that they are having diverse effects on individual and in some cases collective tenure security.

The paper will mainly focus on the articulation of the different systems, the overlap and integration of customary, informal and formal practices is, however, at the core. We furthermore are interested to learn whether and the extent to which new formal processes are succeeding or failing to grapple with the complexity of customary and informal practices and how these impact on the prospects for tenure security.

Emphasis will be placed on:

- Identification of key actors involved,
- Strategies and practices of actors,
- Informal and irregular land markets and sub-markets,
- Land related conflict resolution procedures and mechanisms,

¹ By 'customary' practices we refer mainly to allocation of land by traditional leaders and security through common belief and practice.

By 'informal' practices we refer mainly to purchase and rental of land without any official registration, taxation, or similar legal practices.

By 'formal' practices we refer to activities in which land is secured through registration, often with associated taxation. Transactions include market and 'state' allocation.

- Alternatives to formal rights for securing tenure, and
- Local empowerment and capacity to work within different systems at local scale.

Methodology

Research work for the paper has proceeded along the following two approaches;

- first phase involved mainly desk-top study characterised by pulling together documented reports and a review of conceptual approaches on the said topic,
- second phase comprised of development of case studies conducted within three provinces of South Africa, one around Mbombela District Council (formerly Nelspruit TLC area), Dikgale area close to Pietersburg, and third within Durban Metropolitan Area.

Examination of case study areas is characterised by a juxtaposition of formal local authority and traditional authority, new as well as older settlements, high degrees of participation (formal or informal) in urban economies. Formal tenure, informal tenure (such as informal land occupation and informal rental arrangements) as well as customary or chiefly allocation of land is present in some of the case study areas. The specific nature of the case studies is negotiated with local actors who are mostly interviewed.

The paper will hopefully yield understanding of the key operational and functional features of the systems involved, albeit in a symptomatic and indicative rather than comprehensive manner; an assessment of positive features of existing systems and the level to which they can successfully be integrated; key principles for new approaches to add to residential security; and some level of feedback to those who inform the study, in communities and local authorities.

CONCEPTUAL OVERVIEW AND BACKGROUND

The process of peri-urbanization around the Metros and major regional towns of South Africa has gathered speed in recent years leading to increasing settlement density. In mainly major regional towns this process has accelerated informalisation of settlements on the periphery of formal council borders of people largely drawn by the prospects of finding employment. Along with this process emerge changes in settlement patterns and demands for security of tenure. As demands for development and provision of services in this areas have increased and become formalised, traditional authority structures and administration have become problematic and characterised by tensions. Accelerated informalisation of settlements also raises serious questions of appropriate entry points for intervention and how such intervention might be mediated for local governments. How, for instance, are local governments to deal with the spiralling problem of informality and apparent illegality in human settlements without projecting technocratic expert based solutions so characteristic of apartheid era mode of urban governance.

Increasingly densifying areas not traditionally under formal municipal jurisdiction are now taken over by newly formed local councils under the aegis of municipal demarcation planning. They have thus fallen under the councillor system of local government chosen on proportional representation and hence are no longer actively under the control of traditional leaders. Uncertainty around the implications is affecting tenure in the border communities while increasing anxieties of traditional authority system.

Inside the local government boundaries, delivery of formal housing through the RDP programme is inexorably proceeding apace. For these areas, accompanying land and tenure

system should help to stabilize tenure for people living in informal settlements. However, for the informal settlements already inside or on the fringes of municipal administration, uncertainty and conflict over control of land and housing resources remains part of life. Some of the areas being upgraded with formal housing delivery do not seem to have access to a working formal tenure system, creating space for manipulation of housing and land resources by power holders.

Generally speaking four different types of settlement areas characterise case study sites identified for purposes of this study, namely:

Proclaimed Towns: Proclaimed towns are characterised by high levels of services, well-established infrastructure and social facilities. Residents occupy land through ownership in the form of freehold title or they rent property through lease agreements. These towns are characterised by mono-functional land use areas ranging from agricultural, industrial, commercial and residential. Zoning regulations are relatively strictly enforced resulting in minimal interpolation of these various land uses. Examples of these in the context of our cases would be areas that formed Nelspruit, Durban proper prior to 1994.

R 293 townships: These are townships of the former homeland areas and have been established under Regulation 293 of 1962. They are marked by having a general plan and surveyed stands. In contrast to proclaimed towns, however, they have more basic levels of infrastructure and significantly lower levels of services. Furthermore, these townships have limited social infrastructure such as sports facilities, schools, retail and entertainment sites and parks. Zoning restrictions are less stringently applied resulting in more interactions between industrial, commercial, residential and agricultural land uses. Residents of the R 293 townships hold land in the form of Deeds of Grant or lease properties from Grant holders through formal or informal leasing arrangements. All residential sites were surveyed at the time of proclamation but extensive sub-divisions, encroachments and occupations of public open spaces have occurred within the boundaries of the township over time.

R 188 denser settlements: Established under Regulation R 188 of 1969 are a number of settlements commonly referred to as R 188 denser settlements. There are a number of these settlements within the Polokwane/Pietersburg and Mbombela Districts including those that have been subject to further detailed investigation in this study. Service levels in these areas are very low to non-existent as well as levels of bulk infrastructure and social facilities. R 188 settlements were administered by Tribal Authorities who could allocate lands for residential, commercial and agricultural use by tribal members. Residents of these settlements occupied land through the issuing of a Permission To Occupy (PTO) which granted the holder utilisation rights over the land. Generally these settlements were un-surveyed and unplanned and have continued to grow on an incremental basis as the need arose for more land for residential use.

New Settlement Areas/Greenfields Developments: There are another newer forms of residential settlements, which have recently emerged within sites identified for study. These are townships proclaimed under the Less Formal Township Establishment Act, Act 113 of 1991. In these areas, residents generally occupy formal houses ranging from the basic RDP houses (two rooms) costing a maximum of R 17 000.00 to larger houses (four rooms) costing up to R80 000.00. Ownership of the property is held in terms of freehold title. Whilst residents of these two new forms of settlement are expecting to hold their residential land in freehold title it is anticipated that the standard of infrastructure and levels of service will compare more closely

with those which occur in the R 293 townships than the higher levels of service associated with proclaimed towns.

These different settlement areas therefore differ immensely in terms of the quality of infrastructure, service provision and amenities and secondly they differ in terms of the demographic and socio-economic makeup of the residents. Lower income groups generally restricted to the R 293 and R 188 settlements whilst higher income groups are mostly found within the proclaimed towns. This same differentiation applies in respect of security of tenure. More on this in the following section.

Review of Prevalent Tenure Regimes

To understand the prevailing modes of ownership and settlement patterns it is essential that the underlying legislative/policy framework, which governs the use, allocation and administration of the various settlement areas, be outlined.

Three existing forms of recognised tenure rights within sites or areas identified for purposes of developing cases can be cited.

- The first relates to freehold title and is the prevalent form of land ownership within Proclaimed Towns. Freehold title is either held by an individual, a marital couple (In terms of the Matrimonial Properties Act of 1984, spouses who are married in community of property have joint ownership of assets), or by a legal entity (Trust, CPA, Close Corporation, Pty Ltd Company). In terms of land held in freehold title, land owners have the rights to develop or alienate their property in terms of the applicable regulations laid down by the Municipality and other applicable legislation.

The second form of recognised tenure in the District are known as Deeds of Grant. Deeds of Grant were established by the previous Department of Development Aid to give recognition to residential and occupational rights of Black people during the Apartheid Era. Deeds of Grants were created as a separate Land Registration System to provide black people with some form of recognised occupational right on urban properties. Whilst land held under a Deed of Grant is still classified as state land, the state has recognised the occupation of that land by an individual or household. Deeds of Grant are recognised by banking institutions for purposes of bond finance but until recently were reluctant to lend money to Grant holders since the administrative costs associated with bond finance were too high when compared to the value of the housing to be financed. Deeds of Grant are the prevalent form of land ownership by individuals or families within the R 293 areas.

The third form of tenure predominant in the areas identified refer to Permission To Occupy (PTO) which were issued either by a communal or tribal authority on state land within the former Homelands. PTO's provided the bearer with a recognised right of occupation and utilisation of an identified portion of land but the land remained the ownership of the state. PTO's are not recognised for purposes of security by financial lending institutions. This situation is responsible for low levels of investment by the private sector in such areas. In 1994, however, with the coming into being of a new government and later a new constitution, land was made a national competency. In terms of the administration of state land this function was vested with the Minister for Agriculture and Land Affairs. To date most of the former homeland areas (South African Development Trust –SADT land) is vested with the National Department. In strict legal terms only the Minister may issue a valid and legally binding PTOs after 1994. PTOs furthermore provide holders with a recognised albeit informal right to land. These

occupational rights are protected however in terms of the Interim Protection of Informal Land Rights Act, Act 31 of 1996 (IPILRA). IPILRA furthermore regulates decision making surrounding the formalisation or removal of such informal land rights as those of PTO Holders and also protects the rights of “beneficial occupants” of state land. Beneficial occupants may not have any recognised rights on state land saving for the fact that they have resided or utilised the land for an extensive period without interference. Within the R293 and R 188 settlements in Mbombela District, for example, there are a large number of people who have encroached on public open spaces and other parcels of state land who cannot be arbitrarily removed since they have enjoyed undisturbed beneficial occupational rights which are enforceable under IPILRA.

REVIEW OF THREE CASES STUDIES

Mbombela District Council

Description of Case Study Area

The area first identified for the research case study and in which residents were interviewed is known as the Mbombela District. Most of this area was formerly within the jurisdiction of the Greater Nelspruit Transitional Local Council. Additional areas previously administered by the White River and Hazyview TLCs were, following the December 5th, 2000 elections brought in the Mbombela City Council. Mbombela District derives its name from an historical township, Mbombela Township formerly a part of Nelspruit but which was removed as a black spot in the late 1960's. Many of the residents of the R 293 townships of Kanyamazane and Matsulu were former residents of Mbombela Township. (See attached location map- Annexure A)

In total Mbombela District spans an area of 3420 Square kilometers and is home to approximately 210 000 residents, the majority of whom reside in the so-called “Eastern Section” which was previously part of the Kangwane Homeland (information courtesy of Mrs S Wiggins -CADNET)

Mbombela District is situated in the Eastern section of South Africa's Mpumalanga Province and shares its Western border with the Kruger National Park. Mbombela has over the past decade been considered a significant growth node and its establishment as both the Provincial Capital and a regional service centre have helped stimulate further economic growth. It is a major node identified for industrialisation and other economic activity along the Maputo Development Corridor. Ironically the establishment of the Nkomazi Toll Plaza, as part of the Maputo Development Corridor, has effectively cut the Nkomazi District off from the rest of the Province and many people who previously commuted from there to Nelspruit have subsequently resettled in Mbombela District. This unanticipated urbanisation, attributed to the toll roads, has had a major impact on the growth of unplanned informal settlements and urban densification within the Mbombela District.

Mbombela has a diverse range of land uses which in terms of the IDP process are to be strictly separated through zonings. Land uses within the district include; high potential agricultural land (sugar cane, crops, citrus and Forestry), various industrial areas (Ngodwana, Rocky's Drift, Karino and Nelspruit), service areas and residential areas. Mbombela is also fortunate to be blessed with magnificent scenic attractions and natural features making it a popular tourist area as well. In terms of the proposed IDP for Mbombela, the District is divided into the Eastern and Western Zone. This classification is nothing less than a soft way to describe the racial, economic, environmental, demographic and social differences in the way the district was

planned under Apartheid. Conditions in the “Western Zone” formerly South Africa vary immensely with the so-called “Eastern Zone” formerly the Kangwane Homeland.

There have been a number of Land Reform Programmes within the District which have to some extent attempted to redress the racially skewed land ownership patterns in the District. There are currently 6 Redistribution projects underway within the District and a great many Land Claims have been submitted by people claiming they were subjected to forced removals in the past. In addition the Department of Land Affairs has initiated and funded a tenure upgrade project in parts of the former Kangwane homeland to formalise certain of the towns and upgrade the tenure rights of the residents. More will be said on this project later in this paper.

(Information obtained in “**Integrated Spatial Development Framework**” Prepared by Laduma Project Managers in co-operation with TAPP Town and Regional Planners and Urban Studies)

Generally speaking all four different types of settlement described previously characterize Mbombela District. These include:

- Proclaimed towns such as Hazyview, Nelspruit and Whiteriver,
- R 293 townships: Within Mbombela there are three so-called R 293 townships established under Regulation 293 of 1962, namely Kabokweni, Kanyamazane and Matsulu. These townships are characterized by firstly having a general plan and surveyed stands, however they have more basic levels of infrastructure and lower levels of services than the proclaimed towns
- R 188 denser settlements established under Regulation R 188 of 1969 commonly referred to as R 188 denser settlements. These are R 188 settlements which include Daantjie, Luphisi, Msogwaba, Mphakeni and Zwelitsha. R 188 settlements were administered by Tribal Authorities who could allocate lands for residential, commercial and agricultural use by tribal members.
- New Settlement Areas/Greenfields Developments: There are two new forms of residential settlements, which have recently emerged within Mbombela District. The first refers to townships proclaimed under the Less Formal Township Establishment Act, Act 113 of 1991. Tekwane South and Tekwane North are two such townships within Mbombela

These different settlement areas therefore differ immensely in terms of the quality of infrastructure, service provision and amenities and secondly they differ in terms of the demographic and socio-economic makeup of the residents. Lower income groups within Mbombela are generally restricted to the R 293 and R 188 settlements whilst higher income groups are mostly found within the proclaimed towns. Levels of unemployed are similarly differentiated between these areas.

(Information in this section was supplied by Earthspace Development Planners Pty- “Evolution of Settlement Patterns in South Africa under Different Planning Systems”)

Perceptions of Residents

TRAC-MP interviewed a variety of residents to record their views and understanding of their tenure rights and residential environment. Informal interviews guided by a series of questions were held between TRAC-MP and residents of both formal and less formal settlement areas. In total 10 residents were interviewed during this research project. Their tenure status differs both

in terms of ownership and tenancy rights, for reasons of commonality residents and tenants of similar settlement areas have been grouped together in the below table. The table illustrates the major common features and difference which exist in terms of residents perceptions about their tenure status, residential environment and factors influencing their occupation of their specific residential area.

TABLE 1: RESIDENTS' COMMENTS

Type of resident	R 293 Stand Owners (O) R 293 Tenants (T) Developing Areas Resident (D)	R 188 PTO Holders (P) R 188 Tenants (T)
Number of household members per stand.	4-7 as a family household. In terms of rental up to eight tenants may occupy a single stand.	Between 4 and 8 family members per stand. In terms of rental up to 12 tenants can occupy a single stand.
Size of house/stand	600 square meter stands (20m X 30m) is the most common size.	Between 2 500square meters and one hectare residential stands.
Length of residency	Generally residents have lived on the stand for lengthy periods (23 years or more). Tenants reside for less time (1-3 years). Tekwane was established two years ago.	Length of residency varies from stand to stand. Long term residents (20-70 years) appear to be more attached to agricultural lands whilst recent settlers in R 188 areas seem only to have acquired rights on residential stands.
History of Occupation	Some residents were forcibly removed from the old township of Mbombela and settled in the R293 townships which were part of Kangwane Homeland. Other residents moved there to gain independence from family residing elsewhere in the Province.	Most R 188 residents have lived their whole life in the tribal area. This may or may not be on the same stand. An influx of new residents has appeared particularly over the past 7 years. The motives behind the latest wave of occupancy is the economic growth of Mbombela, the eviction or retrenchment of farm workers. The migration of non-SA citizens is a further contributing factor.
Cost of services/ Rentals	Costs for services vary from township to township and from month to month. On average a household may pay between R 140.00 and R 560.00 per month for services depending on electricity consumption. Rentals differ according to number of rooms occupied but mostly fall within the range of R 80 to R 150.00 per single room.	R 188 residents are expected to pay an annual fee of R 25.00 to the tribal authority. This fee known as a Khonza fee or Springbok is paid to the tribal authority for the provision of services and as a tribute to the chief. Electricity is the other charged service and costs vary according to consumption (R 25.00- R 80.00). Rentals for a single room are approximately R 50.00 per month whereas rental of a house can vary from between R 250.00 to R 400.00 per month.

Average household income in area.	Between R 1 500.00 and R 4 000.00 per household.	R 250.00 –R 600.00 was indicated as the average household incomes.
Alternative Sources of Income	Rental of extra rooms seemed a popular income source. Other activities include Vodacom Kiosks, Hair Salons, Car Washes and the rental of tents and chairs for public functions.	Pensions were identified as a significant alternative income source. R 188 residents also sell livestock, maize and vegetables. Barber shops and Spazas were also popular. Many households further receive remissions from family members working elsewhere in the Province or in Gauteng.
Form of Ownership	Deed of Grants. These have often been informally transferred with no record of sale. Rents are mostly informal with no written rental agreements.	Permission To Occupy (PTO). These to may have been informally transferred. Similarly rental agreements in R 188 areas are informal.
Conflict over land ownership	There is very little conflict over land ownership as all residents view the local government as the land administration authority. Conflicts within families or disputes arising from the informal sale of stands are however fairly common.	There is a land shortage. People with agricultural stands feel threatened by encroachments. Conflict has emerged over the right to allocate stands, the provision of services and new land uses between the tribal authority and the local government.
Sale of stands	Sales should be registered at the municipal office but this system seems to have fallen into disuse. Sales now generally take the form of a cash sale through verbal agreement between two parties with no formal contract. In some cases however due to the need for housing finance, bonds are registered or a private money lender (Omashonisa) enters into an agreement with the buyer.	It is possible for one to sell or buy a stand in an R 188 area. If one would like to buy an existing stand an agreement must be reached between the parties and thereafter the tribal Induna for the area has to be informed of the transaction to avoid later conflict. In terms of acquiring a new stand. The Tribal Induna can be approached to indicate where new stands could be located. A "survey fee" or R 25.00 is paid for this service. Thereafter the applicant must approach the Tribal Authority, swear allegiance to the chief, and pay the required fee (between R 25.00 and R 250.00) depending on the size of the stand. Upon payment a PTO will be issued. Thereafter an annual Khonza fee of R 25.00 is applicable. The Khonza fee for pensioners is R 2.00.
Control over Land ownership	Rests with the Mbombela City Council and the Banks.	The Tribal Authority with the assistance of Indunas who preside over specific tribal areas, much like suburbs. Recently de Jure legal ownership of the State Land has been transferred to the Mbombela City Council.

Control over rentals	None.	None, but if there is a dispute the Tribal Authority can be approached to mediate.
Motive behind remaining/moving	<p>Most families have resided here for over 20 years and are accustomed to the conditions. The proximity to roads is a major factor for residents who commute daily to Nelspruit for work purposes.</p> <p>Motives for moving (to Tekwane or to Nelspruit) include becoming independent of the larger family or to avoid crime.</p>	As most residents of the R 188 settlement have stayed in the area for a long time they to have become accustomed to the environment. They know the people. The cost of living in the R 188 settlements are lower than elsewhere both in terms of land acquisition and service costs. Other reasons for remaining include access to natural resources and less restrictions on their land use activities. Unlike the township where some land uses (particularly light industrial) are restricted by zoning. This does not apply in the R 188 areas.
Levels of services	The Municipality provides purified water and water borne sewerage. Eskom supplies electricity. There are a few tarred roads (main arterial roads), but irregular refuse removal and no street lights.	No purified water. The chief pumps water from the Crocodile River to a central reservoir which has a tap off point. Other areas rely on boreholes with hand pumps. Eskom supplies electricity. Sanitation takes the form of Pit Latrines and refuse remove is done through Skips placed in certain areas.
Value of Property	<p>Anywhere between R 25 000.00 and 100 000.00.</p> <p>A single room could cost R 4 000.00 to purchase.</p>	Most people were unsure. One interviewee optimistically stated that his house was worth R 100 000.00.
Preferred residential area	Nelspruit Suburbs as they are quieter and more free of crime.	The R 188 areas as they are cheaper.
Advantages/disadvantages	<p>Advantages of the R 293 area includes; being near roads, clean water and affordability.</p> <p>Disadvantages include noise pollution, high levels of crime, poor roads, no community facilities such as police stations, churches, clinics and shops. Certain areas have also been redlined by the banks and it is impossible to sell stands there through formal housing finance.</p>	<p>Advantages include big stands, affordability, access to natural resources.</p> <p>Disadvantages include; noise pollution, high levels of crime, no clean water and the absence of community facilities.</p>
Future trends	Residents believe that the Municipality should develop better infrastructure in the area for people. There is a sense that this will happen in the future.	Residents say that they need development but that the council must respect their culture and must communicate and consult with them. Government should protect their rights and develop the area, but should also compensate them for land lost or infrastructure lost during development.

Durban Metropolitan Area.

Description of the Study Area

This case study reports on the situation in regard to residential tenure security in several informal settlements in the Durban Metropolitan Area, with special reference to tenancy practices. To this end, four informal settlements have been considered as part of this preliminary study. Main points of results so far are given here.

Key questions include:

- Identifying key actors,
- Strategies and practices of actors,
- Informal and irregular land markets and sub-markets,
- Land related conflict resolution procedures and mechanisms,
- Alternatives to formal rights for securing tenure, and
- Local empowerment and capacity to work within different systems at a local scale.

The brief for this study focuses on changes in tenancy practices following the violence of the middle 1990s. However, current developments appear to centre on the impact of changes in local government practice and the new municipal demarcation initiative.

Of the areas chosen, Adams Mission is located at the southern edge of the DMA, and is scheduled to come inside the Metro boundaries as a result of the municipal demarcation process. The tenure situation is therefore very fluid. Ohlange Informal is a large informal settlement located on tribal land adjacent to the old Christian settlement of Dube's Farm, on the western side of the very large Inanda informal settlement on private land north of the Durban city centre. Mgaga and Malukazi are among the earliest to appear of the new informal settlements which appeared in the 1990s, and are located close together and adjacent to the large Umlazi formal township to the south of Durban city centre. They are dealt with jointly in the summary following.

The most dynamic areas appear to be Adams Mission and Malukazi. Ohlange has an interesting but fairly stable situation, and Mgaga appears to be stagnating in a stable, anti-developmental situation. Consideration is given in greater depth to the areas where the tenure situation is developing.

The account given here is based mainly on oral accounts from the interviews, due to limited time and resources for archival work with official and other written sources. Dates given may therefore be approximate and events are narrated from the viewpoint of respondents in the communities.

OVERVIEW

Peri-urbanization processes around the Metro area have led to increasing density throughout the districts of former KwaZulu which lie to the south of the city, but mainly in the localities on the city's formal borders. Changes in tenure follow along with demands for development and services, which help to make formal TA administration problematic.

Most of these densifying areas not already under municipal administration will now be taken into the Metro under the municipal demarcation planning. When this happens they will fall

under the councillor system of local government chosen on proportional representation and will no longer be actively under the control of traditional leaders. Uncertainty around the implications is affecting tenure in the border communities.

Inside the Metro boundaries, delivery of formal housing through the RDP programme is taking place. The accompanying land and tenure system should help to stabilize tenure for people living in informal settlements. However, for the informal settlements already inside the city, conflict over control of land and housing resources is made worse by uncertainty around the local government dispensation. Some of the areas being upgraded with formal housing delivery do not seem to have access to a working formal tenure system, creating space for manipulation of housing and land resources by power holders.

MALUKAZI AND MGAGA

Current role players in Malukazi include:

- The grouping within the area's committee which is involved in criminal activity and illegal selling of sites and renting out of public housing
- The grouping within the area's committee which is not involved in illegal activities
- The designated local councillor for the area
- A better-off, urban-origin constituency which supports the ANC and dominates Upper Malukazi
- A poorer, rural-origin constituency which supports the IFP and dominates Lower Malukazi
- A group of enforcers said to be hired by the illegal faction of the committee

Role players in Mgaga include:

- The area's committee which is shared with the adjacent township section
- The designated local councillor for the area, shared with the adjacent township sections, and
- Informal plot owners, landlords and tenants

These two settlements lie on the west side of the large formal Umlazi township which was established in the 1960s on former Tribal Authority (TA) land south of the formerly white central city. They are now part of the Metro and under municipal control.

The earlier landholding authority for Malukazi and Mgaga was the Cele Tribal Authority. The excision of the land for Umlazi created tension with the TA. The seat of the chief was moved further inland to the Ngonyameni tribal ward. The later establishment of the informal settlements, and their assumption into the DMA, has made for more anger and a situation of perceived competition between the TA, formerly part of the KwaZulu homeland and now under the IFP-aligned provincial government, and the Durban metro, an urban area with ANC administration and majority ANC support. This border zone is one in which the urban system marked by elective government is gradually expanding at the expense of the rural system which includes traditional leaders.

Density built up on the demarcated border of the urban area through the 1960s. The former KwaZulu government took over the area on the Umlazi border in 1973. At the same time, increasing numbers of rural-origin tenants were being accommodated in Umlazi itself without being able to get access to housing.

The two informal settlements were established around 1976-79. A land invasion took place at Malukazi, with Umlazi tenants spilling over into the densifying border areas where TA administration was already weak. An Mgaga invasion followed.

Mgaga emerged later on land reportedly under the control of a prominent IFP functionary with an equivocal reputation. This leader is said to have been holding large tracts of land previously under tribal control but formally earmarked for housing development, with the objective of selling plots off privately. Because the area which became Mgaga was not being built on, large numbers of informal settlers moved onto the land. People arrived in such numbers that the KwaZulu government could not consider evicting them, and the area remained under informal settlement. Like Malukazi, it later came under municipal control, at an uncertain date.

Urban development of the Malukazi settlement dates from about 1979, when a housing upgrading scheme using a private developer was brought in. It appears to have been around this time that administration of the area passed from former KwaZulu to the Durban metro government.

A very large share of the existing Malukazi population was relocated to an outlying development scheme at Folweni further south, so as to clear space for housing construction, roads and services in the Malukazi area. It appears that the people who were moved were told they would be returning when the houses were ready, but it is reported that the houses actually went to government workers, creating a higher-income category within the informal settlement. It is probably at this point that the Malukazi area was delimited into formal plots.

No similar development effort was made at Mgaga, and the settlement has never been delimited into plots. Mgaga has continued to densify under its original informal land dispensation. To date there has been no organized effort to deliver housing on scale. It appears the settlement is now too dense for further service interventions to be made without major disruptions to de facto tenure rights and possible social and political backlash. Efforts are being made to stabilize footpaths in the area.

The Mgaga settlement has close demographic and social links with the township sections to which it is affiliated. As Umlazi expanded around the informal settlement onto TA land and new housing was built, some of the people from the informal settlement moved into K and M section of the township. Others in the Mgaga settlement had more rural interests and left the informal settlement for the more rural TA ward of Ngonyameni further inland. Other residents of K and M section moved into the informal settlement as they became unable to get housing in Umlazi. The settlement's local committee draws members from both the township and the informal area of Mgaga itself.

Around the time of the removal and the formal development, the Malukazi community established a local micro-government committee. By the early 1980s political tension was high between the urban-oriented ANC-aligned UDF youth and the IFP and the KwaZulu Police, with support from many of the rural-origin in-migrants. Street committees emerged in opposition to the established leader. Violent fighting took place at Malukazi, while Mgaga remained relatively peaceful. The Malukazi leader fled as the area came further under the control of the street committees and youth. In 1992 an exodus of large numbers of people from Malukazi took place because of the political violence. This outflow seems to have taken many of the IFP supporters out of the area. It is thought that this outflow of people eased crowding and made

service delivery and later provision of RDP housing easier, and would therefore have influenced the development of tenure institutions.

The prolonged political violence eventually led to the division of Malukazi into two sections, one occupied and dominated by IFP supporters and the other by ANC supporters. The ANC-aligned area is more developed and seems to be moving into formal tenure, while the IFP section remains relatively poor and under informal tenure.

Fighting was winding down in Malukazi by 1993, and the local Peace Committee was able to bring about a truce in the settlement. The community formed a single Malukazi Development Committee with representation from both political sides. This committee was initially very successful in bringing about development, although it has now broken down seriously into criminal rather than political violence.

A councillorship system of local government was introduced at Malukazi and Mgaga in 1996 following the local government elections. Relative roles and responsibilities of the Malukazi area committee and of the councillor were not well resolved, and the Malukazi councillor did not gain local support. A new councillor has now been designated. Mgaga's councillor has been better received and more effective.

Malukazi and Mgaga share their designated councillor with several of the sections of Umlazi township in each case. Mgaga is administered from Umlazi's administrative office, and the local committee works effectively with the councillor and with the K,M and L township sections to which it is affiliated. Malukazi is administered separately from the adjacent township, although the councillor for Malukazi is also responsible for three sections of Umlazi. There are no strong links between the Malukazi constituency and the township, and this arrangement has not worked well so far.

Tenure at Mgaga

Mgaga has received municipal water and electricity supply, but has no significant housing or roads development due to extreme overcrowding. The Mgaga population continues to live in self-built structures on rolling terrain, ***without formal tenure***. It is thought that further upgrading would be physically very difficult unless the population could be temporarily moved out. Because subsidized public housing is not available as a contested resource, *the tenure system appears to be stable* at present. From interviews it does not appear that the local micro-government committee has a strong role in tenure allocation and maintenance.

When Mgaga was originally invaded, land occupation was close to *open access*. Occupiers who arrived in the first wave of settlement took up plots on informal tenure without apparent reference to ***any particular leader or authority***. Their claims have never been either questioned or validated, and the upgrading process at Mgaga has *not taken a form which could give a basis for tenure establishment or registration*. No tenure documents of any kind are in use at Mgaga other than possible handwritten receipts for transfer. Existing tenure appears to be relatively secure, but does not support housing investment or other forms of development.

Tenancy, in the form of site-rental tenancy as found on private land at Inanda, does not appear to have been a very common form of landholding at Mgaga. That is, without a foundation in private tenure, site-renting – where new arrivals rent land to build shacks on a temporary basis – does not seem to have become an established practice. Instead, the forms of tenure which

have prevailed since the original land invasion seem to resemble what is commonly found on TA land as informal ownership and an informal land market develop.

The initial occupation in 1976-79 established a layer of informal land claims which allowed these original occupiers to claim informal ownership not subject to any outside authority, and to act as landowners in relation to in-migrants arriving later. Most later arrivals seem to have bought land informally from the first occupiers, and become landholders in their own right.

Plots sold for R 1000-2000. Land seems to have been sold informally until densities reached levels which did not permit further densification. On a 1992 survey, most Mgaga residents reported that they considered themselves plotheolders in their own informal right, and could not say who actually owned the land.

The **rental market** emerged in the form of room renting. Some earlier arrivals built structures comprising clusters of single rooms with outside access, which were rented to individuals or families as room tenants, a practice known as 'renting cottages'. This practice expanded when local faction fighting at Ngonyameni ward nearby produced streams of refugees in need of temporary accommodation.

'Owning cottages' is the kind of rental practice often found in TA areas, where site rental is almost unknown because the tenure rights do not vest in one person and land cannot be assigned to outsiders without going through several layers of institutional process. Room or cottage tenants are not usually recognized as full community members because they do not receive a permanent right to settle tied to acquiring land.

Room rental rates at Mgaga without electricity range from R 50-R 80, and with electricity can run up to R 150 per month. Many of the room or 'cottage' tenants are transient outsiders working locally who have rural homes and do not necessarily want to establish permanent rights in the Mgaga settlement. Some of these are professional people.

It appears that Mgaga in effect has developed individualized informal tenure along the same lines as other densifying peri-urban areas under TA structures, which did not undergo land invasions or explosive densification, or come under municipal administration. However, the community oversight function usually found in TA areas seems to be weak or absent in Mgaga. Tenure seems to work at ground level through private transactions between informal rights holders without much control from the local committee, but the more insecure forms of tenancy have not developed as a large fraction of the housing sector. Given that the conditions are not in place for housing to be formally privatized, it looks unlikely that the tenure system will change unless physical development delivery including higher-value housing is brought into the area.

Tenure at Malukazi

The development of RDP housing in the Malukazi area became an occasion for conflict which highlighted tenure insecurity in the light of institutional problems with local government structures. By comparison with Mgaga, Malukazi is a highly turbulent area. Under present conditions, the temporary freedom from violence which prevailed during the late 1990s seems to have partly collapsed back into conflict, with the struggle over control of subsidised public housing as a pivotal factor.

However, since the demarcation of the area into plots, the earlier informal character of Malukazi is changing toward the characteristics of a formal township. As this happens, the

earlier informal occupiers appear to be leaving and returning to rural areas. This outflow of older residents is said to be partly due to making profits on selling their new land and housing assets, and partly due to physical insecurity.

Out-migration due to violence and lack of personal safety has been reported again, making the area demographically unstable. Higher-income in-migrants are also arriving. Under these conditions, tenure around subsidised private housing appears to be very unstable, and this insecurity may have spread into other areas of tenure. At the same time, the general trend for the area appears to be toward full formalisation of tenure and privatisation of housing, with the higher-income in-migrant population replacing the original rural-origin informal residents through an informal market process.

Although formal housing delivery is in progress, it is reported that no title deeds have actually been issued to people receiving RDP houses or to holders of any other kind of housing stock. A very active informal market in formal housing and serviced sites has developed, with houses being sold up to three times in two or three years, without formal documentation. Houses are reportedly sold for substantial amounts without any documents other than possible handwritten receipts. This lack of formal security is allowing extensive manipulation of the housing market to take place, and appears to leave the original residents relatively insecure, while the new in-migrants with higher incomes may be less affected. At the same time, the structurally freehold or private character of the land delimitation allows a strong market to develop.

Malukazi has full service delivery due to the availability of space for services development and to the efforts of the joint ANC/IFP local committee. The area is still substantially less crowded than Mgaga. The local micro-government committee is oriented toward development goals and has been able to mobilize public works jobs and training for community members, as well as at least one large public housing scheme. A large number of community residents have also been allocated serviced sites for building. Access to this kind of land and housing asset has triggered both market and extra-market competition over resources.

Effective delivery to community members appears to have broken down due to the involvement of criminal groups in the area, who have established links to some of the committee members to get concealment of their activities. Committee members involved in intercepting subsidized housing allocation for their own benefit are reported to have used criminals to frighten or terrorize both uninvolved committee members and the community at large to prevent awkward questions about their activities. There are reported to have been a number of deaths, and residents afraid for their lives are said to be moving out again in significant numbers.

These subsidized formal houses are specifically earmarked for community members, but are reported to be diverted to outsiders who are willing to pay. A significant share of completed RDP houses are said to be retained by committee members, who rent them to house tenants for profit instead of allocating them to community members on the list for RDP housing.

Formally, RDP houses should not be sold before a five-year initial occupation period has passed, but this takes place regularly on the informal market: because of the lack of legal documentation, there is no de facto difference between houses being sold properly or improperly in relation to the five-year moratorium on transfer.

At the same time, serviced sites are being sold by assigned owners to incoming families with higher incomes, so that the higher-income families can build substantial houses with bank

mortgages. The allocated owners of the sites appear to be mostly long-time residents who have retained rural ties, and who are taking their profit on the transaction and going home to their original rural communities.

The rental market as either site-rental or room rental is reported to be declining as more higher-income households buy plots and houses in the area. The earlier system continues mainly in Lower Malukazi, the IFP-aligned area still occupied by poorer and more rural people.

Dikgale-Solomondale Area

This case is about land tenure patterns and shifting relationships within Dikgale communal area, situated in the Central Region of the Northern Province. This area is formerly part of the Lebowa homeland area. The population is made up of Sepedi speaking people under Dikgale tribal authority. The study places special emphasis on understanding of land tenure patterns in the area from a range of divergent perspectives, including the history of land acquisition and settlement, formal and informal ownership of land, structures of local authority, access to land and need for tenure reform.

The area under study is falls under jurisdiction of Dikgale Tribal Authority established in 1964 with formal control of various categories of land. The oldest parts of the area have been under tribal authority without interruption since before arrival of whites. Under apartheid rule land in the area fell under Tribal Authority. Formally, this is state land since allocated for use by the tribe but which is registered in the name of the Republic of South Africa. Between 1913 and the establishment of the South African Native Trust in 1936, additional land was bought from neighbouring white farms either by the community or by specific individuals. This land was then held in trust for the purchasers by the Ministry of Native Affairs. Generally referred to as bought farms, this land was never under direct control of either the SADT or Tribal Authority. Upon establishment of the SADT in 1936, additional land was bought and transferred to the Dikgale tribe. Yet despite the history of ownership described above, its important to note that de jure ownership of land is still with the state and not the occupants.

Administration of Land

Overall, administration of the land largely resides with the Dikgale Tribal Authority which to varying degrees delegated powers to communities (i.e., villages), village headmen (mantona) and Chief Dikgale. Powers to Tribal Authorities are largely derived from a mix of tradition and apartheid era legislation, especially the Black Authorities Act, 1951 under which Tribal Authorities were established.

Access to land is gained through membership to the tribe, but access process vary from community to community. Eligibility to accessing the land is generally based on considerations of birth in the area and, in case of being from outside the area based on community acceptance. A further requirement is that individuals remain loyal to the chief while regularly paying their tribal levies. In this instance land is allocated to households, or heads of households mainly for residential or agricultural purposes. Being a male dominated society, land is generally given to households headed by men, and women or households headed by women generally have difficulties justifying themselves as independent households.

On tribal and trust farms, households acquire land, i.e., residential stands through applications to Tribal Authority through the village headman. They may also apply for ploughing fields in the same way, but ploughing land has been in very short supply in recent years. Both residential

and ploughing land are for exclusive use of the households concerned. Access to communal grazing and other natural resources such as thatching grass and firewood, are open to all members.

On the bought farm of Doornfontein, residential stands are issued by village headman without reference to the Tribal Authority and ploughing land is obtained through negotiation with existing plot holders. In recent years, community projects, funded from external sources, houses become an additional means by which members of the community, especially women and the very poor, have been able to access arable land.

Permission to Occupy

Like rural residents of trust and tribal farms elsewhere, those in Dikgale are able to obtain Permission to Occupy (PTO) certificates through Tribal Authority and Magistrate's Offices. As mentioned elsewhere in the paper, under PTO system, households heads are granted indefinite use right to residential and/or arable plots. On the bought farm of Doornfontein, residents enjoy similar rights but no certificates are issued. All land holders share the same obligations, including payment of tribal levies and observance of traditional practices. All members enjoy equal access to the communal areas and these rights are not documented. Exclusive rights to residential stands or arable plot cannot be sold and can only be exchanged with the approval of the headman or the chief. Anyone wishing to leave the area may sell any remaining structures to a new occupant, but the new occupant must have the stand allocated to them by the Tribal Authority before taking occupation.

The great majority of people interviewed for this study felt that the current communal system, under the control of the traditional leaders, was appropriate to their needs, in terms of land ownership, land allocation and land use. There was widespread support for the principle of community control over land, including over who can access land and the right of the community control over how land is used. No support could be found within the community that supported privatisation of land. The only people who seemed to think otherwise were officials from the Department of Agriculture and provincial Directorate of Traditional Affairs. For them, the transition from communal land tenure system to private, individual tenure was both desirable and inevitable.

Concerns were raised by women, however, because often they discriminated against. For instance, they are often excluded from community decision for a such as tribal councils. They are nonetheless able to own land with all attendant tenure rights their male counterparts enjoy through some of the existing community structures. They can inherit land from husbands but are likely to lose land where in case of divorce.

Widespread evidence of confusion and uncertainty abound in the community around the legal status of land rights and practices under the communal system. The system of written PTOs has fallen into disuse, and many people have lost documentary evidence of their rights to residential or agricultural land. The system of demarcating residential and arable plots has broken down along with the old Trust regulations for the control of grazing land. No effective community-based mechanism have yet emerged to replace the regulations of the apartheid state leaving community members confused and unsure of their rights.

There is no indications that current tenure system has the effect retarding development in the area of Dikgale. For instance, several forms of agriculture have evolved over the years ranging from extensive cropping, livestock grazing and intensive horticulture and, none of our

informants felt hampered by the lack of a title deed. The current land tenure system in Dikgale-Solomondale area allows for a flexible land use system making it accessible to people of all socio-economic background including the very poor.

Once land has been obtained, it remains with the household indefinitely and can be passed on within the family. Dispossession is rare, occur only in cases of divorce or accusation of witchcraft, both which affect women more than men.

The greatest area of uncertainty based on system of land tenure relates to current debates in South Africa around whether local government or traditional leaders administration of land

SUMMARY OF EMERGING TRENDS

This section will provide summary of the trends, factors and conditions which based on case studies discussed above emerge as key to changing residential tenure security systems.

- Findings reveal that the decision to locate or reside in a particular area is based on a number of factors related to the costs of services, rentals or annual Khonza fees. People in the lower income groups (i.e, R 200 – R 1 500 per month per household) still view their access natural resources for grazing, crop cultivation and gathering of fuel woods as very important determinants of their decision to reside in one area or another.
- People in a higher income bracket (R 1 500 –R 4 000 per month per household) partly because they commute to work in other economic centres choose to reside in areas closer to major arterial routes for easier transportation. Their land use remains purely residential with little or no dependence on natural resources in the area to supplement their incomes.
- Crime, poor levels of services, the absence of community facilities and environmental degradation seem to be concerns of all township residents irrespective of tenure status and income levels.
- By linking service charges to land ownership, some local councils inadvertently discouraged people from supporting tenure upgrade initiatives. Residents of R 188 areas in particular feel threatened that if they receive title deeds to their properties and they are further forced to make use of municipal services which they cannot afford, they will run into arrears and be evicted from their properties. This phenomena leads to poorer residents seeking the support and protection of the Tribal Authority to prevent the provision of municipal services.
- Communication and co-ordination between role players involved in tenure upgrade and township formulation is very poor at present with very little in the way of shared approaches to land rights verification, township formalisation processes or service provision.
- Communication between role players (particularly the Municipality) and the residents of these areas is similarly poor. In many cases residents are not consulted or given an opportunity to give inputs into formalisation processes, rather they are approached once the deal is done and the development is underway. Fir instance, the case of a new road being developed in Daantjie where residents front gardens are being destroyed is a good example of this top-down approach. Instead of being consulted at the onset of the project residents were addressed when the road reached their doorstep. At this point they were told that the road is going to

happen anyway, that the land is state land and they have no say in the matter, thirdly they were told that if they oppose the project now the council will lose money and will not build a road for them in the future.

- Residents themselves feel very threatened by the agendas various role players purvey around and are suspicious that new projects or programmes have sinister motives behind them which will result in them being dispossessed of land or having other rights infringed upon. As such many residents favour the status quo ante rather than a move towards more secure forms of tenure.
- In terms of addressing the housing needs of a growing urban population there is a backlog of houses and new programmes such as the DLA's redistribution Programme, the Department of Housing's RDP housing programme and private sector development will in no way be able to meet the growing housing needs of the District. The influx of people into identified areas caused by a number of factors alluded to above will continue in the short to medium term. The only mechanism at present which can provide residential tenure security at present is the conversion of agricultural land into settlement areas through allocations made by tribal authorities through PTOs. Whilst this process has been criticised for various environmental, political and social reasons it is at present the only system that affords poor people the opportunity to access land for settlement purposes.

Conclusion

Beyond the general points arising, as summarised above, the research which we are conducting throws up a number of major questions concerning the way forward towards greater residential tenure security at least in South Africa. As noted, the predominant means of securing tenure have been presumed to lie in formal, private, individual forms. Yet our research shows that many, many people probably find that the non-formal, to some extent customary, and in general hybrid forms of tenure which they have, actually meet their needs. In these circumstances new forms of planning will be required which are more able to take seriously the conditions under which people seek and enjoy the varying forms of tenure and associated security which actually characterise our settlements. But those are subjects for further reports on our research.

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