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Alternative Tenure Options as a Stepping Stone for Urban Land Reform: The Case of Kwa Mai Mai Muthi Market

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Alternative Tenure Options as a Stepping Stone for Urban Land Reform: The Case of Kwa Mai Mai Muthi Market

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A research report submitted to the Faculty of Engineering and the Built Environment, University of the Witwatersrand, in fulfilment of the requirements for the degree of Masters of Built Environment in Housing and Human Settlements.

01 February 2024

ABSTRACT

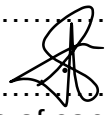
This research uses qualitative methods to investigate the case of the Kwa Mai Mai muthi market located in the central business district of Johannesburg where over the decades informal traders have converted their trading units into residential homes. This case is used to respond to the research question, *'To what extent is taking administrative action to improve land tenure by offering communities rights to occupy urban land feasible and necessary for advancing the urban land reform agenda?.'* The research acknowledges that popular approaches to improving tenure by converting insecure tenure rights to statutory ownership through the Deeds office has had limited success and resulted in efficiencies due to the high costs and the resources intensive nature of this approach. Instead, the research recommends a necessary transition to improving tenure in innovative, context-specific ways that work to build on existing settlements through taking low-cost and low LOE administrative action.

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DECLARATION

I declare that this research report is my own unaided work. It is being submitted to the degree of Masters of Built Environment in Housing to the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination to any other University.

……



……
(Signature of candidate)

……2nd…day of……February 2024…….

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I would also like to acknowledge the financial support provided for my studies by the National Research Foundation through the University of the Witwatersrand, Johannesburg. In acknowledging this financial contribution I also highlight that the opinions and views expressed in this report and conclusions arrived at are those of the author and do not represent those of my funders.

To my friends and family, thank you for all the support and kindness you showed me throughout this journey. Finally, I would like to thank the community of Kwa Mai Mai and all other participants who were involved for sharing their stories and opinions with me.

Izandla zidlula ikhanda, ngyabonga zingane zakwethu!

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Chapter 1:

Introduction



1.1 Background

‘Unplanned settlements are here to stay’ (Chitonge and Mfune, 2015: p. 212). Urban areas are increasingly becoming a critical site of struggle for land for residential purposes’ (Mpofu, 2017, p. 97). This follows the exponential urbanisation rates that are witnessed across the global South, with over 50% of people living in cities (UNCTAD, 2021 and UN-Habitat, 2014). In South Africa, over 60% of people live in urban areas with 44,4% of them living in poverty (Huchzermeyer et al, 2019). Urbanisation is not manifest in parallel with economic growth or infrastructural development, and this has expanded vulnerability and deprivation, leading directly to the urbanisation of poverty (Turok, 2016). This, coupled with extreme land ownership and land use inequalities, has resulted in increased contestation over prime urban land, leaving the urban poor precariously with insecure tenure (Uwayezu and T. de Vries, 2019).

Nonetheless, the urban poor are not politically passive actors in urban processes (Banks et al, 2019). The rise of land activism within urban areas in the form of extra-legal occupations of ‘vacant’ or underutilised urban land is proof of this (Mpofu, 2017). This has been propelled by the mismatch between the high cost of urban living and the low incomes of urban dwellers. The land reform programme in urban areas has failed to enhance the urban poor’s access to well-located urban land due to the complexity of extending ownership rights to the poor in legal and planning terms. It is time for this approach to change, and extending occupational rights to those in extra-legal arrangements could be the way to effectively do this.

As urban dwellers have become aware of the inequality in access to urban land, they have informally occupied urban land with these invasions growing more aggressive and political over the years (ibid). Effectively, this research explores the potential of the provision of well-established occupational rights in enhancing the urban poor’s access to urban land and advancing the urban land reform agenda. Acknowledging that extra-legal living arrangements are here to stay, the research seeks to understand the impact of occupational rights on the livelihood strategies, security, and general well-being of those living precariously in urban areas. Overall, the

intention is to establish the feasibility and necessity of improving urban tenure security through innovative solutions that build on existing community driven systems instead of ownership.

Kwa Mai Mai traditional market in the inner city of Johannesburg has been selected as a case study to explore this issue. The Kwa Mai Mai traditional market is one of the oldest traditional markets in the city. It was originally used as a horse stable and as Johannesburg industrialised, it was converted to a traditional market. It was governed and managed by the West Rand administrative board(WRAB). In 1978 WRAB abandoned the market with no notification. After the market was abandoned the traders started living in their shops for convenience and to protect their businesses. The market has continued to operate both as a commercial and unofficial residential space that is now owned by the city of Johannesburg metropolitan municipality. The market doubles as a home and workplace for the informal traders, giving them access to well-located urban land and a gateway to urban living. However, this living arrangement is extra-legal, and comes with multiple insecurities and vulnerabilities.

1.1 Problem Statement

Apartheid planning resulted in socio-economic and spatial exclusion which urban land reform has the potential to redress (Mpofu, 2017). However, this potential has not been tapped into because post-apartheid debates around the land question tend to downplay the urban manifestations of land struggles (Chitonge and Mfume, 2015). The Centre for Development Enterprise (CDE) conducted a survey that revealed that only 9% of black people that are not professional farmers had clear farming intentions (Mpofu, 2017). This reiterates the need for a focus on urban land reform because the effect of the urban pull is undeniable.

Urban areas offer access to infrastructure such as water, sanitation, and electricity and facilitate livelihood strategies (Beyers, 2013). In the case of urban areas, the land question has often been reduced to a housing question meant to be addressed through housing projects which are often limited in scope and impact as they continue to move people to the peripheries of cities (Beyers, 2013). Informal or extra-

legal arrangements are often de-legitimised and subjected to draconian practices by officials (Huchzemeyer, 2011) however, they have a significant impact on the lives of residents because simply having an address can lead to many opportunities (Beall and Fox, 2009).

Across the country, many of those living precariously with insecure tenure do not live with the constant threat of eviction. However, their living arrangements are criminalised and illegitimsed while the governance structures turn a blind eye to the very harsh realities that plague these areas. Real South African issues are ignored while new programs are framed under urban development models that are based on the concepts, philosophies, and development conditions of the global north and are implemented on an ongoing basis, like the smart cities movement, advocated for by the City of Johannesburg (UN-Habitat, 2014). In choosing to ignore South Africa's prevailing challenges like those of tenure insecurity and the proliferation of informal settlements, the status quo is maintained. The development sector needs to start responding to actual on-the-ground challenges and improving the conditions of those who have to live this way. Improving the tenure security of those living precariously on prime urban land will achieve the following outcomes:

1. It will grant the urban poor access to the city and all the opportunities and services it has to offer;
2. It will force municipalities to acknowledge the communities living in these areas and improve their living conditions as many of these communities live in inhumane conditions;
3. It can assist in the fight to eradicate poverty as UN-Habitat identified tenure security as one of the most importanttoolsl to help eradicate poverty (UN-Habitat, 2014);
4. In addressing the country's urban tenure insecurity challenge, especially among the black urban poor population, has the potential to advance the urban land reform agenda.

1.3 Aims and Objectives

The overarching aim of the research is to explore the feasibility of improving the tenure security of urban dwellers who currently live in illegal precarious arrangements. This follows an acknowledgement that the prevalent approach to address the urban land and housing shortage challenge by rolling out housing projects that are centred around providing home ownership in peripheral settlements, with no connection to the urban fabric has been highly inefficient. Additionally, the main research question seeks to investigate if improving tenure security in this way is necessary by exploring how living precariously negatively affects the quality of life and strategies of community members through the Kwa Mai Mai case. To help reach this, the research objectives include:

- Understanding the drivers and contextual backdrop behind the development of Kwa Mai Mai into a residential community;
- Understanding the living conditions and the resident's engagement with regulatory bodies like the city;
- Exploring the impact of living with insecure tenure on prime urban land in Johannesburg;
- Investigating the feasibility, desirability, and necessity of extending legitimate rights to occupy land to improve tenure security;
- Ascertaining the potential for using this administrative action as an instrument for advancing the urban land reform agenda.

1.4 Framing an Inquiry

The research question that best responds to the problem highlighted above is, therefore:

To what extent is taking administrative action to improve land tenure by offering communities rights to occupy urban land feasible and necessary for advancing the urban land reform agenda?

Sub-Questions

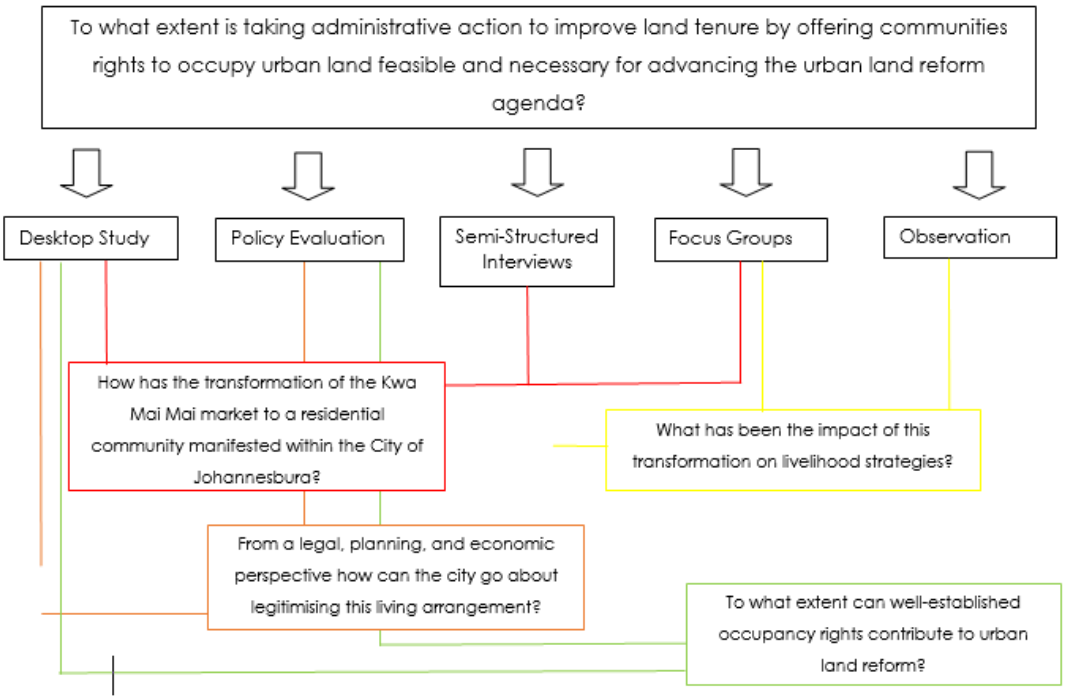
1. How has the transformation of the Kwa Mai Mai market to a residential community manifested within the City of Johannesburg?
2. What has been the impact of this transformation on livelihood strategies?
3. From a legal, planning, and economic perspective how can the city go about legitimising this living arrangement?
4. To what extent can well-established occupancy rights contribute to urban land reform?

1.5 Expected Findings and Outcome

The research seeks to understand the living conditions and the dynamics at the Kwa Mai Mai market while analysing on-the-ground encounters of the consequences of living with insecure tenure in extra-legal arrangements. These first-hand encounters will help supplement the desktop research that is already alluding to the many difficulties and vulnerabilities that may be experienced by people living under these conditions. Understanding what the cost of insecure tenure is on the quality of life and general living conditions of communities combined with understanding what the potential for improvement could be if tenure security were to be improved, will allow the research to build a case for empowering communities with improved tenure through administrative action. This will help in contributing to discourse and set the foundation for a rather necessary cost-benefit analysis of the situation. The Case of Kwa Mai Mai has been specifically selected due to its prime urban location in the heart of the Johannesburg CBD and the number of years the community has been living in this extra-legal arrangement.

1.6 Research Methods

The research is both descriptive and exploratory as it seeks to gather and report on how the extra-legal arrangements are manifest in urban South Africa while investigating the cost to communities living with insecure tenure (Ritchie *et al*, 2013). This is compared to the benefits and potential opportunities for improving this tenure to support an exploration of the feasibility of innovative alternatives. The methods used in this research are qualitative and seek to uncover the nuances of this survivalist phenomenon (Sandelowski *et al*, 1995). As depicted in the diagram below, the research methodology is structured around the main research question and the sub-questions to ensure that each question is appropriately answered.



(Figure 1.6) Schematic diagram of Research Methods. (Author's own). The diagram illustrates how the research methods were all directly linked to one or more of the research questions to ensure that all questions are responded to appropriately.

1.6.1 Desktop Study

The desktop study was an integral part of the research because it helped gain an understanding of the contextual background of the research area and the selected case study. This method provided background information on the history of South African land management and urban tenure insecurity while providing a firm conceptual and theoretical foundation for the research (Neville, 2007). This research method has also allowed the research to present diverse use cases of alternative tenure throughout the global south while informing the feasibility and necessity of improved tenure for communities.

1.6.2 Policy Evaluation

The policy framework on land management and particularly tenure-related matters is extensive and has a long, rich history. Policy evaluation allowed the research to explore this policy framework which contextualised the research from an urban planning and legal perspective (Neville, 2007). Understanding the existing policy framework allowed the researcher to come to informed conclusions on the feasibility of improving land tenure through administrative action.

1.6.3 Semi-Structure Interviews and Focus Groups

Due to the criminalisation of extra-legal living arrangements, the experiences of communities and the complex dynamics on the ground are not well documented. The semi-structured interviews allowed me to interact with residents and traders in person and gain insights from their lived experiences. Researchers and academics make many assumptions about what communities could possibly be feeling or needing, this research method also allowed me to pressure test some of the research assumptions including whether communities would find more security from improved tenure (Marshall, 1996).

1.6.4 Observation

Observation is a key research method for collecting empirical data, some of the best findings can be gained from simply immersing oneself into the study area and observing as communities go about their day (Neville, 2007). In a case study area that is not well documented, with a population that is misunderstood, this is an invaluable research method that helped me understand the nuances of the on-the-ground dynamics.

1.6.5 The Sample

Purposive sampling was used to maximise the value generated from the semi-structured interviews and the focus group discussions (Margaret, 1995). These research methods were approached from the perspective of the traders and residents at the Kwa Mai Mai market and city officials and representatives. These include:

- Induna yakwa Mai Mai (The customary headman)
- The chairperson of the democratically elected committee
- Three city officials/representatives
- A group of 6 residents who have been living at the market for more than 20 years for the focus group.
- 11 residents for semi-structured interviews.

Fortunately, I had explored the market for a smaller project in the final year of my undergraduate degree in urban and regional planning and already have contact details and established repour with the chairperson at Kwa Mai Mai. Prior to commencing with the research I had reached out for assistance in identifying the best participants for the research. The community is weary of outsiders, to mitigate against the possibility of participants being unwelcoming or closed off he offered to personally introduce me to all of them before I conduct any of the interviews. An early attempt to identify the city department or officials who would be responsible for overseeing and managing the market has been made with no success yet but alternatives are being explored.

1.6.6 My Positionality and Identity as a Researcher

A critical analysis of how my identity and positionality will impact my time out on the field:

- From past experience doing research in customary spaces, my identity as a young woman created a barrier when trying to engage senior customary leadership who are typically unwelcoming and may at times not take me seriously.
- Over the years I have spent quite a bit of time at the market which makes me familiar with the area, the people, the language, and the acceptable code of conduct which made it easier for me to engage community members.
- Due to the illegality of the living arrangement, my coming into the market as a student and researcher from the University of the Witwatersrand made it difficult for market residents to engage with me freely and honestly.
- I started off the research with very strong opinions and set assumptions and had to be careful not to impose any of these on the participants.

1.7 Limitations of the Study

This research was undertaken from August 2021 and was constrained by regulations and restrictions imposed as a result of the COVID-19 pandemic. Many people worked from home which made it difficult to reach the city officials even in the early stages, this limited the number of representatives from the municipality that I was able to gain access to. Additionally, traders at the market worked from the early mornings till very late in the evening and some were not open to taking time off their workday to speak to me which limited the number of people I was able to speak to. Lastly, there were many concepts and component parts of the study that were not explored due to time constraints and word count limitations and not living in Johannesburg meant I was not able to visit the site as often as I would have liked due to financial and time constraints.

1.8 Reflecting on Ethical Considerations

There are many ethical considerations that needed to be made while conducting the study. As I was investigating people's lived experiences which potentially could have had consequences on their well-being, I was mindful of people's boundaries. When I began the interviews, I ensured that the participants understood what the research entailed and stipulate that they would not receive any compensation for their participation, this way I avoided making any false claims. Lastly, I needed to ask my questions in an open manner that allowed the participants to formulate their own responses, this helped me remove myself from the research and ensure that I do not project my opinions onto the participants.

1.9 Chapter Overview



Chapter 1: Introduction (Mlindo the Vocalist ft Sjava – Egoli)

The song chosen for the introduction chapter is an afro pop song by Mlindo the vocalist and Sjava titled *Egoli.* The song narrates the story of young men and women leaving the comfort of their homes and migrating to Johannesburg in pursuit of better livelihood opportunities. It speaks of the many unexpected challenges and their difficult living conditions in Johannesburg against the backdrop of the need to stay and make it work in order to provide for their families. This is the case for many people living precariously with insecure tenure in urban areas, it is a necessary act of survival.



Chapter 2: (In)Secure Tenure and Innovative Intermediate Tenure Systems from the South (Samthing Soweto – Omama Bomthandazo)

The literature review explores the concept of tenure from different schools of thought and notes a need for a shift to being innovative in efforts to improve the security of tenure of the urban poor while providing key use cases of innovative intermediate tenure systems from different parts of the global south.

The song chosen for the second chapter is an afro house song by Samthing Soweto titled *Omama bomthandazo*. The song describes the everyday struggles of the township and informal settlement dweller and romanticises their resilience and innovative nature in the same way I have found urban literature to romanticise precarious urban living as the urban poor's triumphant innovation instead of portraying it for what it is: a survivalist strategy that needs to be addressed.



Chapter 3: Black Urban Land Hunger and Contemporary Land Tenure Reform Mechanisms (Hugh Masekela – Sechaba)

The third chapter sets the context by covering the long and unfortunate race-based South African land management policy framework that resulted in the current land tenure insecurities among previously disadvantaged groups. The chapter also explores the contemporary land management policy and the opportunities that it presents for urban land reform.

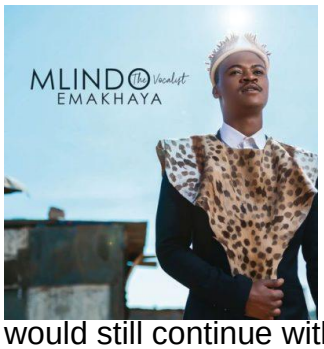
The song chosen for the chapter is a song by the iconic Hugh Masekela titled *Sechaba*. The song narrates the harsh realities of previously disadvantaged groups at the time of the implementation of race-based land laws and speaks to the unfathomable consequences of these on every aspect of their lives. This was a pivotal era that shaped the current land tenure dynamics and related challenges in South Africa.



Chapter 4: Kwa Mai Mai (Blaq Diamond – Sbhekane)

The fourth chapter presents the case study area as a diverse, culturally rich community of South African entrepreneurs. It explores the transition of the Kwa Mai Mai market from a commercial space into a bustling residential community and the consequences of this transition.

The song chosen for the chapter is an afro pop song by Blaq diamond and Thee legacy titled *Sbhekane*. It celebrates the cultural diversity and richness of South Africa. This was fitting as the diversity and cultural richness of the case study made it a point of interest.



Chapter 5: Insecurity for Survival (Mlindo the Vocalist – Ancestors)

The 5th chapter analyses the data collected from the fieldwork positioning the use of the Kwa Mai Mai market as a residential space necessary survivalist strategy that residents would still continue with even if the constant threat of eviction were to be introduced. It highlights the cost of insecure tenure, and the benefits of living on prime urban land for the urban poor, calls out inadequate governance by the city and calls for bold, intentional administrative action that would improve the tenure security of residents without changing property ownership.

The song chosen for the chapter is an afro pop song by Mlindo the Vocalist titled *ancestors*. It talks about the constant hardship life presents and the need for a helping hand at times. It is not enough to acknowledge that there are people living in vulnerability behind the high glass buildings of African cities, corrective action needs to be taken.



Chapter 6: Conclusions and Recommendations (Sjava – Hlasela)

The 6th and final chapter takes a look back at the research inquiry, considers all the findings and presents a possible way forward that is likely to capitalise on the opportunity for advancing the urban land reform agenda.

The song chosen for the chapter is an afro pop song by Sjava titled *hlasela*. The songs speaks about the urgent need to rise up and take action to change the status quo. This research is a call for action.

Chapter 2:

(In)Security of Tenure and Innovative Intermediate Tenure Systems from the South.



2.1 Background

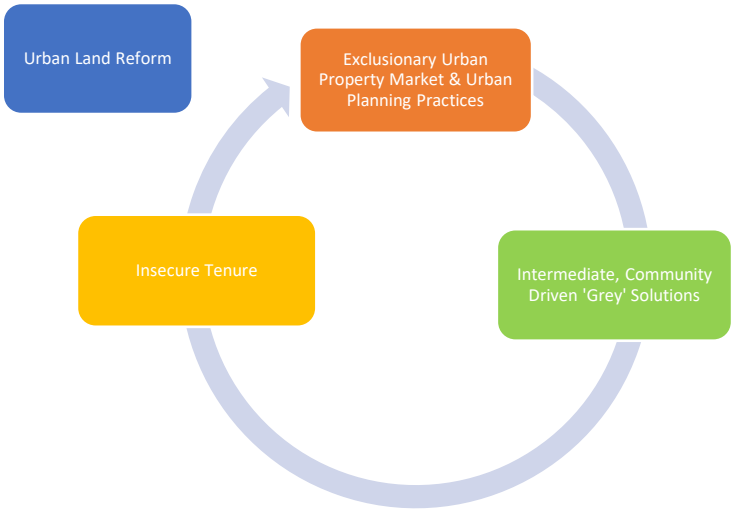
‘‘Urban segregation is not a frozen status quo, but rather a ceaseless social war’ (Davis, 2006)’ (Beyers, 2013 p. 965)

Urban land is an enabling asset that serves as a gateway to accessing other physical assets like infrastructure, services, income-generating opportunities, and facilitating inclusion into social networks (Beall and Fox, 2009). The urban poor and previously disadvantaged groups have limited negotiating power when it comes to urban land access because urban property regimes exclude them from legitimately participating in the market (Alsayyad, 1993). The mechanisms that exclude these

groups from the urban property market include the government's inability to create adequate employment opportunities and provide affordable housing options for the poor who have limited financial resources (Banks, Lombard and Mitlin, 2019). This results in legitimately accessing cities and all the opportunities they have to offer unattainable for the majority of the population forcing them to break regulations to access shelter in these areas (Ibid).

As the urban poor have not remained passive actors in this regard, as will be demonstrated in the 4th chapter, an upsurge of new urban land activism has been observed in many developing countries (Mpofu, 2017). In some parts of the world, these have been aggressive while others have remained passive, hidden in the shadow for years. These include the occupation of 'unused' publicly or privately owned land and the establishment of intermediate systems to maintain and govern these settlements. This is manifest as informal settlements, squatting and many other precarious living arrangements where occupants have no security of tenure and may live with the constant threat of eviction. An exploration of land tenure, its regulatory failures and intermediate tenure systems is explored here to examine the validity and necessity of promoting tenure improvement mechanisms that are not tied to establishing new ownership but building on these existing intermediate systems.

2.2 Conceptual Framework: Failed Urban Land Reform and the Cycle of Urban Exclusion.



(Figure 2.2) Conceptual Framework. (Author's own). Conceptually, the challenge starts with the persistence of exclusionary and elitist urban property markets and planning practices which exclude the urban poor from the urban fabric. This forces this segment of the population to innovate in ways that may be breaking regulations to gain access to cities by driving intermediate housing solutions that may look like the development of informal settlements, squatting, and homelessness. This process leads to a substantial proportion of urban dwellers living precariously in cities with insecure tenure. Urban land reform sits idle on the side as a policy framework that could be leveraged to address this challenge but so far, this remains a missed opportunity.

2.3 Tenure Insecurity

2.3.1 Defining Land Tenure

Land tenure can be defined in numerous ways, through different lenses and from different schools of thought. Traditionally, tenure is defined as the relationship between people, land, and its product (Payne, 2002). It signifies the mode by which land is held or owned and attached to it are various degrees of rights to occupy, use, develop, inherit, and transfer land (Barnes, 1985). This definition is closely tied to notions of rights, the law, and land as a commodity with an exchange value, this definition of tenure is what is recognised by the bureaucratic structures governing urban areas. Theorists like Hernando de Soto perceive secure land tenure to correlate directly with land ownership, that is, tenure is only secure when one possesses a title deed. His work asserted a direct correlation between socioeconomic development and land ownership (Payne, 2003). This work influenced many international agencies like the World Bank and national

governments, gearing the policy and implementation trajectory to focus on ensuring the security of tenure by encouraging land ownership.

Conversely, land tenure can be defined from a human development perspective (Abdillan, Manat, and Awang, 2022). In this way, tenure can be defined as an individual or community's perception concerning their rights to a piece of land (Ibid). This school of thought understands land tenure from a subjective perspective with the key element being assurance. In this case, tenure is considered secure if the individual or community occupying the land perceives minimal risk of losing their land-related assets (Ibid). This analytical lens is significant because the urban poor has been observed not to perceive land as an investment or asset, for them, its significance lies in its ability to facilitate access to livelihood opportunities, social amenities, and social networks (Kihato and Berrisford, 2006).

Another definition of land tenure is through the analytical lens of spatial justice (Uwayezu and T de Vries, 2019). The concept of spatial justice, pioneered by David Harvey focuses on integrating the poor into the urban fabric as a response to spatial injustice repeatedly depriving the urban poor of access to urban land and attached urban amenities (Ibid). This definition of tenure focuses on the social value of land which calls for respect for the social function of land rather than its economic function (Ibid). Spatial justice is meant to offset social and spatial marginalisation and promote the recognition of the right to equitable access to urban resources by urban dwellers (Ibid). In this sense, land tenure can be defined as a right to access urban land by all, even without having legal ownership.

There are three recognised forms of land tenure, namely, *de jure*, *de facto*, and perceived tenure (Abdillan, Manat, and Awang, 2022). *De jure* land tenure refers directly to an individual's possession of a title deed which in turn gives them legal control of the land with very minimal outside interference (Ibid). This form of land tenure derives from the legal recognition of rights to the land, this is perceived to ensure the most intense and efficient use of land (Payne, 2002). De jure land tenure is found in areas of high land value (urban areas) and offers strong security of tenure in South Africa which is guaranteed through the Constitution of the Republic of South Africa Act (No.108 of 1996), and the Deeds Registration Act (No. 47 of 1937).

De facto land tenure refers to the protection of land rights through social, political, and administrative measures, without the possession of a title deed (Abdillan, Manat, and Awang, 2022). This form of tenure manifests through the recognition of informal settlements through politically motivated visits (e.g., election campaigns), the provision of services, or inclusion in a population census which serves as assurance to the settlement dwellers. This ties closely to land tenure through the lens of human development and can be interpreted as a form of recognition by the state even without any formal documentation (Ibid). Essentially, an individual or community's rights to land are protected by social and political institutions. Lastly, perceived tenure views security through a psychological lens by considering an individual or community's perception of the non-plausibility of their eviction (Abdillan, Manat, and Awang, 2022). In this case, valuable land with competing interests (urban land) does not lend itself to the perceived security of tenure as the threat of eviction is constant.

However one chooses to define land tenure, it ultimately intimately intersects relationships between people, culture, historical rooting, politics, law, and immense ambiguity (Payne, 2003).

2.3.2 What is Secure Tenure?

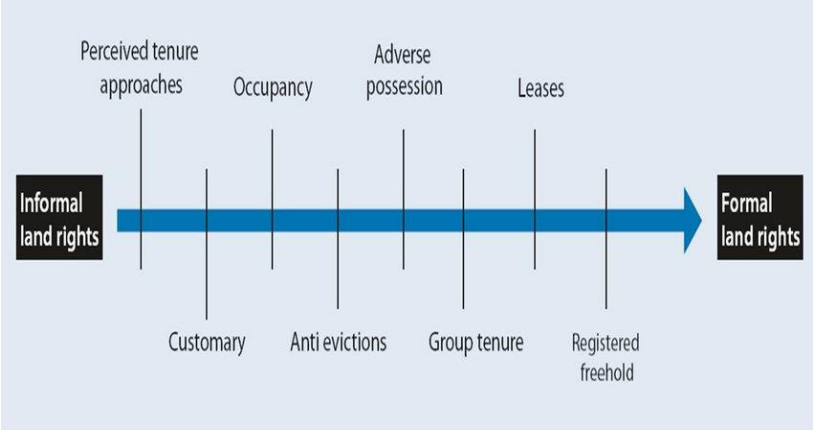
Tenure is traditionally considered secure when occupants or owners of the land have guaranteed protection by law against forced evictions (Lasserve & Selod, 2007). Therefore, insecure tenure would be any relationship between people and land/property that exposes them to the risk of forced evictions. Insecure tenure is arguably one of the most important development challenges for the urban South (Kihato and Barrisford, 2006). There is observed consensus that ensuring secure tenure could help alleviate poverty and vulnerability amongst the urban poor, this was propelled by UN-Habitat's advocacy in the 90s (Jenkins, Smith and Wang, 2007).

Lasserve and Selod (2007) presented two processes that can be undertaken to improve tenure security namely, tenure formalisation and administrative recognition of occupancy rights. Tenure formalisation is a process that involves integrating informal tenure into the official statutory governing systems recognised by public

authorities through policy reform. On the other hand, the state or local authorities could extend administrative recognition of occupancy rights to individuals or communities in the form of a short-term lease or a permit i.e., permission to occupy (PTO) slips administered in rural South Africa. This research calls for a shift in focus from tenure formalisation to administrative recognition of tenure rights as this is a low-effort, cost-effective alternative to tenure formalisation.

2.3.3 The Land Tenure Continuum

Due to the dynamic nature of land tenure, it is impossible to classify it as either formal (considered to be secure) or informal (considered to be insecure) (Payne, 2003). In his inspired and in-depth project across 19 countries in the South, Geoffrey Payne (2002) emphasised that tenure is not a concept that can be perceived to be black and white, instead different tenure options exist along a continuum ranging from a pavement dweller (the most insecure) to a household with a secure title deed or lease agreement. Tenure is a dynamic concept that is further complicated by its intimate relationship with people (Barnes, 1985). This dynamism is manifest in the land tenure continuum, adapted from (Fabian, 2018).



(Figure 2.3.3) The Land Tenure Continuum. (Adapted from Fabian, 2018). The land tenure continuum clearly demonstrated the fluidity of diversity that exists within the land tenure debate. It highlights that tenure isn't a fixed term but rather it exists along a continuum with varying rights and systems of governance.

However, two tenure systems predominate land management systems in South Africa namely, private statutory tenure systems and customary systems. Private

tenure systems ensure the most efficient use of land and clear, well-documented relationships between the land, landowners, and the state (Ibid). This tenure system is perceived to be the embodiment of legitimacy as it is guaranteed through legal registration governed by the Deeds Registration Act no. 47 of 1937 (Kihato and Barrisford, 2006). Customary tenure systems are based on the principles of communal ownership (usually through a trust) and man's role on this land is one of stewardship. Although not as closely regulated as private tenure it is guaranteed through customary law, in terms of the Traditional Leadership and Governance Framework Act (TLGFA) (No. 41 of 2003) (Budlender, 2011). The two tenure systems explored above only form three points on the land tenure continuum, highlighting the need for a deeper understanding of the complexities encapsulating tenure.

There is a clear rural-urban divide between these two tenure systems which is no longer appropriate because over 60% of South Africans live in urban areas with 44,4% of them living in poverty (Huchzermeyer et al, 2019). Private tenure systems are inaccessible to the poor due to the high costs associated with them which are continually being accelerated by the impact of globalisation on the commercialisation of urban land (Payne, 2002). The inadequacies of these formal systems exclude the urban poor and lead them to leverage informal systems to access prime urban land (Kihato and Berrisford, 2006). Accessing well-located urban land is the top priority for the poor because it unlocks access to other benefits like livelihood opportunities and public services (Huchzermeyer et al, 2019). The result of these parallel land occupation systems is what this paper terms 'Intermediate tenure systems'. Physically, these come in various forms that blur the lines between legality and illegality. The most prominent form is informal settlements where stands are allocated with no authorisation either on public or private land, it could also be backyard dwellings which are most prominent in the former locations, or even using property authorised for other uses (commercial or trade) as residential spaces- this is what the research focuses on.

2.4. A Shift Towards Security?

2.4.1 A Need to Innovate

The Brundtland Commission identified urban poverty, poor governance and (un)sustainable cities and insecure tenure as key challenges to achieving sustainable urban development (Jenkins, Smith and Wang, 2007). Urban planning emerged in Europe to respond to rapid urbanisation and industrialisation, and from that period it has evolved to respond to changes in the European context e.g. in the post-war period and with changes to the types of government (Ibid). This flexibility and adaptability have not been evident in urban planning's adoption in cities in the global south (Watson, 2008). There is a big gap between contemporary planning approaches and the consistently growing challenges of urban poverty, spatial fragmentation, inequality and exclusion(Ibid). In this context, the current approaches to planning and development are of limited use with Africa being in the midst of parallel transitions while vulnerability continues to spread out (UN-Habitat, 2014). Evidently, there is a need to rethink approaches to development and planning and promote approaches that are innovative, context-specific and have real potential to advance sustainable urban development and promote the creation of sustainable human settlements.

2.4.2 Understanding the Needs of the Urban Poor

Tenure is foundational for any efforts to improve living conditions for the poor (Payne, 2002). The urban poor does not prioritise the role of urban land as an asset or investment, for them, it plays a bigger role as an entry point to the city with access to employment opportunities, income generation through home-based businesses, access to services, and building social networks (Kihato and Berrisford, 2006). Although South Africa has a strong culture of ownership as demonstrated by the implementation of the housing component of the RDP (Huchzemeyer and Karam, 2006), intermediate tenure systems offer the urban poor access to all these, although in a more precarious nature.

Before delving deep into these intermediate tenure systems, it is important to understand that the urban poor cannot be piled under one umbrella and perceived to have the same needs and priorities. Geoffrey Payne (2002) presented a first attempt

to identify different archetypes within the urban poor which have shaped thinking and approaches in development that is meant to serve the urban poor. Firstly, there is the poorest segment of the population that generally does not have regular employment and upholds the culture of 'mgerezo' *(hustle)*for survival (Payne, 2002). This subgroup prioritises having a prime urban location close to any employment opportunities they can access, especially since 50% of South Africans spend over 20% of their income on transportation (Van Niekerk, 2018). This subgroup simply cannot afford the transport costs associated with peripheral locations, so proximity is more important than long-term tenure security (Payne, 2003). The second subgroup is the 'middle-poor', this group may have access to some informal employment or entrepreneurship opportunities, but the nature of their work is still very precarious and requires them to be in prime urban locations (Ibid). This group does prioritise some security, but the location is still the top priority. The final group is the upper low-income group, they typically have regular employment, and they prioritise long-term tenure security over the location.

Urban planning and development approaches tend to ignore the needs of the poor and in instances where these needs have been incorporated this subgroup is perceived to be made up of the same types of people with the same needs. Payne's analysis introduces a nuance to approaches to development for the urban poor that immediately points to a need for policies and programs tailored to the diverse nature of this population's needs and their living arrangements. The umbrella approach of the housing component of the RDP is a key example as it was formulated with the intention of being able to hand over a tangible asset to beneficiaries. As this was done based on the assumption that a physical housing structure with a title deed is important to all poor people living with insecure tenure in cities, the unintended consequence has been the observed abandonment of these houses and a return to vulnerable inner-city conditions for individuals who value location and access to opportunities more than gaining housing as an asset.

2.4.3 Global Policy and Implementation Shifts over the Years

It is argued that the existence of informal systems is a result of failures within the statutory system to efficiently provide adequate and well-located land for the urban poor (Kihato and Berrisford, 2006). Over the decades this has increasingly been acknowledged not only by academics and theorists, recently, but international development agencies, national development institutions, and national governments have also slowly come to acknowledge this (Jenkins, Smith, and Wang, 2007). This can be seen to manifest as the romanticisation of the struggle of the urban poor living precariously in informal arrangements, seen as a display of resilience and creativity (Banks, Lombard, and Mitlin, 2019).

Nonetheless, it has also translated to an evolution of the state's approach to citizens who are living in extra-legal arrangements in the global South over the centuries (Huchzermeyer, 2011). Initially, the responses to these kinds of settlements were draconian, including forced eviction, demolition, and the blatant criminalisation of informality (Banks, Lombart, and Mitlin, 2019). During this period informal housing and informal living arrangements were considered illegitimate and their improvement and integration into the city fabric fell behind the backdrop of urban competitiveness (Huchzemeyer, 2011). This was followed by a period of 'slum' eradication legitimised by the 'UN Millennium Development Goals slogan, cities without slums' (Huchzermeyer and Karam, 2016: 89). Throughout the global South there was a strong preference for housing programmes that focused on home ownership, mortgage financing, and resettlement. These approaches had limited impact and unintended consequences including, the poor not being able to keep up with the cost of home ownership, resettlement beneficiaries moving back to informal settlements due to lack of access to livelihood opportunities and social amenities in the peripheries (Porio and Crisol, 2004).

Recently there has been a recognition and acknowledgement that these approaches have limited impact and that the mere existence of these systems indicates that the institutional and regulatory framework is not suitable for the prevailing conditions (Kihato and Berrisford, 2006). Not only does this manifest physically in space, but it also inadvertently adulterates the legitimacy of every country's statutory law (Payne, 2002). A legal system cannot be legitimate if it excludes most urban dwellers because the larger the segment of the population that cannot conform to the legal system, the more 'grey' arrangements emerge, leading directly to a reduction in

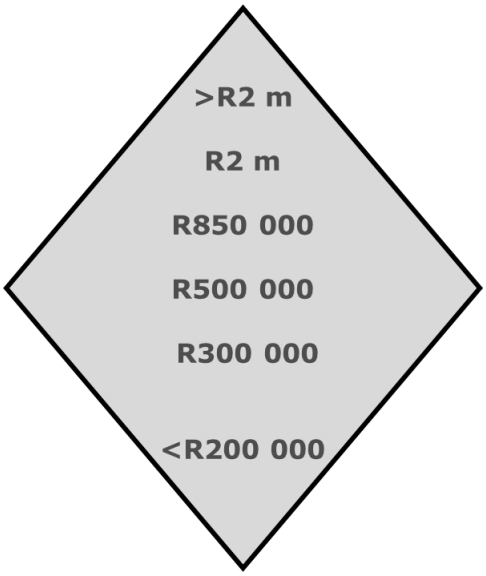
respect for the law (Ibid). However, this acknowledgement has led to a paradigm shift toward the application of more innovative and flexible housing programmes for improving the security of tenure (Abdillan, Manat, Awang, 2022). This has been supported by global development agencies with the Habitat Agenda declaring that access to land and secure tenure are both strategic prerequisites for 'the provision of adequate shelter for all and the development of sustainable human settlements' (Lasserve & Seldon, 2007 p.3). Secure land tenure has also been recognised as an integral part of the fight against poverty and safeguarding secure livelihoods for the urban poor (Ibid).

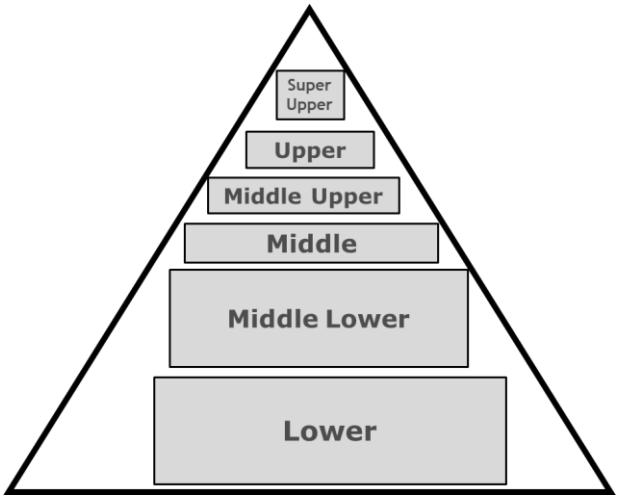
2.4.4 Current approach: South Africa

In South Africa, extreme inequalities exist concerning land ownership and housing access due in part to the territorial segregation and political exclusion of the urban poor and previously disadvantaged groups (Kloppers and Pienaar, 2004). The entire South African housing market is made up of 14 million households. 9 million (64%) of these households qualify for fully subsidised housing through the Reconstruction and Development Act (No. 7 of 1994) because they all earn below R3500 each month (Ariyan, 2021). A further 4.5 million households (32%) qualify for partially subsidised housing through the Finance Linked Individual Subsidy Programme (FLISP) because they earn between R3500 and R2200 each month (Ibid). The remaining 500 000 households (4%) are the only households in the entirety of the South African housing market who can realistically afford to provide themselves with formal housing without any government assistance (Ibid)

South African Housing Supply South African Housing Demand

(Figure 2.4.4) South African Housing Supply vs Housing Demand*.* (Ariyan, 2021) A graphic depiction of the mismatch between housing supply and housing demand in South Africa highlights how the country has the biggest subsidised housing market in the globe. This depicts how unattainable housing in general is to the majority of the population, especially in urban areas where competition for housing and land drives up the prices.





The statistics above are a result of the past spatial injustices which have led to South Africa having the highest proportion of households (96%) qualifying for housing subsidies globally (Ibid). This 96% includes households that qualify for full housing subsidies as they earn below R3 500 per month (64%) and households that qualify for partial housing subsidies as they earn below R22 000 per month (32%). This has been the driving force behind South Africa having a comprehensive land reform programme that is guaranteed through the Constitution of the Republic of South Africa Act (No.108 of 1996), the Land Reform: Provision of Land and Assistance Act (No. 126 of 1993). The South African land reform programme has three pillars namely, land restitution, land redistribution, and the upgrading of tenure rights. Land redistribution aimed to expand access to land amongst the South African black majority, land restitution aims to restore land or provide compensation to South Africans who were forcibly removed from their land from 1913, and tenure reform is meant to protect the rights of those living precariously on state-owned or privately owned land (du Plessis and Pienaar, 2010). This report focuses specifically on the third component of land reform which is tenure reform.

Following the recognition that the land reform programme has not been implemented to its full potential and housing programs have focused on providing ownership with limited success. This research argues that it is time to search for alternatives beyond ownership that will ensure sustainable security of tenure for the poorest segment of

the population living in urban areas. The following section outlines some of the innovative alternatives that have been used to provide access to land and housing throughout the global South; these include: Long-term leases, Temporary land rental, Community land trusts, Group tenure agreements, Administrative permits to occupy, Certificates of rights, Presidential land proclamations, Temporary occupation licences, and Certificates of comfort.

2.5 Innovative Tenure Agreements Across the Global South

South Africa is not atypical in having a large proportion of the population being unable to afford to access secure tenure through statutory processes. Although de jure land tenure is traditionally considered the only secure form of tenure universally, a right does not need to be defined by formal law to be considered legitimate, when something is accepted as a societal norm it can be upheld, protected, and defended against formal law (Payne, 2002). This fact is where de facto land tenure gains its legitimacy, this is also why there have been numerous attempts to offer intermediate tenure options to the poor across the global South.

2.5.1 Presidential Proclamations in the Philippines

Metro-Manila is a national capital region in the Philippines, it stretches for 639 square kilometres. Like many other regions in developing countries, it experiences exponential urban growth which has resulted in astonishingly high population densities (Porio and Cristol, 2004). The rapid commercialisation of urban land and the globalisation of commodities has accelerated land prices and increased competition for land (Ibid). However, over 40% of the population lives below the poverty line and the urbanisation of the poverty rate is high. This coupled with the government's inability to respond to the land and housing needs of the poor have led to what many scholars refer to as the proliferation of slums.

For over five decades, the government has used the promotion of home ownership combined with slum eradication as the foundation of their housing programmes

(Ibid). This included three main approaches, namely, resettlement, slum upgrading, and mortgage financing. As experienced in many other parts of the global South, these approaches had limited impact and many unintended consequences. In the early 2000s, this changed when the administration of President Macapagal Arroyo (2004) started making use of the presidential land proclamations which guarantee residents protection from eviction from state-owned land and promise improved access to social services (Ibid). In 2004 alone, these proclamations reached 645 910 households across 33 informal settlements.

In this case, the residents of metro Manila did not have to manoeuvre the red tape and financial cost of attaining titles to the land they are occupying. The driving force behind this was the realisation that secure tenure has very desirable conquests because people are more likely to invest in improving their dwellings and public spaces if they had assurance that they will be in the area for an extended amount of time without the threat of eviction. It also became apparent that secure tenure empowers people to pursue secure and sustainable livelihood strategies thus improving productivity. The case of metro Manila is a great example of the promotion of de facto land tenure by a political institution. The presidential land proclamations had impressive results, but these were limited by the fact that a large proportion of informal settlers occupy privately owned land. This increases the complexity of the issue due to an agreement being needed between the private owner, the government, and the residents and private owners may not be open to allowing the occupation of their land.

2.5.2 The Favelas of Recife, Brazil

Recife is the capital city of Pernambuco in Northern Brazil, like the Philippines and many other areas in the global South, Brazil's spatial growth has been characterised by the proliferation of slums from as early as the 40s (Uwayezu and T. de Vries, 2019). Between the 60s and the 80s urban planners and municipal officials implemented numerous city (re)development strategies that further marginalised the

urban poor living precariously in Favelas (Ibid). During the 1980s there was a notable rise in community mobilisation for the development of inclusive cities, this mobilisation bore fruits in the 1990s with the institutionalisation and decentralisation of urban planning frameworks with a strong focus on community participation (Ibid).

The City Statute was officially passed and adopted in 2001, this statute legally confirmed the rights of all urban dwellers to urban resources (Ibid). Furthermore, it promoted the social function of urban land and prioritised use value over exchange value, recognising individual rights to land for informal dwellers without issuing title deeds (Ibid). As part of this programme, some Favelas were converted *to Special Zones of Social Interest* (ZEIS), further strengthening tenure security. In this case, political leaders recognised the Favelas as part of the 'formal' city by granting them the right to use the urban space even though they did not own it and did not aspire to own it (Ibid). This was followed by the provision of services and amenities in these areas, further strengthening the de facto land tenure and confirming the protection of residents from evictions (Ibid). This case is a good example of how community mobilisation can encourage political institutions to recognise informal settlements and provide them with services, strengthening the community's de facto tenure security without any formal documentation.

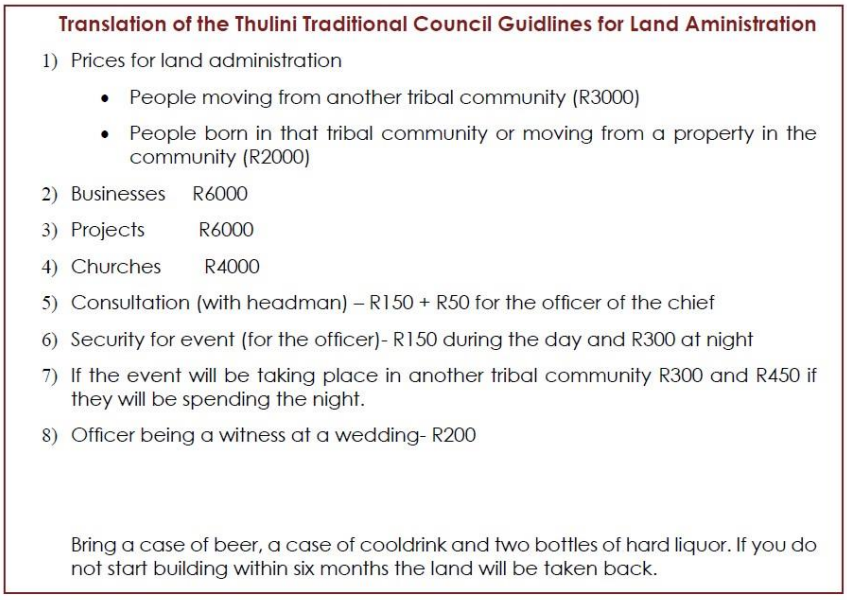
2.5.3 Certificates of Rights in Botswana

The Republic of Botswana is unique as it is one of the most sparsely populated countries in the world with just over 11% of the population living in Gaborone, the capital city (Abdillan, Manat and Awang 2022). Certificates of rights (COR) are a tenure instrument that was designed in the 1970s in Botswana to meet the housing demands of the urban poor in hopes to eradicate informality (Ibid). The COR grants land occupiers the right to use the land, and develop it while the state maintains primary ownership of this land (Ibid). The residents are protected from evictions and are guaranteed service provision as long as the municipal bill is paid on time (Ibid). The COR has provided almost 100 000 thousand Batswana households with secure tenure and access to social services (charged a minimum cost) and amenities (Ibid).

These arrangements, especially where statutory law intersects customary law have had the unintended consequence of gender discrimination. However, this has not been the case in Botswana, most beneficiaries have been women (Ibid). Essentially, this programme has offered beneficiaries free access to land, protection from eviction, and guaranteed access to services at a small levy. Two-thirds of the total urban population have benefitted from this initiative. This case demonstrates overlap in the improvement of de facto tenure security and de jure tenure security as these are recognised under national customary law. The results of this programme are impressive; however, the same results may be harder to achieve in places with high populations because the state bears the brunt of financially supporting the urban poor.

2.5.4 Ingonyama Trust Land in South Africa

The Ingonyama Trust was established in 1994 by the KwaZulu-Natal Ingonyama Trust Act (No. 3, 1994), which has wide-ranging powers and a broad impact (Centre for Law and Society, 2015). It is responsible for 2.8 million hectares of land in KwaZulu Natal, South Africa almost covers the entirety of Lesotho with just over 3 million hectares of land. This land is vested in the then Ngonyama (King) Goodwill Zwelithini as trustee, this responsibility has been passed on to his son Misuzulu Zulu. In 1997 in accordance, the Act was significantly amended to allow for the establishment of the KwaZulu-Natal Ingonyama trust board to administerthe land. There is a ‘chain of command’ that ensures that the land access process is uniform and adheres to the provisions of the national and provincial policy framework. The Ingonyama Trust (IT) board communicates the general code of conduct with all the chiefs who then adapt it in a way that works best for them and send a list of guidelines to the headmen.



(Figure 2.5.4) Procedure for Acquiring Customary Land. (Author's own). The poster above depicts how communities can establish best practices that align with their specific needs and affordability profile.

The poster above shows the cost of accessing Ingonyama trust land with the cost of buying residential land sitting at a maximum of R3000. Buying is used loosely in this instance because the land is never owned by those occupying it, this fee is a once-off fee to negotiate their rights to use the land without the threat of eviction. Services are provided by the municipality at a small levy in these areas and residents are protected from eviction by the KwaZulu-Natal Ingonyama Trust Act (No. 3, 1994) and the Constitution of the Republic of South Africa Act (No.108 of 1996). The report focuses on urban areas but this case based in a rural setting has been included here because many African cities are governed through both statutory and customary law. Numerous informal settlements have their own customary structures and negotiate their access to the prime urban land that they are occupying in the same way that Ingonyama Trust land is negotiated. This case offers beneficiaries strong de jure and de facto land tenure.

2.5 Reflections

Land tenure is a very fluid concept, it can be defined in many ways from varying perspectives. Its traditional definition is tied to statutory law and the exchange value of land while other definitions focus on other facets like the social value of land, social and spatial justice, and human development. Establishing whether tenure is secure is difficult due to the many ambiguities around the concept of tenure. However, it is quite evident that the degree of tenure security depends a lot on a particular group's perception of legitimacy and security. In exploring different areas that would traditionally be considered to have insecure tenure I have come across numerous individuals that are certain that the land they are using belongs to them and they cannot be evicted. That is the key, social norms, legitimacy, and assurance.

The above statement proves that for individuals or a group of people to feel secure on a piece of land they do not require an official title deed. This highlights the validity of exploring the potential of administering land use rights to the urban poor living precariously on prime urban land so they can have improved security of tenure. As demonstrated by the case studies above, there is no silver bullet to solving the challenges of insecure tenure, but the report will explore the potential of using the third component of the South African land reform programme (tenure reform) to administer occupation rights instead of ownership rights. If implemented with caution and researched intensively not only would this improve tenure security in informal settlements, but it will also advance the urban land reform agenda which has been idle for the past two decades.

Chapter 3:

Black Urban Land Hunger and Contemporary Land Tenure Reform Mechanisms



3.1 Background

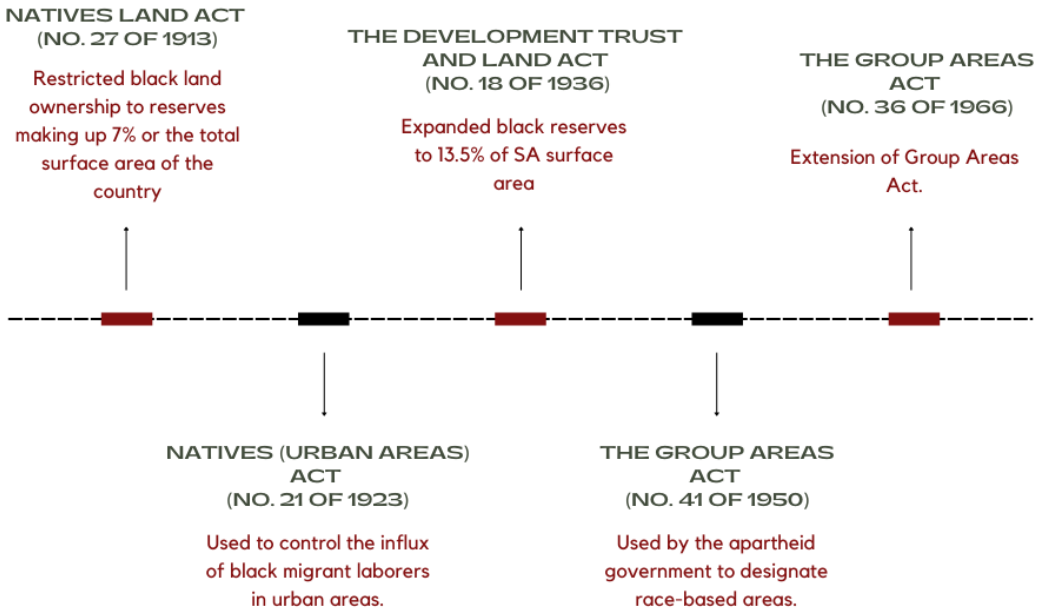
Land in many African countries remains an emotive faultline not only because of the past race-based land policies but because of the remnants of their effects in contemporary cities. Urban land hunger, specifically for the black South African population was birth from the notorious migrant labour system in the 1870s, which saw the urbanisation of black migrant populations for the first time (Vosloo, 2020). The context for this research is set from this period which saw an influx of black urbanisation coupled with vulnerability and land insecurity. All of this was exacerbated by race-based land management and urban development policies at the time. Although mining compounds and labour hostels were abolished and converted to Community Residential Units (CRUs) in the early 2000s, the urban poor still live in similar housing forms with insecure tenure to access livelihood opportunities.

Numerous corrective legislative attempts have been made to rectify this but implementation has been poor, as a result, tenure insecurity like many other symptoms of race-based land poverty is still prevalent in South African cities (Mpofu, 2017). This chapter lays out the historical landscape of urbanisation & urban tenure insecurity, provides a bird's eye view of the historical policy landscape where land tenure is concerned and explores the contemporary corrective policies and programs at a national and municipal level. This is done by exploring the historical background of land tenure systems in South Africa, investigating contemporary land tenure policies and programs and discussing the possibilities for urban land tenure reform within the existing policy landscape.

3.2 The Historical Background of South African Land Tenure

The history of South African land dynamics has been well documented (du Plessis and Pienaar, 2010). Nonetheless, understanding the historical context of land tenure and the related dynamics is pivotal to understanding the current challenges and possibly formulating sustainable solutions for the future.

A good point of departure is the Natives Land Act (No. 27 of 1913) which laid the foundation for the numerous race-based land policies that followed. The act restricted African land ownership to 7% of the country, which was later increased to 13,5% with the enactment of the Native and Land Trust Act (No. 18 of 1936) (Ntsebeza, 1999). Although these acts both detailed how land will be managed, particularly in black reserves, tenure systems had not yet been clearly defined in these areas (Dugard, 2019). It wasn't until 1969 through the proclamation R188 in terms of section 25 of the Black Administration Act (No. 25 of 1939) that communal tenure in black reserves became regulated and clearly defined in policy terms (du Plessis and Pienaar, 2010). The proclamation set out two land tenure options with the first being surveyed or quiteint land and the second being unsurveyed land on which permission to occupy was granted. The key to exploring the historical context of South African land tenure and related land policies is clearly defining how it set the stage for many of the socio-economic challenges faced by the country today.



(Figure 3.2) Race-based Land Management Policy Timeline. (Author's own). A graphic illustration of the race-based land management policies during the colonial and apartheid eras. Evidently, apartheid policy build on the existing colonial policies and extended it further to allow for closer management of the movement of non-white citizens in urban areas because even then urbanisation rates increased over the years with industrialisation and called for tighter restrictions.

3.2.1 The Migrant Labour System: The Birth of Urban Land Hunger and Tenure Insecurity

The dispossession of non-white South Africans on land that they had been relying on to sustain themselves for centuries resulted in a new challenge for heads of households: the inability to support and sustain their families. This combined with the imposition of ‘huts per head’ taxes and pass laws resulted in the transition of black farmers to cheap labour in cities. This built the foundation of the South African migrant labour system which saw the urbanisation of non-white populations for the very first time.

Typically a migrant labour system refers to labour coming in from neighbouring counties. In the South African case, this also refers to the rotational movement of black South African men from their homes in scheduled black areas to cities for work (Xulu-Gama, 2017). The formation of this system of oscillating migrancy was a response to the need for cheap labour in cities and the need to ensure that these black labourers do not live in the cities permanently. After the discovery of diamonds and gold in the 1800s, spatially this took the form of mining compounds. These were communal housing compounds for the black migrants designed in line with Michel Foucault’s work on visibility & power which influenced the design of many prisons and asylums in that period (Vosloo, 2020).





FIGURE Nº 5

Photographer unknown, Central Diamond Company Compound, 1880s (McGregor

(Figure 3.2.1) Mining Compounds. (Vosloo, 2020). A graphic depiction of the living conditions in a mining compound in the 1800s. It is important to note how non-whites’ first exposure to urban living was seeing it as temporary living arrangements with living conditions that were crowded, unsanitary, and inhumane. Currently, the same perceptions of cities as temporary homes for work purposes persist.

During the Apartheid era (post-1948) a similar system was used to control the influx of black labour moving into cities to work for other private companies and municipalities (Ibid). In this period it took the form of labour hostels for temporary workers. At the time, black employment seekers obtained a pass from a labour bureau in the bantustans, entered into 1-year employment contracts in cities (living in hostels), and would return back home after the end of the contract (Ibid). This materialised through section 10 of the Urban Areas Consolidation Act (No. 25 of 1945) which forced private companies and municipalities to construct labour hostels.





(Figure 3.2.1b) Labour Hostels. (Vosloo, 2020). The images above depict the reconfiguration of labour hostels in Johannesburg which can be seen at the Johannesburg Worker's Museum in Newtown. A consistent theme is the temporary nature of the living conditions and the related disregard for the living conditions.

Although hostels were abolished in policy at the end of the apartheid era, they remained a key point of entry into cities for the urban poor – especially young black men(Xulu-Gama, 2020). Some have been converted to family housing (Community Residential Units), others have been abandoned, some refurbished while most have remained the same and these are prominent in the Johannesburg CBD with Denver hostel being a key example. The case study explored in this research observes an area that was illegally occupied by former hostel dwellers after a private company abandoned the hostel in the 1980s when apartheid was headed for its inevitable demise. Although they no longer live in a hostel many elements of their living

conditions and the way they choose to govern the space reflect their long hostel living history.

3.3 Post-Apartheid Land Policy and Programs

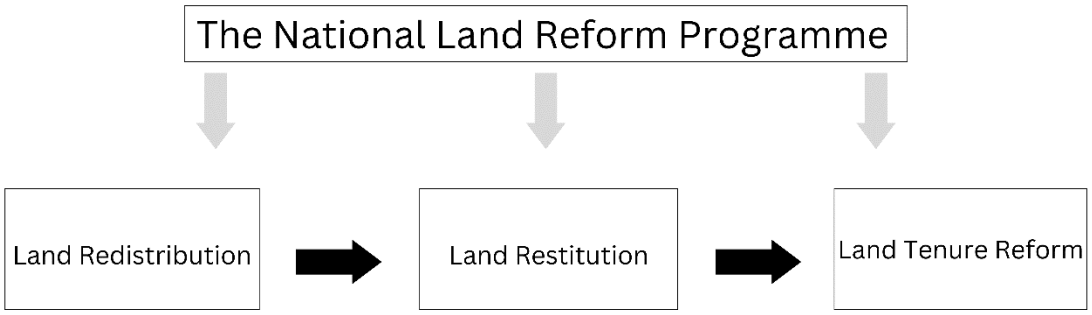
Although it is noted above that the remnants of the colonial and apartheid land policies and the associated socio-economic challenges still persist, a number of corrective policies and programmes have been put in place since the transition into the new political dispensation in 1994 (Kloppers and Pienaar, 2014).

The Abolition of Racially Based Land Measures Act (No. of 1991) was promulgated to repeal the existing racially discriminatory Land Acts and the Group Areas Act. From this point onwards all South Africans could own or occupy land anywhere in the country without fear of prosecution(Ibid). Although this signalled the end of South Africa's long history of racial discrimination and segregation, there was still a lot of redress and reform that needed to take place.

This was closely followed by the formulation of the Reconstruction and Development Programme (RDP) of 1994 which identified the eradication of poverty as its most important goal. Its implementation followed the first democratic election with the aim of redressing all past spatial and socio-economic injustices through an integrated socio-economic policy framework (Francis and Webster, 2019). This followed the identification of South Africa as one of the countries with the highest income inequalities and poverty (Ibid). The RDP had a four-pronged approach to meeting its aim which included:

1. Creating opportunities for all citizens to reach their full potential;
2. Improving human capacity, creating jobs, and boosting productivity;
3. Improving living conditions by providing better access to services for all urban and rural communities;
4. Establishing a social security programme for the poor and other vulnerable groups.

Under the RDP programme land was identified as a basic need after years of the implementation of racial land policies and dispossession, through this the national Land Reform Programme was formulated (Kloppers and Pienaar, 2014). In its formulation, the land reform programme focused on transferring land in rural areas for agricultural use and consists of three components as depicted below.



(Figure 3.3) The National Land Reform Programme. (Author's own). A graphic depiction of the South African land reform programme and its three main components as explained below. The research, however, focused on the third component which is land tenure reform.

As outlined by the Land Reform: Provision of Land and Assistance Act (No. 126 of 1993), land redistribution aims to redistribute land to those who need it but cannot afford it and transfer some white-owned land to black communities and individuals. The restitution component focused on restoring land to South Africans who were previously dispossessed by the racially discriminative Land Acts since 1913 while land tenure reform had the aim of strengthening the tenure security of those living precariously with insecure tenure.

Land tenure reform was formulated to address the challenge of black communities who had purchased land in the 19th and 20th centuries not being allowed to hold title deeds to their properties/farms (High-level panel review,). Tenure reform also targeted former 'coloured' areas covering 18 000km in the Western Cape, Northern Cape, Eastern Cape, and the Free State (Ibid). These were former mission stations for people of Koi and San descent and were nationalised by the colonial government and transformed into labour reserves where communities had no tenure

security(Ibid). The last target group were labour tenants on farms and those who were not employed on farms but were sharecroppers and had no tenure security.

In its formulation land tenure reform was aimed at restoring tenure security for previously disadvantaged groups that had their rights to own or occupy land stripped. Since its formulation in the early 1990s, the context has changed and these groups of people no longer live in these rural parts of the country and the policy has not evolved. To date, the latest versions of the annual report by the high-level panel for land reform still focus on improving tenure by granting statutory ownership through the deeds office. This component of the land reform program is what the research focuses on, it recognises that with the right shift in mindsets and capacity building for implementers the legislation has strategic potential to reshape tenure security patterns and challenges in the country.

3.4 National Policies and Programs Aimed at strengthening Land Tenure

a)The Upgrading of Land Tenure Rights Act (No.112 of 1991)

The Upgrading of the Land Tenure Rights Act of 1991 was one of the first pieces of corrective legislation geared towards transferring ownership of the land back to non-white communities and tribes. The overarching theme of this act was to promote the conversion of unrecognised tenure rights into statutory ownership facilitated through the Deeds office in line with the Deeds Registration Act (No. 47 of 1937). The act also promoted the formalisation of townships which, have them formally registered and surveyed to allow for the granting of formal ownership rights to community members.

b)The Constitution Act (No. 108 of 1996)

Chapter 2 section 25(6) of the Constitution of the Republic of South Africa makes provisions for people living with legally insecure tenure to be provided with tenure that is legally secure or comparable redress by stating:

> *"A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. "* (RSA government, 1996 p.10)

This laid the foundation for the body of legislation and related programmes that followed.

c) The Interim Protection of Informal Land Rights Act (No. 31 of 1996)

The Interim Protection of Informal Land Rights Act aimed to temporarily protect the rights of those living with legally insecure tenure while the formalisation of these rights in accordance with the Upgrading of Land Tenure Rights Act (No.112 of 1991) was implemented. This was due to the recognition that converting insecure tenure rights into statutory ownership through the Deeds office would be a time-consuming and resource-intensive task and it would be years till the targets are met. the Unlike the other pieces of legislation, this was envisioned to only be a temporary necessity which speaks to the government's optimism and confidence that land tenure upgrading by providing titles would be a smooth success.

d)The Communal Land Rights Act (No. 11 of 2004)

The Communal Land Rights Act was promulgated to improve the security of tenure in communally owned land holdings and promote gender equality in land administration processes. However, the Act's constitutionality was challenged in 2008 with arguments that the titling process is not suitable for traditional communal settings and was therefore withdrawn (du Plessis and Pienaar, 2010).

3.4 Reflections

Land tenure insecurity in South Africa was the outcome of decades of discriminatory land management laws and policies, which have been followed by years of poorly formulated and implemented corrective post-apartheid policies. A recurring theme with the corrective policies outlined above is the focus on converting insecure tenure into statutory ownership through the Deeds office. Although this may seem ideal and even noble it simply isn't realistic. The cost, time, and capacity required to effectively do this all over the country outweigh the benefits leading to very clear inefficiencies. This becomes more apparent when one considers Payne (2002)'s analysis which highlights that ownership is not important to everyone, for many, access and legitimacy are the important factors.

Another aspect of this work brought forward by the chapter is the clear racial dynamics where land tenure insecurity is concerned. The challenge of land tenure insecurity presents itself as a clearly non-white challenge due to the continued deprivation of land ownership and access for these racial groups. This is especially the case in cities where non-white populations could only exist as temporary labourers living in temporary housing with no tenure security for years. They had no opportunity to secure prime urban land in that period and with 65% of non-white populations still living in poverty today (CoJ, 2020), they had no means to access this land in the post-apartheid era.

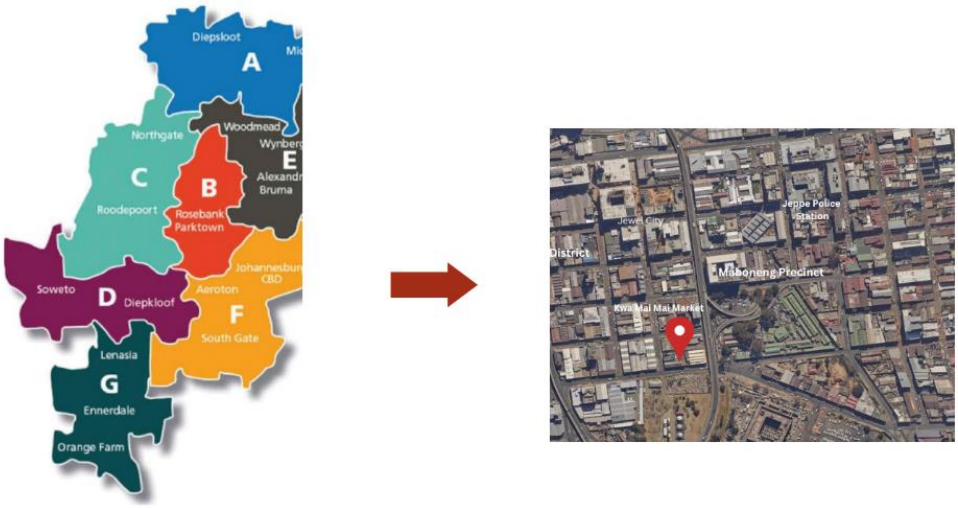
This thesis is an acknowledgement of these realities and these dynamics. It is a call to offer reform in realistic and feasible forms to these populations in urban land. As reflected in the exploration of the policy framework, policy formulation is not the solution as it has had limited impact in the past. Furthermore, land titling has proven to be a strenuous and resource-intensive task which has also limited its effectiveness. It is time to think outside the box, time to innovate, and time to effect real change. Exploring innovative, intermediate tenure options, like those explored in the second chapter is the only way to realistically offer reform to these populations trapped in a cycle of insecurity, deprivation, and vulnerability.

Chapter 4:

Kwa Mai Mai



4.1 The City of Johannesburg: *'A World-Class African City'*



(Figure 4.1) Map of Kwa Mai Mai. (CoJ, 2023). The maps above show the location of the Kwa Mai Mai muthi market at the heart of the Johannesburg CBD with easy access to many services and amenities.

The Kwa Mai Mai Muthi Market is located in the heart of the Johannesburg CBD, under the governance of the City of Johannesburg metropolitan municipality. The municipality stretches over 1645km^2 with a population just above 5.4 million (CoJ, 2020). It is characterised by a high population and building density and is colloquially known as the city of light, hopes and dreams as an average of 15 000 people migrate to Johannesburg each month in search of livelihood opportunities (COJ, 2020). The city is a commercial hub with finance being the main economic driver for skilled labour, this has earned it its status as the finance and commerce nerve centre of the continent with the mantra *'A Worldclass African City'.*

Like many other African cities, the city of Johannesburg is also riddled with poverty, vulnerability and insecurity with 46% of people living below the upper level of the poverty line (CoJ, 2020). The African population records the highest poverty rates with just over 61% of the subpopulation living below the upper level of the poverty line (Ibid). This population segment tends to be excluded from the city fabric as they have limited access to housing, services and livelihood opportunities. As a result,

they have to depend on informal housing solutions, informal services, and informal employment opportunities.

4.2 UMlando wakwa Mai Mai (*The Story of Kwa Mai Mai*)

Due to documentation limitations for this study area, the history of Kwa Mai Mai is based on the correlated stories of the market board's chairperson, the traditional induna and a focus group of elderly residents who have been residing at the market for more than 20 years.



***(Figure 4.2) Kwa Mai Mai*.** (Author's own). An image showing the busy entrance of the Kwa Mai Mai Market. At the corner, you can see the M1 going right above the market and one of iThemba property's biggest apartment buildings in Maboneng.

Kwa Mai Mai, affectionately known as the place of healers was initially a horse stable in the height of apartheid. In this period black labourers had started migrating to the city and would live precariously in hostels and other informal settings. As Johannesburg progressively industrialised the smell from the horse stable became a challenge in the central business district and the stable was left abandoned. In parallel, black labourers were being forcibly removed from different pockets of the city where they had started to embed themselves like hostels and traditional

markets. The first group to occupy kwa Mai Mai was a small group of men, mainly from the province of Natal who were traders and traditional healers in Johannesburg. They had been removed from Wemmer, currently known as the Faraday market, also located in Marshalltown.

By the time this group was removed from Faraday, the horse stable had been abandoned due to it no longer being a feasible location to keep horses. The group of men sought refuge here and continued to trade and offer their healing services. Due to this area being abandoned, with no planned uses in future and no real value recognised from it, the men stayed in the area with limited threat of eviction. One key role played by these men was acting as night watchmen because they would trade during the day and sleep there at night while taking turns keeping watch.

As the years progressed and other generations of traders had migrated from different parts of Natal, the Transkei and other homelands this pocket of the city became recognised as a muthi market. This was solidified by the construction of small trading rooms by the city made of bricks and the provision of communal services like shared toilet facilities and standpipes. In its strategic formulation kwa Mai Mai was developed to be a place of business for informal traders in the heart of the city. However, in line with the founding fathers' role as night watchmen, some traders continued to spend nights in these trading rooms. At this point in time, traders were not spending nights in their trading rooms due to safety concerns, they were doing so because they had very limited access to housing in the city and could either live in these rooms precariously with no security of tenure or have to live in townships and other areas in the periphery while travelling to work. One trader shared how their reasons for staying at the market differ from those of the founding fathers in the quote below:

> "Obaba bobaba bethu babentshotsha ukhlala la ebsuku ngoba bengavumelekile ukhlala edolobheni befuna futhi ukugada izimpahla zabo zingathathwa amaphoyisa obandlululo. Thina sihlaliswa ukuhlupheka mntanami, lamarent ala egoli thina ngeke sikwazi ukwakhokha syazizamela nje impilo."
>
> *"Our forefathers used to live here without authorisation because they were not legally allowed to be anywhere else in the city and they wanted to keep watch*

of their merchandise so the apartheid police could not confiscate it. We live here because we are struggling my child, we wouldn't possibly be able to afford rent in Johannesburg, we are merely doing all we can to survive"

(Respondent 7)

4.3 Kwa Mai Mai Today: A Picture Story

Today Kwa Mai Mai is more than a place of business, it is a culturally rich residential community that has made its mark as one of the biggest tourist attractions in Joburg through the work that they do.

























(Figure 4.3) Welcome to Kwa Mai Mai Collage. (Author's own). The photo collage above is a combination of images taken on one of the site visits highlighting the any facets of the market and people's day-to-day activities as highlighted in the following paragraph.

As one walks through the gates of the Kwa Mai Mai market the atmosphere immediately changes from the bustling rush and human disconnect of the Johanneburg CBD to a welcoming and warm residential community in the middle of it all. Thriving businesses line up next to each other on either side of the pavement from traditional street food, convenient snacks, custom-made furniture, traditional medicines, livestock, and many other goods and services. Children play blissfully as they would in what is traditionally considered a home, men and women laughing, singing, dancing and hard at work at every corner of the market. Right at the centre one can see a preschool that draws any observer in with its bright colours and catchy imagery, and sidewalks are beatified with healthy plants. One woman shares her feelings about living in this community in the quote below:

> "Kumnandi kakhulu la kwa Mai Mai sisi wami, uyabona nje sizhlalele samantombazane nazi neyngane zethu zidlala ngokukhululeka lapha futhi sazi kahle ukuthi sphephile, phela sinomkhandlu wethu osivikelayo"
>
> *"My sister, living at kwa Mai Mai is very nice, we can freely sit together as women, our kids are playing peacefully over there, everyone is friendly and we are 100% save because our traditional council keeps us all safe"*
>
> *(Respondent 2)*

4.4 Regulation at Kwa Mai Mai

Although Kwa Mai Mai was established by the illegal occupation of abandoned property by a small group in the 1940s, it has a sophisticated governance structure today. The market is owned by the City of Johannesburg metropolitan municipality and managed by the Johannesburg Property Company (JPC) an entity of the city and the department of economic development (DoED). The market has a democratically elected board made up of traders elected by the traders, the JPC and

DoED respectively elect representatives to sit on this board. In addition to these structures, the market also has a traditional (customary) counsel with an induna *(headman)* and amaphoyisa induna *(headman's assistants)*

The Johannesburg Property Company is responsible for managing the market on behalf of the municipality. They are responsible for ensuring the delivery of services like electricity, water, and refuse removal. They also facilitate the process of administering rooms to traders in collaboration with the board and the department of economic development. The JPC is also responsible for the collection of rent and rates which works on an automated billing system connected to the city. Each resident receives a bill in paper form at the end of each month and they need to make payment to the city through a bank or at Shoprite. The amount is relatively low at an average of R200 as this is a commercial space provided by the city. The department of economic development is responsible for ensuring the market remains a conducive space for informal traders to have thriving businesses free of structural barriers and the threat of eviction. They represent the interests of the traders and provide them with the necessary tools to reach their full potential as business owners like hosting events to draw business.

The board is democratically elected by other traders in an election process facilitated by the department of economic development. The board's main role is that of the middleman between the traders and the municipality. They have to ensure that any concerns raised by the traders reach the municipality and that any rules or regulations set by the city are abided by the traders. They also facilitate the room allocation process by managing the waiting list and ensuring people pay rent. The market also hosts a wide range of events from music, dance, arts, and food festivals, the board is responsible for sourcing funding for these and planning the events. The traditional committee's main role is that of maintaining peace and mediating any disputes among traders.

4.5 Living in the Grey at Kwa Mai Mai

Kwa Mai Mai has a sophisticated governance structure but the traders maintain their own systems of governance and living that do not fall within the municipality's by-

laws but is socially accepted, deeming it legitimate. The chairperson of the committee shared that 70% of the traders use their rooms as trading spaces and living spaces. They use different creative approaches like dividing the room into two using a curtain and using one half as living space or fortifying a second floor that is used as a living space. He further shared that the remaining 30% has no choice but to live in townships on the outskirts of the city like Soweto and they constantly complain about the high cost of maintaining this. He also shared that the traders' living situation is not a secret, the city is aware of the arrangements and has been since the rooms were constructed. In an interview with the chairperson and a JPC official, The chairperson shared his views on people living in their rooms (himself included) with the JPC official in the room nodding in agreement to the quote below:

> "Ukhlala la kwenza impilo yalabantu abathengisayo ibe lula kakhulu ngoba iningi labo izinyanga eziqala uksebenza nango 3 ekseni, kungabanzima kakhulu uksuka kude uzosebenza, nabakwenzayo bayakhala futhi ukwenza kanje konga kakhulu irent. Ngabe sineshluku uma singagxosha abantu bezizamela impilo"
>
> *"Living at the market makes life so easy for the traders, especially because most of them are traditional healers who have to start work from as early as 3 AM, traveling from the township would be too hard to do, even those who do it are always complaining. It would be cruel of us to stop people who are doing their best to survive from living here."*
>
> *(Chairperson)*



(Figure 4.5) Innovation at Kwa Mai Mai. (Author's own). The images above show the inside of some of the trading rooms at the market. The first image shows the shoes for sale hanging up on the one side of the room while the other side has the traders bedroom with clothes hanging. The second image shows the shop on one side and a ladder leading up to a living area that has been fortified.

The process of allocating rooms is also unconventional. Even though there is a waiting list and the committee could confirm that a number of people come in daily to enquire about accessing a room, room allocation is based purely on inheritance. It is estimated that the traders at the market today are the 4th generation of traders to live there and a large majority of them inherited the rooms from older family members who had also inherited them from older family members. With about 90% of all traders being from KwaZulu-Natal (KZN), the standard practice is the traders migrate to Johannesburg as eager young men and women in their early 20s and come join an older family member who invites them to come as they anticipate their retirement. On retirement, the traders move back to KZN, leaving their younger relatives to run the businesses. This is also the case in instances of death. Over the years some rooms have been left to family members who used to live with a trader and continued their role as a home but were never used as a trading space. A young widow narrates her story in the quote below:

> “Umyeni wami ubedayisa izimbadada la kwa mai mai sihlala ndawonye nezingane. Uthe uma eshona kwaphoqa ukuthi ngiqhubeke ngihlale la ngoba izingane zifunda la eduze nami ngsebenza khona la edolobheni kanti angsaykhokhi nerent ngoba babemazi umyeni wami bayangcabangela.”
>
> *“My husband used to sell rubber shoes at the market and we used to live together in this room with our kids. When he passed away I had to keep living here because my kids go to school across the street and I also work a walking distance away in the city, I don’t even pay rent because they knew my husband and are very considerate.”*
>
> *(Respondent 3)*

The traders who live at the market site many benefits of living there in terms of convenience, cost savings, and access to opportunities and services. However, they are not blind to the numerous disadvantages of living in this commercial space, this comes through the most with female traders living with their families. The reality is that the market was built as a commercial space for traders to spend their working hours in and then travel to the comfort of their homes. The first glaring concern is that of health standards. The only toilets available at the market are gender-neutral communal toilets with 7 stalls contained in one building. All of these are in concerning conditions as depicted by the picture below, this can pose many health issues, especially for women. This is also a safety hazard due to high incidences of rape in the country, although this has not occurred at the market before, many mothers and fathers shared a lot of concern for their young children who they felt were the most susceptible to this threat. Although many respondents felt overall safety from crime and other threats, they also felt that their living conditions left them and their children vulnerable to incidents like rape.

Additionally, the whole market only has a total of 10 standpipes with a concrete basin which was also constructed to serve the traders during the day as they run their businesses. This means that the families living there share a tap and basin for doing laundry, the dishes, bathing, cleaning, and running their businesses. This causes tension and conflict especially because a few families have recently started connecting their washing machines to the taps near their door which ultimately

decreases the number of taps available. In terms of refuse removal, there are only 2 large bins available for residents and customers to discard garbage, these overflow and pollute the area days before the city is due to come for refuse removal which is another health hazard.

Lastly, the shops are all very small and many of them do not have windows for ventilation. When the furniture and appliances fill up the room, there is very little space left for airflow and the risk of accidents that can cause fires or electrocution is very high. Although people go on to live here for decades, every day feels very temporary because of these reasons. It becomes difficult to make the space a home and a sanctuary, this directly impacts the quality of life these traders and their families have.





(Figure 4.5b) Services at Kwa Mai Mai. (Author's own). The images above show the water and sanitation services available at the market. Evidently, these were designed to serve the traders and customers at the market during the day. The deteriorated conditions can be notes specifically in the toilet area which still requires a payment of R2 with every use.

4.6 Views From Above: From the City's Perspective

The first observation even before any engagement was that the city is aware of the trader's live/work conditions. The representatives from the Johannesburg Property

Company and the department of economic development not only oversee the management of the market, but they also spend a lot of time in the rooms checking in on any challenges the traders might have. They also share the chairman's sentiment that this live/work strategy is nothing but a survival strategy by the traders because rent is expensive and they generate incomes that do not gain them access to this market.

However, even after decades of traders using this strategy the officials and the city still maintain that the status quo is only a temporary solution. Like many similar development organisations they do not think that these strategies should be supported and built on, they rather describe it as a temporary informal setup that needs to be formalised. An investigation into what this meant revealed that there are long-term plans to provide the traders and the surrounding informal settlement dwellers with formal housing at another location so they would have a title deeds. They shared that there are already plans in place for the development of this project, the only remaining task now is to find suitable and affordable land for the development. This is because they feel that the trader's current living conditions are unfit for human occupation, a point already identified by the research in the section above.

The research identified the same challenge with the trader's living conditions, as did City officials. However, as the research notes in preceding chapters, governments tend to default to rolling out new housing projects in new isolated locations instead of building on and improving the settlements communities have chosen to live in for various reasons. Improving these conditions in line with the existing policy framework would yield more success than starting another housing project that moves people from prime urban land to isolated areas in the periphery of the city. This will not only come with the additional cost of transportation to and from work and school, but it will also result in home maintenance costs and loss of time, a valuable resource that is ignored in development policy. The traders expressed that they would not want the inconvenience of travelling to work and different engagements with many of them demonstrating that their migration is cyclic, they do not come to Johannesburg to stay forever. They come to Johannesburg to work and they go home as soon as they are ready to retire and never come back because they do own homes back home.

These dynamics and misunderstandings link back to the literature chapter which details out the different meanings that land and property mean to different people.

4.7 Reflections

The City of Johannesburg is the biggest metropolitan municipality in South Africa and a continental leader in finance and commerce. It presents many opportunities from access to services and livelihood opportunities, this is why it receives an influx of migrants in search of better opportunities. However, the city also faces a high level of poverty, vulnerability and insecurity. As a result, many of the people coming in end up living precariously in an informal setting with insecure tenure.

The case of Kwa Mai Mai shows very different migration patterns and unique settlement dynamics have evolved over the decades. Firstly, the traders at kwa Mai Mai have access to prime urban land in the heart of the city centre as their entry point into the city. Instead of experiencing the harsh streets of Johannesburg many migrants experience (myself included) they are welcomed by this warm and culturally rich community and get the opportunity to build a home for their families at almost no cost. This is a clear reflection of what happens when solutions are tailored to that specific context.

Many disadvantages of this living situation have been identified above but those are mainly because the city chooses to turn a blind eye to the realities of these families instead of making the necessary improvements to improve their quality of life.

It is time development institutions like municipalities realised those realities because much of the failures of many African development strategies can be attributed to uniquely African problems being force-solved using western solutions. It is time to re-imagine African development and come up with innovative solutions that are likely to successfully solve African problems.

Chapter 5:

Insecurity for Survival



5.1 The Development of Intermediate tenure systems at Kwa Mai Mai

> "Hayi indawo yobaba nomkhulu le mntanami, akekho ongasisusa"
>
> *"No, this is where our fathers and grandfathers lived my child, no one can remove us".*
>
> (Respondent 1)

This was one trader's very bold response to a question related to their concern about possible eviction. The respondent, a 52-year-old black male from Inkandla in KwaZulu Natal first arrived at the market to join his uncle a traditional healer in 1996. He told many tales of the 27 years he had lived at the market and spoke extensively of their values. When he moved to the market only men lived there and many of them were coming from hostels that had been abandoned at the end of apartheid. His accounts of their day-to-day at the time closely mirror those of hostel dwellers and he attributes these similarities to the fact that they continued with the hostel culture even after arriving at the market because that is the way of life many had become accustomed to. He also shared that although hostel living wasn't the best it was considered a right of passage in many South African Bantustans, villages would gather in celebration every time a young man moved to Johannesburg to live in a hostel. It is something that felt like theirs in a time when black men could have very little and that is why they kept the culture going even after moving to the market.

They elected a (customary) counsel led by an Induna and elected representatives for all the different tribes – similar to how it was done in the mining compounds and hostels. With this came the (informal) formulation of 'market best practices' to help this council manage the wide variety of issues that may arise. Additionally, they elected a group of men who would be the market security keeping everyone within the confines of the market safe. Many of the men were traditional healers but with time relatives who didn't have the gift of healing started migrating to Johannesburg and found different areas of trade. They sold clothes, food, furniture, and livestock, and opened barbershops, and spaza shops at a time with a lot of urban tension at the height of the democratic transition. This is how this culturally rich, vibrant

residential community that many inhabitants fondly refer to as ‘A home away from home’ was established.

The development of the market has been driven largely by the independent action of the traders. For instance, when establishing their structure of governance and formulating their best practices, they upheld the values they all commonly held in high regard. In establishing their businesses for they established a niche industry where they sold goods and services you would only typically find in rural parts of South Africa, this also made the market feel like home to them. Hearing the trader use the words “indawo yobaba nomkhulu le” almost as though he was referring to his homestead really drove this point home. Due to the way the market was developed, the way the traders embedded themselves and their values gave them a strong sense of ownership and belonging – something the paper earlier referred to as perceived tenure.

For a moment, realising the social legitimacy and acceptability of this living arrangement that comes with this perceived tenure prompted me to think more about what the research means when it calls for occupation rights to be extended to people living with insecure tenure. Does their strong sense of ownership and belonging mean they have secure tenure? Does this perceived tenure mean they are not living precariously as assumed? Is the research grasping at straws while the community members live in harmony and with an understanding with the municipality?

5.2 Social Legitimacy and Governing with a Blind Eye

The close relationship between development and politics keeps everything in balance in South Africa. A municipality can be working on groundbreaking projects or programs with a lot of impact on development goals. When a new party comes into office a lot of these can be set aside and the process of formulating and implementing new ones begins. If official programs and projects that went through rigorous formulation and review processes can be set aside this easily simply by a change of leadership, what is the unofficial, unspoken acknowledgement of a few municipal officials really worth?

An alternative argument could be that this acknowledgement and unspoken agreement have been upheld for three decades under the democratic government

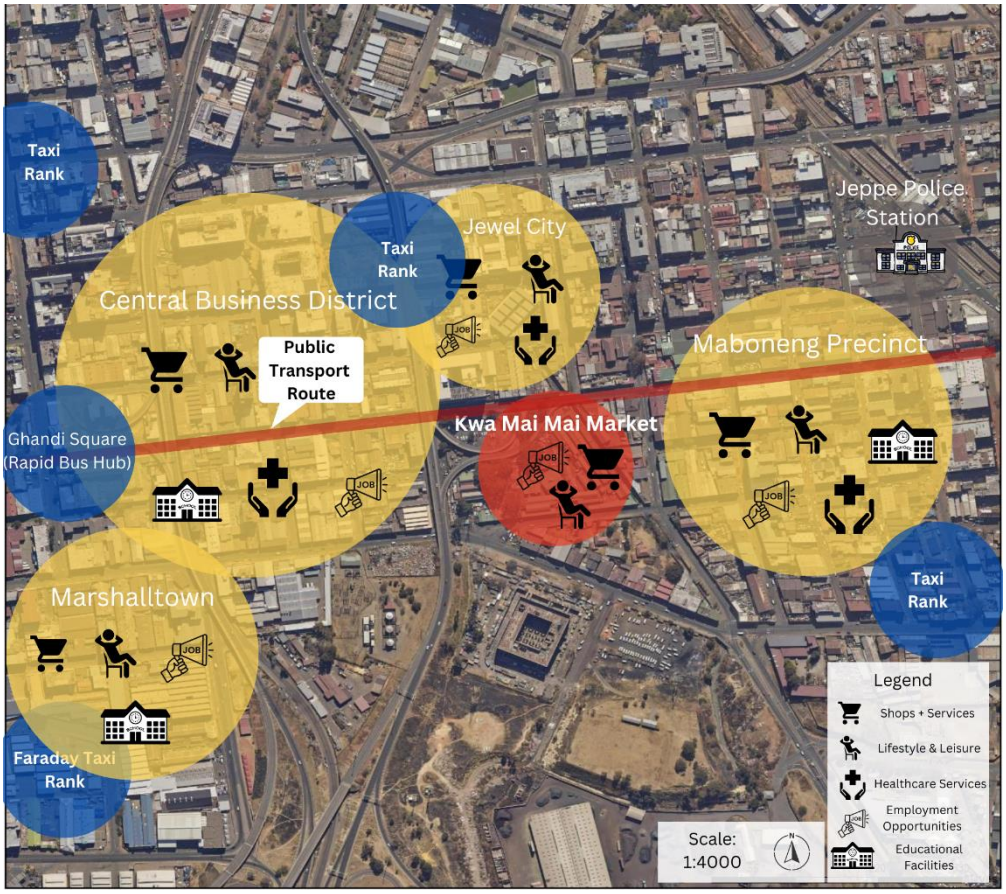
and this is well worth considering. Another factor is the evident social legitimacy of the live/work arrangement at the market among traders, the governance structures in place and outsiders. Perhaps the confidence in their unofficial right to occupy the commercial spaces is warranted. However, the research maintains that unspoken agreements with the city do not have legal legitimacy or backing, the South African policy framework that protects informal land rights discussed in the third chapter can protect their occupation rights to some extent but they could never say the officials gave them their word in a court of law.

The city has formal processes in place for collecting rent and rates, they have the details of all traders and their assigned trading room on their system which makes the interaction official. However, this is only where using the market as a commercial space is concerned. Officially the city has no record that there are people living there and as result, has no responsibility to ensure that the necessary improvements that need to be made to address the inhumane living arrangements at the market.

While some may feel that it is noble of the municipality to allow the traders to live there (the officials spoken to all shared these sentiments), the reality is that keeping this agreement unofficial also absconds them of the responsibility of improving the living conditions. Not taking bold administrative or political measures as is the case when considering de facto land tenure gives the municipality the ability to legally not have to take any action to make the market habitable. Governing with a blind eye is not noble, it is lazy and exempts the city from taking responsibility.

5.3 Insecure Tenure as a Choice?

It has been established that the traders live at the market ‘illegally’ but they have an unofficial agreement with the city and that combined with many other discussed factors gives them a strong sense of ownership and belonging. When challenged with thinking about what they would do if they were told they had to leave or contestation arose 96% of the respondent said they would stay either way. Their reasons are depicted on the map below.



(Figure 15) The locational Benefits at Kwa Mai Mai. (Author’s own). The map above highlights all the services an amenities that are all within a 5KM radius from the market. These include educational and medical facilities, lifestyle and leisure facilities and job opportunities, all which would be hard to access if the residents lived somewhere else.

The map above maps out all the unique opportunities that living at kwa Mai Mai offers the traders access to. The average South African travels an average of 21.8km to work and school, this figure is relatively higher for the poor (Numbeo,

2020). From the map above, it is evident that the traders firstly do not have to travel to work, for their relatives who do not work at the market and school-going children this travel time is cut to a maximum of 5km, making it all within walking distance. Additionally, they have close access to leisure activities which have been proven to improve quality of life and easily accessible transport and healthcare services. If the traders and their families had to either move back home or move to settlements at the periphery of the city, they would be excluded from all of this and accessing it will come at a disproportional additional cost. From the map, it is clear that living precariously at the market is better than any of the possible alternatives and for this reason, most of the traders would still remain at the market with the threat of eviction.

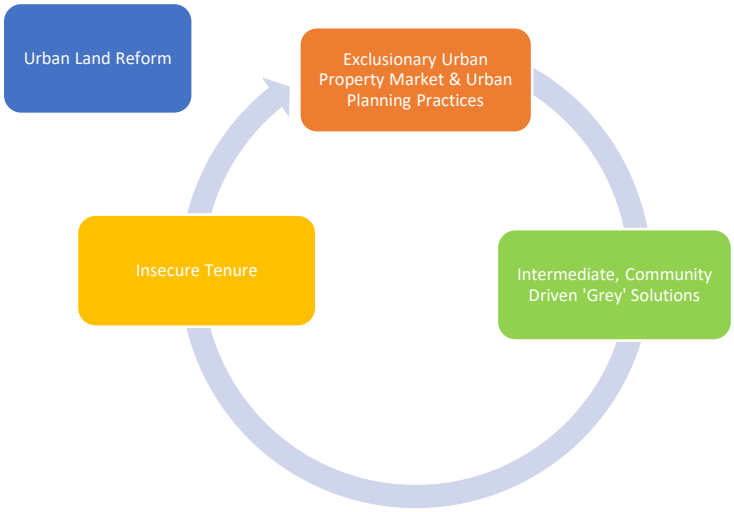
5.4 The Missed Opportunity for Urban Land Reform

The research is a call to extend occupation rights to populations living precariously on prime urban land through administrative mechanisms that hold de facto legitimacy. This call is as an acknowledgement that transferring ownership is not the most feasible way of extending access to prime urban land because of the time and resources it requires and the cost of ownership it bears for beneficiaries. The case of Kwa Mai Mai was used as an analytical lens to depict the complications and disadvantages that come with living without secure tenure and the advantages that would come with improving the tenure security of communities like kwa Mai Mai while advancing the overall urban land reform agenda.

Unexpectedly, the chosen case study area had a population that wasn't living with the constant threat of eviction even though they are occupying the market illegally. Their unspoken agreement with the city appears to shelter them from any threat and contestation – at least that is the perception on the ground. However, even under these unique circumstances, there are consequences to the city's failure to officially acknowledge the Mai Mai market as a residential community through low-cost administrative processes. Firstly, this allows the inhumane conditions at the market to persist as turning a blind eye exempts the city from the responsibility of improving the area. Secondly, although there is a policy framework that protects informal land

rights in South Africa the traders can be evicted from the market if agendas were to change. Lastly, in addition to other discussed challenges, turning a blind eye and not taking any bold action is robbing the city and the country of the opportunity to advance the urban land reform agenda.

5.5 Reflections



(Figure 16) Reflection on Conceptual Framework. (Author's own)

Before any of the fieldwork data was collected the first assumption made about the case study area was that the traders at Kwa Mai Mai lived in their shops secretly under constant threat of eviction.

The fieldwork has disproved this assumption which was the foundation of the research. However, the conceptual framework still captures the dynamics at the case study area where tenure insecurity is concerned.

This brings the discussion back to the different ways of understanding tenure covered in the second chapter. When considering de jure land tenure, the traders at kwa Mai Mai have no tenure security, they would be defined as squatters invading a commercial space, which can result in not just eviction but possible prosecution. However, because of the long history of the live/work arrangement at the market,

and the tacit acceptance/agreement from City officials, the level of social legitimacy attached to this living arrangement has legitimised it to the extent that none of the interviewed participants expressed ever fearing possible eviction. This is where perceived tenure comes in, the traders have lived precariously with insecure tenure in this market since the 1940s with no challenge or contestation and have come to perceive of themselves as legitimate occupants who are not living precariously or in insecurity.

The findings from the research demonstrate linkages and intersections across the concepts of tenure (in)security, intermediate tenure systems, regulation, and possibilities for urban land reform. The traders are living at the market with the knowledge of the city and no threat of eviction. Residents have also formulated clearly understood regulatory systems of governance to work around this living arrangement and manage the settlement to ensure the whole system runs efficiently, although as demonstrated in the 4th chapter there are many challenges that arise.

Ultimately, the research still maintains that the traders have insecure tenure even though the city has chosen to turn a blind eye to their knowledge of the living arrangement. This is because the city's inaction still doesn't make this arrangement a legitimate intermediate tenure system.

This is where De facto land tenure which relates to the city actively protecting the property access rights of these traders through bold political or administrative measures would come in, instead of simply looking the other way. For prime urban land access to be extended to the urban poor and the urban land reform agenda to be advanced, real action needs to happen and many improvements would need to be made to the market to make it suitable for people to live in.

Reflecting on the research method the strongest approach was the semi-structured interviews and the focus group because it allowed me to piece together different pieces of the story of Kwa Mai Mai that had not been well documented before this. It also gave very powerful insights into the day-to-day lived encounters of the market traders and their opinions. The biggest gap in the method is the limited number of officials that were engaged. The research would have benefitted from engagement with senior stakeholders from the side of the municipality to get a better

understanding of their stance on the management of the market and related future plans.

Chapter 6:

Conclusions and Recommendations



6.1 Responding to the Inquiry

The research report titled 'The legalities of Illegality: Exploring the Contestation for Urban Land Rights at the Kwa Mai Mai Muthi Market, Johannesburg." asks, "To what extent is taking administrative action to improve land tenure by offering communities rights to occupy urban land feasible and necessary for advancing the urban land reform agenda?" The report used four sub-questions to assist with answering the main question. Five research methods were used to appropriately answer all the questions, these methods include:

- Desktop Study;
- Policy Evaluation;
- Semi-Structured Interviews;
- Focus Groups;
- Observation.

The research positioned improving tenure security for those living precariously on prime urban land as a means to advancing the urban land reform agenda. This reasoning was based on the initial assumption that improving tenure security automatically means that land tenure reform has been achieved, and as a result, overall urban land reform has been advanced. After carrying out all five research methods some key challenges arise, highlighting that the initial assumptions were not accurate.

The first challenge was initially identified during the desktop study phase, that defining insecure tenure is complex. The research maintained that for the purpose of this study, insecure tenure would be understood as a person or group of people who do not possess a title deed for the property they are occupying and live with the constant threat of eviction. The case study challenged this thinking because the traders at Kwa Mai Mai have no title deeds or administrative authorisation from the city to occupy the property they live on but they are not faced with the challenge of possible eviction. This, combined with the residents' strong sense of belonging and the social legitimacy of their living arrangement, could tempt one to question whether their tenure is insecure and needs to be improved. However, reflecting on how the lack of official authorisation has allowed the city to turn a blind eye and not have to

improve the living conditions of the residents prompted the research to maintain the traditional definition of tenure insecurity which is tied to a lack of a title deed.

The second challenge is that typically, once communities have been identified to have insecure tenure that needs to be improved, the default response is to roll out big housing projects centred around giving beneficiaries a title deed to a house that has been built in the periphery of the city. This was evident in the case of Kwa Mai Mai where both residents and officials acknowledge the many benefits of being in their current location and residents highlight that they prefer living the way they are living now over moving to a further location. However, knowing all of this, the city still has plans to roll out a housing project that will result in residents having to move to peripheral locations because the emphasis is on being able to provide a title deed and meet quantifiable targets. Therefore, even if it was easy to define when tenure is secure and when it isn't secure there would still be the bigger change management challenge at hand. There is a need for development approaches to evolve and prioritise responding to the needs of residents over achieving quantifiable results and prioritising ownership.

The last challenge emerges when one starts questioning whether administrative action that authorises occupation rights would indeed lead to land tenure reform. Giving legitimate authorization to individuals or communities to occupy land would certainly improve their tenure security and minimise the risk that they are exposed to. It is difficult to confidently conclude that this would lead to land tenure reform, especially considering that from its formulation the South African land reform programme was meant to redistribute agricultural land and improve tenure among labour tenants. This makes one question if, under the current provisions of the program, there is room for impact and implementation in urban areas. However, the research also notes that there is a tendency for governments and development agencies to preoccupy themselves with reviewing policy instead of taking real action with real impact.

The research acknowledges that land tenure needs to be improved and that the urban poor deserve security. It maintains that where tenure is insecure and people are living precariously, municipalities should be empowered to take administrative action to improve this tenure. However, the research also acknowledges the reality

that there are too many gaps in this field for one to confidently detail in what cases this should happen and how it should happen. When should tenure be considered insecure? How do mindsets and default approaches leaning towards proving title deeds change? Does improving tenure automatically mean one has advanced urban land reform? These are all questions that have been brought forward by the deeper investigation into this topic.

Due to the country's land management past, challenges around land tenure are important and they need to be addressed however, not enough work has been done on urban land reform and what that would entail or require. The research can conclude that where tenure is insecure there needs to be a change in approach from prioritising ownership to focusing on responding to the needs on the ground because as the case study has proven, communities have reasons for settling where they settle. The locations offer access to the urban fabric and all the opportunities it has to offer and residents would choose these locations over individual housing in less ideal locations. However, the research cannot confidently conclude that improving tenure in innovative ways that allow communities to live with security in urban areas will advance the urban land reform agenda. Additional research into all the different aspects of this would need to be done to allow for the current gaps and disconnects to be addressed.

6.2 Constraints of the Study

The biggest constraint for the study related to the chosen case study. Gaining an understanding of all the different components of the case, the case study area, and existing dynamics was challenging because the Kwa Mai Mai market is not a well-documented area and I had to develop most of the insights from scratch. Additionally, as anticipated in the first chapter I had some challenges getting time to speak to the induna and keeping his attention when I had finally found some time with him. There were also some unexpected culture shocks like being asked to leave when I came in wearing jeans for my interview with the induna and asked to return wearing respectable female clothing.

Another constraint that made me note just how big the housing burden is and how desperately communities need a helping hand was being asked if me doing this work meant the municipality is going to improve conditions at the case study area. After explaining that I am there in my capacity as a student only for research purposes I did lose a couple of potential respondents. This was also the response with other potential respondents after I explained what the research focused on, some did not feel comfortable proceeding because they did not want to cause any trouble. However, I was still able to speak to multiple respondents who were very forthcoming and eager to help.

COVID-19 also had an impact on the research, especially in the first year. When I was preparing to start with interviews most municipal officials were still working from home which made it difficult to track people down and find some time with them. Once I had managed to get ahold of some interested parties it was challenging to find times and locations that worked for all the parties involved, particularly because I do not live in Johannesburg. Due to government restrictions at the time, learning at the University of the Witwatersrand was moved online which meant I no longer had access to the academic resources and peers that would have made the learning journey easier over the years. Lastly, load shedding limited the number of productive working hours available in a single day and slowed down the progress of the research.

6.3 Recommendations

The main aim of the research was to explore the feasibility of improving the tenure security of urban dwellers who currently live in illegal precarious arrangements on prime urban land. This was with the acknowledgement of current approached to improving tenure by providing tittle deed being resource intensive and ineffective tasks. The case study was used as a reference point as it was impossible to consider the challenges of every similar community within the scope of the research. Based on finding from the case study, the following recommendations are put forward to address the challenge of urban tenure insecurity.

1. *Developing Metrics when Tenure is Insecure in Development Terms*

The beauty of literature, theory, and academia is that there is a lot of room for competing perspectives to coexist and inform our thinking. However, reality is very different to literature and theory. On the ground these issues we spend time writing about and debating have real consequences on the lives of many. The lack of clarity in understanding when tenure is insecure acted as a barrier for the case study and it potentially acts as a barrier for many similar communities getting the assistance and support that they need. Moving forward, a lot of effort needs to go into developing some best practices to help determine this, even if this is only in the confines of municipalities.

2. *Auditing of Municipal Service Delivery Areas*

One issue that the case study shed light on is that of municipalities turning a blind eye to residents' living conditions and not taking accountability and responsibility. Many municipalities all over the country are well aware of these kinds of living arrangements and the harsh living conditions associated with them but they choose to ignore these realities so they do not have to do anything about it. Being able to run external audits of all the areas municipalities service would immediately highlight all the residential communities municipalities are aware. This would need to be done in conjunction with specific programs that identify and help support and improve the living conditions and services in these communities without disrupting them.

3. *Buidling Local Capacity to Formulate Local Solutions*

The biggest challenge faced by many countries in the South is that governments and municipalities insist on prioritising programs and projects based on western ideals with limited impact like de Soto's influence on the preoccupation with ownership. The second chapter presented a wide range of examples where innovative, context based solutions were implemented and had real impact. There is a need to build capacity so that development professionals have the required capabilities to innovate and respond to the needs of communities.

4. *Reconceptualising Land Reform*

It is widely accepted that land reform has had limited impact in the last 3 decades. At the time of its formulation land issues were centered around rural areas and

townships which it made an attempt to respond to but still failed. With urbanisation rates in Africa projected to keep increasing, while large proportions of previously disadvantaged communities continue to live precariously with no security, we cannot afford to have a land reform program that doesn't respond to this. It was difficult for the study to confidently conclude whether improved tenure security would automatically mean advanced urban land reform because there isn't a clear picture of what urban land reform would look like. There is a need for academics, municipal officials and policy makers to refocus and conceptualise what urban land reform could realistically look like, what it would require, and what steps need to be taken to ensure that is is a success.

6.4 Concluding with Contributions of the Research to the Mandate for developing Sustainable Human Settlements

This research highlights that even being open-minded and accepting of both the formal and informal is not enough because even that is not purely black and white. Most informal settlements refers to communities living in corrugated iron rooms and houses. The reality is a large proportion of the population is living in many diverse informal arrangements like hijacking abandoned buildings, renting out 'rooms and spaces', sleeping in public areas, and many cases like that of Kwa Mai Mai. These living arrangements and the challenges around all of them are unique, it is impossible to develop an all-encompassing piece of legislation to address all of them or individual pieces of legislation for each one. What is necessary in this moment is a shift in development approaches to be more flexible and adaptable in responding to all these unique challenges.

Practitioners in the global south need to be comfortable with recognizing, innovating, and addressing issues that would typically be ignored. Above all else, it may be time for all of us to accept that unplanned settlements and extra-legal living arrangements are here to stay. Instead of criminalising these and formulating policies and programmes to eradicate these, it is time to acknowledge that they develop for a reason, they serve a purpose to their occupants and the focus should be on developing innovative solutions that make them work better, integrate them

legitimately into the urban fabric, and improve the quality of life of those occupying the. That is how you have impact and create sustainable human settlements.

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LIST OF INTERVIEWEES

Semi-Structured Interviews

Respondent 1: Resident and Trader at Kwa Mai Mai (M)

Respondent 2: Resident and Trader at Kwa Mai Mai (F)

Respondent 3: Resident, not a trader at Kwa Mai Mai (F)

Respondent 4: Trader, not a resident at Kwa Mai Mai (F)

Respondent 5: Trader and Resident at Kwa Mai Mai (M)

Respondent 6: Resident and Trader at Kwa Mai Mai (M)

Respondent 7: Resident, Trader, and Committee Member at Kwa Mai Mai (M)

Respondent 8: Resident and Pre-School Teacher at Kwa Mai Mai (F)

Respondent 9: Resident, Trader, and Committee Member at Kwa Mai Mia (M)

Official 1

Official 2

Chairperson

Focus Group Discussions

Chairperson (M)

Respondent 7: Resident, Trader, and Committee Member at Kwa Mai Mai (M)

Respondent 9: Resident, Trader, and Committee Member at Kwa Mai Mia (M)

Respondent 1: Resident and Trader at Kwa Mai Mai (M)

Induna (M)

FD Participant 1: Resident and Trader at Kwa Mai Mai (M)

FD Participant 2: Resident and Trader at Kwa Mai Mai (M)

Official 1

Appendix 1: Participant Information Sheet



Participant information sheet

Greetings

My name is Thobeka Mnguni and I am a Masters [MUS(HHS)] student in the school of Architecture and Planning at the University of the Witwatersrand, Johannesburg. As part of my studies, I must undertake a research project, and I am investigating the potential of occupancy rights in advancing the urban land reform agenda under the supervision of Dr. Miriam Maina. The aim of this research project is to understand the positive impact that well established occupancy rights could have on the livelihoods of urban dwellers currently living in extra-legal arrangements

As part of this project, I would like to invite you to take part in an interview. As a respected community leader or long-term community member at the Kwa Mai Mai muthi market I have chosen to engage with you on the matter. I am using this market as a case study and the questions I will be asking will help me understand your living conditions and hopes for the future. This activity will involve answering a few questions and will take around 15-25 minutes. With your permission, I would also like to record the interview using a digital device.

There will be no personal costs to you if you participate in this project, you will not receive any direct benefits from participation but there are no disadvantages or penalties if you do not choose to participate or if you withdraw from the study. You may withdraw at any time or not answer any question if you do not want to. Should you wish to remain anonymous or have the information you share remain confidential this will be ensured throughout the process, and the information you give to me will be held securely and not disclosed to anyone else. Furthermore, I will use a false name to represent your participation in my final research report. If you experience any distress or discomfort at any point in this process, we will stop the interview or resume another time.

If you have any questions during or afterwards about this research, feel free to contact me on the details listed below. This study will be written up as a research report which will be available online through the university library website. If you have any concerns or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (Non-Medical), telephone +27(0) 11 717 1408, email hrec-medical.researchoffice@wits. ac.za

Yours sincerely,

Miss T.L Mnguni

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Appendix 2: Consent Form



Consent Form

Title of project: **Alternative Tenure Options as a Steppingstone for Urban Land Reform: The Case of Kwa Mai Mai Muthi Market**

Name of researcher: Thobeka Mnguni

I, ……., agree to participate in this research project. The research has been explained to me and I understand what my participation will involve. I agree to the following:

(Please circle the relevant options below).

I agree that my participation will remain anonymous.

YES NO

I agree that the researcher may use anonymous quotes in her research report.

YES NO

I agree that the interview may be audio recorded.

YES NO

I agree to have photos/a video taken.

YES NO

I agree that the information I provide may be used anonymously after this project has ended.

YES NO

Participant

…… (signature)

…… (name of participant)

…… (date)

Researcher

…… (signature)

…… (name of person seeking consent)

…… (date)

Appendix 3: Resident/Trader Interview Guide



Hello, I am Thobeka Mnguni currently studying for my masters at Wits University. As my participant Informant Sheet explained, this is a purely academic study. Thank you for agreeing to be interviewed. Please feel free to interrupt me anytime at any time and please let me know if you are uncomfortable with any of the questions I ask.

1. What is your trade at the market?
2. How long have you been at the market?
3. How much rent do you pay for your stall?
4. Where do you stay after hours?
5. If at the market, how long have you been staying at the market?
6. What were your main reasons for staying/not staying at the market?
7. If at another location, how does your everyday differ to that of your counterparts who stay at the market?
8. Have you ever feared being evicted? Why? Why not?

ONLY for residents

9. How do you access services (water, sanitation, waste disposal)
10. Do you feel safe at the market?
11. Do you find the conditions ideal?
12. If you were told you had to, would you leave? Why? Why not?

*For the forum discussion each member had to briefly narrate the history of the market, their arrival, and the existing governance structure and their roles.

Appendix 4: Official Interview Guide



Hello, I am Thobeka Mnguni currently studying for my masters at Wits University. As my participant Informant Sheet explained, this is a purely academic study. Thank you for agreeing to be interviewed. Please feel free to interrupt me anytime at any time and please let me know if you are uncomfortable with any of the questions I ask.

1. Which organisation do you work for?
2. How long have you worked with the market?
3. How were you elected as your organisation's representative?
4. What is the role of your organisation at the market?
5. What does YOUR everyday look like? (roles)
6. How is rent payed at the market?
7. How is room allocation managed at the market?
8. Who manages the waiting list?
9. Are you aware of the trader's living arrangement?
10. Is your organisation aware of the living arrangements?
11. What is your stance?
12. Are there any future plans to manage the situation?

Appendix 5: Ethics

APPROVED

Protocol Number: SOAP128/06/2021