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EXPLORING THE DELAYS IN LAND REGISTRATION WITHIN TOWNSHIP ESTABLISHMENT PROCESS FOR LOW INCOME HOUSING DEVELOPMENTS IN SOUTH AFRICA, A CASE STUDY IN SESHEGO/ POLOKWANE: LIMPOPO

Teresa Molatelo Mashego

A Research Report submitted to the Faculty of Engineering and the Built Environment, University of the Witwatersrand, in partial fulfilment of the requirements for the degree of Master of the Built Environment in Housing.

Johannesburg 2017

DECLARATION

I, Teresa Molatelo Mashego, student number, 562190, a student registered for the Degree of Master of the Built Environment (Housing) in the year 2015. I hereby declare the following:

I am aware that plagiarism (the use of someone else's work without permission and/or without acknowledging the original sources) is wrong. I confirm that the work submitted for assessment for the partial completion of the above degree is my own unaided work except where I have stated explicitly otherwise. I have followed the required conventions in referencing thoughts, ideas and information of others. I understand that the University of the Witwatersrand may take legal disciplinary action against me if there is a finding that this is not my unaided work or that I have failed to acknowledge the source of the ideas or words in my own work.

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Signature

Signed on_____ Day of _____Year ____2017___

ABSTRACT

The research report is based on the complex nature of land registration within a township establishment process in South Africa. Post 1994 democratic government have placed a great emphasis on land tenure security. Therefore it becomes ~~prominent~~ crucial for government departments to identify, acquire and expropriate land for the provision of affordable integrated human settlements. The political drive for low income housing developments results in community pressured projects, disregarding the opening of a township register which enables individual title transfers. Several townships established on municipal owned land are incomplete wherein the General Plan is approved but not registered at the deed's office, hampering deed of transfers to allocated beneficiaries. Land exchanges, employer housing allowance, family inheritance and insurance contracts necessitate land ownership declaration. The various land tenure security approaches are explored and argued for formal recognition since they have been proven to be working successfully in other parts of the world.

DEDICATION

This Research Report is dedicated to the uplifting of woman in support of the drive to eradicate gender based violence. Galatians 3:28 reads: “there is neither male nor female” and Revelation 21:4 read as follows: “there shall be no more suffering”.

ACKNOWLEDGEMENT

This research is dedicated to my current employer, the City of Polokwane, a local government institution located in Limpopo Province of South Africa, for if it was not for the organisation, my passion for Integrated Human Settlements and Township Establishment would not have been conceivable.

My supervisor Mr. Neil Klug, thank you for being a Professional Town Planner who shares similar views as me in this profession. Your deep understanding and guidance on matters of land registration encouraged me to finish this research. Professor Marie Huchzermeyer, you have truly been a supportive course conveyor. You have understood the family bereavement situation I underwent early 2015 and continued to have confidence in me that I will get through this course. I thank you for taking the time to assess my research topic and allocating me with the best relevant supervisor.

To Polokwane residents, the community of Polokwane Extension 78, without you there would have never been such a successful integrated, sustainable human settlements project. Thank you to my colleagues, fellow Town Planners, Housing and Property administrators, some of which formed part of the participants for the research methods contained in the report.

My inspiration is drawn from my mother; you are my pillar of strength. Thank you to my son, family, cousins and friends for your continued support throughout my life journey.

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LIST OF ACRONYMS

BNG	Breaking New Ground
CBO	Community Based Organisation
CLARA	Communal Land Rights Act, Act 11 of 2004
CLO	Community Liaison Officer
COGHSTA	Cooperative Governance and Traditional Affairs
CPA	Communal Property Association
CRU	Community Residential Unit
DFA	Development Facilitation Act, Act 67 of 1995
EIA	Environmental Impact Assessment
EIAP	Environmental Impact Assessment Practitioner
EMP	Environmental Management Plan
ESTA	Extension of Security of Tenure Act, Act 62 of 1997
FICA	Financial Intelligence Centre Act, 38 of 2001
GEAR	Growth, Employment and Redistribution
GIAMA	Government Immovable Asset Management Act (GIAMA) 19 of 2007
GIS	Geographic Information System
GP	General Plan
HDA	Housing Development Agency
IDP	Integrated Development Plan
IPILRA	Protection of Informal Land Rights Act, Act 31 of 1991
IRDP	Integrated Residential Development Programme
LEFTEA	Less Formal Township Establishment Act, Act 113 of 1996
LDO	Land Development Objectives
LUMS	Land Use Management Systems
MEC	Member of the Executive Committee
MFMA	Municipal Finance Management Act (Act No. 56 of 2003).
MIG	Municipal Infrastructure Grant
MTEF	Medium-term Expenditure Framework
NDoHS	National Department of Human Settlements
NGO	Non-governmental Organisation

NHBRC	National Home Builders Registration Council
PHD	Provincial Housing Department
PISA	Prevention of Illegal Squatting Act 52 of 1951
RDP	Reconstruction and Development Programme
RLCC	Regional Claims Land Commission
ROD	Record of Decision
RSDF	Regional Spatial Development Framework
SADT	South African Development Trust
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013
SPP	Surplus People Project
TLC	Transitional Local Council

IMPORTANT DEFINITIONS

- ***Cadastre:*** a systematically organized database of property data within a certain jurisdiction. This information is based on a comprehensive survey of a property's boundaries. Related to the term cadastre are the terms "cadastral survey, which is a survey of boundaries of land parcels, and "cadastral map, which is a map indicating the boundaries of land parcels (Hanstad, 1998:649). A General plan is a commonly used term to describe this in South Africa. Although cadastres were originally established for land taxation purposes, in many countries they later were used for land registration purposes. When a cadastre is used for land tax purposes, it is a "fiscal cadastre"; when it is used for land registration purposes, it is a "legal cadastre. It is important to note, however, that a cadastre, or even a cadastral survey, is not a requirement for a land registration system (Greenville, 1990).

- ***Conveyancing Attorney:*** Conveyancing (or conveyance) is the legal term for the process whereby a person, company, close corporation or trust becomes the registered and legal owner of immovable property and ensures that this ownership cannot be challenged. It also covers the process of the registration of mortgages. Conveyancing in South Africa can only be carried out by a licensed conveyancer, i.e. a lawyer (the term attorney is also used in South Africa) who has passed the *National Conveyancing Examination*. It is estimated that the timeframe for effecting transfer is 14 days at the deeds; office, which is actually viable and has over the years proven to be true. The main issue lies with the registration of townships and not individuation registration of titles.

- ***Infrastructure development:*** With regard to the infrastructure development to be done by the municipality, it is common cause that the Local Government Structures Act 32/2000, places a general duty on municipalities to give priority to the basic needs of the local community by *inter alia* ensuring that all members of the local community have access to at least the minimum level of

basic municipal services (section 73). This obligation thereby increases land values particularly in urban areas.

- ***Land rights:*** the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, donation or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries.

- ***Land-use regulation*****:** land-use planning and enforcement and the adjudication of land use conflicts.

- ***Land Surveyor:*** a professional mainly responsible for generating cadastral diagrams as defined in the Land Survey Act, 1997 (Act No. 8 of 1997). The diagram is the fundamental registerable document prepared by the land surveyor. The essential information shown on a diagram is the unique description of the property; an illustration depicting the property; the boundary description listing the corner beacons and the details of any curved/ rounded boundary; descriptions of the corner beacons; a table listing the numerical data of the boundaries and the area of the property. The Surveyor-General gives each diagram a unique reference number.

- ***Land valuation and taxation:*** the gathering of revenues through forms of land valuation and taxation, and the adjudication of land valuation and taxation disputes. In a local government, this is regulated by the Municipal Property Rates Act 6 of 2004.

- ***Town Planner:*** a professional responsible for the foundation/ planning of a township development.

GLOSSARY OF TERMS

BNG.	Breaking New Ground (alternatively known as the Comprehensive Plan for Sustainable Human Settlement). The Department of Human Settlements introduced this planning strategy at the end of 2004 as a guide to housing development in order to redirect and enhance existing mechanisms for more responsive and effective delivery. BNG encourages a flexible approach to the use of a variety of instruments and mechanisms to achieve sustainable human settlements.
Charter.	The Bank Housing Charter, providing for affordable bondable-housing Subsidised by the Department of Human Settlements.
COGHSTA	The Limpopo provincial Department of Cooperative Governance Human Settlements and Traditional Affairs.
Diagram.	A cadastral diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997).
DRA.	Deeds Registries Act, 1937 (Act No. 47 of 1937) as amended by the Deeds Registries Amendment Act 2010 (Act 12 of 2010). The purpose of the Act is to regulate the registration of deeds and make uniform the practices of each Deeds Registry in the process of registering deeds.
Engineering Service.	A system for the provision of water, sewerage, electricity, municipal roads, storm water drainage, gas and solid waste collection and removal, required for the purpose of land development.
Erf.	Any piece of land registered as a plot or stand in a Deeds Registry. It can also be a lot or stand in a portion of land laid out for development, but not yet proclaimed as a township as defined in the Town Planning and Township's Ordinance 15 of 1986.

HSDG	Human Settlement Development Grant, which finances the provision of housing subsidies through a number of mechanisms that all ultimately benefit Low Income households: project-linked subsidies (where the bulk of the grant is spent); Individual subsidies; Institutional subsidies; Consolidation subsidies; The Peoples Housing Process; and, The finance-linked subsidy programme.
HSP.	Housing Sector Plan is a component of the IDP and contains detailed housing projects of the housing planning undertaken or planned by a municipality and should be done as part of the IDP process.
DRD&LR.	Department of Rural Development and Land Reform.
Incremental upgrading Of informal areas.	The progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation, and may include any settlement or area under traditional tenure (governed by the National Housing Code, Part 3, Incremental Interventions (Consolidation Subsidies, Emergency Housing Programme, Integrated Residential Development Programme and Enhanced Peoples Housing Process) and Upgrading Informal Settlement (Subsidy Quantum – Incremental Interventions). See Proclamation R188 for traditional authority jurisdiction and Proclamation R293 for South African Development Trust (SADT) jurisdiction.
Upgrading of Tenure.	The Upgrading of Land Tenure Rights Act (No. 112 of 1991) provides for the upgrading and conversion into ownership of certain rights granted in respect of land and for the transfer of tribal land in full ownership to tribal authorities and for matters connected therewith. See Proclamation R188 for traditional jurisdiction and Proclamation R293 for South African Development Trust (SADT) jurisdiction.
USDG	Urban Settlement Development Grants, which Metropolitan municipalities directly receive from the national department of human

	settlements to address infrastructure needs
Land.	An Erf, agricultural holding or farm portion.
Land development.	The erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme (as defined in the Spatial Planning and Land Use Management Act 16 of 2013).
Land registration	In this research report, Land registration has been interchangeable used in the context of opening of a township register/ township registration therefore should be interpreted as such.
MSA	Municipal Systems Act, (Act No. 32 of 2000). The MSA brings the IDP in as a mandatory planning document that will integrate and centralise the planning of all municipal sectors and align with national and provincial policies and plans.
NDoHS.	National Department of Human Settlements.
NEMA	National Environmental Management Act (no 107 of 1998), which provides for co-operative, environmental governance (between the different spheres of government).
Owner.	The person registered in a deeds registry as the owner of the land represented in the title deed document or the beneficial owner in law. Section 239 of the Constitution.
R188.	Proclamation R188 of 1969, under the authority of the Black Administration. Act (No. 38 of 1927) in terms of which tenure in rural areas of South African Development Trust (SADT) land was regulated. Town planning and township establishment in the rural parts of the SADT land was governed in terms of R188. The town planning

	provisions established procedures for laying out and surveying plots and handing them over to occupiers that conferred rights which are inferior (in terms of tenure law) to those practiced in the former white South Africa. These procedures have persisted in law and regulation for these areas after 1994, and have been incorporated into new spatial planning and development rights processes.
R293.	Proclamation R293 of 1962, under the authority of the Black Administration Act (No. 38 of 1927), in terms of which tenure in the denser settlements of South African Development Trust (SADT) land was regulated. Town planning and township establishment in the denser settlements of the SADT land was governed in terms of R293. The town planning provisions established procedures for laying out and surveying plots and handing them over to occupiers that are inferior (in terms of tenure law) to those practiced in the former white South Africa. These procedures have persisted in law and regulation for these areas after 1994, and have been incorporated into new spatial planning and development rights processes.
SDF	Spatial Development Framework. A core component of the IDP, representing the Municipality's spatial vision.
Township.	An area of land divided into erven, including public places and roads indicated as such in a General Plan.
Townships register.	Approved subdivisions register of a township in terms of the Deeds Registries Act (No. 47 of 1937).
Viable property.	Immovable property that can be developed and function as a separate entity and be registered as such at the Registrar of Deeds.
1939	Transvaal Local Government Ordinance No. 17 of 1939 Ordinance
1986	Town-planning and Townships Ordinance No. 15 of 1986 Ordinance

CHAPTER 1

1. INTRODUCTION

Many of the land tenure systems which Africans live by are still not officially recognised and are frowned at under the state law and the private sector particularly in South Africa (De Klerk, 1991). Broadly speaking communal tenure is officially recognised in its different forms in many ~~parts of~~ African countries such as Tanzania, Uganda, Namibia and Botswana (Payne, 2002). The market oriented system to property rights requires a title deed as the only way of proof of ownership. While freehold tenure is the most legally recognised tenure option, it necessitates land registration which is cumbersome. Challenges with land registration ranges from the historical backlog created by the apartheid government (Group Aras Act), lengthy town planning and township establishment processes. Effectively, the lengthy township establishment processes and related variables contribute to housing and land ownership challenges facing South Africa in terms of financial costs.

The official waiting list for housing subsidy[1] in Polokwane municipality holds about 30500 applicants of which 22693 are within the urban built up arera (Seshego/City). The land market become expensive as a result of the registrations cost further ~~acerbating on~~increasing the land and housing backlog. Land prices are increased to cover the settlement planning processes and for low income households, these processes are never finalised and beneficiaries carry over the long term burden of not having a title deed for the land they occupy. The beneficiaries of these projects cannot structurally improve their houses, cannot obtain a second bond in order to

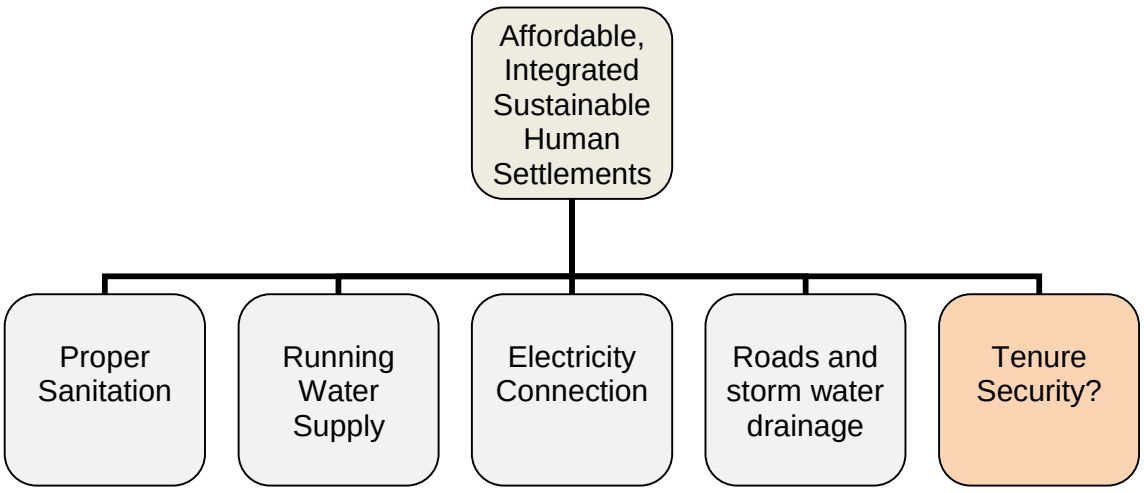
[1] A housing subsidy is a grant from government to qualifying beneficiaries engineered specifically for housing purposes. Different subsidy options exist within the South African government for different housing beneficiary categories. There are those subsidies applicable for the ~~to~~ development institutions and development banks wherein the subsidy is paid to the township developer to finance the construction of a house. The house is then transferred to the qualifying beneficiary according to household income and repayment arrangement over a period. The Department of Human Settlements specialises in the delivery of housing related to the bottom-most end of the market, where it provides housing subsidies to the poor whose household income is below R3 500 where the bulk of the housing backlog exists (Housing Code, 2009).

structurally improve the existing house, cannot qualify for employer housing allowance, cannot take out housing insurance and are unable to legally sell or transfer inherited houses.

1.1 PROBLEM STATEMENT AND RATIONALE OF THE STUDY

The delay and or non-delivery of individual freehold tenure titles for low income housing beneficiaries in South Africa, research detailed to the level of Polokwane Municipality, Limpopo Province, South Africa. As a ~~P~~professional Town Planner having more than 10 years' experience in land use management and township establishment procedures, it happens more than once those townships are established and not finalized up to the opening of a township register at the deeds office. ~~Land registration is a complex exercise in pursuit of service delivery in the South African Government~~. Land registration complexities dates as far as the apartheid era, the Group Areas Act created a backlog wherein the majority of South Africans do not own land, thereby creating a gap in land and housing ownership (Gwanya, 2003).

Figure 1: Problem statement (*own design)*



Integrated Sustainable Human Settlements is defined in the Housing Code[2] as housing with ~~subservient~~ supporting basic amenities as illustrated in figure 1. While the other ~~four~~ five components are implemented (sanitation, water, electricity, roads and storm water drainage), tenure security is far behind despite the government's emphasis on the right to property outlined in the Constitution of South Africa, 1996 (Act 108 of 1996), Section 25, Chapter 2, Bill of Rights. Problem statement is mainly the land registration delays (opening of a township register) within a township establishment process. This delay results in several abandoned projects[3] of unregistered low income housing households at the deeds office hampering the issuing of individual titles to the respective beneficiaries. There are many disadvantages associated with unregistered land portions, one being that the private banking sectors and insurance companies do not recognise other forms of tenure except individual title and do not provide long term financial support to individuals without title deed. ~~Furthermore one also needs to acknowledge that there are only two forms of formal housing that is Public Housing and Private Housing~~ (Lai, Lorne, Chau and Ching, 2016).

Figure 2 below represents total registration against houses built in each province[4] post-apartheid, 1994-2009. It can be concluded from a concise analysis of this graph that Limpopo is one of the provinces with highest percentage of unregistered land parcels.

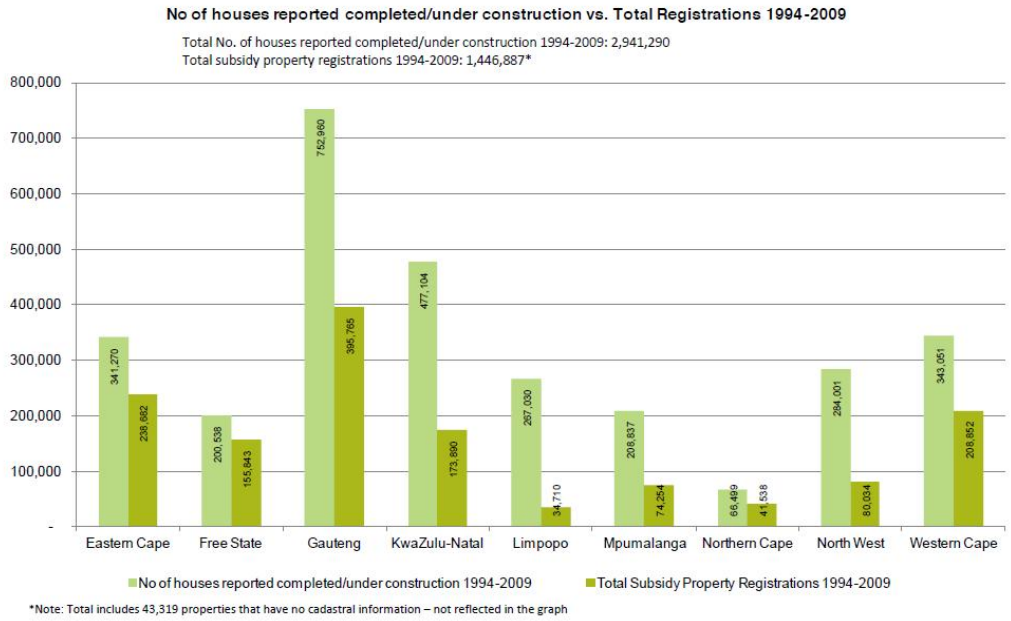
Figure 2: Total Registrations vs. number of houses reported by province: 1994-2009.

(Source: Shishaka, 2012: ~~(~~26)

[2] **The** Housing Code sets the underlying policy principles, guidelines, norms and standards which apply to the South African government's various housing assistance programs introduced since 1994 and updated. Moreover, this legislation contains the various housing subsidy instruments such as the financial, incremental, rural, social and rental interventions that are available to assist low income households to access adequate housing. This Code also amends the National Housing Code of 2000.

[3] Abandoned projects refers to incomplete buildings, houses and other processes due to project failure, budgetary constraints or negligence in the part of the contractor, project managers or government officials.

Figure 6: Total Registrations vs number of houses reported by Province: 1994 – 2009[9]



[9] The gap reflected between the number of houses reported and total registrations is more significant than shown in the diagram due to the fact that total registrations includes Discount Benefit Scheme properties which are not included in the number of houses reported

In analysing the graph, Limpopo has the lowest registration percentage of 13% across all provinces as follows:

Eastern Cape: 70%
Free State: 77%
Gauteng: 52%
Kwazulu Natal: 36%
Limpopo: 13%
Mpumalanga: 35%
Northern Cape C: 62%
North West: 28%
Western Cape: 60%

1.2 OBJECTIVES

The research aims to lay out a platform for local government to understand the complex nature of the township establishment processes. These procedures need to be planned for before housing delivery is promised to the communities. Land development not only means the top structure, ~~but a lot of~~ planning; infrastructure servicing and land registrations remain due. In recent years, several pieces of

[4] South Africa has nine provinces. Each province has its own Legislature, Premier and Executive Council.

legislations have been enacted in order to assist in shortening the town planning processes as they relate to land development. It is another purpose of the report to find out if ~~these legislation~~this legislations ~~have~~ has served the purpose or worsened the situation. Rural communities and low income housing households are the most affected by land ownership issues and it is the purpose of this report to highlight the causes, implications and possible solutions to this lack of tenure security. It is important to note that this research is limited to low income housing households in the city limits, urban areas regulated by the Town Planning and Township Ordinance 15 of 1986.[5]

In the literature review, case studies of how other countries recognise land tenure are highlighted in order to compare South Africa with other countries as a way of discovering other available security of tenure options. The other objective of this research is furthermore to explore as a topic for further research, alternative land tenure security systems which will speed up township establishment processes in South African.

1.3 MAIN RESEARCH QUESTION AND SUB-QUESTIONS

What are the constraints in land registration within a low income housing development ~~as well as~~and what are its implications ~~to~~ for the township establishment process?

a. How does security of tenure relate to “the right to property and housing”, and what are the processes followed and cost implications in a land registration transaction?

[5] Although the Spatial Planning and Land Use Management Act No. 16 of 2013 (hereinafter referred to as “SPLUMA”) was promulgated on 05 August 2013 and came into operation as of 01 July 2015 by way of SPLUMA Regulations gazetted on notice number 38828 published on 27 May 2015. The Town Planning and Townships Ordinance 15 of 1986 has not been repealed by the provincial by laws in Limpopo Province and specifically in Polokwane Local Municipality so it is still applicable and being referred to in this research report.

b. Are~~Is~~ there any other less complex tenure security approaches available in South Africa for the low income population group save for the legally recognised freehold tenure?
c. What is the process of township establishment in a proclaimed scheme area?

1.4 RESEARCH STRUCTURE

This research ~~work~~ report consists of six chapters, with tables, graphs, illustration maps, annexure, questionnaires and some newspaper extracts to substantiate the research report. Chapter one highlights the introduction to the research report, gives a brief outline to the context, introduces the problem statement and objectives to the research. The main research questions are also highlighted in this chapter. Chapter two specif~~y~~ies the research methods ~~to be~~ used for the report whereby the participant~~-~~s profiles are considered as well as issues of interrogation. Chapter three is the basic literature review, the points of reference of the research report and international theories of land registration. Chapter four is legislative framework to land and housing, some case laws as part of the background are within this chapter as well as deliberations on land administration and local legislation on township establishment. Chapter five, a detailed outline of the case study area is contained herein. Concluding remarks can be found on chapter six informed by the assessment of the interviews conducted, the literature studied and the available resources which supported this research report.

CHAPTER 2

2. RESEARCH METHODOLOGY

2.1 LOW INCOME HOUSING DEVELOPMENT

The researcher has used qualitative method. The following areas of research will be looked at as part of research methods for this report: land registration applicable legislation, international and local case studies. Low income housing development is a common subject for officials working for local government under housing section, the lack of security of tenure is experienced on a daily basis by the beneficiaries.

As a Town Planner working within the Development Planning Department encompassing Property Management and Housing unit of Polokwane Local Municipality, enquiries related to proof of ownership are prevalent. My employer has authorized me in undertaking this research report; therefore ethically I have complied with the requirements relating to professionalism. The Municipality's City Planning and Property Management section is inundated with request for deed of grants/ proof of ownership by residents. A number of low income housing townships lacking township register exist in Polokwane municipal area, which ~~will be~~are used for the research. The unregistered and un-transferred properties remain in the Municipality's asset register and it is queried by the Auditor General's office. Data collection ~~will be~~is in the form of personal face to face ~~i~~interviews and questionnaires. The interviews ~~are~~ were conducted with relevant officials who deal with matters of land registration on a daily basis, their responses are analysed and used as findings to this research report. Site inspection represented by site images will be conducted to gather information as well. The advantage with the researcher is the familiarity of the study area and the subject matter. The researcher has a language advantage having the ability to understand the local languages spoken being Northern Sotho (80.4% approximately of the population), English 3.2% and Tsonga 2.8%. Other research tools will include previous projects experience with the case study area, ward councillors contributions and community meetings which have taken place within the residents of Seshego and Polokwane Extension 78.

Primary data source, the major data source in this research report is the researcher's personal experience of township establishment, opening of a township register procedures and low income housing development beneficiary allocation. Most of the transcripts in the report are informed by community meetings, project steering committee and council meetings of Polokwane Municipality involving land registration and land tenure security. Deeds office in Pretoria, as of December 2016, Limpopo is the only province without the registrar of deeds office; all land registration transactions have to be processed by the National Offices in Pretoria. As a result the cost implications for land registration in Limpopo may be higher than the rest of the country (own analysis). This has created backlog, abandoned projects because of non-affordability by beneficiaries thereby creating gap witnessed in the previous Figure 2 (p:18) of this report. Meetings and discussions with the representatives of the deeds office indicate that there are plans to open a new office by April 2017.

Secondary data source for this research report is the land and housing legislation available to the South African government, The Constitution of the Republic of South Africa (Act 108 of 1996), Local Government: Municipal Structures Act (Act 117 of 1998) and the Local Government: Municipal Systems Act (Act 32 of 2000) provides the basis for the restructuring of local government and outlines systems of developmental local government. Other legislative and policy framework relevant to this research include but not limited to the SPLUMA, Development Facilitation Act (Act 67 of 1995), the National Housing Code (2000) the Breaking New Ground (2004).

2.2 PARTICIPANT PROFILES

No	Name	Short Profile
1	Mr. Tshepo Sebola	Tshepo is familiar with the process of township establishment and has worked under the Land Use Management section of the City for more than 10 years. He is a Technical Town planner and has been exposed to the various challenges associated with land registration. To mention one example, Seshego G registration of the subdivided erven was a tedious process which saw approximately 6 years until

No	Name	Short Profile
		registration took place. People settled long before they are the documented owners of the land in which they reside in. Mr Sebola has dealt with several land use applications most of which as township establishments and has seen the processes unfold up to the opening of a township register
2	Me. Claudete Emsley	Claudete is a Housing Administrator at the City of Polokwane directly linked to low income housing beneficiaries. She has more than 20 years experience working in the field of data capturing for screening of low income households in order to check them against the qualification criteria. She was intensively involved in the relocation planning of the people at Polokwane extension 78 (Disteneng) therefore she is aware of the community needs, their frustrations caused by the processes of township establishment.
3	Mr. Morris Maleka	Morris is a Property specialist in the Municipality familiar with the processes of property management including property acquisition, holding and disposal. He holds a Master Degree in development Studies and has been in the field for more than 10 years Valuation roll and immovable asset register fall within the section he is working under. For the purpose of this research, he is relevant because one of the matters escalating property values is the lengthy procedures association with land preparation, land servicing and land registration.
4	Mr. Phistos Muleya	Phistos is a Professional Town planner majoring in the field of building control. He is accustomed to building plans procedures and the challenges that come with un-proclaimed land as a result of pending township establishment processes. The undue process result in abandoned projects where houses cannot be built because building plans cannot be approved. Mr. Muleya has over 10 years experience in the field of Town planning.
5	Me. Winny Mnisi	Winny is a legal administrator directly involved with properties. She has extensive knowledge on matters of land registration. As a property lawyer, registered with the Law Society, complexities

No	Name	Short Profile
		associated with conveyancing are all recorded in her book of knowledge. It is also an undeniable fact according to her that some conveyancing attorneys take advantage of unassuming clients by charging ridiculous amounts for a mere land administration and transfer transaction which further exuberates the issue of land registration for low income earning households. Winny has a working experience both in the local government and in the private sector as a result she has best of both worlds and is able to assist with the research questionnaire of land registration for fully subsidised developments.

2.3 ISSUES FOR INTERROGATION AND FINDINGS

The following are the issues of interrogation in trying to answer the research question also attached as Annexure A:

Part A: Land Use management

1. How long does it normally take to establish a township?
2. Do you find the steps followed complicated?
3. At which stage can a township be declared complete?

Part B: Housing

1. What is the procedure in allocating houses to beneficiaries
2. What are the core components of sustainable integrated human settlements?

Part C: Property Management

1. The municipalities Asset Register
2. What can you tell me about land registration of municipal immovable properties up to date?

Part C: Planning Control and Outdoor advertising

1. What are the requirements in processing a building plan from a town planning perspective?
2. What are your day to challenges in relation to processing a building plan application?

Part E: Legal Services, Conveyancing

1. What is your experience regarding township registration and or land transfer or registration?
2. What are the common challenges and pitfalls?

Part A: Land Use Management

Interview with Tshepo Sebola in the form of a questionnaire

1. How long does it normally take to establish a township?

Mr. Sebola highlights the estimated Timeframe for the approval of a Township establishment application as follows:

Responsible Authority and Task	Target time frame
Approval of application by local Authority	six months
Approval of General Plan by Surveyor General	four months
Opening of Township Register with Deeds Office	three months
Proclamation of Township by Local Authority	one month

Because there are various stakeholders involved, the timeframe is not under the full control of the Municipality.

2. Do you find the steps followed complicated?

Yes, the process is time consuming hence there is some impatience in terms of service delivery especially at the final stages during encounters with the deeds office.

3. At which stage can a township be declared complete?

At the proclamation stage which includes installation of services and opening of a township register.

Part B: Housing

Interview with Claudete Emsley in the form of a questionnaire

1. What is the procedure in allocating houses to beneficiaries?

Houses need to be complete and townships ready for allocation. Township establishment takes place before allocation. Polokwane Municipality has a Housing Database (National Human Settlement Needs Register) and people are allocated per ward and on a first come first serve basis e.g. if CoGHSTA gives an allocation of 1200 units we divide those units by the number of wards in Polokwane 1200/43 = 28 so for each ward, then draw people from number 1 to 28 from their Human Settlement Needs Register (database) to screen once they passed, they complete the Housing Subsidy application forms.

2. What are the core components of sustainable integrated human settlements?

Provision of quality habitable housing with provision of basic services, proper infrastructure e.g. roads, parks etc. tenure security and easier access to socio and economic amenities.

Part C: Property Management

Interview with Morris Maleka in the form of a questionnaire

1. In the municipalities Asset Register, there are some properties categorized as "unknown", how come?

Unknown properties: these would be Properties that are located in a township owned by the Municipality but which are not individually registered in the name of the Municipality.

2. What can you tell me about land registration of municipal immovable properties, is it up to date?

Not at Polokwane Municipality at least, hence the answer to the previous question. There are properties which belong to the municipality but are not separately/ individually updated/ recognized on the asset register, they are either still registered as a farm portion on the mother deeds or have been subdivided which subdivision is not yet effected at the deeds office. And in some instance you will find that properties reflect on the municipality's asset register but they have been occupied on site.

Part D: Planning Control and Outdoor advertising

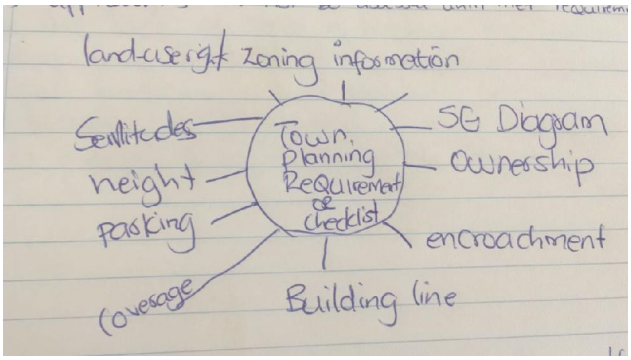
Interview with Phistos Muleya in the form of a questionnaire

1. What is the procedure followed in approving a building plan in a town planning perspective?

The National Building Regulations and Building Standards Act, 1977, including local by-laws *(Building Control)* defines the system whereby the City approves building plans and monitors building operations and controls the usage of building. Furthermore the Town Planning Scheme imposes a set of regulations on each property, which will in turn control any development of that property. These regulations include land use zonings (both primary rights and consent uses) and

density zonings. Building plans must first be approved by the Local Authority for the necessary building permits subject to the following criteria:

a) Site development plan is submitted from the building inspections Section to the Outdoor and development control Section for assessment.
b) The plan will be registered by the admin officer attached to the Outdoor unit for record purpose
c) The following forms part of the supporting documents
    i. Title deed and/or proof of ownership
    ii. Zoning certificate and/or land use rights confirmation
    iii. SG Diagram
d) Town Planner assesses the Site Development Plan in line with Schedule 3 of the Polokwane/Perskebult Town Planning Scheme, 2007.
e) Town Planner to look at certain the aspects on the plan to take into consideration when scrutinizing building plans, diagram on the right as illustrated by Phistos Muleya
    - ✓ land use rights /zoning information
    - ✓ SG diagram
    - ✓ Ownership
    - ✓ Building line
    - ✓ Height
    - ✓ parking required
    - ✓ Servitude
    - ✓ coverage



Once Town planning is satisfied with the appropriate information submitted, assessment be done to ensure that the building plan comply with requirements set by Polokwane Town Planning Scheme and other relevant policies. Once comments made on the application (negative or positive). If positive Town Planner will stamp the plans as a sign of approval and forward file to building section for Final Approval. If there are negative comments, the developer or Architecture will be given the comments

f) The Plan is recommended for approval/disapproval based on merit

g) The outcome on the plan will be captured by admin officer
h) Plan is released back to building inspection Section
i) After construction all building structures excluding “Residential 1” zoned properties will be inspected in order to verify correspondence with approved plans
j) Occupation certificate is recommended

My reflection of this interview so far relating to the specific aspect of land registration is that it will always be reminding us as town planners the past segregation and inequalities created then. The title deed is mostly required to verify the real owner of the property, to check the restrictions on the property and the size thereof. There are some plans submitted without proof of ownership and this hinders development because these plans cannot be assessed. Houses which building plans are not approved by the local authority cannot be ensured by insurance companies and cannot be funded. This meant that the owners use their monthly income and sometimes their life savings to build them, lacking insurance exposes these houses to risk of not being covered during the time of fire and other natural disasters. It pains me to think how this system was created to develop the advantaged population group and destroy the disadvantaged population group (those in rural areas without title deeds) (Ntsebeza and Hall, 2007:3). The 1913 Land Act set aside only 7.5% of the land in South Africa for black people in the tribal areas, land which has little value, land which cannot be ensured and land which one cannot borrow against. Through this research one also learns that developing on this land can be a huge risk because of massive investment on land which is one does not have full title rights over. The direct opposite applies to land in urban areas which was allocated to white people before 1994.

The interview with Mr. Muleya continues,

2. What are your day to day challenges in relation to processing a building plan application?

The most common challenge in assessment of building plans is non-compliance with the development criteria and standards. The other most common challenge is the inability to interpret the development control mechanism such as the Town Planning Scheme by the clients as common errors are continuously made, therefore

prolonging the process. At a personal level, my day to day challenges include political interference; shortage of staff delaying the process of approving building plans; corruption in the industry resulting in fraudulent plans approvals and threats by frustrated property developers & architects for the delays.

Part E: Legal Services, Conveyancing

Interview with Winny Mnisi in the form of a questionnaire,

An interview with Winny Mnisi was a very intense and interesting discussion, from the discussions I gathered that her experience is more focused on private transactions. Irrespective of this fact, generally one world would gather that the land registration and transfer business is an extensive one, even when privately driven and profit motivated with commissions received by estate agents/ executors. If there are shortcomings in the private transactions as well, then what about in the government sector wherein the end user is not contributing to any of the financial costs.

1. What is your experience regarding township registration and or land transfer or registration?

She first introduces herself then narrates her experience in property management. “My experience is on the transfer of immovable property on the following transactions; transfer between private individuals, transfer on state land to private individuals or communal property association, transfer to companies and trusts, divorce transfer as well as the estate transfer. My experience starts from consultation with interested parties specially the seller in order to understand terms and conditions of the sale agreement, and then I draft the sale agreement to be signed by the seller and the purchaser. Once in possession of deed of sale I call upon the parties to submit the following documents certified copies of their identity documents, marriage certificate, proof of residence, company registration certificate or letter of authority as well as delegation of powers in case of trust or companies in order to draw the transfer documents to be signed by interested parties without delays.

The seller signed the following transfer documents power of attorney to pass transfer of ownership to the purchaser marital status affidavits, insolvency affidavits, SARS documents and FICA affidavits and purchaser signed authority to invest the purchase price, marital status affidavits, FICA affidavits, insolvency affidavits etc. I request a clearance certificate from the local authority and transfer duty receipt from SARS. The following transfer documents are lodged with registrar of deeds for registration purpose: Deed of Transfer, Power of Attorney, Affidavits, Clearance Certificate and transfer duty receipts. In transfer of immovable property the purchaser has duty to pay the purchase price and also comply with the seller's obligation to transfer the property into the purchaser's name. The registrar of deeds will then approve the transfer of ownership only if the lodged documents comply with the requirements laid down in deeds registry act.

Upon registration then the conveyancer will pay out the proceeds of sale to the seller and also notify the local authority about the change of ownership or registration. The conveyancer will collect title the deed from the deeds office and hand it to the buyer in case of cash sale or to the bank in case of bond sale. The purchaser has the duty to pay the purchase price and the seller has the obligation to transfer the property".

2. What are the common challenges and pitfalls?

One common challenge delaying registration processes is the adoption of FICA for one. In most cases the purchasers are unable to comply with requirements laid down in this act and as such bond applications are rejected by banks. Secondly delay on the part of purchasers to pay purchase price and transfer fees. In cases of estate transfer, there is a delay by executors to finalise the estate matter with the master of high court. In case of divorce transfer failure or delay by the party or parties to comply with court order or settlement agreement. CPA transfer conflict within the beneficiaries. Delay by the local authority to issue clearance figures and clearance certificate or issue wrong clearance certificate. Delay by the seller to settle the amount due to the local authority in order to obtain clearance certificate.

CHAPTER 3

3. LITERATURE REVIEW

INTRODUCTION

International case studies show that there are various forms of unique ways of registering land ownership, and if each one of them is officially recognised by the respective state government, they can work effectively to yield the required benefit of all the residents, businesses and the state economy. South Africa is largely influenced by the Western and European land registration system whereby the individual title deeds of properties registered at the deeds office reflect the permitted and restricted use of the property in term of land use regulations. The freehold tenure in South African took the approach of the 1858 registration of title first introduced in Australia by Sir Robert Torrens. Torrens believed that a land register should show the actual state of ownership, rather than just provide evidence of ownership. Under this system, the government guaranteed all rights shown in the land register. Shortly after Torrens introduced the concept of title registration in Australia, a similar system developed in England (Theodore and Ruoff, 1957). The major advantage to this system is that it is the most efficient, globally recognized land registration system available to date however on the disadvantage site; it can be expensive particularly for developing countries where professional capacity constraints are prevalent.

3.1 INTERNATIONAL THEORIES AND CONCEPTS OF LAND REGISTRATION

3.1.1 Hong Kong

In Hong Kong, Kowloon Walled City (KWC); the Kaifong Association was formed, translated to "residents in the neighbourhood". This association allowed the people access to the witnessing power in their land leasing contracts as a form of ownership, additional to occupation status. The witnessing power comes in two forms, an authoritative witness and record keeping organization. It is considered authoritative when the witness is a reputable member of the society, a Chief or a leader. The sale purchase contract is therefore endorsed with a stamp of the Kaifong Association to

prove authority. In South Africa, land allocation by Tribal Authorities in the rural areas, also use to the witnessing power such that the people residing in the specific settlement know each other and form a community, with an elected community representative referred to as the civic leader. However this form of land ownership is still not officially recognised by other institutions such as banks and insurance companies.

3.1.2 Zambia

The Zambian state legally recognises customary tenure rights and all sectors of the state economy endorse this form of ownership making it no less inferior towards statutory tenure. In Zambia, land tenure is in two systems, customary rights and~~&~~ statutory tenure. Customary rights are the most common at 93% of the land in Zambia held under the control of the Tribal Authorities and allocation is therefore controlled by the Chiefs. This allocation gives rights to the members of the community to access and occupy land for various uses such as residential, commercial, and grazing purposes. The registration of ownership rights on the other hand is brought by the statutory tenure with only 7% of the land in Zambia registered. The registration process is notably very slow and the longest recorded timeframe to complete was 3 years. The Zambian LAN registration process is delayed due to the shortage of Land Surveyors and surveying equipment. The local people do not find the customary tenure inferior; it is only the investors from the western areas who emphasize on statutory registration as a condition of investment. Seeing that South Africa already inherited a huge land registration backlog, having similar forms of land ownership as Zambia, possibly the South Africa government can legally and equally acknowledge customary tenure[6] in the same manner as freehold tenure by enforcing that the private entities indemnify property developed on land without freehold tenure. In South Africa, one cannot ensure a house if they do not hold a title deed to it.~~.~~

3.1.3 Kenya and Sudan

Kenya and Sudan took the European and American model of land registration. A study by Hanstad, 1998, conducted in the American University International Law Review shows that two categories of land registration systems exist: registration of

[6] Land in held in trust under the control and allocation of Tribal Authorities. This allocation gives right to occupy the land for various uses.

deeds and registration of title. Registration of deeds was developed first. This system, called "land recordation" in the United States, involves registering or recording of documents affecting interests in land (Hanstad, 1998:650-651). “It developed hundreds of years ago in several European countries to prevent double selling of land, with registration or recordation of the deeds at a government office, the priority of claims could be established in the event of double selling” (Hanstad, 1998:651). In South Africa, Kenya and Sudan registration of deeds involves opening of a township register where land has been prepared, planned and surveyed producing a General Plan. Agricultural holdings and farm portions can are also registered at the deeds office only if cadastral exits depicting the boundaries and sizes. The Surveyor General Office is located separately from the deeds registry office which makes the land registration process ineffective and expensive. One important term, at times closely linked to land registration, is "cadastre’ (Hanstad, 1998).

3.1.4 ~~England,~~ Australia ~~and Nepal~~

In England, a general plan is filled at the registry office, the subject land parcel registered in therefore outlined. In Australia, the land parcel is registered individually and not taken from a general pan called the Torrens system which can be more expensive. The most efficient land registration system used is in Nepal whereby the land registration office is combined with land survey office, land revenue office and the land reform office (Theodore and Ruoff, 1957).

Tenure as a form of ownership, understanding tenure issues requires the need to assess local tenure options based on cultural and historical traditions instead of pursuing approaches developed during the colonial time. These options will then differ from nation to nation. High planning and building standards have the potential to increase land prices, however the administrative/ registration process majorly contribute to land and housing costs to a level that prohibit access to formal housing with formal titles. Access to land by low income households is therefore depended on non-formal and statutory tenure systems (Payne, 2002:4). In terms of customary law to as it relates to land tenure, the majority of African population recognises this form

of tenure as legal as it existed for many years before colonisation by the Western Powers (Payne, 2002). They are even willing to invest on this land long term.

Payne, 2002:7 argues that other various forms of non-statutory tenure exist because of the incapability of statutory and customary tenure system to meet the needs of lower income groups, which possibly the population group is majoring in any country. That land without title constitute to a dead capital in that it cannot be used to participate in the market, the banks do not recognise it, therefore cannot be used as collateral thereby denying the poor to participate in the economy who uplift themselves. Payne ,(2002) deliberates that there is no evidence to De Soto's thesis, in fact the banks do not lend money based on collateral rather they lend money base on monthly repayment affordability. According to Payne, 2002:12, individual titling remains attractive, yes, but other option need to be considered. More-so because there is already a huge administration backlog at the deeds registry when it comes to land titling. Payne, 2002:3, introduces another measure to address the requirement by authorities have towards freehold tenure by enforcing finance institutions to offer loans without requiring title deeds as a prerequisite can be a radical improvement in housing conditions.

3.1.5 Namibia

In Namibia there are two flexible tenure systems to accommodate persons in informal settlements first introduced in 1998 namely a starter title and a handhold title (Payne, 2002:36). A Bill called Tenure Rights and Land hold Title Tenure Rights was published in 1999. The Bill aimed at introducing less complicated methods to land surveying and registration replaced by para-professional, termed a "Land-measurer" who would undertake a simplified land surveying towards the registration which is undertaken in block erven (Payne, 2002:37)

3.1.6 Egypt

In Egypt, freehold tenure is the major property right along with security of housing tenancies, long term leasehold without a timeframe and can be passed off to leasehold without a timeframe and can be passed off to children due to death of the tenant. ~~Rental amount does not increase and this system enjoys free eviction.~~ The

tenure security of the system is measured by how much the tenant is known by the community, to local police station and neighbours.

3.1.7 Colombia – Bogota

Intermediate land tenure forms exist in Bogota,

a) Tenancy by private agreement documents and physical possession can last for up to 20 years and more. Although a “promise to purchase and sale of rights document is hand written and never registered (Payne, 2002:107), it is signed by both parties.
b) Declaration of possession happens when an occupier of a land approaches the notary on the basis of proof of occupation for over 5 years in line with the Columbian Law to property which states “the sole act of living in the unit for five years implies a right of tenure through the legal process of “pertenencia” (Payne, 2002: 108). It applies to low income dwellings; the occupant qualifies for ownership if the real owner does not claim ownership rights.
c) Transition to buy and sell rights for future use
d) Urban legalisation has been in operation since 1996 herewith urban upgrading and provision of bulk services becomes much more important than tilting itself, freehold tenure is later considered.

3.1.8 Germany - Berlin

In Berlin, two types of formal tenure predominate, that is freehold and housing permits. There is maximum security of tenure in freehold systems and there is currently a backlog due to its expensive and time consuming nature. Housing permit applies to households residing/allocated government land, it is a temporary measure which is subject to reassessment at any time. It is recognised by finance institutions and qualifies for a mortgage (Payne, 2002:122).

Customary approaches to land tenure can also be found in Berlin in two methods, No government intervention method and one that authorities intervene. Basically under the non-intervention method, the customary owner cannot file allocation of the land through subdivisions, basic survey and provisional layout and sale of plots to

individuals (Payne, 2002). Sale agreement becomes a formal documentation to prove ownerships. Interventions by authorities come at the stage where bulk infrastructure needs to be rolled out, and then a detailed survey is undertaken. This happens when the people have already settled who then becomes "presumed owners". Each of the owners are confirmed and issued with housing permits that can be converted into a permanent permit once the house has been built.

3.1.9 Botswana

In Botswana, three types of land tenure security can be found 1. Freehold land tenure which constitute only 6% 2. State land tenure is at 23% administered under the State Land Act and 3. Customary land tenure (tribal) regulated by the Tribal Land Act, 1993 of Botswana, land is allocated free of charge to recognised residents who originate from that community through their parents and ancestors, this form of tenure right amounts to 71% (Payne, 2002:193).

All of the above international examples provide a framework for the South African government to open up the other tenure options to be legally recognised. Individual title deeds of properties registered at the deeds office should not be the only system of land ownership.

3.2 CONCLUDING REMARKS

Basically, it is not the way in which land ownership is recorded; it is the way in which the authorities classify these land registration approaches, whether inferior or superior to the western way of tenure security. Land management systems used to regulate land registration. Land tenure security has different meanings for different people, however what matters is which one is officially recognised by the banking sector as a legal tenure right. It has been discovered that the western's view to land tenure has influenced South African system to land tenure. Although customary tenure cuts across all nations, it is not legally accepted though tolerated. In most of the readings captured in the literature review, titling has been evidently rated the most expensive method of providing tenure securities especially for poor households which is why alternative means of tenure becomes the default means.

CHAPTER 4

4. CONTEXTUAL REVIEW

INTRODUCTION

South Africa lags behind approximately 20 - 40 years in respect of urbanisation compared to the developing Latin American countries. This was mostly because of the apartheid policy which discouraged urbanisation by African people to the cities. ~~South Africa has not gone through all the stages of urbanisation as yet which impacts on issues of tenure rights.~~ Land administration is the way in which the rules of land tenure are applied and made operational (Brown, et al, 1998). Durand-Lasserve and Royston (2002:4) recognize that security of tenure concerns all those living in communal and informal settlements. These settlements have emerged in various tenure forms different from country to country including informal land development subdivisions and the customary allocation of land by tribal authorities (*ibid*,4). Because of the rural nature of African countries, most land is owned by the state, controlled by tribal authorities or community trusts and held in customary laws. In these areas it is difficult to apply urban development controls and land is thus mostly haphazardly allocated (Durand-Lasserve and Royston, 2002:18). Informal/illegal settlements without tenure security also encompass structures which violate building bylaws or town planning bylaws (Durand-Lasserve and Royston, 2002:23). The argument herein is that the rural/ urban spatial division resulted in different land ownership forms for those living in rural areas and those living in urban areas. It becomes unfortunate now that the form of ownership applied in the rural areas is not officially recognised in several sectors of the economy.

4.1 HISTORICAL CONTEXT

~~In a conference paper by~~ Ntsebeza and Hall (2007), state that at the beginning of the twentieth century Black South Africans had been pushed into small areas of the country by the colonizers - both the Dutch and then the British. The pattern of racial discrimination in South Africa began as early as 1653 when colonization started. There were historical developments in the twentieth century, during the era when

specific Acts were passed which formalized racial discrimination, or apartheid, with respect to the land. Two major Land Acts existed in the twentieth century, which up to this day cripple the South African society and will forever haunt generations to come. The 1913 Land Act No. 27 and the 1936 Trust and Land Act No. 18. These Acts were aimed at shaping land ownership in the country, by reserving 87 percent of the national surface of the country for Whites, Coloureds and Indians. Black South Africans, the largest population group, were limited to 13 percent of the country's land. The new South African government's land reform programme has a huge backlog to deal with as a result of this design (South African History Online, 2015). The depressing ordeal about these two Land Acts is that most of the areas black people could legally occupy were in rural South Africa. Blacks were 'temporary residents' in the cities and towns during the day for employment purposes. Whites had the largest amount and generally the best spatially located land with full infrastructure services. The housing backlog was created by the fact that formal housing stock was not planned for the whole population ~~at that time~~ during apartheid (South African History Online, 2015). This created enormous housing shortages in the cities and towns, especially for low income people. This backlog cannot be addressed overnight, more land needs to be prepared in the form of a township establishment in order to build more houses on.

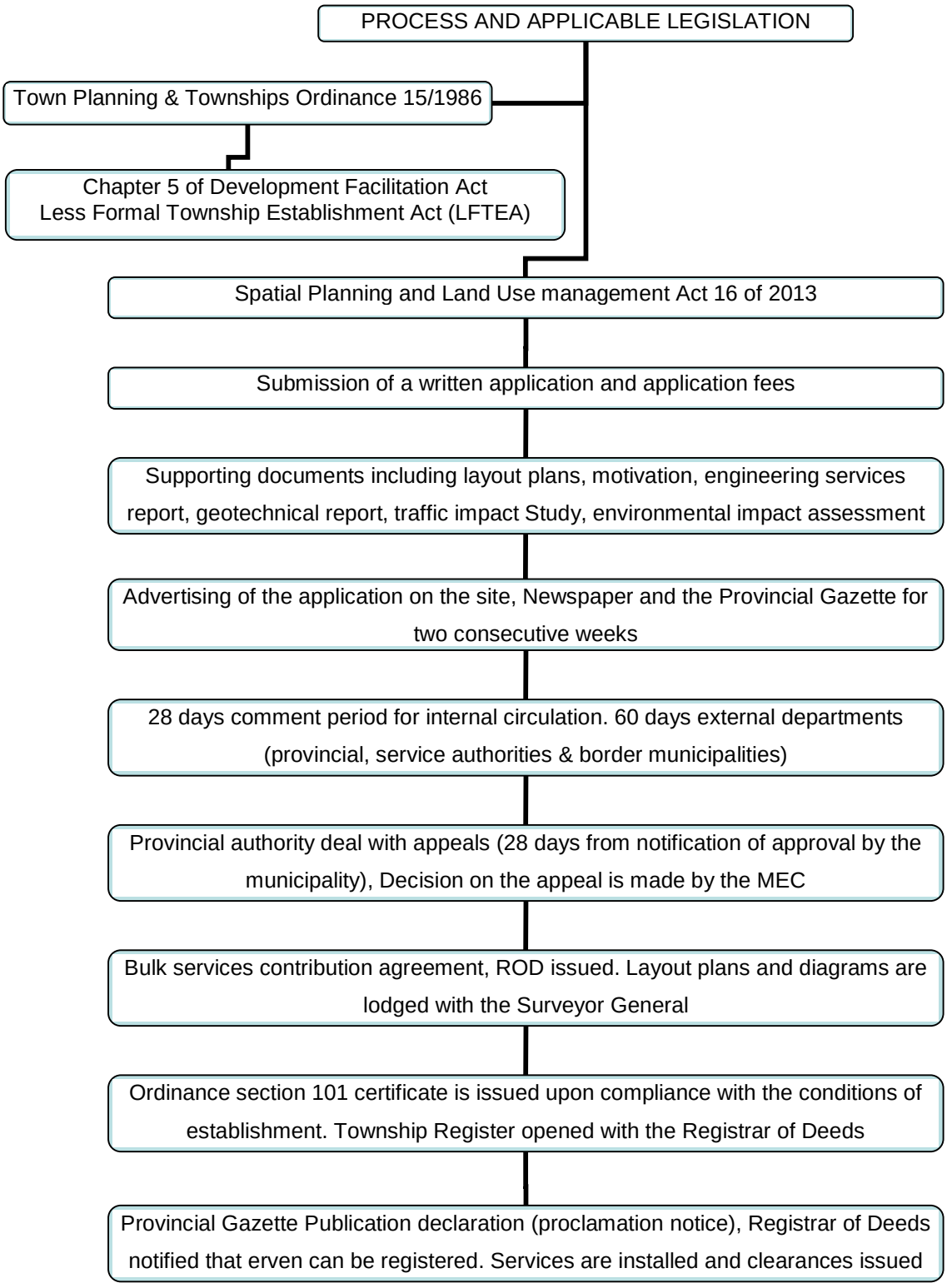
Gwanya (2003) ~~in his research conducted under the Institute of Housing South Africa~~ explains how in 1936 the South African Development Trust was formed, in which all land in the 13 percent, which was not already held by Blacks in freehold, became vested in the Trust allocating a range of highly restrictive titles such as permissions to occupy, 99 year leasehold and customary rights. A condition of title was always that it had to be occupied and often the state reserved the right to take the land administratively due to noncompliance of allocation conditions. In the 13 percent part of South Africa, there were special land delivery procedures known as Proclamation R293 of 1962 for proclaimed urban areas and R188 of 1969 for rural areas. ~~The current government~~South Africa is not only faced with registration of new townships but to upgrade the so called Proclamation R293 townships from Deed of Grants to Full Title Register, increasing the formal housing stock and addressing the redistribution of land (Gwanya, 2003).

4.2 SOUTH AFRICAN LAND LEGISLATIVE FRAMEWORK

4.2.1 Township Establishment Legislative Framework

Land is guided by a set of land use regulations imposed through Town planning Schemes and Spatial Development Frameworks, acquired either through a townships establishment, amendment schemes and consent use applications. For the purpose of planning and costing low income housing developments, it is important to understand the process of township establishment for land development, land registration and security of tenure. In this instant the major steps undertaken when establishing a township in the urban environment are therefore highlighted.

Figure 3: Summary of the typical township establishment process (Own design)



The process outlined above basically applies to the mentioned three legislations: Town Planning & Townships Ordinance 15/1986[1], Chapter 5 of Development Facilitation Act and the Spatial Planning and Land Use management Act 16 of 2013.[1] Over the years, new legislations have been introduced to try and speed up township establishment process. The researcher's experience ~~has proven~~suggests that there are no short cuts when it comes to getting a General Plan approved, a township register opened and individual title transfer.

Various ~~acts and~~ legislation~~s are~~ is used to regulate land development towards serviced, identifiable and register-able erven onto the property market eligible for transfer. According to Cole, (2010)~~,~~ between one and three years is the estimated timeframe to proclaim a township after the applicant has submitted all the necessary information timeously ~~when corresponded to~~ throughout the ~~approval~~ process. Additionally for any housing project to be undertaken on vacant land within a proclaimed Town Planning Scheme Area, a township needs to be established. However there are some housing projects undertaken in rural areas wherein town planning procedures are exempted (Cole, 2010).

Previously, the provisions of chapter 1 of Less Formal Township Establishment Act, 1996 (LEFTEA)[1] allowed early settlement on land designated by the Member of Executive Committee (MEC) wherein there is an imperative need as may be determined. During this process the applicable laws regarding the development are temporarily suspended or relaxed, settlement is allowed only when the provisional General Plan is generated and erven pegged. Thereafter a township register is opened whereby transfers can take place (Gordon and Di Lollo, 2011). The act took cognisance of the challenges encountered during opening of a township register which included Land claims, title restrictive conditions, dealing with servitudes, consolidation and subdivision of the subject farm portion. The aforementioned technical terms related to town planning, land surveying and deeds registration delay land registration. Apart from technical terms, other delays are generally caused by limited professional capacity within municipalities and provinces.

The Spatial Planning and Land Use Management Act 16 of 2013 was promulgated for the purpose of introducing speedy land development procedures, however this

time all powers vest in the local authority as opposed to provincial government. The national department of Land Reform and Rural Development has drafted the Spatial Planning and Land Use Management Act since 2003-2012 in order to integrate the various national and provincial legislations for the purpose of uniform/single approach in Spatial Planning and Land Use Management System in South Africa. The reason for the proposed draft was to make sure that the challenges experienced through the implementation of the various legislations within the sphere of government are addressed. ~~This includes the problem highlighted on the white paper on Spatial Planning and Land Use Management of 2001.~~ SPLUMA might have very good intensions but land management and ownership are complex matters in South Africa, therefore more patience is required to adequately deal with them.

SPLUMA aims to address the disjuncture between inherited schemes and newly drawn up plans and lengthy approval times. It is important to note that until such time that the municipal land use management by-laws are finalized and adopted, any provincial legislation is still valid i.e. Ordinances or those National pieces of legislation administered by provinces, e.g. The Removal of Restrictions Act, 1967, Less Formal Township Establishment Act and the Physical Planning Act that have been assigned to Provinces. Sec 2(2) of SPLUMA restricts the applicability of alternate or parallel mechanism, institutions or systems that are inconsistent with the Act. What is important is the interpretation of the term consistency, it is possible that certain sections of existing legislation are inconsistent e.g. decision making bodies at provincial level whilst some sections may be consistent e.g. sections dealing with receipt of applications, processing and the decision making by the Municipality. Therefore the procedures of the Town Planning and Townships Ordinance 15 of 1986 are consistent with SPLUMA expect for the appeals boards which was previously allocated to provincial department. The main purpose of SPLUMA was to create a coherent regulatory framework for spatial planning and land use management for the entire country that redresses the inefficiencies of the past planning and regulatory systems where spatial planning and land use management is concerned.

The Act promotes consistency and uniformity in its approach to Spatial Planning and specifically in its approach to land use management through setting parameters for

application procedures and decision-making by authorities responsible for land use decision and land development applications. SPLUMA has brought fundamental changes in spatial planning and land use management. It calls for the re-engineering of municipal planning processes ~~whereby the land use management system of a municipality is rebooted~~ to enhance the manner in which municipalities have been performing spatial planning, land development and land use management duties.

Government identified that there seems to be too much control and not enough facilitation in planning procedures. Recently, ~~one of the Legislations~~all the chapters of the~~,~~ Development ~~f~~Facilitation Act~~, Act~~ 67 of 1995 except for chapter five have been ~~ruled out~~repealed by SPLUMA since it was infringing ~~with~~ on the application of the Constitution of Republic of South Africa in terms of the definition of Municipal Planning. ~~It was therefore, also an easy example that has put many emphases that had paved the way for the promulgation of the legislation~~. SPLUMA is closely relevant to matters relating to land registration as it covers the whole municipal area.

The main dilemma in most low income houses is that the occupiers do not have security of tenure. In the short term the negative impact can be ignored but the long term effects suggest that these beneficiaries cannot structurally improve their houses, cannot obtain a second bond, cannot qualify for employer housing allowance and are unable to legally sell or transfer (inheritance transaction) their properties (Gordon and Di Lollo, 2011). While municipalities might have performed in terms of physical service delivery as expected by short-circuiting the process of township proclamation to get houses on the ground, the abandoned paperwork only gets ~~disjointed~~disorganized and makes it even more complex to rectify in future. In the local municipality of Polokwane, Limpopo Province, there are several unregistered townships and transfer of individual stands has never taken place while the projects are closed. These are the so called blocked projects, the danger in prioritizing housing delivery over town planning paperwork is that politicians and project implementers never go back to finish off the invisible processes which were abandoned. Recognising the importance of these processes will enable government officials, political leaders and communities to emphasize completion of township establishment processes before houses are built. In actual fact, a house handover should be a simultaneous process with a title deed handover. If anything must come

first, it must be a title deed because a house should be built on a registered Erf within a proclaimed township.

4.1.2 Subsidised housing legislative framework

The government's mandate in the provision of housing is caught up on the emphasis of "adequate housing" which is limited by its definition to infrastructure, accessibility, basic amenities close by and structural durability (Housing Act, 1997). Security of tenure is part of the components defining adequate shelter, however because of its invisibility; it is often neglected thus creating a gap in land registration (Cousins, 2007). The South African law to housing stems from the Bill of Rights, Chapter 2, section 26 of the Constitution Act 108 of 1996.

Housing

"26. (1) everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions".

This implies that all spheres of government which includes municipalities must ensure that adequate housing be made available either by means of providing funds resources and or other means to achieve this goal~~.~~ (Housing Act, 1997). The South African Government invested in housing delivery by introducing some important acts and regulations to guide institutions and obligate implementation by housing departments. To name a few the Housing Act, 1997 (Act 107 of 1997) and National Housing code emphasize integrated human settlements. ~~There have been trials when it comes to the subject of township establishment for housing developments, although~~Although some its chapters have been repealed, in 1995 the Development Facilitation Act; (Act 67 of 1995) was promulgated to speed up development with the following objectives,

"... to introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land; and in so doing to lay down general principles governing land development throughout the Republic; to provide for nationally uniform procedures for the subdivision and development of land in urban and rural areas so as to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses; to promote security of tenure...".

The Housing White Paper, 1994 sets out Government's broad housing policy and strategies. The Housing Act 107 of 1997 and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 are some of the Acts operating within the South African government. Strategies and programs have also been developed to enhance housing provision such as the Growth, Employment and Redistribution (GEAR), the Reconstruction and Development Programme (RDP) and the Breaking New Ground Policy. In the early 1990's unions, civic movements and social organisations began to develop a plan for social transformation needed for post-apartheid South Africa. A process developed which involved extensive consultations within the ANC, its allies and a wide range of experts and that resulted in 1994 with the Reconstruction and Development Programme (RDP) aimed broadly at providing shelter and basic services for the poor (ANC, 1994). GEAR is a macro-economic strategy adopted by the Department of Finance in June 1996 as a five year plan aimed at strengthening economic development, broadening of employment, and redistribution of income and socio-economic opportunities in favour of the poor (RSA, 1996b).

Section 2 (c) of the Housing Act (Act no. 107 of 1997), emphasise access to title as an essential principle of the national policy, individual title has the ~~capacity~~ ability to increase economic development of the society (Department of Housing, 2004: par 2.1). The planning and implementation of housing projects must be pursued to result in the provision of houses with security of tenure. Sustainable human settlements are ~~archived~~achieved by way of integrating other sector plans into the planning process such as transport, electricity and water. In terms of section 9 (1) of the Housing Act, municipalities must identify and designate land for housing development, set housing delivery goals, initiate and coordinated housing development within their operational

areas. The act additionally necessitates municipalities preserve environments that are conducive for housing development by ensuring the delivery of basic services i.e. water, sanitation, electricity, roads and storm water drainage systems.

4.1.2.1 South Africa's housing subsidy programs

A housing subsidy is a grant from government to qualifying beneficiaries engineered specifically for housing purposes. Different subsidy options exist within the South African government for different housing beneficiary categories. There are those subsidies applicable to development institutions and development banks wherein the subsidy is paid to the township developer to finance the construction of a house. The house is then transferred to the qualifying beneficiary according to household income and repayment arrangement over a period. The Department of Human Settlements specialises in the delivery of housing related to the bottom-most end of the market, where it provides housing subsidies to the poor whose household income is below R3 500 where the bulk of the housing backlog exists (Housing Code, 2009). According to the Housing Code, 2009 which is derived from the Housing Act the subsidy programs available are as follows:

i) Integrated Residential Development
ii) Individual Subsidy Programme
iii) Enhanced People's Housing Process
iv) Informal Settlement Upgrading Programme
v) Consolidation Subsidy Programme
vi) Institutional Subsidy Programme
vii) Rural Subsidies: Informal Land Rights Programme
viii) Farm Resident Housing Assistance Programme
ix) Social Housing Programme
x) Enhanced Extended Discount Benefit Programme
Xi) Finance Linked Individual Subsidy Programme (FLISP) Subsidy programme

Compared to other African countries, South Africa has managed to cater for housing demands, irrespective of the fact that the demand is short of supply, the SA state can

be proud to say houses have been provided to millions of people for free coupled with free education, national school feeding scheme, free health care and other amenities in order to sustain the housing program (ANC, 1994).~~.~~ The problem statement is yet to be solved i.e. land registration and registration of title. Regardless of all the housing programs and housing finances; none of them addresses the problematic state of unregistered low income townships which have been implemented since 1994. The Deed's Restoration Program has recently been introduced by the Department of Rural Development and Land Reform to be rolled out in local municipalities in order to address this backlog.

4.1.2.2 South Africa's housing finance systems

Closely linked to housing subsidies, is housing finance. The cost of land and housing are influenced by the delay costs it takes to prepare the land, the town planning, environmental authorisation, surveying and conveyancing costs all accumulate to housing finance (Kim, 1997).~~.~~ South Africa's housing finance system is divided into 3 sectors: the end user finance i.e. Mortgage loans, pension-backed loans, and micro loans. ~~Secondly, the w~~Wholesale~~Secondly, wholesale~~ finance i.e. ~~L~~loans to micro lenders and other retail intermediaries, loans to rental / social housing ~~companies, and thirdly~~companies, thirdly ~~D~~development loans i.e. ~~B~~bridging finance or working capital Banks loans to developers. A housing finance system also includes other things such as a legislative or regulatory framework as well as an institutional framework (Kim, 1997). Housing finance institutions were established as part of the objectives of the housing code and the housing Act. The various housing institutions include: National Housing Finance Corporation (NHFC) specialising in NHFC wholesales loans to intermediaries that offer retail loans to end users mortgage lending, wholesale finance to micro lenders, social housing investments. The Rural Housing L~~l~~oan Fund (RHLF) to cater for wholesale finance to housing micro lenders in rural and peri-urban areas. ~~The~~ RHLF increased its number of financial intermediaries to provide credit to low income households. National Urban Reconstruction and Housing Agency (NURCHA) focuses on construction finance lending. The Social Housing Regulatory Authority *(*SHRA) which is the regulator to create viable borrowers of social housing institutions and later the Trust for Urban

Housing Finance (TUHF) targeting inner city lending to small scale landlords (Kim, 1997).

In support of the institutions, other programs were established including but not limited to:

i. *Masakhane Campaign*
ii. *Mortgage Indemnity Fund*
iii. *Servcon Housing Solutions & later Thubelisha Homes*
iv. *National Home Builders Registration Council (NHBRC)*

Microfinance is a crucial component to housing finance which caters for incremental housing. The demand and supply to housing is largely varied in scale, the typical housing institutions such as government subsidies and the mortgage loans provided by commercial banks do not cater for all the housing needs. The gap market was for a long time not catered for in the housing finance until the Finance Linked Individual Subsidy Programme (FLISP) was introduced. There are situations where individuals are unable to access neither government housing subsidies nor mortgage loans, therefore incremental housing remains a solution for many of them. The FLISP subsidy provides that if you earn too little to qualify for mortgage finance to buy your own home, ~~or~~ but you earn too much to qualify for the Government's free basic house under their RDP Housing Subsidy Scheme, you may apply for the FLISP subsidy.

In South Africa institutions ~~such as Nedbank~~some banking institutions and Retail Credit Solution (RCS) mainly~~jorly~~ operate within the mandate of microfinance which usually has higher interests rates compared to the normal mortgage loans. The overall goals and objectives of housing microfinance aim to bridge the gap created by the state and formal banking institutions when it comes to home loans. It provides short-term loans to finance incremental housing development (Mills, 2007:457). Microfinance is not limited to only monetary credit, but includes education, training and other related support products. Housing microfinance is the solution to be explored for the housing shortage worldwide.

In South Africa, the Kuyasa F~~f~~und exists as a microfinance entity established in 2000 as a non-profit microfinance institution specialising with the marginalised group,

woman, pensioners and those employed in the informal sector earning less than R3 500 per month (Mills, 2007:458). The Kuyasa finance mainly focuses on individuals who already possess a subsidy and only want to improve the existing structures (Mills, 2007:459). All applications of this fund are screened to check if they are listed or have a clean credit record. However those who are listed are not discriminated against obtaining the loan, the screening process only provides a basis for an assessment of the individual credit background so that the lender will know how much interest to charge considering the risk factor and forms a basis for terms and conditions to be imposed. Kuyasa microfinance is gender sensitive, giving priority to woman as they are considered low risk and generally good payers. Woman are traditionally more attached to a house and household activities meaning that they value a house much more than their male counterparts (Mills, 2007:465-466).

Apart from the Kuyasa fund, other micro - lending solutions in South Africa ~~exist,~~exist; however the interest rate is typically high compared to a normal mortgage loan which is at prime plus 2. Unsecured loan amounts to an interest of 30-40 plus, because of the risk attached to microfinance, other micro-lending solutions are secured with pension fund as collateral. Two institutions in South Africa were established particularly to provide housing finance support for those who cannot afford the mortgage bond. The National Housing Finance Corporation (NHFC) and the Rural Housing Loan Fund (RHLF) are the two institutions created to substitute the normal housing lending sector (Tomlinson, 2007:81). The RHLF is partly funded by the German Development Bank to assist the poor households in rural areas with housing needs.

4.1.3 The right to immovable property legislative framework

The Constitution of SA, 1996 (Act 108 of 1996), Sections 25, Chapter 2, Bill of Rights deals with property and the right a person has on property:

Property

"25. (1) No one may be deprived of property except in terms of law of general application and no law may permit arbitrary deprivation of property. (2) Property may be expropriated only in terms of law of general application for a public purpose or in

the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

Section 26 (1) (2) (3) of the constitution is very clear on how housing is prioritised. Consequently the sections are summarised as follows: “everyone has a right to adequate housing, the state is obliged to provide housing and is prohibited to from arbitrary evictions without a court order. The above sections are depended to each other (Clark, 2013:8).

It is evident from the following case studies that the bill of rights takes precedence over several aspects of housing related matters. The law of property takes cognisance of chapter 2 of the constitution wherein it states everyone has a right to adequate housing. The housing backlog created the development of informal settlements and because the general welfare/health of the people is ranked a top priority. In the informal settlement upgrading process, land registration and title transfers become the last component to be finalised. In all the National service delivery protests that the country has witnessed, people are protesting about houses, proper roads, water, electricity and free education. ~~Deed of transfer is an invisible component easiest to be compromised.~~

4.1.3.1 Case Studies

In recent case laws, the courts have judged that it is the state’s constitutional obligation to protect private property owner’s rights according to section 25. However if no alternative land is provided, the courts often find it compromising to issue an eviction order because evicting them would lead to another invasion elsewhere. Emergency Housing Program was introduced by the department of Human Settlements to cater for temporary accommodation (Clark, 2013:13). Land is the most precious resources, cannot be reproduced, relocated nor destroyed, it is infinity (Hanstad, 1998:649). Land ownership and registration is one of the complex projects which cannot be solved overnight. To expand on this argument, some background information about case laws is prearranged in the below paragraphs.

Government of the Republic of South Africa and Others vs. Grootboom (Grootboom) 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC)~~**The Cape Town, [*Grootboom]***~~

The Cape Town, [*Grootboom]* case law represent a case where people occupied a piece of private land to respond to their housing needs, whereas the state has a constitutional obligation to provide access to housing in terms of section 26 (2), the courts ruled in favour of the 900 individuals because the state provided no alternative land (Clark, 2013:9). Socio economic rights are prescribed in section 26 (2) of the constitution and there is a difference between administrative law context and socio-economic rights context to housing (Clark, 2013:10). The [*Grootboom]* case law laid down a foundation for future evictions in that as much as evictions are provided for in section 26 (3) of the constitution, there must be considerate to the homeless and the end result so as to provide for alternatives. Chapter 12 of the Housing Code provides for Emergency Housing Programme which release grant to cater for emergency housing situation, the various types of temporary and permanent accommodation options (Clark, 2013:10).

Walmer [PE Municipality]

Clark (2013:13) in his analysis of the [*PE Municipality]* case law found that although the PIE Act came into operation to assist all parties on their rights to land and property. The court had to assess the circumstances before making an eviction order, circumstances including the right of the homeless, the rights of children and woman and the rights of the private property owners. Over time eviction orders were granted randomly without considering the rights of the homeless but prioritised property owner's rights. The [*PE Municipality]* case symbolizes a clear distinction between current property laws and the apartheid property laws. A group of individuals unlawfully occupied private land in Walmer after being evicted elsewhere by the state; the state secured an eviction order which the SCA set aside on the basis of the occupiers reasoning that they were not guaranteed security of tenure on the suggested alternative land to be relocated to (Clark, 2013:14). Although the municipality argued that it was not actually compulsory to provide an alternative land when evicting unlawful occupiers (Clark, 2013:14). The judge counter argued that in this instance, it would mean that section 26 (3) of the constitution and the PIE Act

reverted back to apartheid laws such as PISA which aimed at making evictions as easy as possible without considering the rights of people as emphasised in the bill of rights.

The Modderklip

The Modderklip case law represents a situation where people unlawfully occupied privately owned land. The high court judged that it is the state's constitutional obligation to protect private property owner's rights according to section 25. The supreme court of appeal (SCA) judged in favour of the unlawful occupiers because the state failed to provide alternative land. Evicting them would lead to another invasion elsewhere. The judge ruled that the state compensate the land owner until such time that alternative accommodation can be allocated (Clark, 2013:12). The EHP should be applied in these instances before the court can decide on evictions. The EHP can be used to provide for temporary accommodation (Clark, 2013:13).

Blue Moonlight Company

Blue Moonlight Company purchased a factory building in Saratoga Avenue, Berea with the knowledge that it was unlawfully occupied. When time for revamping came, eviction was ~~caused~~took place. The occupiers interdicted the eviction order on the grounds that it would leave them homeless and sought that the city of Johannesburg provided alternative accommodation (Clark, 2013:18). It is worth noting that these are people who have lived here for more than 30 years. In the PE Municipality case, a house is defined as "a zone of personal intimacy and family security"; therefore it cannot be disputed that being in a place for more than 30 years has created/qualified this definition. Interestingly, the City of Johannesburg acknowledges the responsibility of facilitating the provision of alternative housing to be within local government's obligation. In the Blue Moonlight case, the city tried to differentiate between housing situations after it failed to secure funding from the provincial department for EHP. The city indicated that its policy catered for people removed from unsafe buildings and did not cater evictions by private landowners. The court dismissed this claim on the basis that the cause of homelessness remained immaterial to the homeless person, therefore the identity of the evictor, whether state

or private cannot be a subject matter of the day. The state must respond to all evictions situation/ housing matters (Clark, 2013:19).

Mchunu and Hlophe

Mchunu and Hlophe represent two different cases in Durban-KwaMashu and Johannesburg where municipal officials were ordered by court to provide alternative accommodation within a certain period of time, failing which they could be held accountable and face a fine or imprisonment. This judgement yielded positive results across other municipalities, officials acted quickly to comply with the court order. However housing provision is a multi-faceted dimension, it requires commitment from sector departments and municipalities are often left to fend for themselves in the provision of adequate housing to communities (Clark, 2013:19).

The above case studies were analysed to assist is answering the question: How does security of tenure relate to “the right to property and housing”?, while the below section on the analysis of South Africa’s law to housing partly lay down the processes followed and cost implications in a land registration transaction.

4.1.4 South Africa’s law to immovable property acquisition and disposal

Access to decent affordable housing is a basic requirement for human well-being, yet in most cities in the developing world, much of the population occupies the most rudimentary forms of shelter. The failure of government housing programmes to provide affordable housing has forced the mass of the developing world into cheaper alternative forms of shelter, which range from inner city slums to peripheral squatter settlements. Due to past apartheid legislation and policies certain areas were regarded as “sleep towns” and certain communities were denied the opportunity to reside where they chose (Goebel, 2007). This has meant that the previous black areas did not receive proper housing. After the demolishment of apartheid the situation has improved although the housing backlog has escalated (Navarro and Turnbull, 2014).

Proclaimed and registered land is valued higher than unregistered land which can increase the value of low income homes, refer to **Annexure B** and **Annexure C.** Sale of sites legislation impact on the service delivery to the poor, Section 14 of the Municipal Finance Management Act prescribes that any land to be disposed of by the Municipality must be at market related prices unless it is for the purpose of the social use or of public interest.

> "Immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise";

To elaborate further, this concept applies vice versa and applies to transactions from private sector to public sector. If the sale or letting is by competitive public tender or proposal call, all immovable assets must be leased or sold at current market related value except when the property is to be used to address public interest or the socio-economic needs of a disadvantaged community or households. All public tenders for immovable property are subject to tendering and adjudication guidelines, and should be open to the public. The leasing of an immovable asset must be at a market related rental as contemplated in section 14 (2) (b) of the MFMA except where the economic or community benefit would be greater, or where the needs of a disadvantaged community/ households are imperative and would be best served by accessing the land or building.

Based on Annexure B and C as well as the MFMA, fully serviced land is sold at market prices which are often too expensive for the intended purpose of housing delivery for the general population. Land registration and land transfer costs as outlined in the Deeds Registry Act, are the reason why low income town townships are never registered at the deeds office. Cost related reasons and non-existent of cost recovery measures result in abandoned projects. The cost recovery measures for township establishment services in the private sector is carried through to the buyer while in low income housing, this is not possible. Although land disposal/ land registration is another way to increase revenue base for local government as mandated by National Treasury regulations, ~~L~~land disposal policies should not only be profit motivated. ~~The Housing Development Agency's role should not only end at land acquisition.~~ Another area for further research is increasing the options for land

tenure to include recognition of limited tenure, leading to legally secure tenure and later freehold tenure. Taking into consideration the key role players in land administration as follows:

a. Engineers, (environmental, traffic and geotechnical)
b. Town Planners,
c. Land Surveyors,
d. Community

The process of Acquiring, Holding, Preparing and Disposing Municipal Land is clearly regulated by the Municipal Systems Act, and the MFMA and likely in the future to be regulated through Government Immovable Asset Management Act (GIAMA) 19 of 2007 (GIAMA). Within the framework laid out by these Acts there is a clear structure for implementation of the land management process, particularly around the valuation, disposal through sale and other means, and accounting for immovable land assets held by the municipality.

In terms of these laws local government can own, sell, rent, develop, and expropriate property. The Municipal Systems Act clearly requires the municipality to take into account its IDP when making decisions with regard to the Acquisition, Holding and/or Disposal of its land. There is also provision in all the legislation for the municipality to fulfil certain social objectives through its asset and land management policies, including playing a welfare function, and more recently (with reference to BNG) a more defined developmental function in terms of sustainable growth and development and the achievement of sustainable human settlements. Nothing in law prevents the municipality from setting a non-market related rental and/or sale value to municipal property when the usage of that property is clearly related to the achievement of social goals which contribute to sustainable growth and development and spatial reconstruction.

The law to property advocate for market related prices, however acknowledging that housing and land is a government mandate, it is possible to set aside this requirement for the purpose of social integration. Land markets are escalated by the conveyancing costs related to land, and one of the research questions is: Is there

any other less complex tenure security approaches available in South Africa for the low income population group save for the legally recognised freehold tenure? Other cheaper land registration mechanisms need to be explored. Registered land encompasses administration and financial implications, even when it relates to disposing of such land. The Local Government Ordinance 17/1939 (the Ordinance) in Section 79 (18) thereof stipulates that a municipality may let, sell, exchange or in any other manner alienate or dispose of any movable or immovable property of the council, provided that where a council exchanges immovable property for other property, the other property shall be wholly or predominantly immovable. It is further stipulated by the Ordinance that where a council wishes to alienate immovable property, it shall have the immovable property valuated at the current market value. For purposes of valuation of the property a valuer or associated valuer registered in terms of the provisions of the Valuer's Act, 23/1982 has to be appointed.

4.2 APPROACHES TO LAND TENURE AND REFORM

The South African democratic government post 1994, in an effort to breach the gap in housing supply and service delivery, one of the priority areas was to ensure tenure security as part of land reform goals. The Department of Rural Development and Land Reform introduced measures to ensure land redistribution, restitution of land claims and land tenure. In rural areas development can occur even when a township has not been established. The Restitution Act ensures that those properties which were taken by force from black people who were forcefully removed from their homelands are given back the land with title for security. Land reform arrangements cannot properly be implemented without land ownership and title deed; it is therefore necessary for land to be registered for proof of ownership. Land registration is a system of recording ownership through title. In South Africa the Registrar of Deeds is responsible for updating all land transfers, disposal, mortgage and other land transactions. For the past few years, there has been a debate around incremental tenure as an interim measure pending proper land tenure upgrading. Incremental tenure is currently being used worldwide to promote land ownership (Cadstadt, 2006). It is only in the formal proclaimed townships in terms of the Town Planning and Township Ordinance 15 of 1986, that opening of a township register is a precondition for title deed.

According to the Department of Land Affairs Land Reform Programme, three types of land reform programmes are available namely:

a) Land Restitution

The aim of the Restitution of Land Rights Act, 22 of 1994, is to restore or compensate people for land rights they lost because of racially discriminatory laws passed since 19 June 1913. People can claim their land once if they are of opinion that they qualify for this act (Ntsebeza and Hall, 2007:3). The Restitution of Land Right Act, Act 22 of 1994, makes provision for people (or their direct descendants) to claim restitution (compensation) if they have been forcefully removed from their lands by means of Apartheid legislation between 1912 and 1994. The compensation can be the restoration of the original land in the name of their CPA (Communal Property Association), but it can also be alternative land or financial compensation, depending on the circumstances.

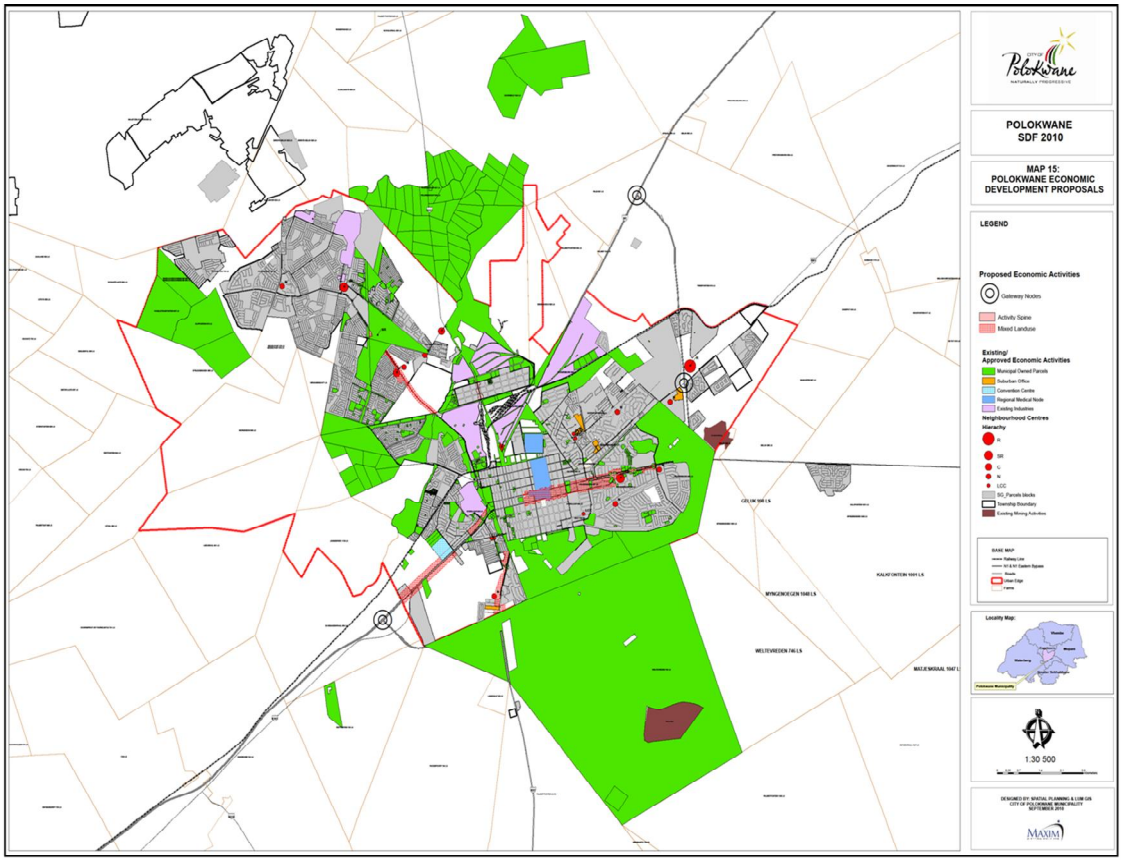
People had until 31 December 1998 to submit land claims, and the various Regional Land Claims Commissioners' offices then started investigating the validity of the claims. Due to the slow pace of resolving land claims, for a variety of reasons, the Regional Land Claims Commissioner Gazetted (give official Notice) a Land Claim before conclusive proof of the validity of the Land Claim is found, in order to speed up the process. This official notice aim to invite all interested and affected parties to comment on or object to the Land Claim within a period of 30 days. The Restitution of Land Rights (Act 22 of 1994) has a major impact on the future settlement pattern, originating from the restitution of rights in land in respect of those persons or communities that were dispossessed.

b) Land Redistribution

The purpose of this land redistribution programme is to provide the poor with access to land for residential and productive use to improve their livelihoods.

c) ~~4.3~~ Land Tenure Reform

Land Tenure describes the way in which people own or occupy land in South Africa. Public housing is the state's mandate; the release of public land for low income housing residential development has proven to be a difficult task. The Department of Public Works and the Department of Rural Development and Land Reform (DRD & LR) holds approximately countrywide 13% of land on behalf of individuals or communities. This land is nominally held by the state and is mostly already allocated to towns, rural settlements and customary areas under specific statutory provisions. Some national government departments also have the mandate to hold land. Not all of the land held by these departments (for the purposes of social facilities) has been developed. Local authorities own land for recreational and administrative uses such as public parks, conservation areas, bulk infrastructure such as reservoirs and waste disposal sites. In Polokwane Municipality, the land owned by the Municipality is only limited to the Urban areas as can be seen on the below map highlighted in green.



Land within these areas is expensive and therefore not compatible with the concept of low cost housing. The beneficiaries of these low cost houses are subjected to

municipal rates and utility bills charges after the transfer if affected. All the legal processes up to the transfer accumulates further costs thereby excluding the land from the low income category, hence most low cost township developments are never finalised. Only the General Plan approval informally qualifies for land allocation. It is therefore left to the authorities to strike a balance between social need and land commodification.

Other forms of tenure security subjected to South Africans according to Brown, ~~Erasmus, Kingwill, Murray and Roodt~~et al, 1998 are as follows: The Communal tenure imposed through Proclamation R188 (1967) this form of tenure is a sharing arrangement controlled by the Chiefs, which mainly favours the male as the head of the household. A long term unregistered lease often referred to as permission to occupy issued by traditional authorities administered by the Communal Land Rights Act. Communal Land Rights Act provides for customary land tenure. The Trust tenure whereby the owner of all state owned reserved for blacks, ownership is established through a certificate of occupancy (AAA certificate) in terms of Less Formal Township Establishment Act, Act 113 of 1996; Strict restrictions apply to this form of tenure, such as no subdivision and leasing out allowed, conditional allocating that the land must be developed within a year of allocation, an annual lease amount payable limitation to the number of cattle owned or to be kept on this land and then lastly there is the Freehold tenure which applies to individually owned land in the form of a title deed. Although not for residential purpose, the Leasehold tenure is recognised as a tenure arrangement for land leased out mainly for agricultural purposes, grazing or arable farming.

In summary, the Communal Land Rights Act has relevance ~~of this bill~~ to this research report is that it aims to:

- Give legal recognition to land tenure rights held by a community
- Confer legal status of tenure
- Provide legally secured tenure to communities
- Provide for suitable comparable redress for people whose tenure were previously insecure
- Regulate decision making by authorities

- Protect fundamental human rights (equality, democracy pertaining to land tenure, democracy pertaining decision making)

One of the most important aims of the Act is to give legal security to land. The juristic personality of a community is:

- After registration of rules a person/ community becomes a juristic person'
- May then deal with land… (Acquire/ dispose, encumber such immovable property or real right by mortgage, servitude or lease…)

The transfer of Communal land can occur as follows:

- The Minister can cause land/ parts thereof to be transferred to certain interested parties
- A conveyancer (attorney) will perform registrations etc.;
- The process will include all forms of land tenure;
- An Administrative structure shall request Minister's approval for the opening of a communal land register. This Applies to all land registered in an interested parties name;
- Registered owner of a land tenure rights may apply for the conversion of his/ her land tenure right to full ownership.

It is clear that the intention of the Act is to give ownership to people who lived in former tribal authority areas. This will enable inhabitants of such areas to legally deal with land. Transfer of land can take place from one person to another; land can be mortgaged and ensured against. Furthermore, a community may adopt rules etc., which will guide development and administration of such areas which are to be converted. These rules should be democratically compiled and be to the benefit of the whole community. The costs involved in implementing this act (converting the land from tribal land) to individual ownership include transfer, registration and surveying to be funded by the Minister of Land Affairs from.

4.3 ADVANTAGES TO LAND REGISTRATION

Land registration cannot happen in isolation, a developed system of property rights must exist first before land can be registered. The definition of land includes

surveyed land with boundaries, zoned land in term of Town Planning laws. By realising all the advantages of a land registration system the government can do more to ensure that every land parcel is registered and transferred as much as possible except for properties which are reserved for public use such as social, institutional and recreational use. The advantages of land registration can be summarised as follows:

i. Tenure Security

Land rights in South Africa and in other developing countries are of complex nature, shared amongst government departments, tribal authorities and individuals. Land registration provides a degree of certainty and security to the owner as well as to others having rights in land. Such secure rights are important for various purposes. Economists such as Hernando De Soto has argued this theory although criticized, that in agricultural land it is apparent that providing legal title can be an effective way of improving tenure security, which normally will lead to increased investment, better production, and higher incomes (De Soto, 2000).

ii. Greater Access to Credit

Those who have proof of ownership over their properties can use those properties as collateral required for funds to be released by the banks. Only registration of rights to land establishes those rights in the eyes of the law and provides documentary evidence necessary to prove land rights. Title holders are more "creditworthy" and can use this capital to initiate a long term business than those who would rely on borrowing from friends or relatives (Royston, 2009).

iii. Improvement of Land Administration and Public Administration

Land administration is important for any local government to properly function and improve service delivery. Land is required for various projects within the municipal area to improve the lives of the community, for the fact that land planning must happen before land registration takes place is evidence enough that land registration triggers land development (Royston, 1998).

Land development creates awareness about basic facts concerning the land such as land use, zoning, public urban development, land consolidation, land subdivision, protection of ecologically sensitive areas, development phases and irrigation projects. Other projects associated with public administration are land reform, control of foreign ownership, and prohibitions on excessive land ownership which is only viable though the presence of an effective land register captured in the land registration system. Additionally improvement of Land Administration and Public Administration result in reduced Land Litigation (Royston, 1998).

iv. Improved Basis for a Land Tax

The most important of them all for local government is the increased revenue base as an outcome of land taxation. A good land registration system based on maps and embodying the unique identification of each land unit, provides the information necessary for a successful tax system (Royston, 1998).

Taking into account the advantages and long term spinoffs for land registration, the recently introduced land restoration program should be Fast-tracked and rolled out the finalization of all those low income townships which were never registered at the deeds office and possible the transfer of title to be lawful occupiers. Goal 7 targets 11 of the Millennium Development Goals stating “cities without slums”, need to be a combined effort between in-situ upgrading, coupled with relocation of households where development is not possible (Huchzermeyer, 2008:98). In India, formal responses to the housing problem include land allocation, basic infrastructure, legitimizing of irregular land occupation; relaxation of development controls and development of a variety of housing typologies (Durand-Lasserve and Royston, 2002:25). Countries such as Mexico for instance, during the 1990’s applied the conventional methods to land administration by converting occupied land incrementally into a registerable land which can later be legally transferred, mortgaged and inherited. This process required a proper township establishment, physical verification of occupants, community participation, geotechnical reports, environmental impact assessment, traffic impact, land surveying, preparation of general plan and registration.

4.3 CONCLUSION

Smit and Abrahams (2010); Durand-Lasserve and Royston (2002) talk about two approaches to land tenure, the administrative recognition and the legal regularization. The latter involves complicated processes which require township establishment, surveying of plots and registration. There are several advantages to ownership identified in Smit and Abrahams (2010). The poor have an opportunity to play a role in the economy if their land is registered and recognized by the banks. Ownership mandates the local authority to maintain and upgrade services because land owners would account for these services through paying rates and taxes imposed. However land registration can also isolate the vulnerable poor in that they end up not affording to pay for services and taxes on the registered land. Some authors have argued that, titling does not always work in the advantage the poor instead it promotes poverty.

The fact that ownership provide a basis which the poor can raise loan finance can also be the basis on which capitalist take advantage of this system to exploit the poor to repossess their homes failing to pay off the loan (Smit and Abrahams, 2010). Land registration can be a push factor in that the poor are pushed out of their territory; a terminology termed downward raiding where the middle class displace the poor out of their community. It is for the above reasoning that Durand-Lasserve and Royston (2002:16) introduces land tenure upgrading as another common method for securing tenure rights. Land tenure upgrading does not provide for individual title deeds, it provides for an opportunity to be upgraded at a later stage, at the same time providing security in the form of deed of grants which provides protection against forced evictions (Durand-Lasserve and Royston, 2002:16).

The incremental tenure approach can also apply to short term recognition/ arrangement in preparation for long term regularization through titling and registration. The suitability and viability of these locations are able to be assessed during this period while residents are secure (Smit and Abrahams, 2010:15). Applying zoning rights can be used to secure tenure. The City of Johannesburg has adopted this approach in their Town Planning Schemes, where blanket recognition is used for these settlements (Smit and Abrahams, 2010:15). During the process of land administrative recognition, land is assessed in terms of environmental issues,

spatial planning policies, deed's searches, bulk infrastructure, verification of occupants before the tenure plan is finalized. During the process, land is surveyed, subdivided into a formal township thus constituting to the development of land use management systems in order to control land activities taking place and taxations become easier to implement. Transportation and infrastructural services have to be put in place therefore an opportunity is created; availability of services on a site increases the land value. This might create conflicts in that higher rates and taxes are imposed which are unaffordable to the poor (Smit and Abrahams, 2010:15).

The advantage with this approach is that it can even be applied to temporary holding areas which have a potential to be upgraded at a later stage (Smit and Abrahams, 2010:19). The other positive part about land tenure according to Smit and Abrahams, 2010, it contributes to more manageable urban areas in terms of land use and zonings. However it is of major importance to note that land allocation does not only occur in the urban areas, in rural areas land is allocated in customary methods by tribal authorities or community trusts. Proof of ownership is often documented in the form of permission to occupy, ward councillor's letter and other related methods. Additionally other more temporary informal forms of land ownership may include a municipal services account and a Housing Subsidy System beneficiary allocation letter.

The motivation that land tenure upgrading through titling empowers the poor to use their properties as collateral cannot apply in rural areas. Land owned by the poor cannot be used as collateral to raise loans from the banks as banks do not lend money based on title deeds but based on a stable monthly income.

This research report aimed at significantly addressing the following areas:
The constraints in land registration within a low income housing development and the implications to the township establishment process by elaborating on the following: the processes followed and cost implications in a land registration transaction, tenure security approaches available in South Africa for the low income population group ~~save~~ except for the legally recognised freehold tenure and the process of township establishment in a proclaimed scheme area.

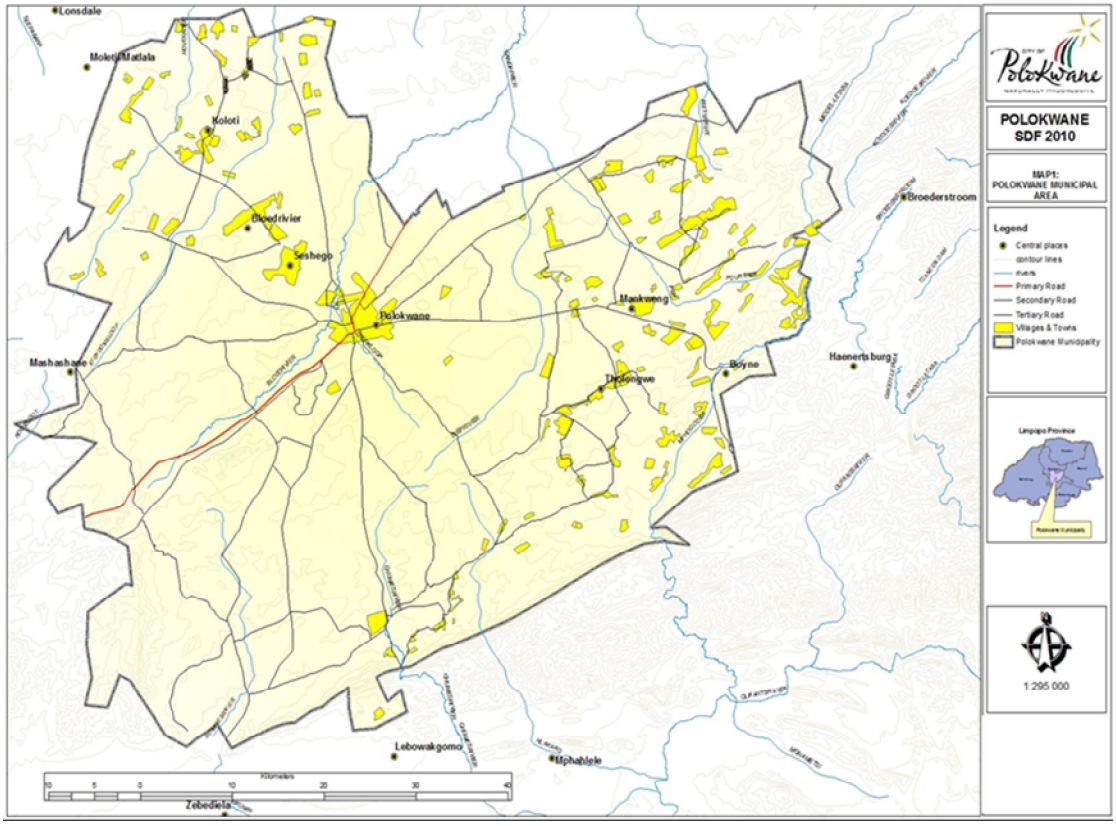
Within the contextual review, in this chapter, the processes leading to land registration have been ~~satisfactorily~~ outlined. The costs to land markets are regulated by the professional valuation system aligned to the MFMA. These costs take into consideration the preparation phases land has to undergo before it is ready for development; these processes have also been elaborated upon in this chapter. Other approaches to land tenure security such as land allocated by the chief by issuing a "permission to occupy", although available and being used, they are not legally recognised by various institutions particularly the banking sector. In the next chapter, we get into details on the study area, expand more on the complexities encountered in land registration and opening of a township register for low income housing developments.

CHAPTER 5

5. CASE STUDY AREA

5.1 CONTEXTUAL ANALYSIS

Polokwane Local Municipality within the Capricorn District in the Limpopo Province~~along with other four local municipalities in the district area. It is centrally located to be the administrative and economic capital of the Limpopo Province. The surface area of the Municipality measures 3775km² and accounts for 3% of the province's total surface area of 124 000km². Polokwane Local Municipality is 23% urbanized and 71% rural. The remaining 6% comprises of small holdings, institutional, industrial and recreational land. The municipal spatial pattern reflects that of a historic apartheid city model characterised by segregated settlement. At the centre of the area is the Polokwane economic hub, which comprises the CBD, industrial area, range of social services and well established formal urban areas (*Polokwane Spatial Development Framework, 2011).*~~



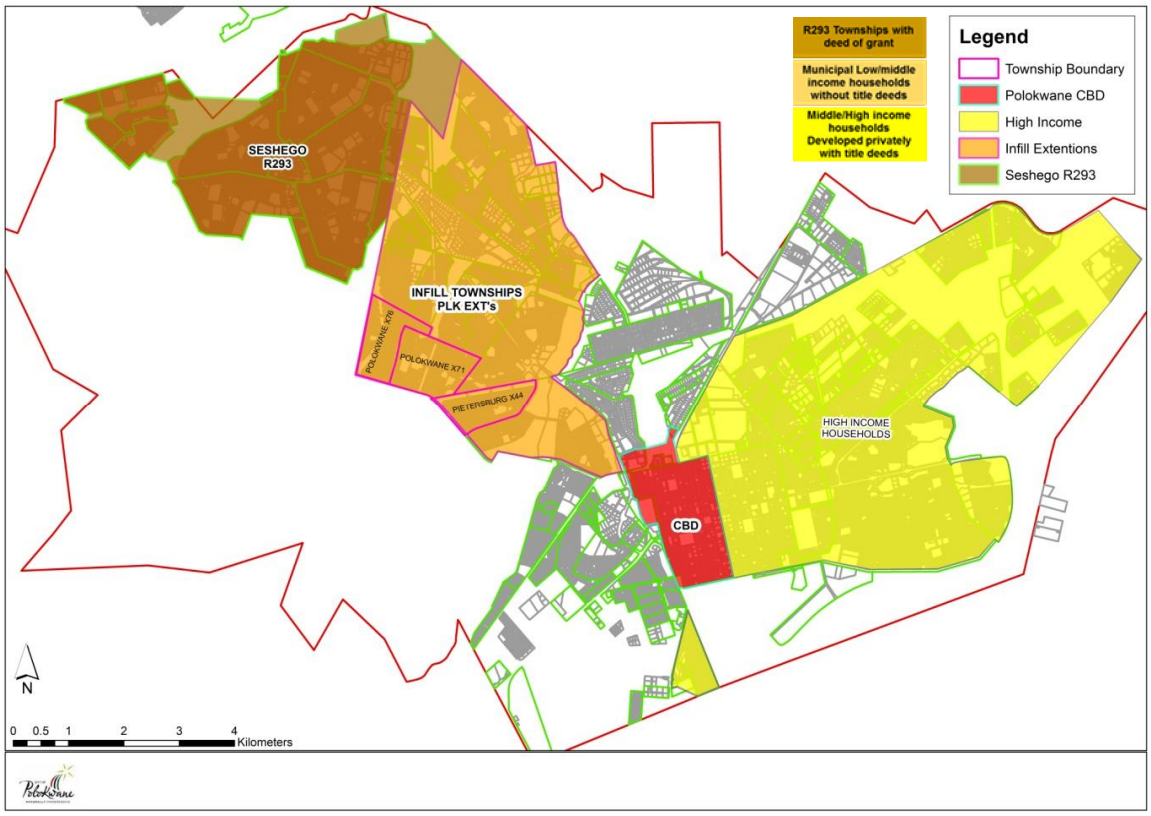
Map 1: Locality Map

Source: Polokwane Municipal Spatial Development Framework, 2011

The rural urban migration trends is not unique in this part of the country, as a result Polokwane municipality experience has a huge backlog in terms of low income housing development allocation. Housing is only one aspect of urban problems for communities; its components are also difficult to be catered for in the urban areas. These areas are in dire need of upgraded services and infrastructure as the struggle continues to cope with the informal influx of more and more people (Bank, 2007).

Polokwane Municipality is dominated by settlements patterns which are characteristics of apartheid planning and procedures~~. divided into two categories namely Rural and Urban.~~ Rural settlements are found in the former "homeland" areas and are found in what is called 3rd order settlement. Urban settlements are found in traditionally white areas and former R293 and these centres constitute Provincial and District growth points of the municipality (Polokwane SDF, 2006). Polokwane Municipality like other areas in South Africa is trapped between high rate of urbanisation and urban migration and the need to proper housing, infrastructure and public amenities.

The below map depicts the study area, shaded in red is the Polokwane Central Business District (CBD); Seshego is located approximately 12 Kilometres away. Between Seshego and Polokwane, there are developments aimed at connecting the city and the segregated township of Seshego. Over the years, infill developments took place most of which are municipal fully subsidised housing developments. While people have settled, land serviced and one thing is lacking, "title deeds" because the land has either not been registered at the deed's office or not yet transferred to beneficiaries.



Map 2: Income Map

Source: Polokwane Municipality GIS system, map has been modified.

The city was not ready for this influx of people to Polokwane urban area because it happened during the time when ~~T~~town ~~P~~planning was done according to apartheid legislation and control which resulted in uncontrolled squatting (Polokwane SDF, 2006).. Post-apartheid, we have seen access to home/land increasingly being recognised as human right and government now emphasises the importance of tenure security and a market oriented system of property rights. There are a number of legislative frameworks that are geared to address the imbalances and redress in nature. Legislation such as Upgrading of Land Tenure Rights Act, 1991 (Upgrading of Permissions to Occupy), Extension of Security of Tenure Act, Act 62 of 1997 and Development Facilitation Act, 1995 is a few examples.

5.1.1 Land registration and zoning schemes

Table 1: Property registration sample

Township	X	Erf	Deeds Owner	Title Deed	Size. Ha
Pietersburg	44	8763	Polokwane Municipality	T144735/1998	0.026
Hospital View	2	9427	*	Unknown	0.0329
Seshego D	0	1750	**refer to registrar of deeds **	Unknown	0.0509
Seshego-A	0	1953	Polokwane Municipality	*Unknown	0.078
Seshego-B	0	3101	Polokwane Municipality	TG28738/2009	0.0372
Seshego-F	0	8151	Polokwane	TG63016/2011	0.5136
Seshego-H	0	270	Polokwane	TG63040/2011	0.09
Seshego-9A	3	243	Polokwane	T9381/1997	0.3709
Seshego-9C	0	39	Polokwane	T146811/1998	0.0864
Seshego-9F	0	36	Polokwane Transitional Council	T140727/1998	0.8427
Seshego-9G	0	209	Polokwane	T120582/1999	0.1659
Seshego-9L	0	65	Polokwane	T143303/2002	0.0248
Polokwane	71	12358	Polokwane	T130934/2005	0.0405
Polokwane	72	19330	Polokwane	T35977/2009	0.0456
Polokwane	73	13739	Polokwane	T107089/2008	0.05
Polokwane	75	14787	Polokwane	T15007/2008	0.04
Polokwane	76	14914	*	*Unknown	0.0405

Source: Polokwane Municipality Asset Register, 2014

* Means ~~D~~*do not exist in deeds office*, the township ~~Erf~~ on which the erf is within was never registered at the deeds office because the project ended at the general plan approval stage. These are townships established more than a decade ago; hence one can imagine the backlog that exists in unregistered townships.

* **refer to registrar of deeds** means the transaction is pending possibly due to some rejection notes, details can be found in the files of the deeds office.
* Unknown, means the title deed number in unknown because it has never been allocated.

The below map depicts the zoning within Polokwane's proclaimed Scheme area (urban area)

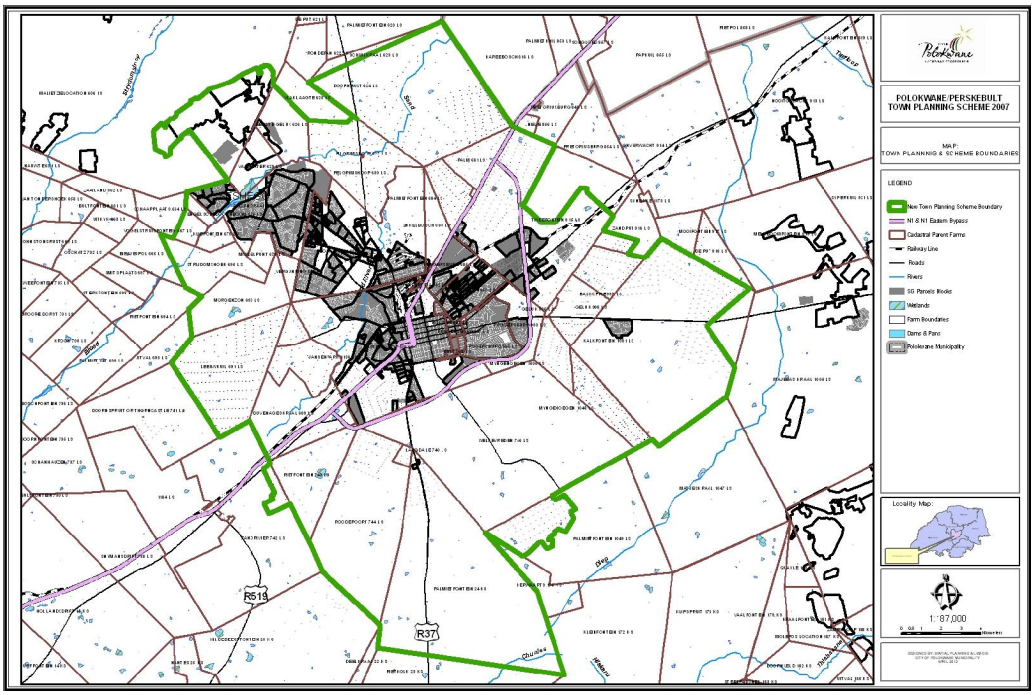


Map 3: Zoning Map

Source: Own Design from Polokwane Municipality's GIS shape files

The concepts: Land Use Management v.s. Land Use/Zoning Schemes. Polokwane Municipality's SDF, 2007 makes the following submissions in respect of Land Use Management Schemes: "The Land Use Management Bill, March 2001 defined: "land use management" to mean "… establishing or implementing any statutory or non-statutory mechanism in terms of which the unencumbered use of land is or may be restricted or in any other way regulated" whilst, "land use scheme" mean "… a scheme which - regulates the use of land in the area; records the permissible use of each piece of land in the area. Therefore the concept of a Land Use Management System (LUMS) will refer to the mechanism in terms of which imaginative use of land

is regulated in one way or another, which may include the adoption of a Land Use Scheme which will have the binding effect to land. It is furthermore accepted that any spatial development framework, policy, structure planning and other guidelines accepted by the municipality, forms part of the regulation of land by guiding and informing the LUMS and legally effecting decisions to be taken to amend the Land Use Scheme. The LUMS is therefore interpreted to be a much broader term which incorporates different aspect affecting land, land use and development from policy making level (strategies, principles in the IDP) up to final development control measures (conditions in land use scheme/use zones). The basis of the LUMS and basic principles derive from policy and strategic based decision from the IDP and more specifically the Spatial Development Framework thereof. A Land Use Scheme on the other hand, is interpreted to be a scheme, which subsequently regulates and records the permissible use and/or restrictions applicable to each property within the area of the municipality. It is therefore the “mechanism” or legislative document which provides the final management/control over land use over each piece of land, on a more administrative and technical level in accordance with the LUMS in general (SDF 2007: 86). Land uses in the city of Polokwane are currently administered by means of the Polokwane/Perskebult Town Planning Scheme, 2007.



Map 4: **Town Planning Scheme Boundary Map (urban area)**

Source: Own Design from Polokwane Municipality's GIS shape files

5.1.2 Historical analysis

The approach to this research report is positioned on three low-middle income township developments namely, Polokwane extension 78, Polokwane extension 40 and Jansen Park.

Polokwane extension 78 is a mixed use township in Polokwane Municipality previously called New Pietersburg now informally called "Disteneng", which was the most difficult project to undertake in relation to township establishment processes. Issues of land claims had to be dealt with as part of the Restitution of Land Rights Act 22 of 1994 by the land claims commissioner in the province. General Plan cancellation and expropriation of land through the provisions of the Expropriation Act 63 of 1975 encompassed some of the challenges faced with formalizing this township. New Pietersburg has a long history, filled with historic political agendas and turmoil. It was a private township, established in the early 1900's, and the erven initially sold to Africans, working in the then Pietersburg City. However, at a later stage, National Group Areas policy had the inhabitants forcefully removed to Seshego, a location reserved for non-whites, in order to maintain an "open buffer" between the "Black Seshego" and the "White Pietersburg". Post democracy the land was invaded by illegal informal residents (squatters), the Municipality opted to formalize the area instead of eviction (Ntsebeza and Hall, 2007:3 and South African History Online, 2015). During this process, the then Pietersburg Municipality purchased most of the erven in New Pietersburg and expropriated the few erven under private ownership. The old established township had to be de-registered, redesigned, sub-divided into smaller portions and the old General Plan withdrawn. At the same time that this tedious process unfolds, the community is awaiting progress regarding provision of basic services, the Municipality embarked to allocate through a relocation project the unregistered erven to the beneficiaries of the housing waiting list despite the non-availability of basic services. The details of land ownership issues remain a struggle that exist in New Pietersburg and other South African parts today.

The history of New Pietersburg like any black township in South Africa dates back from 1913 wherein the first measures were taken by the white rulers to create an institutional divide between black and white, the details can be found in De Klerk's book dated 1991. New Pietersburg was a product of Native Urban Areas Act of 1923. The Draft Urban Areas Native Bill was released for discussion among municipalities and Pietersburg municipality reported on it in 1918. When the Native Urban Areas Act was enacted in 1923, it did not compel local municipalities to provide housing and develop land for black occupation in segregated locations. Instead, local authorities could either accept the burdens and or benefits of the enactment. Once a local authority decided to follow the Act, it would have become liable for the following functions:

- To build on land and improve black location areas
- To earmark a separate location or native reserve revenue for Native expenditure
- To prevent whites from acquiring or occupying premises
- To control the influx of blacks and:
- To remove unemployed "surplus" people (South African History Online, 2015).

The above conditions firmly established the foundations for a segregated urban society in South Africa and New Pietersburg was not an exception to that. Pietersburg Municipality adopted the legislation relating to location regulations in terms of Section 23 (3) of Native (Urban Areas) Act of 1923 on the 15 April 1925. At Council meeting of the 26 January 1932 it was recommended and subsequently adopted, that the whole of the Pietersburg municipal area be proclaimed in terms of Section 5 of Native Urban Areas Act No 21 of 1923. This in essence meant that blacks had to be relocated to a black township. Council adopted a position which entails that "a suitable site for segregation of natives as is separated from Town and Annandale by the Sand River, and that by allowing natives to purchase land there, would be inducement to them to move out of town". This area i.e. known as New Pietersburg was proclaimed a native village and was controlled by Native Affairs Department (De Klerk, 1991).

Residents of this area were forcefully removed at around the years 1966 -1968 as part of the implementation of the Group Areas Act and Bantu Authorities Act of 1951 and other related apartheid laws. Seshego, a homeland township was established near the white urban center of Pietersburg and according to the then government and planning laws it was ideally situated for permanent residence, for migrant workers. The proclamation of Seshego as a township rendered New Pietersburg a “black spot” and residence of New Pietersburg were then relocated to Seshego as part and parcel of consolidating Grant Apartheid. The transition to a Democratic South Africa, enunciated the need to redress the past imbalances. The Restitution of Land Rights Act of 1994 (Act 22 1994) was passed. The Act required and promoted that people who were forcibly removed from their land after 1913 as a consequence of discrimination laws; come forward and lodge a claim with the Land Claims Commission. During 1998 people from New Pietersburg lodged a claim for New Pietersburg. The settlement of the New Pietersburg Land Claim entailed two options that depend mostly on preference by the respective claimants. In terms of the Restitution of Land Rights Act: people who were forcefully removed from their land were given a time frame to lodge their claims of the properties. The cut-off date for the lodging of claims was 31 December 1998.

The implementation of the Restitution of Land Rights had an option for financial compensation or return to the land or rather compensation in kind through provision of alternative land for resettlement. The New Pietersburg Land Claim was also subjected to the Restitution process and the two scenarios as contained in the Act prevailed. In ~~the year~~ 2001, the Minister of Land Affairs approved the restoration of the claimed land called “Disteneng” to the claimants and part of the claimants opted for financial compensation. This meant that the Minister approved financial compensation to the claimants in lieu of provision of original land. When this matter was engaged with the then Pietersburg Polokwane TLC it was agreed that the original “Disteneng” will be an alternative land that the claimants will be restored to. While this process was still being considered and the logistics were being finalized informal settlements mushroomed and it became difficult and costly for the municipality remove and relocate squatters.



During the year 2014-2015, the municipality embarked on a relocation process pending the opening of a township register, Pictures dated September 2015, own source.

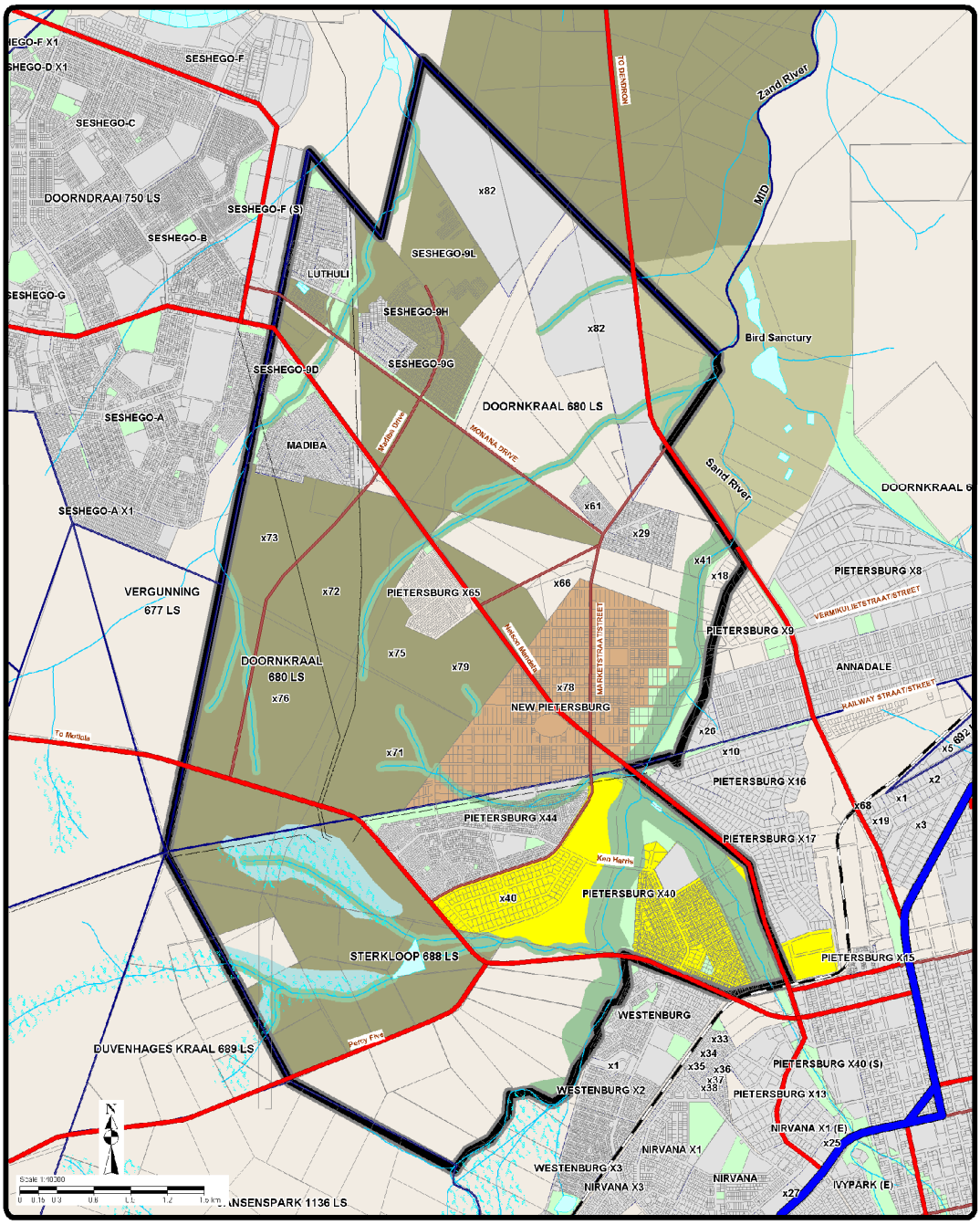
This in essence would entail that the municipality would have to obtain a court order/interdict and at the same time arrange for an alternative land. This of course was going to be a long and costly process. The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (Act 19 of 1998) provides that a court order must be obtained before any eviction could be effected and at the same time gives provision for the applicant to provide alternative land for the evictees. Section 6 (a) – and (b) together with subsection (2) (a) – (c) provides for that. (Photographic visuals of New Pietersburg)



Pictures dated September 2015, own source

A photograph showing squatters who are presently in new Pietersburg scattered randomly with no specific pattern to the layout plan of the area

It was in the light of the above painted scenario and sequence of events that the Regional Claims Land Commission (RLCC) and Polokwane municipality agreed on the provision of alternative land. Three options were put on the table by the Municipality for consideration and it was up to the commission and the claimants to come up with an option that would be suitable in terms of timeframes, resources available and the number of claimants. The three alternative land options provided by Polokwane municipality were, Pietersburg Extension 40 (phase 1), Remaining Extend of Portion 80 of farm Doornkraal 680 LS and New Pietersburg. Polokwane municipality provided the status quo of all the areas, and a sufficient consensus was arrived at Pietersburg Extension 40 (Phase 1) after intensive and rigorous negotiations with the Land Claims Commission, Polokwane Municipality and the Claimants.



Map 5: Polokwane Extension 78

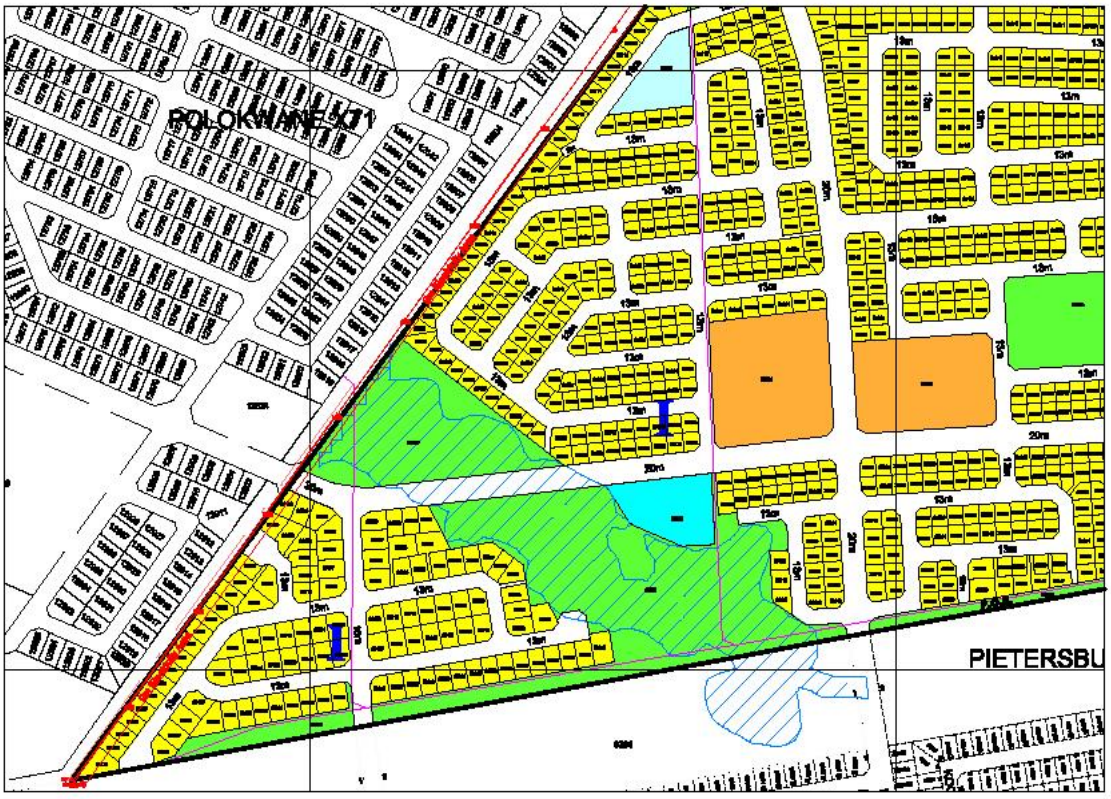
Source: Polokwane Municipality Strategic Development Area 1

This development will definitely ensure proper integration of the City with Seshego in an attempt to correct historically distorted spatial patterns embodied by so-called “buffer zones”. In this instance, New Pietersburg will play a major role to ensure and

advance the desired integration. The fact that informal settlers identified the area for residential purposes shows that the area is strategically located.

The area in brown represents the township of New Pietersburg. This area forms part of an area where people were forcefully removed during the Apartheid era and the land was transferred to the municipality. It also forms part of land claim and restitution case, which is in the final stages of settlement between the municipality and Land Claims Commissioner. Although the municipality owned the largest part of this township, there were still single erven owned by other individuals which were later expropriated. During this process, the Pietersburg Municipality purchased most of the erven in New Pietersburg and expropriated the few erven under private ownership. Refer to **Annexure D**, Resolution to expropriate township**, Annexure E,** Expropriation Notice and **Annexure F**, Resolution to approve township.

Map 6: Approved Layout Plan

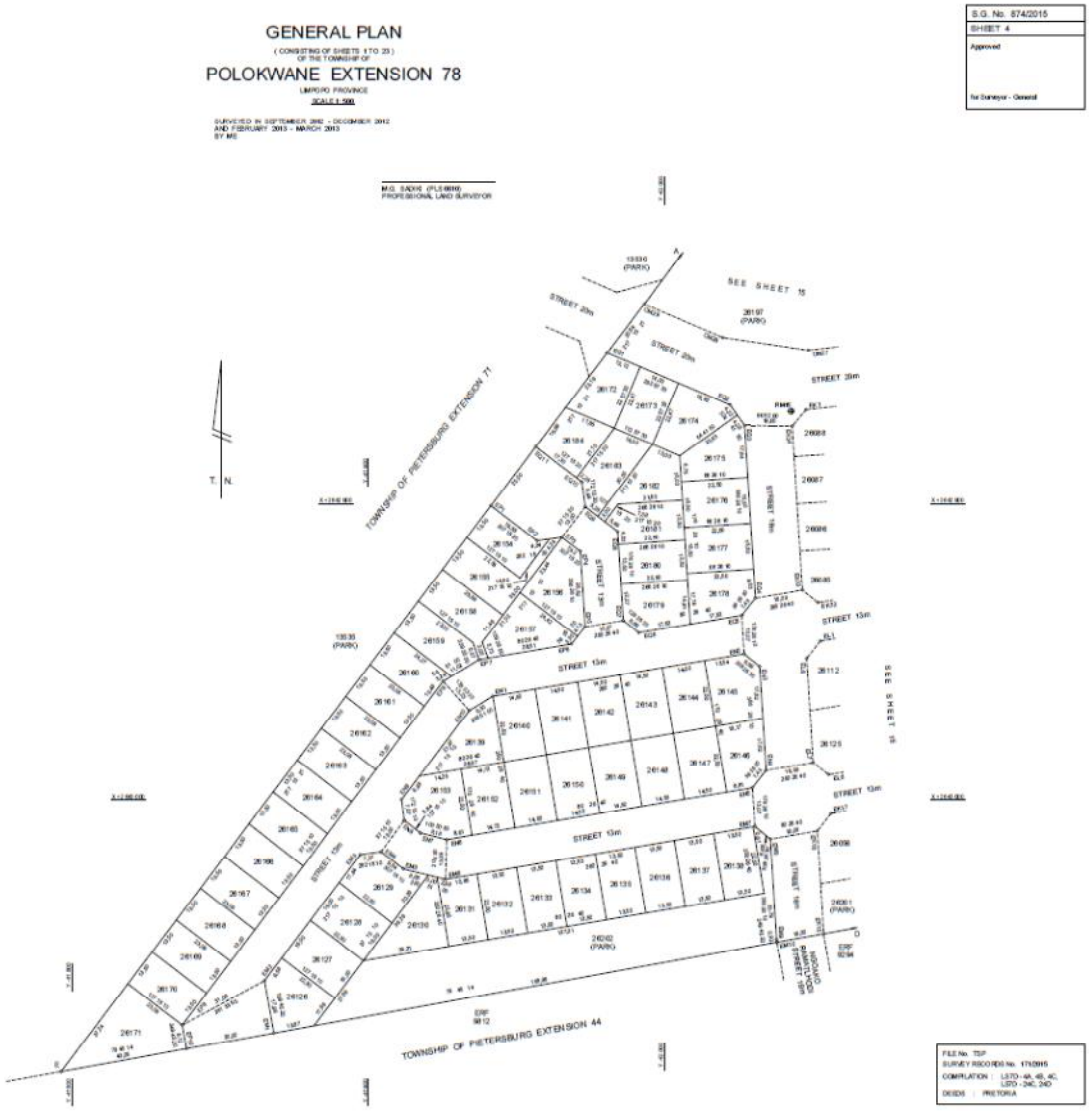


Source: Polokwane Muncipality Township Databases

The old established township had to be de-registered, redesigned, subdivided into smaller portions and the old general plan withdrawn. At the same time that these

tedious processes unfold, the community is awaiting progress regarding provision of basic services, the Municipality then resolved to allocate unregistered erven to the beneficiaries of the housing waiting list. Despite the availability of basic services, the complexity of land ownership remains a struggle that exist in New Pietersburg and other South African parts today.

Map 7: Approved General Plan



Source: Surveyor General Databases

The above scenario represents the major steps taken to establish a township, it can be observed that council resolved to establish a township on the subject area and expropriate some of the properties in 2008. Late 2012, the EIA had already been issued, the layout plan prepared and sanctioned by the community and towards 2015, the General Plan was approved. These steps have been accomplished within record time, save for land registration which is a major stumbling block taking us back to the problem statement. The land claim commission affiliate issues of township establishment and subdivision as a delay in addressing land reform and land redistribution. In Polokwane alone, there are more than two cases where land has been restituted to the claimants, but not yet registered in their names for this reason and for the sake of service delivery, Municipalities resolves to settle residents without registered titles.

Pictures dated September 2015, own source







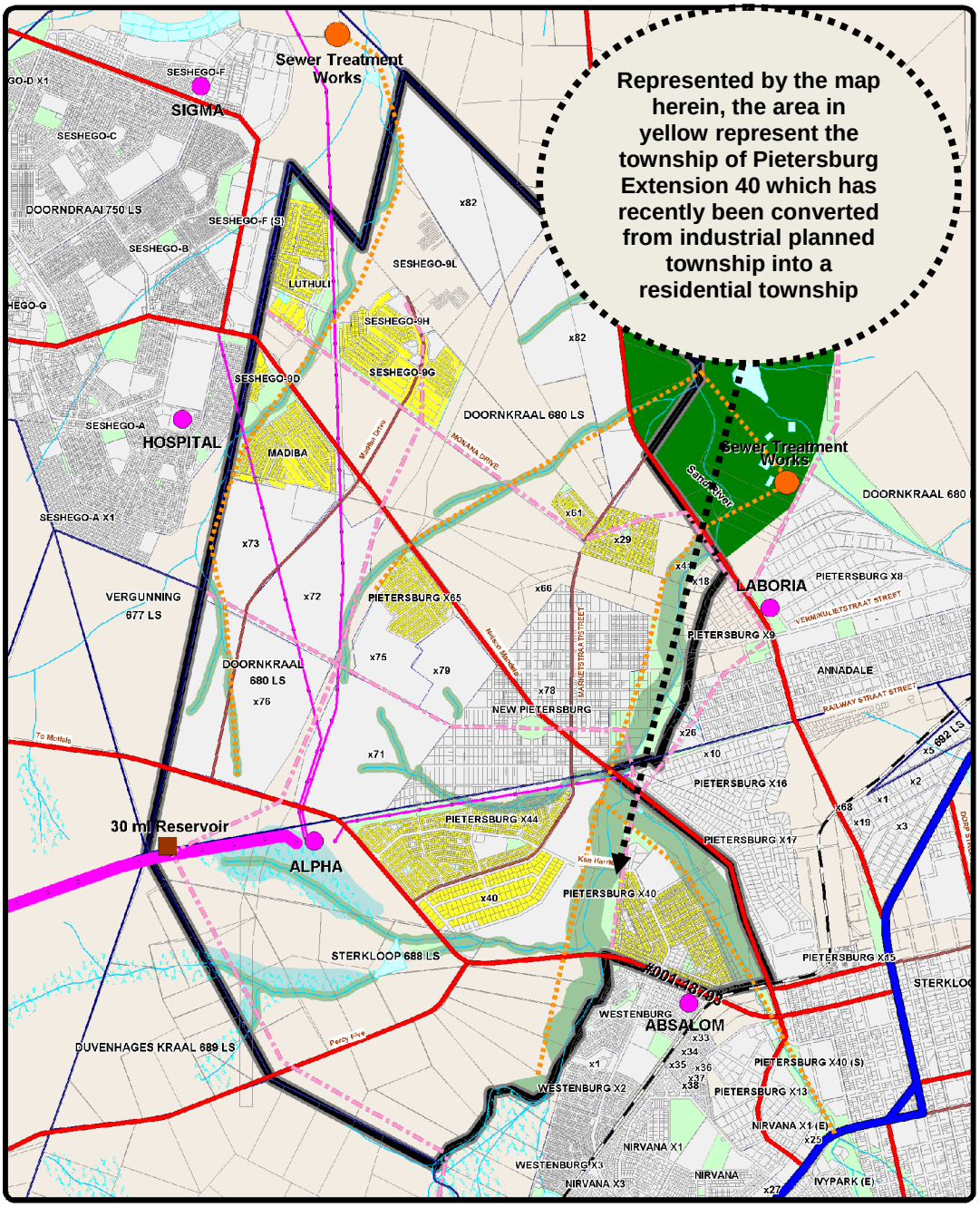
During the year 2014, the municipality embarked on a relocation process pending the opening of a township register



Polokwane extension 40 and Jansen Park are hereby being referred to in this research report because they fall within the Urban Edge wherein a township need to be established, services installed, land surveyed and subdivided, thereafter individual transfers can occur. Certain legal conditions become applicable, e.g. land use

conditions, basic layout plans, occupation certificates and registers. 'Early' forms of township establishment, through for example Chapter 1 of the Less Formal Establishment Act or a simple Chapter 5 Development Facilitation Act (DFA) application; also afford legal recognition to a settlement.

Map 8: Polokwane Extension 40



Source: Polokwane Muncipality SDF, 2011

Map 9: Polokwane Extension 40 on an aerial photograph



Source: Google Earth Image, Map Modified

Section 34 of the Restitution of Land Rights Act~~, Act~~ 22 of 1994, makes provision that "any National, Provincial or Local Authority may, in respect of land which is owned by it or falls within its area of jurisdiction, make application to the Court for an order that the land in question or any rights in it shall not be restored to any claimant or prospective claimant". Subsequent to the above reason, the council then resolved to donate 497 (Four Hundred and Ninety Seven) erven in Pietersburg Ext 40 (Phase 1) which measures 23. 5894 hectares to "Disteneng / New Pietersburg" Land Claimants as an alternative land to settle the "Disteneng" Land Claim in terms of Restitution of Land Act, 1994 (Act 22 of 1994) as amended and in turn the Polokwane municipality took ownership of New Pietersburg with 1181 Erven measuring 2 240 000sq meters (224 ha). Additional to the donation council committed to accept the infrastructure development on the area at an estimated cost of R12 286 400 i.e. inclusive of Road network, Water and sanitation, Electricity and Land Surveying.

Some of the New Pietersburg Land claimants were compensated a farm portion 20 and 21 in Jansen Park.



Pictures dated July 2016, own source.



To date, since the restitution three years back, the land has not been legally transferred to the claimants let alone registered in their names. Jansen Park is an agricultural holding within Polokwane Municipality, located within the urban edge with potential for development. The Municipality incorporated these farm potions within the development areas in the Spatial Development Framework as response to the DRD&LR's request to identify suitable land for land claimants. As part of the land restitution agenda, this land was then reserved to accommodate claimants who opted for alternative land as opposed to monetary compensation. A blunder caused by the department was to award the claim to the claimants without following the process of township establishment first perhaps because of human capacity constraints and poor budgeting. When investigations unfolded as to why a township not established first the department noted that there were no funds for that financial year to cover the township establishment costs and there was an urgency to compensate the land claimants because they had been waiting in vain for ages, refer to **Annexure G**

The land claimants rightfully so, due to their lack of knowledge about town planning procedures, demarcated sites, allocated themselves, and are now residing on the holding without water, sanitation and proper roads. The Municipality is now sitting with a catch 22 situation, whether to declare the occupation as illegal and remove the shacks or to embark on a process to establish a township on their behalf. The latter was found to be outside of the municipality's mandate as the land is not owned by

the Municipality but owned by the DRD & LR. Establishing a township on land not owned by the Municipality would result in an unfunded mandate contradicting with the Municipal Finance Management Act. Evicting the claimants will constitute to an unconstitutional act adversely in contradiction with the Restitution Act, the Constitution Act, PIE Act and the Housing Act. Brown, ~~Erasmus, Kingwill, Murray and Roodt~~et al, 1998:61, identify the risk of allowing restitution to happen before undertaking settlement planning processes. In their study, they argue that there needs to be a minimum level of planning to ensure that restitution is successful in the long term. Restitution is more than getting the land back as it involves resettlement of people, provision of infrastructure and sustainable development" (SPP, 1994). Then why does the government allow restitution before infrastructure and development plans are in place, like in the case of Polokwane Extension 40 (refer to Annexure H), Leewkuil, Jansen Park referred to in this research report. The pressure derives from the community and a political pressure to deliver on government's obligation of address land reform. The pressure from the community lies in the fact that they are not concerned with town planning processes as this might over cloud the return of the land and they would often argue that it opens a room for shopkeepers[7] who would start exploiting the process. There is no patience to accommodate town planning processes as they are lengthy, resulting in land invasion as a way of pressuring government officials to act quickly on provision of infrastructure.

DRD & LR now seems to have abandoned this project three years ago because they have achieved on their restitution register, a claim has been awarded and their books are clean. However the situation on the ground does not represent a habitable land as it is not aligned to the town planning principles, development objectives, the Town Planning Scheme and the Spatial Development Framework of the Municipality. Jansen Park is a perfect example portraying that some projects are simply being treated as administrative mandates, or a checklist that must be ticked off without caring about the end user. The scenario in Jansen Park is a mirror image of situations which are not profit driven, or situations where there no return in investment, they are not prioritised. If this was a private township aimed at selling the sites after the township has been established, the land surveyed and site

[7] Leaders of an organised group in control of setting the rules and keeping records of agreements and meeting, they can sometimes use this power to manipulate and influence processes to their advantage.

demarcated, fully serviced, because there would have been a promised return on investment, the process would have been ensued. Although a small percentage of Township's are eventually finalized and township register opened. The process it takes for individuals transfers of the erven has some individual challenges. The Department of Rural development and Land Reform introduced the Title Deed Restoration Program which aims to correct all these unregistered land parcels that exist within each province, refer to **Annexure I.** Alongside the deeds restoration program, during the year 2015, Polokwane Municipality embarked on a site verification process for people who reside on land on which they do not have title deed or any form of proof of ownership.

CHAPTER 6

6. FINDINGS

From the interviews undertaken, it is presented that the cost implications for formal property rights registration system are enormous. The land registration process is both complicated and expensive, making it unaffordable for the general population. However it remains important to have some kind of proof of ownership in order to improve on the land one occupies. The National Building Regulations and Building Standards Act, 1977 for instance requires that an owner of the land or an agent authorized by the owner submit a building plan for development. Other forms of ownership which the majority of South Africans possess are still classified as inferior hampering them to fully participate in the economy of the country. It becomes pertinent that the South African law of property advocates that the different approaches to land ownership such as communal tenure in the form of PTO's, be officially recognised in the formal economy. Land registration has underlying factors which have a long history of discrimination. Land remains a sensitive case especially in the South African context because of the history and design of apartheid laws. The fully subsidised housing projects built and handed over to the beneficiaries, the beneficiaries cannot take out liability insurance against them if the townships are not yet registered at the deeds office, let alone unregistered titles. The very same projects aiming to empower the previously disadvantaged group are unable to retain this empowerment. It is therefore a temporary empowerment because they, it is risky and not be able to house future generations. It is not possible for those who wish to legally extend their houses to do so without approved building plans if proof of ownership is not produced.

6.2 CONCLUSION AND RECOMMENDATIONS

Ben cousins advocates for policy changes in land rights security, change that is distinct from 'western-legal' form of land ownership (Cousins, 2007). Due to the state of affairs regarding land and the large-scale dispossession of land that took place, it is unjust to acknowledge only one form of land ownership when dealing with issues

of land redistribution and restitution in South African land reform policies (Cousins, 2007).

The urban development challenge (township establishment) is as a result of the historic backlog, past policies in South Africa have given rise to patterns of land distribution that are racially skewed and inequitable, about 3.5 million South Africans in urban and rural areas lost their land and rights in property through forced removals during the apartheid era (Royston, 1998). “The urban housing backlog in South Africa as of 1995 is estimated at approximately 1.5 million units. It is increasing at a rate of 178,000 units per annum, due to high rates of population growth and low rates of housing provision” (Royston, 1998:3). Additionally the increasing housing backlog is because of low rates of formal housing provision as well as an increasing number of people accessing land informally in informal settlements and through land invasion (Royston, 1998).

South Africa's new National Housing vision is one in which all people will have access to a permanent residential structure with secure tenure accompanied by adequate potable water, adequate sanitary facilities and domestic electricity supply (RSA, 1994). The security of tenure vision needs to be redefined, to include the legal recognition of other forms of tenure including customary traditional tenure. Freehold tenure requires a formal township establishment which has proven to be delayed and at most never finalised due to the challenges facing South Africa's urban areas including:

i. The integration of cities and towns, previously separated through apartheid spatial planning;
ii. The provision of affordable shelter and security of tenure; and
iii. The transformation of local authorities to play an effective developmental role (RSA, 1995)

A combination of factors have historically constrained access to suitable urban residential land in South Africa including the state’s past legislative land use control mechanisms (town planning and township ordinances). A range of municipal planning requirements have been legislated i.e. the Land Development Objectives, Integrated Development Plans, the Restitution of Land Rights Act (1994), the Land

Administration Act (1995), and the Upgrading of Land Tenure Rights Act (1993) which provides for the upgrading of various forms of tenure in order to address the quick release of land for housing to the people (Royston, 1998). South Africans currently hold land under a variety of tenure systems, including freehold, customary tenure and under various forms of tenancy (Royston, 1998). It is the argument in this research report that while racially based land laws have been removed, many people still face tenure insecurity. The government's land tenure reform programme aims to extend greater tenure security to South African's under a diversity of tenure systems (DLA, 1997), however on the ground, discrimination still exists based on the category of tenure system one holds.

Many residents of formal residential areas do not have full ownership rights because many of these townships are not proclaimed (Royston, 1998). Development in such communities has been constrained because residents are being precluded from accessing credit to maintain and improve housing stock (Royston, 1998). While this research report is not more focused on the economic benefits to security of tenure, it is important to note that having a recognised legal right to property can have progressive impacts towards the maintenance of the house build on the subject land, such as being able to register it for insurance cover in cases of fire or natural disasters. On the other hand one can also be able to invest upon structural improvements with confidence that the investment is for future generations and will not be wasted in the long term. In South Africa, it becomes very sad that people who have spent half of their lives building homes on land which is not proclaimed can lose it all in an instant due to the fact that insurance brokers do not indemnify houses build on land without freehold tenure rights. This research report was aimed at highlighting these issues rather than advocating for economic spinoffs of having title over land or using land as collateral for borrowing at financial institutions.

A township register is a legal document which describes the conditions under which the land may be used by owners and requires a lengthy process needs to be undertaken by conveyancers and surveyors. The township needs to be surveyed, and the plan approved by the Surveyor General, prior to opening the register in the Deeds Office. South Africa's system of freehold tenure generally provides clear legal protection for tenure rights, and is backed up by efficient and accurate deeds registry

and surveying systems [DLA, 1997]. Although South Africa's sophisticated land surveying and tenure registration is internationally renowned, most people are forced to acquire land outside this formal system [RSA, 1994]. The system fails to cater for the variety of housing delivery approaches and mechanisms. The system does not accommodate other tenure arrangements for the benefit of poor South Africans (especially the rural population) [DLA, 1995a]. South Africa has a variety of informal land transfer systems, operating outside the formal land registries, based upon customary tenure or on existing freehold sites. Many of the tenure arrangements that do exist are not officially recognised. The informal transfer systems are often based on patronage, and discriminate against women. The benefits of registration need to be extended to alternative forms of tenure, especially communal and group tenure. The administration of land registries needs to be unified, to bring into line inferior or lesser land registration systems with various distinctions between different forms of title and separate and racially based administrations (Royston, 1998).

These complicated freehold land registrations processes causes a major delay when it comes to a completion of a township establishment process, because a township cannot be proclaimed if a township register is not opened at the deeds office. It is for this reason that the researcher advocates for less restrictions as far as opening land registration is concerned. In fact the communities priority is basic services such as water, sanitation, road network and electricity. Security of tenure should be embraced in all its forms like other countries mentioned in this research report. Opening of a township register should not be a precondition for township proclamation, thereby shortening township establishment process (Royston, 1998).

The South African Constitution gives national government responsibility for implementing land tenure and land administration reform. In addition, it is up to national government to ensure a more equitable distribution of land. Provinces and national government have concurrent competency to legislate housing, regional planning, and urban and rural development matters. The Constitution also provides for a national override in certain circumstances. It is the responsibility of provincial government to provide complimentary development support (such as the provision of infrastructure). Local authorities have constitutional functions pertaining to land use and planning. In terms of customary law, traditional authorities carry out some land

related functions [DLA, 1997]. A new institutional arrangement is called upon to deal with the imbalances of land tenure that exists in South Africa. Many local authorities have capacity constraints, in addition to financial constraints, that inhibit the ability to deliver on basic services let alone tenure security matters (Royston, 1998).

Payne, 2002:306 warns the authorities not to put all their eggs in one tenure basket, and open up the land market to recognise the other tenure alternatives which have existed for centuries such as the popular communal tenure rights in Sub-Sahara Africa. The issue of land is complex and there is evidence that within the freehold title systems there are major gaps further complicating the registration process, gaps including limited records and missing cadastre. Considering the number of years required for land registration and the current backlog other approaches need to be explored in resolving the land registration dilemma. A radical, innovative approach to land tenure is long overdue in South Africa; even if it means losing international investors to property. The current formal freehold tenure system will never accommodate the backlog that already exists. According to Payne, 2002, Policy directives should look at the implementation and finalisation of the:

I. Land Rights Bill, this bill was focused on providing blanket protection and non-statutory, non-registered secure tenure to people residing on land in former homeland trust and areas (state land)
II. Communal Property Associations (CPA) Act 1996 is another legislation to be acknowledged when it comes to communal ownership of land. The right to hold, manage and process land rights communally
III. Family Title, this form of title means that the ownership of the land remains in the family and shall be inherited from transaction to transaction held in family trust.
IV. Initial ownership as a result of township establishment process, this form of ownership happens when a Greenfield township is established, a township register is opened into the township founder's names, and thereafter individual titles are transferred into individual respective beneficiaries.

It is my concluding remarks that the delays in land registration and opening of a township register country wide are further perplexed by the profit driven monopoly

which exists attached to apartheid town planning systems. Conveyancing remains one of the protected professions, making it expensive for the general poor to afford transferring attorneys. An irrefutable fact is that land ownership was originally denied for low income household's category in the country. The equation is far from balancing itself even after 22 years post democracy. Other approaches to land tenure need to be legally recognised in South Africa same as they are officially recognised elsewhere in the world thereby simplifying the process of township establishment.

Alternatively, the state's policies should be focusing more on administrative recognition approaches to land tenure and enforce that the private financial sectors officially accept these documents as an effort to resolve the land ownership dilemma.

Annexure A1: ISSUES OF INTERROGATION

[redacted]

Questionnaire

SCHOOL OF ARCHITECTURE PLANNING

EXPLORING THE DELAYS IN LAND REGISTRATION WITHIN TOWNSHIP ESTABLISHMENT PROCESS FOR FULLY-SUBSIDIZED HOUSING DEVELOPMENTS, A CASE STUDY IN SESHEGO/ POLOKWANE: LIMPOPO

Part A: Land Use management

1. How long does it normally take to establish a township?
2. Do you find the steps followed complicated?
3. At which stage can a township be declared complete?

Part B: Housing

1. What is the procedure in allocating houses to beneficiaries
2. What are the core components of a sustainable integrated human settlements?

Part C: Property Management

1. The municipalities Asset Register
2. What can you tell me about land registration of municipal immovable properties up to date?

Part C: Planning Control and Outdoor advertising

1. How can you describe the procedure in approving a building plan in a town planning perspective?
2. What are your day to challenges in relation to processing a building plan application?

Part E: Legal Services, Conveyancing

1. What is your experience regarding township registration and or land transfer or registration?
2. What are the common challenges and pitfalls?

Date: May 2016
562190: Molatelo Mashego

Annexure B: **SALE OF SITES**
Source: *Observer Local Newspaper 14 August 2014*

14 August 2014

kes on
thon

to have a leading financial services group like Sanlam working with us to realise the potential of this very special event."

Photo will be lining up for the race alongside fellow-PRR Comrades gold medallist, Martinique Potgieter and Phuti Mohale, also from PRR. Potgieter is hoping for a good time after running her personal best time in the marathon recently. Photo said he is aiming for a time of under 02:20 after resuming training last month after his sterling effort in the Comrades Marathon.

CITY OF Polokwane
NATURALLY PROGRESSIVE

PUBLIC NOTICE
POLOKWANE LOCAL MUNICIPALITY
SALE OF ERVEN IN NIRVANA EXTENSION 3

Notice is hereby given in terms of the provision of section 79(18) of the Local Government Ordinance, 17 of 1939, of sale of the below-listed residential erven in Nirvana Extension 3.

ITEM	ERF	EXTENT	PRICE	ITEM	ERF	EXTENT	PRICE
1	899	644	R260 000	14	985	450	R205 000
2	902	644	R260 000	15	995	450	R205 000
3	903	644	R260 000	16	996	450	R205 000
4	906	644	R275 000	17	997	450	R205 000
5	907	644	R275 000	18	998	568	R230 000
6	913	644	R260 000	19	1008	517	R230 000
7	962	721	R300 000	20	1020	585	R250 000
8	963	450	R205 000	21	1026	463	R210 000
9	967	450	R205 000	22	1030	470	R210 000
10	970	450	R205 000	23	1035	463	R210 000
11	971	450	R205 000	24	1038	463	R210 000
12	982	512	R230 000	25	1062	550	R250 000
13	984	450	R205 000	26	1063	545	R250 000

Date: 20 August 2014
Time: 09:00
Place: Civic Centre, Rates Hall, cnr Landdros Mare and Bodenstein streets, POLOKWANE
No of stands: 26
All prices exclude VAT.

Bring along certified copies of ID (plus that of spouse), Marriage Certificate/Decree of divorce. R100.00 non-refundable admin fee is payable.
N.B. Only applicants who are not registered property owners in Polokwane Municipality are legible to apply.

CIVIC CENTRE
cnr LANDDROS MARE AND BODENSTEIN STREETS
POLOKWANE

MRS. T.C. MAMETJA
MUNICIPAL MANAGER

20 YEARS OF FREEDOM

Annexure C: **SALE OF SITES**

Source: *Own Design, draft advert for the public*

CITY OF Polokwane
NATURALLY PROGRESSIVE

ERRATUM
PUBLIC NOTICE

POLOKWANE LOCAL MUNICIPALITY

COMPILATION OF DATABASE FOR SALE OF ERVEN IN PIETERSBURG EXT 11 AND BENDOR

This notice is meant to correct errors which were noticed on the previous advert relating to Erf prices. The correct Erf prices are as captured below. Polokwane Municipality regrets the error.

PIETESRBURG EXT 11					BENDOR			
#	ERF	EXTENT	PRICE		#	ERF	EXTENT	PRICE
1	2573/1	967	R528 960		1	RE Erf 648	975	R510 720
2	2546/RE	928	R510 720					
3	2545/1	862	R474 240					
4	2545/RE	870	R474 240					
5	2544/1	825	R456 000					
6	2544/RE	841	R456 000					
7	2538/1	842	R465 120					
8	2538/RE	842	R465 120					
9	2537/1	766	R419 520					
10	2537/RE	767	R419 520					
11	2536/1	776	R428 640					
12	2536/RE	777	R428 640					
13	2535/1	773	R419 520					
14	2535/RE	780	R428 640					
15	2534/1	776	R428 640					
16	2534/RE	777	R428 640					
17	2533/1	911	R501 600					
18	2533/RE	908	R492 480					

NB. Prices include VAT.

CIVIC CENTRE
C/O LANDROS MARE & BODENSTEIN STREET
POLOKWANE

MS. F. MABOYA
ACTING MUNICIPAL MANAGER

Annexure D: RESOLUTION TO EXPROPRIATE TOWNSHIP

Source: City of Polokwane Council Minutes, 2008

CR/07/10/08	A	*PORTFOLIO: SPATIAL PLANNNING & DEV.* *DATE: 12/082008* *ITEM: 3* *PAGE: 51* *REF: 15/2/2 #408692*	*MAYORAL COM / COUNCIL* *DATE: 14/08/08* *ITEM: 35* *PAGE: 154* *REF:*

PROCUREMENT OF PROPERTIES IN NEW PIETERSBURG TOWNSHIP FOR THE PURPOSES OF RE-LAYOUT: POLOKWANE EXTENSION 78

RESOLVED

1. That Polokwane Municipality obtain ownership of all the erven in New Pietersburg Township, in order to establish the Township of Polokwane Extension 78 (a re-layout of New Pietersburg to establish a more sensible and feasible township).

2. That Polokwane Planning Consortium be authorized to, on behalf of the Municipality and subject to its written directions, approach the High Court of South Africa Pretoria Division, to obtain an order by the court to the effect that:

   a) in terms of the provisions of section 1 of the Prescription Act, Act 68 of 1969, all land/properties forming part of the Township, inclusive of all public open spaces and streets as well as privately owned land, which was not dealt with in any manner during the past 30 years, vest in the Polokwane Local Municipality; and

   b) the Surveyor General be ordered to allocate stand numbers to all streets and public open spaces and approve diagrams in respect thereof; and

   c) the Registrar of Deeds be ordered to register all such public spaces and streets in the name of the Polokwane Local Municipality;

3. That the Polokwane Municipality engages in a process of expropriation of all properties forming part of the Township, which are currently privately owned but falls outside the ambit of the 2 above, such process to include:

   a) determination of present market value through sworn valuations;

   b) consultation and public participation;

   c) expropriation in accordance with the provisions of the Expropriation Act, and having regard to the provisions of Sections 25 and 33 of the Constitution of the Republic of South Africa and the provisions of the Promotion of Administrative Justice Act.

   d) payment of compensation to the expropriated owners calculated at the present market value of the land or alternatively offering to them land of equal value in the new township to be developed.

Action: **Acting Director Development and Planning**

Annexure E: EXPROPRIATE NOTICE

Source: *Northern Review Local Newspaper August 2011*

Northern Review 4-5 August 2011

POLOKWANE MUNICPALITY

NOTICE OF INTENTION TO EXPROPRIATE LAND IN NEW PIETERSBURG

Take notice that the Municipality is, in the interest of the public and to address housing shortages, of the intention to expropriate the under mentioned properties in the township of New Pietersburg and to pay the compensation to the registered owner thereof as indicated

STAND NUMBER	OWNER	VALUE
Portion 1 of Erf 1	Star Malt Pty Ltd	R 40 700
Portion 1 of Erf 36	Oscar Machaba & Appollos Mukhafni	R 57 400
Remaining extend of Erf 93	Doornkraal Syndicate	R 57 450
Remaining extend of Erf 134	Roman Catholic Mission-Northern Transvaal	R399 600
Remaining extend of Erf 135	Roman Catholic Mission-Northern Transvaal	R 57 450
Remaining extend of Erf 136	Roman Catholic Mission-Northern Transvaal	R 57 450
Remaining extend of Erf 148	Johann Frederick Stegmann Van Niekerk	R 8 350
Remaining extend of Erf 280	Johann Frederick Stegmann Van Niekerk	R 8 350
Remaining extend of Erf 150	Michael Modiba & MUN Pietersburg	R 28 725
Portion 6 of Erf 191	Methodist Church of Southern Africa	R 12 150
Portion 7 of Erf 191	Methodist Church of Southern Africa	R 9 800
Portion 8 of Erf 191	Methodist Church of Southern Africa	R 6 600
Remaining extend of Erf 193	Evangelical Lutheran Church in SA Transvaal	R 22 100
Remaining extend of Erf 255	Mayibuye Business Entreprises CC	R172 260
Remaining extend of Erf 256	Mayibuye Business Entreprises CC	R 28 800
Remaining extend of Erf 257	Mayibuye Business Entreprises CC	R156 100
Remaining extend of Erf 258	Mayibuye Business Entreprises CC	R114 800
Remaining extend of Erf 259	Mayibuye Business Entreprises CC	R 57 450
Remaining extend of Erf 262	Mayibuye Business Entreprises CC	R 57 450
Remaining extend of Erf 300	Safmadabe Commercial Prop Pty Ltd	R 57 450
Remaining extend of Erf 301	Safmadabe Commercial Prop Pty Ltd	R240 650
Remaining extend of Erf 303	Safmadabe Commercial Prop Pty Ltd	R110 100
Remaining extend of Erf 304	Safmadabe Commercial Prop Pty Ltd	R 40 850
Remaining extend of Erf 305	Safmadabe Commercial Prop Pty Ltd	R 29 025
Remaining extend of Erf 337	Safmadabe Commercial Prop Pty Ltd	R104 500
Portion 5 of Erf 306	Safmadabe Commercial Prop Pty Ltd	R 14 350
Portion 6 of Erf 306	Safmadabe Commercial Prop Pty Ltd	R 14 350
Portion 7 of Erf 306	Safmadabe Commercial Prop Pty Ltd	R 14 220
Remaining extend of Erf 306	Safmadabe Commercial Prop Pty Ltd	R 8 450
Remaining extend of Erf 319	Isaac Baloy & MUN Pietersburg	R 57 400
Portion 4 of Erf 339	Obert Nyamane & John Semona	R 57 220
Remaining extend of Erf 346	Doornkraal Syndicate	R 18 000

All interested parties are invited to attend a public participation meeting to be held at Pietersburg Ext 78 / New Pietersburg (Moruleng) on 11 September 2011 at 09:00. For further information contact: Morris Maleka, tel: 015 290 2071 / 082 941 9190 or Michiel de Bruin tel: 015 291 2147

Annexure F: RESOLUTION TO APPROVE TOWNSHIP

Source: City of Polokwane Council Minutes, 2012

EXTRACT FROM THE MINUTES OF THE LAND USE MANAGEMENT MEETING ON 01/~~10~~/2012

15/3/3/219(1) ⇒ Mans ⇒ Ledib

LUM 244/10/12	LUM:01/10/2012 Item: 27 Page:1547 File:490268 ✓

PROPOSED TOWNSHIP ESTABLISHMENT: POLOKWANE X 78 TO BE ESTABLISHED ON A PORTION OF PORTION 2 OF THE FARM DOORNKRAAL 680 L.S

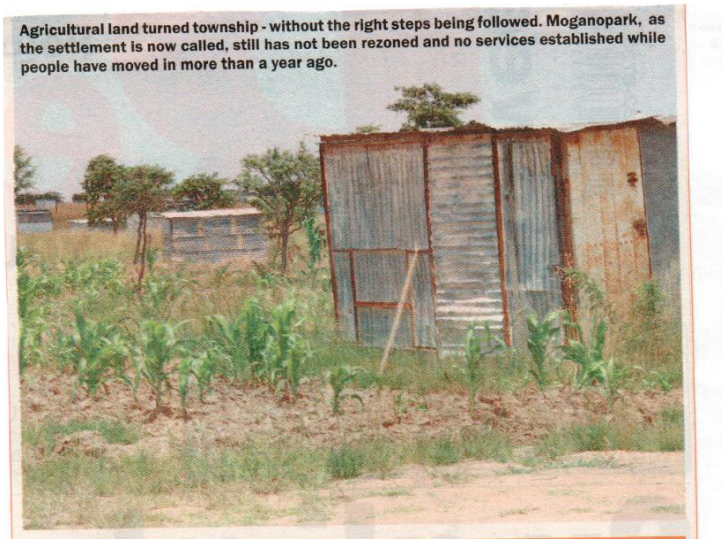
RESOLVED

That the application **be approved** in terms of Chapter 4 of the Town Planning & Townships Ordinance no. 15 of 1986 for a township to be established as Polokwane X 78 on a portion of Portion 2 of the farm Doornkraal 680-LS based on the following conditions:

35. Polokwane Extension 78 Township should comprise of the following land uses:
    - 2863 x "Residential 1"
    - 5 x "Residential 2"
    - 7x "Residential 3"
    - 2 x "Business 3"
    - 1 x "Special"
    - 5 x "Institutional" (Church)
    - 7 x "Educational"
    - 4 x "Municipal"
    - 13 x "Public Open Space"
    - 1 x "RSA"
    - Internal "Streets"

Annexure G: JANSENPARK

Source: Observer Local Newspaper October 2014



Agricultural land turned township - without the right steps being followed. Moganopark, as the settlement is now called, still has not been rezoned and no services established while people have moved in more than a year ago.

Leeuwkuil squatter case heard in court on November 1

Nelie Erasmus
investigate@nmgroup.co.za

POLOKWANE – The matter of the illegal occupation on land at the Leeuwkuil small holdings' plot 20 and 21 since August last year, is scheduled to be heard in the Polokwane magistrate's court on November 1.

This is according to Malesela Maubane, spokesperson for the Polokwane Municipality.

The small holdings have not yet been rezoned from agricultural to residential land, but hundreds of families have settled on Leeuwkuil smallholdings 20 and 21.

The land was bought and handed over to land claimants by the department of rural development without making provision for rezoning on June 17 last year.

The land was classified as agricultural land and municipal regulations state that only one dwelling can be erected on agricultural land.

Practically overnight some 80 shacks were built on the land in August last year. The number of shacks had increased since, without any sewerage or other municipal services rendered to these settlers.

Neighbouring small holders said they were afraid that underground water would be contaminated. A land developer who preferred to remain anonymous, told **Review** that the price of surrounding land had dropped significantly and willing buyers could not be found.

The leader of the group who occupies the land, Esrom Mogano, accused the neighbouring landowners of racism.

He said the land was handed over to the claimants and they had waited long enough for their land claim to be settled.

He said the municipality was at fault and they knew about the claim, and should have seen to it that services were provided.

The municipality, however, had not planned or budgeted for any such settlement and said it would get a court order to remove the people, who were squatting illegally on agricultural land.

"Regarding the court order, the municipality intended to have the matter heard in May.

"However, due to difficulty in obtaining some zoning documents and correspondence between the municipality and the department of rural development and land reform in Pretoria, the matter could not be heard then," Maubane said.

In the meantime no township has been established yet and the land is still zoned as agricultural land.

There was also a moratorium placed on the development of residential land and some business developments by the municipality due to insufficient water and electricity services in the city and the moratorium has not been lifted yet.

According to Maubane, in town planning stipulations acquiring of land use rights or the correct zoning can take up to two years before proclamation.

"Township establishments can take up to four years until all the conditions have been complied with, including the approval of general plans, the registration at the deed's office, the laying of services."

Nicholas Magada, spokesperson for the rural development department, told **Review** that town planners were busy with plans to turn the area into a sustainable rural settlement after consultation with the Capricorn District Municipality and the Polokwane Municipality.

He could not supply **Review** with a timeframe of when development would begin or finish.

The department's sustainable rural human settlements programme is based on eco-friendly principles to assist people with inadequate access to services and public infrastructure in rural human settlements.

It is based upon the pillars of environmentally sustainable developed services and infrastructure to build climate resilience.

Review tried to contact the department of rural development's office for comment, but no answers were available by the time of going to print.

Annexure H: Polokwane Extension 40

Source: Capricorn Voice 13-19 May 2015

CAPRICORN VOICE 13-19 MAY 2015, Pg 9

'We will not move' - illegal occupants

Desmond Boshego
thoko@nmgroup.co.za

SEVERAL shacks have been erected illegally on an open land at Ext 40 along the Matlala road, and the occupants have vowed not to move.

Most of these occupants are said to be from Disteneng, and they claim the land was promised to them by the Polokwane Municipality some years ago.

One of the occupants, Bethuel Phaswane, said they had waited for for the municipality to offer them this land officially, but as there was no action forthcoming from the municipality, they decided to act on their own.

"The municipality has ignored us for too long and we took the decision to offer ourselves the land. More shacks are still going to be erected and there is no one who will demolish them. We are tired of the empty promises from the municipality."

When **CV** visited the site on Friday, some occupants were busy chopping down trees, while others cleared the bushes.

Another occupant, Alfred Mogale, said he had waited too long to own a stand and he was now happy that his family would have their own home.

"I cannot afford to rent a house with the money I make from my odd jobs. The ANC-led government promised us houses and more jobs a long time ago, but nothing has happened so far," said Mogale.

Municipal spokesperson, Tidimalo Chuene, said the municipality was aware of the unauthorised land occupation along the Matlala road.

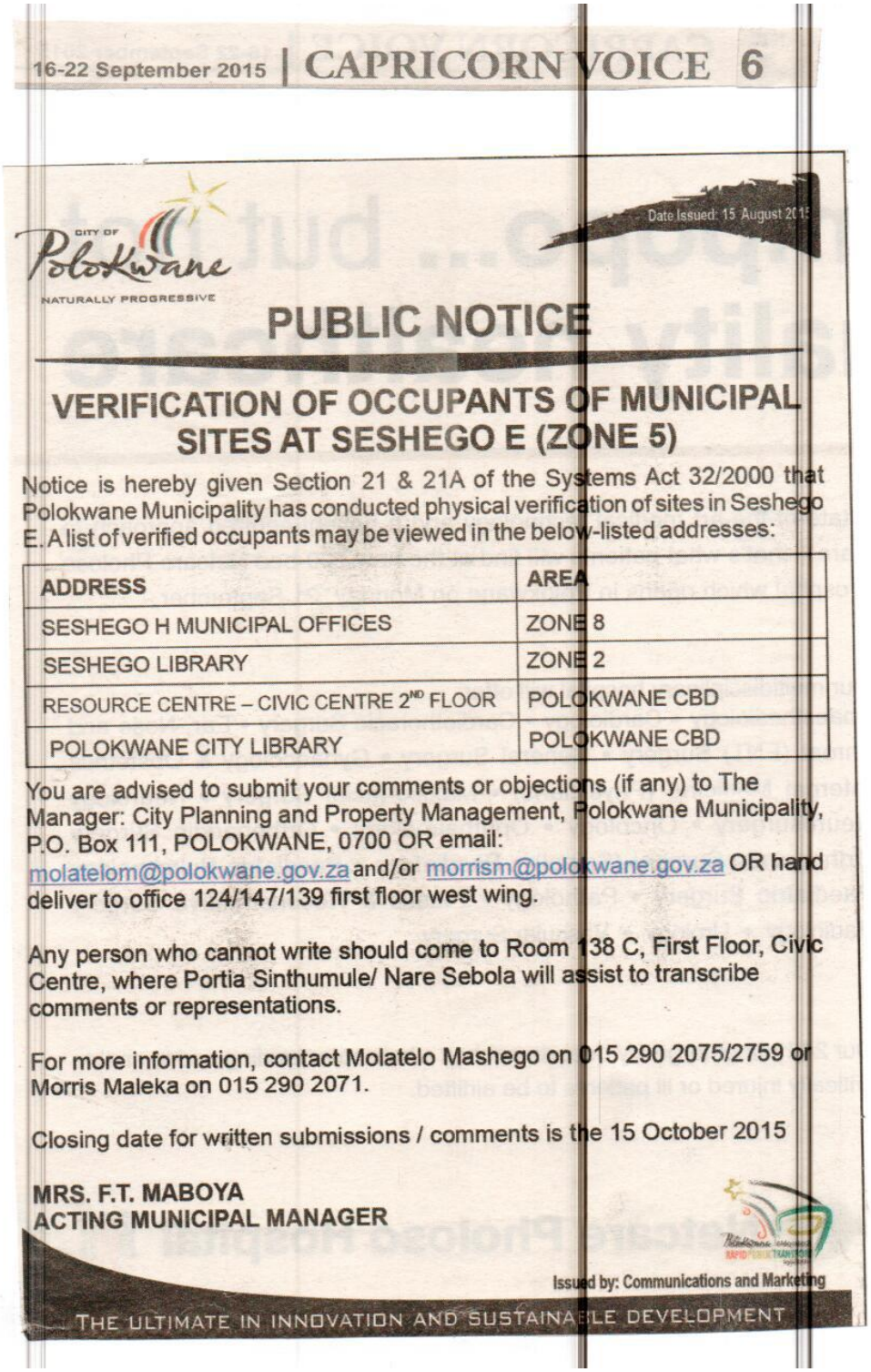
"Stakeholder engagements and consultations are underway towards an amicable solution to the issue. The municipality will issue a statement as soon as all the immediate legal and relevant land use related processes are satisfied," Chuene said.



Illegal occupants at Ext 40 along the Matlala road have vowed not to move from the area.

Annexure I: **DEED RESTORATION PROGRAM**

Source: *Capricorn Voice 16-22 September 2015*



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CITY OF Polokwane
NATURALLY PROGRESSIVE

Date Issued: 15 August 2015

PUBLIC NOTICE

VERIFICATION OF OCCUPANTS OF MUNICIPAL SITES AT SESHEGO E (ZONE 5)

Notice is hereby given Section 21 & 21A of the Systems Act 32/2000 that Polokwane Municipality has conducted physical verification of sites in Seshego E. A list of verified occupants may be viewed in the below-listed addresses:

ADDRESS	AREA
SESHEGO H MUNICIPAL OFFICES	ZONE 8
SESHEGO LIBRARY	ZONE 2
RESOURCE CENTRE – CIVIC CENTRE 2ND FLOOR	POLOKWANE CBD
POLOKWANE CITY LIBRARY	POLOKWANE CBD

You are advised to submit your comments or objections (if any) to The Manager: City Planning and Property Management, Polokwane Municipality, P.O. Box 111, POLOKWANE, 0700 OR email: molatelom@polokwane.gov.za and/or morrism@polokwane.gov.za OR hand deliver to office 124/147/139 first floor west wing.

Any person who cannot write should come to Room 138 C, First Floor, Civic Centre, where Portia Sinthumule/ Nare Sebola will assist to transcribe comments or representations.

For more information, contact Molatelo Mashego on 015 290 2075/2759 or Morris Maleka on 015 290 2071.

Closing date for written submissions / comments is the 15 October 2015

MRS. F.T. MABOYA
ACTING MUNICIPAL MANAGER

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APPENDIX A

Ethics Clearance Certificate