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Actors, Procedures, and Institutions Behind De Facto Land Administration

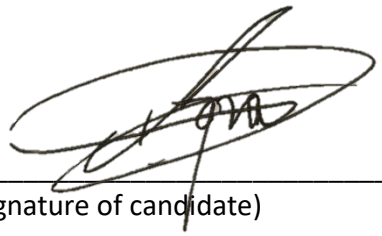
The Case of Kya Sands Informal Settlement

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A research report submitted to the Faculty of Engineering and the Built Environment, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Science in Development Planning.

DECLARATION

I declare that this research report is my own, unaided work. It is being submitted for the Master of Science in Development Planning Degree at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other University.



_____

(Signature of candidate)

28th day of November 2022

ABSTRACT

This study is premised on the idea that the formal land administration system in South Africa is failing to acknowledge the plurality of land tenure systems and the wide range of practices that have evolved under non-formal tenure arrangements, leading to many holdings in land being left out of formal land administration processes. For decades formal land administration in South Africa has been reserved for those who hold what are referred to as real rights to immovable property; where immovable property includes land and everything that is permanently attached to it, which are registrable only in terms of the Deeds Registries Act 47 of 1937. This has produced ideas that have informed property rights and land law, that the formal land administration system is there to serve registered right holders only.

The result of this has been that government does not provide adequate administrative infrastructure, planning and information systems support to off-register tenures as it does to statutory forms of tenure which are elevated to the apex of the land and property hierarchy. Because of these shortcomings, actors in the informal sector have established a body of practices that have evolved to undermine, accommodate, complement and reinforce formal systems of land administration but these often go unrecognised and undocumented.

With the above shortcomings of land administration in mind, this study brings to the fore the established land administration practices of the community of Kya Sands informal settlement to elaborate on what grassroots land administration under an informal system of tenure looks like. The study is informed by studies and literature that have proven over the years that informal land delivery systems play an important role in urban residential supply in South African cities and so should be recognised and accommodated. Their strengths must be recognized, and their shortcomings be identified and resolved in ways which are not harmful to what communities already have established on the ground. The study uses the four functions of land administration i.e., land tenure, land value, land use and land development as a framework to document these practices and their associated institutional arrangements.

DEDICATIONS

I dedicate this work to my grandmother, Nozizwe Cynthia Hopa, at home we all called her Dabawo. You unapologetically lived your truth and pursued your purpose by being of service to communities till your last days, I hope I too am following in your footsteps and making my mark in changing the world one step at a time.

This one is for you MamNgwevu

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1 CHAPTER 1: INTRODUCING THE RESEARCH

1.1 INTRODUCTION

Emanating from Roman-Dutch ideas of rights, law and property, the formal land administration system in South Africa fails to acknowledge the plurality of land tenure systems. Despite the existence of a 'high-quality' cadastre and a 'world-class' deeds registration system, estimates suggest that over 5 million real land occupations (60% or more of the population) in South Africa exist outside of the formal land administration processes (Advisory Panel on Land Reform, 2019; Williams-Wynn, 2021; DALRRD, 2022). These occupations of land excluded from formal land administration include people living in informal settlements; on land under traditional/tribal authorities; resettled communities; off register housing schemes and housing for farm dwellers; labour tenants and other occupations on commercial farms including beneficiaries of the state's land redistribution programme (Advisory Panel on Land Reform, 2019; Hull and Whittal, 2021). Although the Constitution, legislation, precedent case law and policy recognise other forms of land tenure in principle, this recognition has not translated into formal land administration processes.

In their series of recent studies titled *Informal Settlement: Norms, Practices and Agency*, the South African Economic Rights Institute (SERI) (2019) attributes this to the government's failure to consider the practicalities of how housing land is used and supplied on the ground, as well as inadequate housing and land supply strategies and models adopted by government that often take a blunt and top-down approach to incorporating these other forms of tenure into formal land administration and management processes.

According to SERI, actors in the informal sector have developed a body of practices that have evolved to "undermine, accommodate, complement and reinforce" formal systems of land administration and management but often go undocumented and therefore receive limited to no administrative or legal recognition from the state.

In line with the argument put forward by SERI, this research proposes that addressing the impasse of informal settlements sustainably requires a substantive shift from highly

centralised and top-down state-led urban land administration and management to the incorporation of localised practices and models used to manage housing and housing land at the grassroots level. The focus of this study will be on land occupied in informal settlements.

The purpose of the study is to contribute to a better understanding of existing localised arrangements under informal systems of land delivery to assist urban planners and land administrators in sketching out an agenda that will inform how they adjudicate, protect and reconcile informal and formal systems of land administration for improved urban land governance and development outcomes.

1.2 BACKGROUND TO THE PROBLEM

Racially discriminatory colonial and Apartheid laws, such as the 1913 Native Land Act, the 1936 Native Trust and Land Act of South Africa, the Group Areas Act 41 of 1950 and Act 36 of 1966 were enacted to entrench racial hierarchies and ensure that land rights and provision of services were reserved for only the white minority (Klopper and Pienaar, 2014). The repeal of the Land Act in 1991 through the Abolition of Racially Based Land Measures Act 108 of 1991 ushered in a great shift towards a democratic dispensation where large numbers of the population previously excluded from urban centres and the economy could now legally migrate to urban areas in search of job opportunities and better economic prospects promised by the newly elected African National Congress government in 1994 (Truth and Reconciliation Commission, 1998; Bakker, Parsons and Rauch, 2019).

This mass migration of South Africans to urban centres has led to competing demands for economic opportunities, housing, and housing land under disparate conditions of power, resources and unresponsive land administration and management systems. Urban low-income groups with deficient economic resources are often left out of decision-making processes about how land is managed and, in whose favour, (Harrison et al, 2008; Urban LandMark, 2013; Advisory Panel on Land Reform and Agriculture, 2019). Their exclusion from decision-making processes has forced many to seek and hold land through alternative or informal means which are often flexible and low-cost but not recognised through the state's legal and administrative systems.

By not being administratively and legally recognised, these alternative means pose a challenge for urban land administration and management as settlements established through these means constrain the ability of municipalities to plan and control urban growth, provide housing land, deliver services and impose responsibilities such as payment of rates and taxes on the landholders (Kombe and Kreibech, 2000). For urban low-income groups who are trying to make ends meet the lack of administrative and legal recognition translates to the compounded challenges of land occupation that is not legally enforceable and lacks the marketability that one would enjoy with legally recognised forms of tenure, a constant fear of eviction, poor infrastructure investment and little to no access to basic services such as water and sanitation.

In the past two decades the recognition of informal land administration systems - that being, the procedures used and the actors operating in the informal housing and housing land sub-sector and their rights - have become major issues on the global development agenda. Significant to this growing need for recognition is the 1999 global campaign on the security of tenure and a global campaign on governance launched by the United Nations Centre for Human Settlements, followed by several other citations in contemporary conventions and policies such as the Millennium Development Goal 7 which provides for the improvement of slum dwellers' lives by 2020 and Sustainable Development Goal Indicator 1.4.2 which emphasises the need for countries to consider a continuum of tenure rights (Smit and Abrahams, 2010; United Nations, 2020). Tenure rights go beyond recognising land rights by formal title and other legally recognised rights as the primary means. It also relates to legitimising and recognising other intermediate forms of tenure (Durand-Lasserve & Royston, 2002). Along with contentious ideological and empirical debates about the value of ownership in the developing world, actors in the informal sector have developed a body of land administration and land management practices that often go undocumented and therefore receive no administrative or legal recognition from the state.

Despite these ongoing global progressions and the recognition given to the importance of localised solutions to local problems in various legislative and policy frameworks, in South Africa, the recognition of informal land practices has remained inconspicuous in mainstream

urban land administration approaches and development planning processes. In urban South Africa, the failure to incorporate informal land practices and rights into formal administrative and legal processes according to Smit and Abrahams (2010) can be attributed to the government's long-held view of informality as an undesirable part of the urban form.

This can be seen through many interventions including the state's bold mass housing subsidy programme which takes a clean slate approach to settlement development and views alternative means of securing accommodation and land with hostility. Like other attempts at eradicating informality, the state's housing subsidy programme has to a large extent been unable to keep up with the growing housing needs of our urban centres (Phuhlisani NPC, 2017). Other programmes aimed at bridging the gap and linking low-income groups to land markets such as the Finance Linked Individual Subsidy Programme (FLISP) have also not adequately addressed issues of access to housing and housing land for the 'gap market'. To be approved for a FLISP grant one needs to already have approval in principle for a home loan from a financial institution and the grant cannot be used to cover transfer fees and costs (Department of Human Settlements, 2021).

Out of the growing need for land and accommodation and consequently the growing number of urban informal settlements, a gradual and more flexible approach has been adopted, "in policy terms at least", for incremental *in situ* upgrading of informal settlements under the Upgrading of Informal Settlements Programme (UISP) and in Volume 4 Part 3 of the National Housing Code, along with incremental interim approaches to securing tenure as part of a broader process of administrative and legal recognition of these settlements (Department of Human Settlements, 2009). A dimension of informal settlement upgrading; *in situ* upgrading is a phased upgrading process that aims to improve the overall conditions of a settlement with minimal disruption to the established social and economic networks of a community (Cities Alliance, 2011). However, *in situ* upgrading in many South African cities is often

neglected in favour of Greenfield developments, relocation or rollover upgrading[1] which usually collapse these social networks and adversely affect the community's existing economic networks. Other compounding challenges to *in situ* upgrading in South Africa include: fairly limited experience in practice, the time between earmarking settlements for upgrading and actual implementation can take anywhere from 6 months to 25 years and the associated formal township establishment processes driven by the housing subsidy programme are cumbersome and take far too long for any substantive change and recognition to be realised to tenure security, infrastructure provision and improved living conditions by informal actors (Huchzermeyer, 2009; Smit and Abrahams, 2010; Tissington, 2012; Sibiya, Aigbavboa and Thwala, 2013; Maina, 2013).

1.3 THE PROBLEM STATEMENT AND RATIONALE

The foregoing introduction and background into land administration and informal settlements in South Africa bring to the fore several issues. Firstly, through its interventions aimed at addressing urban informal settlements, the state has often taken an approach that is invasive, blunt and far removed from the practical apparatus that determine how land is used on the ground. Watson (2009) argues that state policy interventions into informality even though well-meaning are untactful in their approach to the highly complex, sensitive and often fragile socio-economic nature of communities in the informal sector. Informal settlements although seen as an 'uncontrolled' and 'unregulated' nuisance to many, play a very critical role in absorbing a large number of the population migrating to urban centres and those that even after 27 years have not been accommodated through the states' housing subsidy programmes or formal housing and land markets.

[1] According to the National Upgrading Support Programme (NUSP) (2015) rollover upgrading involves the temporary relocation of households to a nearby site while rehabilitation and installation of infrastructure and layout take place according to Greenfield procedures. After rollover upgrading densities are often reduced meaning that in some areas up to 85% of residents are displaced through the upgrading process (Smit, 2016).

Secondly, Allen, Massey and Pile (1999) in their book *Worlds within cities* highlight the importance of a hidden social logic in cities, they argue that cities cannot be reduced to the movement of state politics and capital and that a deep social order is embedded in the everyday lived experiences of city dwellers. Spaces in the city that may appear chaotic and disorganised are often much more stable than they appear to an outsider's gaze. It is these nuances embedded in unwritten everyday routines that should be incorporated into policy and the everyday sociologies of cities. Thus, gaps and shortcomings of formal urban land administration and management in controlling urban growth and providing housing land and services cannot be closed in the foreseeable future by continuing with conventional and superficial urban land administration and management policies and approaches (Antonio, 2018). To achieve efficient land use patterns, ensure efficient revenue collection and bring about substantive change to the plight of informal settlement dwellers there is a growing need to recognise the importance of building on existing and embedded practical systems that local communities use to effectively administer and manage land. There is an emerging consensus that policymakers and other actors responsible for development should seek to find what the poor have rather than what they do not have, in effect focusing on their assets and their embedded livelihood strategies (Moser, 1998; Diang'a, 2011).

Despite having conceded the pivotal role informal settlements play in the provision of housing land for the urban poor and the urban economy, ongoing trends of regularising and incorporating these settlements into development processes have not been fully explored to ensure that interventions are responsive to the plight of dwellers and that they address the present and future well-being of beneficiaries. In both literature and policy responses, there has been minimal effort to understand the actors that make up informal settlements, the embedded institutional arrangements and procedures used in the administration and management of informal settlements (SERI, 2019). It is important to understand in the absence of administrative and legal recognition how people secure, manage and use land and how incorporating realities that exist at this grass-roots level can contribute to improved urban land administration and management outcomes, tenure security and provision of services to informal settlements and ultimately their administrative and legal recognition. With shifts in planning theory and practice, there has been a great emphasis on trying to

understand the potential of informal housing. More scholars in the policy space are now arguing for the importance of understanding cities through an institutional lens which allows for more adaptive and incremental approaches to urban planning (Bouwmeester and Hartmann, 2020; van Karnenbeek and Janssen-Jansen, 2018). According to the 'Credibility Thesis', the persistence and success of informal institutions cannot be explained by their form but rather by their functions and their general acceptance by communities (Ho, 2018).

Even though there have been attempts by municipalities such as the City of Johannesburg Metropolitan Municipality to integrate informal settlements into land administration processes by legally declaring them as transitional residential settlement areas, the process has unfortunately not fully materialised (Urban LandMark, 2009). Maina (2013) has attributed this to difficulties in adapting the city's regulatory framework along with interests in the bureaucracy resistant to change. According to Weakley (2013), it is easier for the municipality to eradicate informal settlements than possibly building on the resilience and agility shown by this alternative system of housing and housing land acquisition. Through documenting and clearly understanding who the actors are, how they access land, their activities and their practices in conducting housing and housing land transactions it is expected that this research will contribute to the establishment of appropriate policy and policy interventions at the local, provincial and national levels to assist in the incorporation of informal settlements into formal land administration and management processes with minimal disturbance to existing settlements.

In summary, the statements below describe the research problem this study seeks to address:

- Very little is known about the embedded social logic in informal land administration and management systems. As a result, the narrative has not completely shifted from informal settlements being viewed as chaotic spaces in the city that need to be eradicated.
- Attempts at formalisation and regularisation of informal settlements by the state often do not effectively engage with the complexities of the existing grassroots systems of managing the built environment in informal settlements.

- Very little is known about the capacity of informal land management systems to collect and maintain land information that can be used in the process of regularising informal settlements.
- There are no coordinating mechanisms to regulate actors in the informal development sector to clarify their mandates and to use land information they collect to maintain and integrate informal settlements into formal urban planning and administration processes.

1.4 RESEARCH OBJECTIVE AND QUESTIONS

The theme and focus of this research emerged from personal interest in substantively integrating informal systems of urban land management and practices into formal urban land administration processes to create urban governance platforms where informal actors have equal say in processes that define the cities they also play an integral part in making functional. The study will account for and document the actors, procedures and institutions at the neighbourhood and dwelling level that influence the physical, social and economic characteristics of the built environment in informal settlements.

The objective is to establish how on a day-to-day basis actors in informal settlements access, acquire, keep a record of ownership and transfer housing and housing land in order to establish the appropriate settings that contribute towards effective and sustainable interventions, strategies and programmes in informal settlements, as well as to adjust and simplify bureaucratic procedures to facilitate compliance and bring down access barriers to the legal and administrative recognition of alternative forms of land acquisition and ownership.

With these goals in mind the key question that framed the research was:

"How do people of Kya Sands informal settlement access, secure, hold and administer land outside of formal land administration processes?"

Sub questions:

I. Who are the actors in processes of managing and administering land?

II. What are the established institutional arrangements in these land processes?

III. What is the nature of rights, restrictions and responsibilities and how are these managed?

1.5 OVERVIEW OF THE STUDY

This research report is structured and presented in six chapters beginning with the introductory chapter, **Chapter 1**. In this chapter I introduce the reader to the problematic of land administration and tenure in the South African context through the lens of informal settlements. This is then followed by a background and overview of legislation and policy that has influenced the direction taken by government in dealing with the issues of land and housing land. This is then followed by a statement of the research problem and rationale, as well as the research objective and questions.

Chapter 2 elaborates on key concepts and literature on land administration with a specific focus on land tenure as a factor of land administration that define the various types of relationships people have with land. I then address the problematic associated with binaries of formality versus informality in planning and its implications for the management and administration of land, and its implications on practices of formalisation of informality. In the last part of the chapter, I provide a summary of the conceptual lens that is used to investigate and document the study findings.

Chapter 3 provides a general overview and contextualises land administration in South Africa beginning to define the challenges of land administration. The structure of the formal land administration system and its empowering legislation are then introduced. This is followed by a discussion and debates around tenure in practice and framing these tenures within the legal and ideological progression of the country's tenure reform programme. In the final sections I give special attention to informal settlements in South Africa and applicable interventions, as well as policy and legislation guiding these interventions.

Chapter 4 covers the methodology adopted in this study. The chapter explains the approach, tools, framework, and techniques used in the empirical part of the research. It justifies the methodological approach used in the selection of the case study, the participants and in the

analysis of data, as well as limitations, and ethical considerations that guided the design and my conduct throughout the research process.

In **chapter 5** I introduce fieldwork findings emerging from my chosen case study area, Kya Sands informal settlement. The chapter begins with a description of the settlement based on my observations and primary and secondary data sources. The findings are then themed using the conceptual framework based on the 4 core functions of land administration, these functions are land tenure, land value, land development and land use.

Chapter 6 concludes the study with reflections of the findings and other work presented in the study, and recommendations for further research.

2 CHAPTER 2: DRAWING ON LITERATURE TOWARDS A CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION

Land administration is an operational tool of land governance that links land, people, policy and practice. According to the National Upgrading Support Programme (NUSP) (2015), when it comes to the relationship between people, land and property, practice refers to the established way of doing things or what actually happens on the ground concerning, rights, duties or benefits such as how people access land, the processes of how land moves from one person to another, how disputes are resolved and how people use land. Any system, whether formal or informal of governing, managing and administering the relationship between people in relation to land and land resources requires authorities to deal with areas of tenure, value, use and development (Enemark, Hvingel and Galland, 2014).

To frame the study the chapter has been divided into four sections. In the first part, this section provides an overview of literature on land administration with a specific focus on land tenure and unpacking the different ways in which people hold land and land rights.

The second part addresses the problem of binaries by framing the formal-informal dichotomy in the context of urban planning, land administration and informal settlements. In this section I draw on the work of various scholars to show how binary thinking reinforces neoliberal and colonial logics, discourses and power relations by distinguishing between ordinary or world-class cities, formal or informal sectors, individual or collective ways of life (Marx and Kelling, 2018; Alvarez, 2019).

In the fourth section, I discuss the concept of good governance as a particularly useful concept to be used when conceiving any plans, strategies or policies in relation to land. The normative ideals that come of this discussion on governance are accountability, transparency, service effectiveness, and the prevailing of the rule of law. I am of the view that these four ideals when implemented appropriately address the issue of unequal power relations when

decisions are to be made about the rights, restrictions and responsibilities when it comes to managing the relationship between people and land.

In the final section, I present the four functions of land administration which are land tenure, land value, land use and land development as part of the conceptual framework that I will use to unpack how land in the chosen case study informal settlement is administered and managed on the ground.

2.2 DEFINING LAND ADMINISTRATION

Land administration literature has defined land administration in various ways, including the United Nations Economic Commission for Europe (UNECE) (1996: 14) that described land administration as ‘‘the process of determining, recording, and disseminating information about the ownership, value and use of land when implementing land management policies". The Food and Agriculture Organization (FAO) (2002) sees it as how land tenure rules are applied and operationalised. They further state that land administration in both formal and informal settings requires a range of systems and processes to administer. These processes include defining land rights and how these rights are transferred from one party to another. This transfer can be through leasing, sale, loan, donation or inheritance. Secondly, regulation of land use by defining how land use controls are planned and enforced; thirdly, processes of land valuation and taxation by determining methods of valuing and taxing land; and lastly, processes for the resolution of land use and land ownership conflicts (FAO, 2002). Steudler, Rajabifard and Williamson (2004) describe land administration by its functions. They divide these functions into four components:

- Juridical – concerned with land ownership
- Regulatory – concerned with land development controls and land use planning
- Fiscal – concerned with determining land values and taxation
- Information management – an integral component fulfilling the information requirements of the other three components

Later in 2014, Enemark et. al (2014) highlight that the emphasis placed on land information management in definitions such as the UNECE’s reflect the computerisation of land

information agencies in the 1970s. According to these authors, land administration is now concerned with the type and quality of information, pushing the role of land administration towards an enabling infrastructure for implementing sustainable development policies. They see land administration as an 'operational tool of land management that conceptualises rights, restrictions, and responsibilities to land'. Land administration includes four elements that ensure the proper management of these rights, restrictions, and responsibilities to land, property and natural resources. These four elements include land tenure, concerned with securing and transferring rights to land and natural resources; land value, concerned with the valuation and taxation of land and property; land use, concerned with planning for and controlling the use of land and resources; and land development, concerned with rolling out infrastructure, implementing utilities and planning for construction (Enemark *et*. al, 2014). A sound and well-managed land administration system has the potential of delivering a wide variety of societal benefits (ibid.). These benefits include, support for governance and the rule of law; poverty alleviation; secure tenure; support for formal land markets; security for credit lenders; management of disputes and improvement of land-use planning and implementation among others (Lamba, 2005; Enemark *et*. Al, 2014; NUSP, 2015).

In broad terms, Hull *et. al* (2020) define land administration as an operational component of land governance in pursuit of national land policy goals, plans and strategies concerned with finding out and sharing information about the relationship between people and land. According to these three scholars, definitions evolve in response to changes in society, giving prominence to issues of concern at different times and according to societal pressures. A case in point is how in developing countries, the main concern for the governments is making land administration more inclusive. This is as a result of past and existing dualistic systems of land administration divided along racial and ethnic lines. For example, in the South African context, natives had no legal rights to land. In this case, land was held by tribal authorities. At the same time, statutory law permitted ownership and defined rights for white people (Expert Advisory Panel on Land Reform and Agriculture, 2019). For Hull *et. al* (2020), these legacies persist today where various legitimate systems of land administration exist but with others such as formal land administration receiving more recognition. In the west, what is now referred to as land administration evolved from systems of land information registers that were used by

governments to keep track of land in order to collect taxes on ownership, as towns grew and land markets took hold, the management of land and its resources became more complex prompting states to manage and regulate, as well as raise revenue from transactions (ibid.). Hence, in that context land administration was defined as a process of recording and sharing information about the ownership of land, its value and the use of land and its associated resources. Progressively land administration systems have evolved to incorporate the recording of ownership to protect tenure and property rights, and spatial planning to manage urban growth and land uses (Hull *et. al*, 2020).

The progression described above shows us that land administration is not merely a once-off technical exercise but rather a context-specific process of managing a particular society's relationship to land. Although seen as the responsibility of government, land administration is not always carried out by the government. According to Hull *et. al* (2020) supported by Wehrmann (n.d.), by simply occupying land, people stake a claim to it and in essence, are carrying out a function of land administration. This shows that it is not only those residing in formal dwellings or commercial farmland who need land administration. It is equally important for those living on off-register land. Land administration can therefore be seen as a multi-sectoral function (a function of government, tribal/customary land authorities and informal settlement communities) of securing and protecting land and land resources.

In essence, this study views land administration as a context-specific process that operationalises rights, restrictions and responsibilities to land. These rely heavily on the determining, recording and disseminating information about tenure, value, use and development of land. The literature reviewed above widely documents that these relationships vary according to the different meanings, value, and uses people attach to land. These meanings, values and use associated with land are normally summed up in a country's land policy. It is said that land administration systems evolve to support the implementation of country-specific policies and strategies on land (Hull *et.* Al, 2020). Further, land administration systems exist to harmonise areas of tenure, land value, land use, and land development (UNECE, 1996; FAO, 2002; Enemark *et.* Al, 2014). To ensure that this system serves its societal mandate it needs to be based on complete and current land information

and the common tools used to generate and maintain land information are land registration and cadastral surveying (Steudler *et.* Al, 2004; Lamba, 2005; Hull *et.* Al, 2020).

2.2.1 LAND TENURE AS A FUNCTION OF LAND ADMINISTRATION

To understand land tenure as a pillar of land administration there is a need to understand the concept of land rights. It is widely understood that land is a finite resource subject to various competing, overlapping, complementary and overriding interests (Payne, 2000; FAO, 2002; Cousins, 2008). As a result, rules are needed to mediate and manage these interests. These rules assign rights and responsibilities to all who make use of this land resource. According to Fisher and Whittal (2020, p.2), "A right refers to what the holder can do with the thing or what the holder can prevent others from doing". Gilbert (2013) notes that rights in relation to land can be the right to access, occupy, enjoy, use, transact (transfer, sell, purchase, grant or mortgage), inherit and bequeath, as well as the right to restrict or exclude others from exercising such rights. Land rights are not considered human rights and therefore are not recognised under international law, treaties or declarations. Legally, these rights fall under land laws, land tenure agreements or planning regulations. This means that the onus is on country-specific land administrators to define, maintain, protect, and enforce these rights (Gilbert, 2013).

Linked to land rights, land tenure refers to the different normative arrangements under which rights to land are held. Adams, Sibanda and Turner (1999) define land tenure as the terms and conditions by which land is held, used, and transacted. From a legalist point of view, Enemark (2005) define land tenure as the allocation and securing of rights to land through legal processes of cadastral surveying, land transfer and management of boundary disputes. In his evaluation of the impacts of land tenure on food security in the developing world, Ashley (2016) introduces us to the idea of complexity, he defines land tenure as a complex social institution that governs the relationship between people in relation to assets such as land, water bodies and forests. According to Ashley, land tenure determines rights and regulates the use, control and transfer of land.

Like all things that take place in space and time (context), land tenure is influenced by broader systems of rules and norms. These rules and norms are defined either through the legal provisions of statutory law, custom, tradition, religion or socially by groups in society bound together by a common objective. Each of these systems sets the rules of engagement when it comes to defining the relationships between people and land. To unpack the complex institution of land tenure we will draw on the work of Payne (2004 cited in Lamba, 2005), Collier, et al. (2010), Payne and Durand-Lasserve (2012) and Kasimbazi (2017) to categorise the different tenure typologies. It should be noted that this categorisation of tenure typologies is not an exhaustive list of how people hold land.:

Private or freehold land tenure

This type of tenure is based on ownership by title to land, granting the rights holder the fullest use of land, subject to any applicable restrictions. Although rights are held permanently, land may be expropriated for purposes of land reform or for infrastructure development. These rights are often administered through a state's formal or legal system and registered in a deeds registry. This type of tenure is the most preferred because individual rights receive legislated recognition and protection from governments in many parts of the world making this form of tenure marketable and land rights thereof transferrable and sellable on the open market at the highest exchange value. The primary limitation of this type of tenure, however, is its inaccessibility to and exclusion of lower-income groups (Payne, 2004; Collier *et.* al, 2010; Kasimbazi, 2017).

Public or nationalised land tenure

Under this type of land tenure full ownership rights to land are vested in the state. Persons or groups are allowed sanctioned or contractually agreed on use and enjoyment of the land but with limited rights. This tenure type exists to ensure equitable access to land by all members of society and to counter the limitations of private or freehold ownership. An

example of this is the Proactive Land Acquisition Strategy under the South African Government's Land Redistribution Programme where the state buys commercial farmland and leases it out to beneficiaries for agricultural production. This programme has however fallen short of its redistribution mandate because of a number of issues including a lack of transparency from the state, elite capture by politically connected groups and state neglect (Hall & Kepe, 2017).

Customary land tenure

Under this type of tenure, land is owned by indigenous communities and administered according to their customs and traditions. Land is regarded as a sacred resource where the role of the current landholders is that of stewardship and preserving it for future generations. Land rights are context-specific and can overlap in the form of communal or group use rights over communal areas such as fields for grazing and cultivation. While more exclusive use rights are applicable over individual land parcels. Land allocation is often done by traditional leaders including chiefs, while access can be limited to ethnicity and kinship. This form of tenure is commonly associated with a lack of transparency, susceptibility to abuse of power and the discrimination of women. Rights held under this type of tenure in many countries are not legally registerable and therefore in those cases, there is limited to no security of tenure (Payne, 2004 cited in Lamba, 2005; Cousins, 2008; Kasimbazi, 2017; Hull *et.* Al, 2020).

Tenancy or leasehold land tenure

Tenancy or leasehold represents a temporary state of overlap in interests and rights over a single piece of land. These rights are transferred to the tenant or lessee by the landlord - either the state or individual - through a contractual agreement that stipulates the period the land will be leased for and whether the lessee can make improvements on the land.

This type of arrangement offers a level of certainty, however, is not a completely secure form of tenure as often with short-term leasing failure to meet your contractual obligation of paying monthly rental fees can lead to the termination of a lease agreement and possible eviction. In countries like Lesotho where land is vested in the state, apart from customary tenure, long-term leasehold is the only other legislated way citizens can hold land and land rights. Section 32(1) of the Land Act 2010 specifies the length of time an individual or legal person may hold land rights for. The Act stipulates that for residential, agricultural, religious, educational and medical purposes a lease may be held for 90 years. For industrial and commercial purposes, including hotels, the rights may be held for 60 years. And for purposes related to the sale, storage and processing of oil and petroleum rights may be held for 30 years. Non-citizens may not hold primary or secondary land rights in Lesotho, their tenure is only limited to sub-leasing, except under special circumstances (Leduka, Ntaote, Takalimane, 2018).

Informal or non-formal land tenure

Informal land tenure is an umbrella term that includes a wide range of under-recognised tenure categories with varying degrees of 'legality' and 'illegality'. Informal land rights may include the *de facto* rights of first occupiers, the overlapping and competing rights of squatters occupying state- or privately-owned land, in some context's customary forms of tenure and various other forms of unofficial or unrecognised forms of rental arrangements. Rights under this category are varied and are often referred to as informal because they are not recognised on a country's national deeds database. Because of the lack of 'formal' recognition or registration, this type of tenure enjoys nominal to no security. In the case of South Africa, informal rights receive a certain level of legal protection from the state through various legislation including the Interim Protection of Informal Rights Act 31 of 1996 (IPILRA), Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE) which prohibits unlawful eviction and sets out procedures to be followed for the eviction on unlawful occupiers (van Wyk, 2012).

The FAO (2002) notes that in practice these tenure typologies can constitute a web of intersecting, overlapping, overriding, complementary and competing interests in land. The responsibility of a land administration system would then be to mediate between these varied interests. Consequently, a coherent land tenure system would improve the function of land administration as the different rights under the various tenure typologies would be accounted for.

Nuberg (1999) noted that in a given territory any of these tenure typologies can be categorised as formal or informal, referring to the status of each tenure typology's recognition by the laws applied in that state. Scholars concerned with development and development policy have argued that this polar categorisation of the different ways in which people hold land rights fails to capture the complexities present in modern societies, especially in the context of developing countries (Payne, 2000; Durand-Lasserve and Tribillon 2001; World Resources Institute, 2005; Mahadevia, 2011). As a result, many advocates of incrementally securing land rights held under the different types of land tenure have called for rights to be viewed along a continuum (UN-Habitat, 2008; Royston and Kihato, 2012; NUSP, 2015; Hornby, Kingwill, Royston and Cousins, 2017; GLTN, 2018). Emerging concepts of a land rights continuum have been criticised by a number of scholars for 1.) reinforcing the polarised categorisation of the different types of tenure; 2.) taking a linear view and confusing tenure status and rights; 3.) positioning freehold tenure as an ideal and desired type and 4.) suggesting that the only rights worthy of registering, formalising, legalising and securing are those held under freehold tenure (LEAP, 2005; Payne and Durand-Lasserve, 2012). LEAP (2005) argues that there are multiple systems or types of tenure (with registered freehold title being only one of them) and all exhibit different levels of informality, formality, security and insecurity. Therefore, the concern for a country's land tenure system should be to account for all legitimate forms of tenure in that territory and to ensure that the different ways in which people hold rights under each tenure typology are accounted for legally and administratively. In instances where rights overlap or conflict, to ensure that the appropriate mechanisms are in place and used, in line with a country's land policy goals.

2.2.2 LAND INFORMATION

Land information and spatial data serve as a foundation and are prime requisites that support decision making on the day to day use of land. Current, complete and accurate land information reduces uncertainty and ensures effectiveness in land use planning, infrastructure development and in the allocation and management of resources (Hannam *et. al*, 2017). According to Lamba (2005) land information provides us with personal data on subjects and the rights they hold to land; spatial data such as geographical location, size, boundaries, coordinates, land use, as well as temporal data such as duration of land rights, permissible land uses, land transfers, property values and spatial change over time. Land information systems may, therefore, be defined as organising procedures that track and describe the inherent properties and characteristics of land and rights associated with land in support of effective decision making in urban land management processes. For landholders, accurate and up to date land information systems can serve as a basis for improved tenure security, while the state can leverage on improved conditions of cadastral processes for the delivery of basic services and the collection of rates and taxes (Nzioko, 2002; Tjia, 2014; Williams-Wynn, 2021).

Zevenbergen (2000), Fourie (1998) and Molen (2004) argue that urban land administration and its complementary land information systems in developing countries pose a challenge for many urban off register residents as these systems are often centralised, expensive, exclusionary and inflexible; involving legally and technically complex procedures. Drawing on cases from Namibia and Mozambique, Fourie (1998) argues for locally-based land administrators. Her recommendation is for the establishment of localised land information systems based on elements of both formal and informal systems, as well as the establishment of local land offices that would form the locus where the formal and informal systems of land management become integrated over time. She concludes that this arrangement could: bring the informal land delivery system into the wider urban management system; adapt existing urban administration systems where possible to local-level norms and standards; link the local community, professionals and the various authorities involved in the land delivery process. Nzioki (2002) identifies land information systems as an impediment to the collection of

reliable land information, as well as a cause of the resultant gap in land-related data collected by governments. He argues for 'fit for purpose' urban land information systems by outlining the institutional, technical and resource requirements for successful implementation of such a system.

2.3 THE FORMAL-INFORMAL DICHOTOMY

2.3.1 DEFINING INFORMALITY

Growing academic debate has recognised the multi-dimensional nature of urban informality and how it manifests under different conditions. For example, urban informality has been associated with self-sufficiency and creative ways of opening up development for groups often left out of urban development processes (de Soto, 2000); as resistance against authority and elitism (Bayat, 2000); as an expression of varying degrees of power and exclusion (Roy, 2005); as practices of subsistence by the poor (Watson, 2009); as human settlements creation and trading that happens outside of legal state processes and structures (Porter 2011); and as an alternative mode of city making (McFarlane and Waibel, 2012). Although the growing importance of informality has been widely acknowledged across economic, spatial, and political domains, there have been different perceptions on how the subject should be defined and approached as a matter of urbanisation. Arising from these debates, there are those who view informality as the tenacity of marginalised groups to mobilise against social, economic, political and geographic exclusion. While others view it as an unregulated and unplanned reality that needs to be regularised and formalised to conform to statutory law and regulation (Banks, Lombard and Mitlin, 2019).

Critiqued for its multiple dichotomies, the problematisation of informality can be traced back to Hart's (1973 cited in Lombard 2009) distinction between the formal and informal economic sectors based on types of employment, as well as the ILO's adoption of the informal sector concept to describe unregulated small-scale activities that took place outside of government processes of enumeration, regulation and protection. The informal sector here was seen as one side of a dualistic framework, with the other side being a large scale regulated and

"modern" formal sector. It is argued that this binary conceptualisation has had a lasting influence and subsequently shaped much of the discourse on informality today.

It is argued that despite informality taking place in various sectors of society the formal-informal dichotomy has resulted in the homogenisation of largely heterogeneous subsets of activities and practices (Watson, 2009; Lombard, 2009; Alvarez, 2019). This is seen through various structuralist conceptualisations of informality where it is viewed as a survival strategy of groups marginalised from development by capitalism and elitism (Rakowski, 1994; Banks *et. al*, 2019). In this view, informality is seen as a survival strategy of the losers of capitalism and has led to the association of urban informality with poverty. Lombard (2009) and Alvarez (2019) highlight that even when these terms overlap, informality and poverty cannot be taken to be the same. They both draw on Roy (2005) who argues that not all people working or residing informally are poor and that in fact, some people living above the poverty line reside in informal conditions, while those who live in formal housing such as social housing and formally recognised housing can be poor. This shows that even though there may be a relationship between informality and poverty, one does not necessarily imply the other (Lombard 2015). It has been argued that the myth of poverty and marginality is used for the social control of people who far from being marginal, were integrated into society "on terms that often caused them to be economically exploited, politically repressed, socially stigmatised and culturally excluded" (AlSayyad, 2004: p9; Lombard, 2009: p26).

Additionally, legalist views of urban informality have defined informality as a deviant sector that does not comply with formal rules and regulations, while formality is taken to mean the norm. It can be argued that the legalist view of informality further supports the dichotomy between formal and informal, and in essence delegitimises and criminalises people's activities and strategies by framing them as lawless, unregulated, uncontrollable, inefficient and chaotic and needing to be put in line through what some may argue are elitist statutory laws and legal regulatory frameworks (Banks at. Al, 2019). Legalist views are also further criticised for perpetuating a singular, exclusive and hierarchical understanding of formality giving it superiority over its informal counterpart (AlSayyad, 2004; Roy, 2005; Marx and Kelling, 2018).

2.3.2 THE PROBLEM OF BINARIES FOR URBAN INFORMALITY AND PLANNING

The formal-informal dichotomy is further played out in the context of urban planning and development discourse and practice. In urban planning processes, informality is seen and addressed as a fundamentally distinct process from formal ordered processes of development. This is rooted in ideas and association of informality with marginal practices of the poor, different and detached from traditions and notions of order (planning) reinforcing ideas that it is something to be addressed through urban policy as a problem (Watson, 2009; McFarlane and Waibel, 2012; Marx and Kelling, 2018; Alvarez, 2019). Rolnik (2014) suggests that the binary conceptualisation is an inadequate and flawed way of analysing activities, actors and processes of urbanisation. The division between legal-illegal fails to represent the plurality of systems and relationships that play out in a single territory beyond those legislated by the state, but also the many parallel systems and relationships that have developed such as customary law and informal land registers, which have been "legalised" over time. Aspan, Frediani and Cocina (2019) add that understandings of informality fail to acknowledge that city-making consists of a wide spectrum of practices led by a plurality of actors that interact with but also go beyond dominant and official planning practices such as those enabled by the state.

Planning in the global south is said to be unable to adequately engage with informality in this context, this is largely attributed to planning systems and models used being importations from the north and an inheritance from colonialism (Yiftachel, 2006; Varley, 2013; Watson, 2014). This challenge is further augmented by influences of neo-liberal ideology, that directs planning towards privatisation, competition and the creation of world-class cities (Hassan, 2011). Further to this, various scholars have noted the ambiguity of planning and how this weakness in planning has enabled powerful actors in society to further their economic interests (Yiftachel, 2009; Roy, 2009; Rolnik, 2015). Roy (2009) argues that planning and scholarship in the global south are not equipped to deal with the issue of informality as they are too preoccupied with evaluating the inadequacies of planning models and assumptions imported from the north. Scholars argue that these same planning systems produce social and spatial injustices that benefit those in power, meaning that planning itself is deeply

implicated in creating the crisis (Watson, 2009; Khan and Swapan, 2013; Lemanski and Marx 2015).

2.3.3 IMPLICATIONS OF THE FORMAL-INFORMAL DICHOTOMY FOR LAND ADMINISTRATION

There is bourgeoning literature extending the question of the formal-informal divide in planning to aspects of land management and administration. This literature, some of which I review in this section argues that urban land governance models and laws applied in African states are by and large an importation of norms, values and practices from the west and are said to be an inheritance from colonialism. The assumption has been, since these systems and models provided the foundation for eminently successful planning systems in countries such as the United Kingdom it must be the necessary foundation for successful implementation for the importing country (McAuslan, 1980). It is widely documented in literature that across many Sub-Saharan African countries this has not been the case (Fekade, 2000; Wily, 2003; Leduka, 2004; Rakodi and Leduka, 2004).

Fekade (2000) argues that because the process of urbanisation in African states is not embedded in the endogenous structural (political, economic, and social) transformation and development of the continent, we are now faced with what Smith (1996, p. 48) refers to as "exploding cities in unexploding economies". Rakodi (2004) in her study into contemporary informal land delivery systems in Anglophone African cities introduces the idea that African states are failing to holistically apply formal rules of land management. She argues that this failure has led to formal rules being ignored and formal procedures being bypassed, leading to the emergence of what she refers to as "real rules". These are rules that are understood and mutually accepted by actors in informal land delivery that subscribe to different land management and administration procedures but are linked and bear resemblance to formal systems. Her findings suggest that in some respects, informal land delivery systems work better than formal systems. She further contends that better understanding these informal systems can contribute to improvements in the overall planning and management of land to the benefit of all citizens (ibid.).

Generally, reflective policy and research have focused on critiquing and improving existing and established state-led formal land administration and management systems paying very little attention to administration and management in other prevalent parallel systems of land delivery and how these operate. This sentiment is further echoed in Rakodi and Leduka (2004), stating that studies into African towns and cities have assigned the obligation and capacity to intervene in land management to the state. As a result, the analyses have often focused on widespread societal failures to comply with formal state law and regulations, thereby elevating formal state laws over other socially embedded and non-statutory rules that other actors in society draw on to regulate and manage land and land transactions (ibid.). Although with good intentions, it can be argued that this elevation of imported systems over local and socially accepted systems further polarises land administration in developing countries.

There has been general consensus in the international development domain that governments need to adopt efficient, inclusive and fit-for-purpose (FFP) land administration systems. International organisations and academic scholars alike advocate that land administration should be seen as a diverse social subject that involves multiple institutions and numerous actors operating within various regulatory and normative frameworks (Reda, 2014; Hull *et. al*, 2020; Hull and Whittal, 2021; Williams-Wynn, 2021).

In the context of informal settlements, a tendency of planning responses has been to use the guise of formalisation to do the following: impose a market logic and individual property rights through titling programmes; to forcefully evict and resettle communities; and to use inapt planning regulations such as land use, zoning, and building standards to control urban expansion without carefully considering the social and power relationships within a space (Watson, 2009; Roy, 2009; Alvarez, 2019). Planning here is used as a tool to restructure land and property relations for accumulation and control in favour of powerful actors rather than a harmonising tool to create spatial justice (Devos, 2001; Rolnik, 2001; Watson, 2009; Roy, 2009; Alvarez, 2019). This coercion of planning inadvertently inhibits groups in society from accessing adequate housing and housing land, determining their place in the city to disaster-prone or peripheral areas.

2.3.4 INFORMALITY AND FORMALISATION

The formal-informal dichotomy has led to a tendency in planning practice to exclude and formalize the informal, with negative consequences for citizens. For many, the notion of formalisation is premised on the idea that poverty, exclusion from formal systems and forced evictions faced by inhabitants of informal settlements stem from the absence of formal tenure (Taruza, 2016). In his book, The Mystery of Capital de Soto (2000) divides the world into two groups; those who have legally defined property rights and those whose rights are not legally recognised. The latter who do not hold these defined rights are unable to leverage on the value of their assets to generate income or lend money from financial institutions and these assets he says are thus held as "dead capital" entrapping them in a "tragedy of commons" where their unregistered assets can be taken from them by those with powerful interests as seen with widespread cases of evictions of informal dwellers (ibid.). For de Soto (2000), legally defining these rights would be enough incentive for many operating in the informal economy to realise the value of their assets. This is further echoed by Durand-Lasserve and Royston (2002) who argue that the quality of life of informal settlement dwellers can be improved by a greater sense of ownership.

Urban LandMark (2009) views formalisation of informal settlements as the legal process of establishing a township with formal services whereby residents receive formal security of tenure with the added benefit of a top structure. For the United Nations Economic Commission for Europe (2015), formalisation or legalisation of informal settlements is a process aimed at addressing illegalities in the occupation of state- or privately-owned land. Illegalities can be in the form of violations of zoning, planning, building and health and safety regulations, or the complete disregard of existing legislation on state-ownership rights or the ownership rights of private individuals or entities. Choplin and Dessie (2017) state that titling processes play a central role in defining individual rights as a way to fight poverty in cities within the Global South, however, formalising these rights should not be confused with securing tenure, which refers to one's ability to exercise one's rights without threat or hindrance.

According to Wehrmann (n.d), to adequately integrate practices of "informal" land management into "formal" processes we need to begin by clearly defining and distinguishing between terms such as informality, illegality and irregularity in our analysis of urban land management processes. Notions of informality and illegality are often confused and at times used synonymously. To make her case, she draws on the principles of legal pluralism distinguishing between legitimate (non-conformist) and criminal (illegal) actors and practices in land management. According to Wehrmann, legitimate actors are those who act in the interest of broader societal welfare and the needs of the poor. In this case, she finds it more appropriate to refer to non-conformity or even legitimacy. Criminality on the other hand are practices that are deemed unacceptable by not only statutory law and regulation but also go against recognised morals or even human rights (ibid.). In cases of criminality, self-interest predominates common welfare – as is in cases with land corruption and mafia activity. Her analysis is based on Fernandes' (1998) study findings which point out that there are "degrees of illegality"; that is, that some forms of illegality tend to be accepted and tolerated than others, by both the state and public opinion. The more accepted forms are those that involve documentary evidence.

De-facto rights, denoting widely accepted rights not entirely sanctioned or standardised according to statutory law, might be non-conformist to statutory law but conform to popular practices and customs. As is the case for customary rights which are often based on culture or religion, where land is often not registered and settlers hold no formal title (Maimela and Maunatlala, 2020). Informal tenure rights can be seen as non-conformist in that they refer to rules agreed on by a particular social group. Informal tenure and rights may not be in line with statutory law but can be seen to represent *de-facto* rights. These rights are in some instances recognised by statutory law or administratively by municipalities and in the case of customary land rights by chiefs or other traditional authorities (Wehrmann, n.d.; Maimela and Maunatlala, 2020).

Informal land occupation on the other hand encompasses what many see as illegal or semi-legal. Illegal land occupation denotes the occupation of land that violates existing ownership rights as well as rules and regulations (Wehrmann, n.d.). Semi-legal refers to practices that

violate building and planning norms. In the case of informal settlements, however, it can be argued that both what is termed illegal and semi-legal is non-conformist as common welfare predominates individual interests. Land transfer that involves corruption and speculation, is one area of informal land administration susceptible to elements of illegality (ibid.). Corruption can creep in where state officials sell off public land reserved for the poor on the formal market to specific clients in return for favours (Wehrmann, n.d.; Udessa, Adugna and Workalemahu, 2021). These clients further hold onto the land for speculative purposes. Within informal settlements, speculation also creeps in when beneficiaries of public housing programmes hold onto their shacks even after they have been upgraded or relocated for the sole purpose of collecting rental income from the shack or benefitting directly or indirectly from other parallel government programmes.

2.4 LAND AND GOVERNANCE

A term closely linked to policy and policy implementation, 'governance' became widely used in the 1980s with ambiguity around the roles of the government, civil society and the private sector in decision making processes about how a country's affairs are managed. Before the 1980s, governance and government were used as synonyms. Political sciences, however, broadened the meaning of governance to go beyond just government actors to include civil society, the private sector and the public sector as wielders of power in devising and enacting public policies that directly affect human, institutional, economic and social development (Ansell and Gash 2007: 545).

The United Nations Development Programme (UNDP) in 1997 attempted to give a more definitive meaning to the term by going further and identifying characteristics for governance to be considered good. According to the UNDP (1997), governance is the exercising of political, economic and administrative authority to manage a nation's affairs at all levels through mechanisms, institutions and processes that allow citizens and various interest groups to articulate their interests, their legal rights, meet their obligations and settle their differences (Pieterse, 2000). According to the UNDP, good governance is accountable, transparent and participatory. Good governance ensures that the identification of economic, political and social priorities is based on consensus and that voices of the poorest and most

vulnerable groups in society are heard in the apportionment of resources related to development (Lamba, 2005).

UN-Habitat (2002) views good governance as, how well a population, its representatives and agents come together in good faith to identify and resolve social, economic, and environmental challenges that stand in the way of improved life for all citizens.

According to the World Bank (2013), good governance is characterised by predictable, open and enlightened public policymaking driven by a well-managed public service which places public managers under performance contracts, holds civil servants accountable for their actions and a civil society that participates actively; all brought together by the rule of law.

A common thread can be found within these three normative attempts at defining governance and the criteria for it to be considered good. These commonalities include the decentralisation of power and "relational management" based on the realisation that traditional systems of hierarchy and command are no longer appropriate and that there is a need to shift decision making on the management and distribution of public goods and the promulgation of public policy to include other sectors of society – a shift from governmentality to governance (Tamayao, 2014).

In any context, the people-to-land relationship is dynamic and changes over time in response to cultural, economic and social development imperatives. Land governance sets the scene about - authority, politics and power, and in particular whose power prevails over a land agenda. Land governance deals with how competing priorities and interests of various groups are reconciled. In any society, there are multiple development objectives and multiple stakeholders who have interests that range from basic survival to personal enrichment or societal welfare.

Governance in the context of land can be described as the process where decisions are made about how land is accessed and used, how these decisions are implemented and enforced and the way competing interests in land are managed. It is important to note that governance in relation to land is inherently subject to power and resources. In urban areas the more power and resources you wield the stronger your claims to land are, translating to more

influence over governance and land management processes (Antonio, 2018). The normative stance taken in this study is that for land management to comply with principles of good governance the following criteria needs to be met (Kreibech and Kombe, 2000; UNHSP, 2002; McCall, 2003; Lamba, 2005; Rama 2013; Jones, 2017):

- **Inclusivity:** Participation by stakeholders at the grassroots level through the decentralisation of land management functions. Guaranteed provision, protection and enforcement of secure property rights for all including the urban poor and other vulnerable groups such as women, youth and ethnic minorities, as well as recognition of local norms of tenure, cultural rights and indigenous knowledge.

- **Transparency:** Responsiveness of land management systems to the demands of the users of the system including the accessibility of land information at affordable rates.

- **Service effectiveness and Accountability:** Increased capacity of local governments through the employment of effective and efficient land administration staff to assist governments in the attainment of sustainable development goals while meeting service levels and cost needs.

- **Prevailing of the rule of law:** Legitimacy, inclusivity and constitutionality of land management regimes and land laws. Objectivity in judicial processes of land law enforcement and court decisions in land disputes. The possibility and right to appeal land administration decisions.

Land policies, institutions and land administration are key tools aimed at governing the people to land relationship. These tools often include the means of allocating and controlling the *rights, restrictions and responsibilities* (the RRRs) to land (Enemark, Hvingel and Galland, 2014). Rights in relation to land and property are concerned with ownership and tenure, while restrictions control the use and activities on land. Responsibilities relate more to social and ethical commitments or attitudes to environmental sustainability and the conservation of natural resources (ibid.).

2.5 CONCEPTUAL FRAMEWORK

In the governance of any people to land relationship, authorities often have to contend with tenure, use, development and value. These four elements are summed up by Williamson *et. al* (2010) and Fisher and Whittal (2020) as the core functions of land administration. These authors note that within formal land administration these functions are administered either by government officials or a range of private professionals including land surveyors, conveyancers, urban planners and professional valuers. Hull *et. al* (2020) along with other scholars whose work has been cited above argue that by simply occupying land, such as in the case of informal settlements people are performing a function of land administration. This literature proved to be very useful in defining a scope and framework from which land administration in the case study area will be documented and analysed. The research will use these 4 core functions of land administration as a lens to investigate the land administration processes in Kya Sands (refer to Figure 2.1). To ground the study, under each of the 4 functions I will look at the drivers and practicalities of each function on the ground. Without these drivers the 4 functions of land administration would not go anywhere; these drivers include the actors, the institutions and the processes underlying each function within my case study area.



Figure 2.1 Conceptual framework diagram: The 4 core functions of land administration (Williamson et. al, 2010; Enemark et. al 2014)

2.6 CONCLUSION

In this chapter I began with a presentation of progressive conceptualisations of key concepts used in this study including land administration, land tenure and land information that help us move away from seeing the world around us as static. I present these concepts as dynamic and as composed by varying social relationships giving people to land relationships intimate

social meaning that needs to be negotiated based on context and amongst various actors and interests in society.

The following parts highlight the issue of binary thinking and point out the importance of recognising power inequalities and the role collective action can play in empowering vulnerable groups to negotiate meaning and interest when it comes to shaping the land governance agenda. These arguments help to sustain the idea that informality versus formality is merely about negotiability of value and interests and point out that the lines between legal and illegal, legitimate and illegitimate, collective and individual are quite blurred and that access and control over land are issues to be collectively negotiated.

3 CHAPTER 3: OVERVIEW OF LAND ADMINISTRATION IN SOUTH AFRICA

3.1 INTRODUCTION

This chapter contextualises land governance and land administration in South Africa. The chapter begins by attempting to define the challenges of land administration. The next section provides a brief summary of the structure of legislated land administration in South Africa. This is followed by an unpacking of tenure in practice and framing these forms of tenure within the legal and ideological progression of the country's land tenure reform programme. The final part of the chapter immerses the reader in the national policy framework aimed at addressing informal settlements. This final section begins with a brief discussion of the magnitude of the issue and follows up with legal and policy responses aimed at addressing tenure security in these spaces.

3.2 THE LAND ADMINISTRATION CHALLENGE IN SOUTH AFRICA

Shaped by the historic discriminatory land policies of colonialism and Apartheid, land administration in South Africa can be characterised as fragmented and engineered along racial and ethnic lines (Hull *et. al*, 2020; Williams-Wynn, 2021). On the one hand, there is a formal land administration system which is largely a function restricted to the government, characterised by legislated systems of land registration and cadastral surveying, land development, land use planning and management and land valuations. Existing alongside this formal land administration system are off-register local level systems administered by various forms of legitimated authorities including traditional councils, civil society groups, community forums and non-governmental organisations receiving limited protection from state institutions in arising land disputes and conflicts (Advisory Panel on Land Reform and Agriculture, 2019; Hull and Whittal, 2021). The 2017 audit of landholdings registered through the national deeds registry further revealed patterns of continuity with Apartheid where formally registered land holding is skewed in favour of white individuals and males (Department of Rural Development and Land Reform, 2017).

According to the Advisory Panel on Land Reform and Agriculture Report of 2019, one of the largest drivers of land tenure insecurity in South Africa is the country's lack of a clear and comprehensive land administration system to achieve the goals of the National Development Plan: Vision 2030 (Advisory Panel on Land Reform and Agriculture, 2019). For decades the administration and management of land in South Africa has been seen as a legitimate function of government (Pienaar, 2009). This has produced ideas that have informed property rights and land law, that land management and administration systems are there to serve registered right holders only. The result of this has been that government does not provide adequate administrative infrastructure, planning and information systems support to off-register tenures as it does to statutory forms of tenure which are elevated to the apex of the land and property hierarchy (Phuhlisani NPC, 2017; PLAAS, PARI and SALGA, 2021).

3.3 THE INSTITUTION OF FORMAL LAND ADMINISTRATION

At the helm of formal land administration in South Africa is the national Department of Agriculture, Land Reform and Rural Development (DALRRD)[2] supported by various state institutions at the national, provincial, and local levels. Among other things, the DALRRD is responsible for the formulation, administration and implementation of policy, laws, and regulations on land. Key to land administration, the DALRRD carries out the functions of formal land registration, land surveying and land valuations for purposes of land reform (Department of Rural Development and Land Reform (DRDLR), 2011). At the national level

[2] The Land Administration Act 2 of 1995 places the function of administration of laws on matters related to land in the Ministry of Agriculture, Land Reform and Rural Development. The Minister may then either, generally or in particular cases, in writing delegate or assign his or her powers to any executive or government body at the national, provincial or local spheres of government.

the following are land administration institutions that fall directly under the jurisdiction of this department:

1. Office of the Chief Registrar of Deeds –This Office functions in terms of the Deeds Registries Act 47 of 1937 and provides oversight to 11 deeds registries located in major towns and cities within the 9 provinces of South Africa. These registries are responsible for the registration of real rights in land and the management and maintenance of the national land register (DALRRD, 2022a).

2. Office of the Chief Surveyor-General – Established in line with the Land Survey Act 8 of 1997 and Sectional Titles Act 95 of 1986, the Office is tasked with managing and maintaining the national cadastral records through examining and approving cadastral surveys (diagrams, general plans, sectional title plans) and ensuring that these comply with statutory requirements, as well as keeping records of land parcels (position/location and extent of rights). The Office is supported by 8 Surveyor-General's Offices with each responsible for regulating cadastral surveying in the provinces it is responsible for (DALRRD, 2022b).

3. Office of the Valuer-General – The Office of the Valuer-General is established as an autonomous entity reporting to the Minister of Agriculture, Land Reform and Rural Development in terms of the Property Valuation Act 17 of 2014. The OVG is said to provide impartial valuation services for all land to be acquired for land reform and properties identified for disposal or acquisition by the government (Office of the Valuer-General, 2022). The purpose of its establishment in relation to land reform was to address shortcomings of the willing-buyer willing-seller approach as well as to define what is just and equitable compensation (Gavor, 2018).

According to the Constitution of South Africa, provincial governments can also develop and pass laws in areas that national and provincial governments have concurrent legislative and executive competence as defined in Part A of Schedule 4 of the Constitution. These areas include regional planning and development, urban and rural development, housing and agriculture (Constitution of the Republic of South Africa, 1996; Tjia, 2014).

At the local government level, municipalities are tasked with providing infrastructure and services such as water, sanitation, roads, waste management, disaster management, electricity etc. In relation to the functions of land administration, municipalities regulate and control land development, as well as carrying out functions of land-use planning and management in accordance with the Municipal Systems Act 32 of 2000 and the Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013. In certain metros these functions are supported by land information systems based on data linked to the national deeds registry roll and cadastral system. Major municipalities through the Municipal Property Rates Act 6 of 2004 further perform functions of property valuation and maintenance of municipal valuations rolls for the purpose of collecting rates and taxes. As a part of decentralising and speeding up housing provision, certain municipalities have been empowered to carry out functions related to housing and housing land provision through the Upgrading of Informal Settlements Programme (UISP) as outlined in Part 3 of the National Housing Code (Department of Human Settlements, 2009). Under the UISP municipalities are required to incrementally upgrade informal settlements overtime with the pressing mandate being to secure tenure and provide a basic level of services to communities living in these settlements.

Traditional councils constituted in line with Section 3 of the Traditional Leadership and Governance Framework Act 41 of 2003 are 'empowered' through SPLUMA to participate in processes of municipal land use planning and land use management, on condition that there is a signed service level agreement with the responsible municipality. Failing to conclude service level agreements the traditional council is then required to provide proof of land allocation in terms of the applicable customary law to anyone living in that traditional area who wishes to lodge a development application.

Other actors involved in formal land administration processes include professionals in the private sector registered with their respective statutory bodies and councils in terms of the applicable laws (Tjia, 2014). These professionals include :

- Land surveyors who conduct land surveys, registered with the South African Geomatics Council (SAGC) in terms of the Geomatics Profession Act 19 of 2013 (SAGC 2021).
- Notaries and conveyancers who prepare legal contracts, deeds and documents for registration on the national Deeds Register, registered with the Legal Practice Council (LPC) in terms of the Legal Practice Act 28 of 2014 (LPC, 2021).
- Town and regional planners who prepare land use applications for submission to municipalities and provincial government departments, registered with the South African Council for Planners (SACPLAN) in terms of the Planning Profession Act 36 of 2002 (SACPLAN, 2021).
- Valuers who conduct land valuations registered with the South African Council for the Property Valuers Profession (SACPVP) in terms of The Property Valuers Profession Act 47 of 2000 (SACPVP, 2021).

Table 3.1: Summary of legislation guiding formal land administration in South Africa (Tjia, 2014; Hull *et. al 2020*)

Function	Legislation	Administering authority
Land Administration	Land Administration Act	Ministry of Agriculture, Land Reform and Rural Development
Land Registration and Land Surveying	Deeds Registries Act Land Survey Act Sectional Titles Act	Office of the Chief Registrar of Deeds Office of the Chief Surveyor-General
Land Use Management	SPLUMA	Department of Agriculture, Land Reform and Rural Development
Land Valuations	Property Valuation Act Municipal Property Rates Act	Office of the Valuer-General Department of Cooperative Governance and Traditional Affairs
Land Development	Municipal Systems Act	Department of Cooperative Governance and Traditional Affairs

3.4 THE NATURE OF TENURE IN PRACTICE

The land area of South Africa is made up of 72% private land, 14% government land, and 14% land in former homelands or Bantustans (Department of Rural Development and Land Reform, 2017). This land is subject to a complex range of intersecting, overlapping, overriding, complementary and competing interests. To simplify the task of unpacking the real nature (tenure in practice) of landholding in South Africa, I classify tenure broadly in terms of statutory, customary, and non-formal or informal tenure.

3.4.1 STATUTORY FORMS OF TENURE

Statutory tenure refers to those holdings in land where what are defined as real rights are surveyed and registered on the national deeds and cadastral databases (Williams-Wynn, 2021). These officially documented real rights are administered and fully protected by the state through the provisions of statutory law including the Deeds Registries Act 47 of 1937 and the Land Survey Act 8 of 1997. The main forms of statutory landholding in South Africa are:

Freehold tenure

This form of tenure gives holders the most extensive right to land which ultimately translates to indefinite 'ownership' held through a title deed. These ownership rights are legally transferrable and are subject to a number of statutory limitations in favour of private or public persons or entities, for example, servitudes, zoning and land use planning, mineral rights, creditors rights, registered leases, body corporates or home-owners associations, all registered in the deed's registry and form part of restrictive conditions in title deeds (Phuhlisani NPC, 2017). The freehold system of landholding in South Africa has emerged out of several processes under the colonial, Apartheid and post-Apartheid governments (Tjia, 2014). Under the colonial and Apartheid regimes, these processes included the alienation of public land in favour of people of European descent and the conversion of quitrent titles to title deeds . Under the post-Apartheid state, the government has assigned freehold status through titling programmes in townships targeting old government rental

stock housing, the state subsidy housing programme and the restitution of land rights to people previously dispossessed (Williams-Wynn, 2021). The law allows this form of landholding for private individuals, registered companies, community-based organisations (including Community Property Associations), trusts, religious entities and through the Sectional Titles Act 95 of 1986 to body corporates and homeowners' associations (Tjia, 2014).

Public tenure

In South Africa public tenure refers to land vested in the state and held either, in trust by the state or belonging to government entities, departments and municipalities. The Government Immovable Asset Management Act 19 of 2007, governs donations, leases and exchange of government-owned land. Land under GIAMA is often disposed of or transferred on a freehold basis. State-owned land is currently at the centre of debates on land to be expropriated for the provision of land in urban areas as part of the country's Land Reform Programme (Advisory Panel on Land Reform and Agriculture, 2019)

Leasehold tenure

This type of tenure allows the holder limited rights over land for a set time period and is subject to conditions laid out in a lease agreement between the lessee and lessor. Leases may be granted by the government on government-owned land, or by freehold title holders on private land. As provided for in the Formalities in respect of Leases of Land Act 18 of 1969, only notarially executed leases of not less than 10 years may be registered on the national deeds database. It is also important to note that lessees can only claim registration against a deed if it is registered. When leases of 10+ years are not registered after the tenth year the lease agreement will no longer be legally binding. Current leases granted by the government are 30-year leases for agricultural land under the land redistribution

programme of Land Reform (Dupre and McGaffin, 2018). The Waterfall Estate development is an example of leasehold rights granted on privately-owned land on a 99-year lease basis. The land is held by the Waterfall Islamic Institute who hold the land in line with Waqf laws which do not permit land to be sold (Cliffe Dekker Hofmeyr, 2022).

3.4.2 CUSTOMARY TENURE

Customary tenure in the South African context refers to holdings of land situated in former homeland or Bantustan areas administered separately by traditional councils according to unwritten rules of customary law. Unlike the statutory forms of tenure, customary land rights are not registrable land rights under the currents deeds registration system, but rights of occupation are protected and recognised by the Constitution, and through various legislation including the Upgrading of Land Tenure Rights Act 112 of 1991, the Interim Protection of Informal Land Rights Act 31 of 1996 and the Extension of Security of Tenure Act 62 of 1997 (Williams-Wynn, 2021). Although rules are not written down by communities, Phuhlisani NPC (2017) argues that under the colonial and Apartheid regimes customary systems of tenure were subject to the codified interpretations by proclamation and legislation such as the Native/Black Administration Act 38 of 1927 which sought to set up separate legal and political systems for proclaimed black areas. For Kingwill (2017), the separation and insulation of customary land tenure under colonial and Apartheid rule was to prevent the recognition of African property rights and to further the political and economic interests of white capital formation. While in the same breath the system sought to repress the robust development of customary law from keeping up with democratic and constitutional values and this legacy persists to date.

According to Hull and Whittal (2021) under this system of tenure in South Africa, the term ‘community’ is still tied up with traditional authorities whose legitimacy and accountability varies widely. While widely framed as communal land tenure, Cousins (2008) and Hull, Babaloa and Whittal (2019) argue that rights held under this system of tenure are layered and are held both individually and communally. Cousins argues that the notion that customary land is held only communally was a strategy used by the British that sought to make the

colonial conquest of land easier by elevating the role of traditional authorities and nullifying the idea that native individuals and families were able to hold individual rights to land. According to Hull and Whittal (2021), what may be considered communal under this system of tenure is only the general acceptance by the community of rules defining access to land and land use rights. Communal rights are only limited to fields used for grazing and gathering (referred to by Cousins as the commons) where all members of the community have equal access by virtue of being a member or resident, however, individuals and families hold exclusive rights to the land their dwellings occupy.

Customary systems of tenure challenge the core notions of statutory tenure. Phuhlisani NPC (2017) have identified a tendency by African households not to sustain the legally defined processes of transferring rights making an example of the idea of family homes – in rural areas and in townships – African forms of freehold favour family interests over those of individuals where there is often no selection of heirs or owners as required by law, rights are given over to family through accepted kinship ties without necessarily naming or nominating individuals.

Traditional leaders have for a very long time claimed ownership, custodianship, or guardianship of customary land (Phuhlisani NPC, 2017). This has been further reinforced by both the Apartheid and post-Apartheid governments through various laws including the repealed Communal Land Rights Act (Hull and Whittal, 2021). The current debate around customary land in South Africa is whether land should be registered for communities, under traditional councils or the state.

Systems of customary tenure are largely criticised for undermining living customary law and not keeping up with democratic land governance principles, raising issues of women's rights and poor or no consultation by traditional councils when decisions are made about land (Centre for Law and Society, 2015; Hull *et. al,* 2020; Beinart, 2021). A case in point is a chief in Xolobeni, in the Eastern Cape Province who became a trustee of a mining company that wants to exploit the land in the area while some community members rejected the idea of the mining development raising health and environmental concerns. A 2018 ruling was made by the High Court, that mining development can only take place with the full and informed consent of the community (Huizenga, 2019; Tlale, 2020; Beinart, 2021). Some politicians and

political office bearers in government have come out in support of the mining development . The Minister of Mineral Resources and Energy, Gwede Mantashe applied to the courts to appeal the judgement, but to date, the state has not pursued the appeal.

Further, the Ingonyama Trust Act of 1994 was a brokering tool used to get the Zulu Monarch and the Inkata Freedom Party (IFP) who had a stronghold over Kwa-Zulu Natal to participate in the 1994 elections, the Act was then promulgated and vests large tracts of land in the Zulu Monarchy through the Ingonyama Trust Board (ITB) which was to administer land to the benefit of communities in its jurisdiction (Centre for Law and Society, 2015). The ITB claims custodianship of the land and that it holds the land on behalf of the Zulu people. In recent developments, the ITB was taken to court for converting people's permission to occupy into to leases and when people fail to pay for their leases they face eviction (*CASAC and Others v ITB and Others 2021 SA 437 (CC)*; Portfolio Committee on Rural Development and Land Reform, 2018).

3.4.3 INFORMAL TENURE

This type of tenure encompasses a wide variety of occupations of land including informal settlements, occupations of buildings in inner-city areas and various other forms of land tenancy in both urban, peri-urban and rural settings. For purposes of this research, the focus on informal tenure will be limited to informal settlements. This form of landholding involves the occupation of land owned either by the state- or privately-owned land primarily in urban areas without a legal basis and often without permission of the landowner (Lamba, 2005; Department of Human Settlements, 2009; Royston and Kihato, 2012; NUSP, 2015). Similar to customary tenure, informal tenure or informal settlement tenure is not necessarily a land right, but the *de facto* rights to the land they acquire, occupy and use are protected by Section 26(3) of the Constitution and the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 which work in tandem, as well as the development of anti-eviction law (Royston and Ebrahim, 2019). The Housing Act 107 of 1999 and the Housing Code are also important in developing the right of informal settlement dwellers to housing and setting out the responsibility for provincial and local governments of ensuring that they develop

appropriate programmes to protect this right (Department of Human Settlements, 2009). In their study, Rubin and Royston (2008) found that land administration arrangements that arise from informal settlements can be hybridised where the state and communities to varying degrees jointly manage and administer land. A detailed review of informal settlements in South Africa is given in Section 3.5.

3.4.4 TENURE REFORM

Although tenure reform exists as one of the three tenets of South Africa's Land Reform Policy it has arguably remained the black sheep of land reform and a point of land governance paralysis for the government for almost three decades. Merten (2020) argues that this programme of land reform has been caught up in processes of political brokering between political parties and traditional leaders; who constitute a critical support base particularly during elections, and communities who take last preference when it comes to decision making processes about land.

Kingwill (2017) explains post-Apartheid South Africa's land tenure reform policy direction by its two distinctive phases. The first phase boldly sought to establish and clearly define a bundle of rights that would apply back-to-back across all categories of tenure. These categories included landholdings on rural commercial farmland and its various sorts of land occupations including labour tenants, farm labourers and the rest; former homeland areas and their customary systems and the various systems in urban areas including both formal and informal tenure. This first phase through a rights-based approach sought to dismantle Apartheid patterns of exclusive rights to land and allow for the recognition of coincidental rights on a single land parcel and in former homeland areas to introduce democratic systems of land governance. The approach did not intend to dismantle the existing cadastral system but challenged the apartheid imposed chiefly governance of tenure, as well as the longstanding notion of exclusive rights to land that had been adopted and enforced in favour of whites through statutory laws since the beginning of the 20th century. This phase was accompanied by the promulgation of rights legislation including the Land Reform (Land Tenants) Act 3 of 1996; the Communal Property Associations Act 28 of 1996; the Interim

Protection of Informal Land Rights Act 31 of 1996; the Upgrading of Land Tenure Rights Amendment Act 34 of 1996; the Extension of Security of Tenure Act 62 of 1997, and the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (ibid.). This first phase was then further summed up in the 1997 White Paper on South African Land Policy which emphasized the added urgency to address dispossession and injustice, providing secure tenure including for those living in informal settlements and the establishment of a functional land administration system (van Wyk, 2012; Advisory Panel on Land Reform and Agriculture, 2019).

The ideology of the first phase of land tenure reform was subsequently abandoned for a second phase which began in the year 2000 and continues to date. This second phase, without repealing the rights legislation of the first phase saw land tenure reform policy revert to a state of tenure dualism with a distinct divide between the statutory tenures on commercial farmland and urban areas on the one hand and customary tenure in former homeland areas or Bantustans on the other (Kingwill, 2017). In urban and peri-urban areas, the second phase has seen a return to attempts at individual titling and exclusivity of rights where communities are relocated to state subsidy housing in large investment project areas in the form of mega housing projects which push people to the outskirts of cities or economically unviable areas (SERI, 2018b).

Compelled by court order the National Assembly in 2020 passed the Upgrading of Land Tenure Rights Amendment Bill which was assented to by President Cyril Ramaphosa as the Upgrading of Land Tenure Rights Amendment Act 6 of 2021 (The Presidency, 2021). The Act allows for the conversion of land tenure rights to ownership at the opening of a township register in any formally established township, it also makes provision for interested parties to object and allow for aggrieved persons to approach the courts for relief, and the institution of enquiries to assist in determining land tenure rights. In former homeland areas, we have also seen the strengthening of chiefly control of land enabled through the Traditional Leadership and Governance Framework Act (TLGFA) 41 of 2003 and the Communal Land Rights Act 11 of 2004 which was declared unconstitutional by the courts and subsequently repealed and is in the process of being replaced by the Communal Land Tenure Bill currently

before Parliament. Winkler (2019) further argues that even SPLUMA uncritically accepts and further entrenches the idea that customary or communal land in rural areas is owned by traditional leaders, leaving many contentious issues about land ownership on customary land unresolved. Many traditional leaders also have reservations about SPLUMA believing that it will take away their control over customary land (Winkler, 2019: 11).

3.4.5 INFORMAL SETTLEMENTS IN SOUTH AFRICA

Part 3 of The National Housing Code identifies informal settlements on the basis of illegality and informality, inappropriate locations, restricted public and private sector investment, poverty and vulnerability and social stress, noting that any settlement that demonstrates one of these characteristics should be identified as an informal settlement (Department of Human Settlements, 2009: 16). In addition to this categorisation, Smit et al. (2017) note that there are some informal settlements that fall within a continuum between being legal and illegal, formal and informal, and being planned and unplanned.

The Housing Development Agency (HDA) estimates that more than 4 million people or 1.25 million households make up the country's informal settlements (Royston and Ebrahim, 2019). However, due to the nature and fluidity of these settlements, data on the number of informal settlement and people living under these arrangements is difficult to pin down. Huchzemeyer (2011) further notes that due to the informal and everchanging nature of informal settlements, data is not easily collected and even when collected this information rapidly becomes outdated. Within the City of Johannesburg alone, the number of informal settlements in March 2020 was noted at 211 settlements made up of over 168 300 households. In an interview with a senior housing official from the City of Johannesburg it was indicated that there are currently 320 settlements in the City (Personal communication, COJ Housing Official 1, 2022), in reality, this number may be significantly higher.

Within this sub-sector of land supply come the associated challenges of little to no formal state recognition, insecure tenure and exclusion from services provided by both the state and private institutions. According to Smit et al. (2017: 111), "Informality should be understood as produced by the state itself through its legal and planning apparatus which determines

what is informal or not, who is deserving or not". Informality, on the surface, is often considered a land-use issue and is managed to restore order to the urban landscape. Urban planning and land administration processes have been coerced as tools to determine whose rights are registrable and which land-uses are preferred over others, all at the expense of urban low-income groups with very little influence over processes of land governance.

3.4.6 THE STATE HOUSING SUBSIDY PROGRAMME

The South African government has adopted a progressive legal and policy framework that governs the right to housing enshrined in Section 26(3) of the Constitution. This has been undertaken through the establishment of a comprehensive state-subsidised housing programme with the aim of redressing the legacy of Apartheid (SERI 2019). This comprehensive state-subsidised housing programme comprises a range of subsided housing options for eligible beneficiaries. The Housing Code, an implementation framework of the Housing Act, sets out all the available government housing programmes including the upgrading of informal settlements, the core programmes are the Emergency Housing Programme (EHP) and the Upgrading of Informal Settlement Programme (UISP) (Department of Human Settlements, 2009). Huchzemeyer (2011), notes that the process of formalising informal settlements does not always translate to in-situ upgrading even in cases where this may be achieved. This is often done through roll-over upgrading, or by the relocation of residents to Greenfield housing developments.

3.4.7 EMERGENCY HOUSING PROGRAMME

This programme is focused on the provision of temporary relief in cases of emergencies through the provision of land, engineering services, relocation assistance and accommodation for informal settlement dwellers affected (Department of Human Settlements, 2009). The programme provides assistance to households that find themselves in an emergency housing situation due to reasons beyond their control. These reasons may be as a result of a damaged or destroyed existing structure, a prevailing situation which poses an immediate threat to life, health and safety, or eviction or the threat of eviction such as those caused by acts of nature such as floods or man-made disasters such as fires (ibid.).

The measures provided for in the programme are not meant to act as a replacement for programmes that provide formal housing or housing land delivery but is rather there to supplement and support these programmes. The programme provides for assistance in an emergency in the short to medium term and lays a foundation for a more permanent solution in the medium to long term (SERI, 2018b).

3.4.8 UPGRADING OF INFORMAL SETTLEMENT PROGRAMME (UISP)

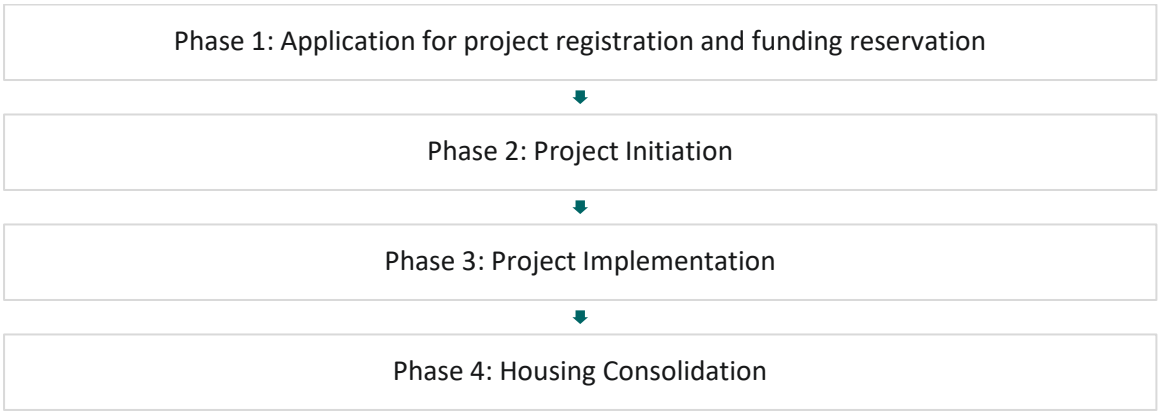
Upgrading of Informal Settlements Programme (UISP) provides for incremental redevelopment or upgrading of informal settlements through the provision of infrastructure, tenure security, and access to basic services through participatory and inclusive processes (Department of Human Settlements, 2009). The UISP is premised on four key pillars which are the security of tenure, in-situ upgrading, health and security, and empowerment and livelihoods. The programme places an emphasis on prioritising in-situ upgrading as opposed to relocation and places relocation as a last resort when there are no other viable alternatives, as relocation is often disruptive (SERI, 2018a).

In order to minimise relocation, an assessment and categorization phase is undertaken as part of the planning phase in the upgrading process, and this includes assessing factors including physical and environmental, land and legal, social and infrastructure and determining the category of an informal settlement based on these factors (NUSP, 2015). There are standard categories that have been set by the national Department of Human Settlements to standardise the categorization of informal settlements. These categories are as follows (Department of Human Settlements, 2009):

- **Category A:** The settlement is viable for full upgrade and the conditions allow for upgrading interventions to be undertaken in the short term, within the next 2 years.
- **Category B1**: The settlement is viable for full upgrade in the longer term as the conditions do not allow for the short-term. Interim basic services will be provided towards permanent services in the long term.

- **Category B2:** The settlement is not viable for in-situ upgrading and would need to be relocated but the relocation is not urgent. Emergency services will be provided while arrangements for a permanent area are being prepared.
- **Category C**: The settlement is faced with significant risk or threat in the current location and relocation is urgent.

The upgrading of informal settlements in undertaken through a 4 phased approached which is structured as follows (Maina, 2013):



In previous years, the implementation of this programme has been found lacking due to two key aspects. The first is a result of focus within the institutional and bureaucratic framework, towards housing provision through building state-subsidised housing in greenfield developments (Maina, 2013). The second stems from perceived conflict between the provisions of the UISP and the fiscal framework which prohibits “wasteful and inefficient expenditure” (Clark and Tissington, 2016: 3).

As a way to address the lack of implementation of the programme, the Informal Settlement Upgrading Partnership Grant was introduced as a window in the 2019/2020 financial year. The grant was included as a new component of the Human Settlements Development Grant (HSDG) from the 2020/21 financial year. The purpose of the grant is to provide funding to facilitate a programmatic, inclusive and municipality-wide approach to upgrading of informal settlements (Eglin, 2019).

The grant has clearly outlined conditions with respect to the requirements for receiving the grant. There are two conditions for first transfer funds and they include 1) an approved informal settlement upgrading plan and 2) a social compact or any other community participation agreement (National Treasury, 2020).

In summary (Eglin, 2019):

- **Phase 1** – The (project) application phase is where the municipality motivates for upgrading of informal settlement funding.
- **Phase 2** – The project initiation phase focuses on the provision of interim or emergency basic services and some form of basic administrative tenure recognition for all B1 and B2 categorised informal settlements.
- **Phase 3** – The project implementation phase focuses on the provision of full permanent engineering services, and improving tenure security (such as pegging plots and rezoning the land) can be taken for B1 informal settlements. For B2 settlements, alternative land is identified and then at least basic interim services and administrative tenure recognition can be provided on this alternative land.
- **Phase 4**, the housing consolidation phase, is not really a phase of the upgrading of informal settlement programme but it is an additional phase where houses are built and title deeds are provided for those people who qualify for a housing subsidy once they have been through the previous phases. For B1 settlements this will be on the land they originally occupied and for B2 settlements this will be on the new land identified for relocation.

There is also what Afesis-Corplan (2022) terms the pre-feasibility phase or phase 0. This is where a municipality conducts the necessary investigations to get to a stage where they are able to categorise all informal settlements in a particular municipal area, and can then start with Phase 1 knowing if the settlement is a category A, B1, B2 or C settlement.

3.5 CONCLUSION

In this chapter I have explained key historical, political, legislative and policy events, structures and frameworks that have influenced the administration of land in South Africa. Through this

analysis, I have shown how the democratic government has adopted a fundamentally colonial and race-based system of land registration and how this has led to occupations of land by a majority of South Africans not being formally registered or recognised. This has adverse implications for land administration as occupations of land not registered on the national deeds database receive little to no services, infrastructure, planning and information systems support, as well as security when land disputes arise.

To further contextualise land administration in South Africa, I give a short description of the institutional structure of legislated land administration and the complexities of actual tenure in practice. The legal and ideological progression of the country's tenure reform programme is also introduced. In the final sections I give special attention to informal settlements in South Africa and applicable interventions, as well as policy and legislation guiding these interventions.

This chapter brings to the fore the fragmented nature of how the people-to-land relationship is dealt with and by consequence the administration of land in South Africa. The chapter signifies a pressing need for the country to deliver a comprehensive, integrated and cohesive system of tenure for all, with a particular emphasis on those marginalized groups living under customary and informal tenure arrangements.

4 CHAPTER 4: METHODOLOGY

This chapter of the research outlines the approach, tools, procedural framework and techniques used in identifying, gathering, and analysing data to better understand the research problem and achieve the overall research objectives (Kallet, 2004). The chapter gives a justification for the method that was used in undertaking the study, the various stages followed, as well as the selection of the case study area, participants and processes of data collection and data analysis.

4.1 RESEARCH DESIGN

As implied in the research objectives and questions, this research is framed as an exploratory inquiry into processes of land administration under an informal system of tenure. A qualitative approach was found to be most appropriate in conducting this type of study as this approach entails a commitment to viewing the events, actions, values, norms, and meanings of specific events as constructed by the participants (Orodho, 2005). According to Yin (2011), the most important sets of meaning are those held by participants in an event or phenomenon. Further, this research approach has been increasingly recognised for its ability to generate non-numerical data that cannot otherwise be obtained through a quantitative approach that measures variables alone (Pathak, Jena and Kalra, 2013). According to Glesne and Peshkin (1992), qualitative research is research premised on the assumption that reality is socially constructed and that variables in a study are complex, interwoven, and difficult to measure. Yin draws on the ability of qualitative research to capture meaning held by participants as a strength and more desirable than the meanings imposed by a researcher in quantitative research.

By framing this study qualitatively, the aim was not to provide absolute truths but rather to empower participants to play an active role in assisting the researcher document and derive meaning on the phenomenon of informal systems of tenure, particularly actors, institutional arrangements and practices, without censorship of the individual opinions and experiences of the participants. The descriptive nature of the qualitative approach allows the researcher to provide a description of the experiences of the participants which according to Meyer

(2001), will either confront or sustain the theoretical assumptions on which the study is based.

In line with principles outlined in the preceding paragraph, this research sought to understand how outside of formal processes of land administration how people secure, manage and use land and how further understanding these lived realities of informal dwellers can improve urban land management and administration outcomes.

In achieving the research objective of documenting the way land is managed and administered in an informal system of tenure, in this case, an informal settlement. The study was guided by the following questions:

"How do people of Kya Sands informal settlement access, secure, hold and administer land outside of formal land administration processes?"

Sub questions:

I. Who are the actors in processes of managing and administering land?
II. What are the established **institutional** arrangements in these land processes?
III. What is the nature of rights, restrictions and responsibilities and how are these managed?

4.2 CASE STUDY

This study necessitated the identification of an informal system of tenure administered outside or partly, of the state's processes of formal land administration. Kya Sands informal settlement was thus identified as an appropriate case study area and an instrument to explore the phenomenon of informal land management in context. A case study is defined by Mugenda and Mugenda (1999) as an in-depth examination of people or groups of people, institutions, or a phenomenon. According to Yin (2009: 18), a case study allows for an empirical enquiry on a contemporary phenomenon and is set in a real-world context, allowing documentation and analysis of processes and outcomes in such context. A case study can be viewed as a typical example or illustration of a phenomenon, group, or individual in context. It should be noted that the use of Kya Sands informal settlement as a case in this study is not

an attempt to generalise about informal land administration systems; however, the knowledge and experience from this settlement allows us to speculate, argue and hypothesise more meaningfully about the nature of informal land management.

Kya Sands informal settlement was selected as a case study area for this study as it represents an appropriate case of an informal system that operates outside of formal state processes, the phenomenon being explored here. The settlement is one of the older informal settlements in the City of Johannesburg and therefore presents an established system of land management practices. The researcher found Kya Sands to be an interesting case as it is located on land owned by private entities as well as the state. The settlement was also of particular interest because there have been several interventions by the state including servicing and relocation of residents to nearby state housing projects with nominal to no impact on the actual settlement itself as the settlement continues to expand.

4.3 SAMPLING

A sample refers to a sub-group of a population whose experiences can be generalised as representing those of the rest of a population (Sarantakos, 2005). In research sampling methods are usually classified as either random or non-random. The method chosen is determined by the purpose of the research and the type of information the researcher seeks to find. Through random or probability sampling techniques a researcher sets a few selection criteria and chooses members of a population randomly. Non-random or non-probability samples are chosen based on an extensive set of criteria including the participants' knowledge or experience of the subject at hand.

I chose to approach the study through non-random purposive sampling techniques, basing the selection criteria for the first group of participants on their membership in an organising community structure such as the residents committee in Kya Sands and their involvement in processes of managing land. This interview took place in a group setting where participants were asked questions specific to the role of the Committee including the basis and process of its formation, its involvement broadly in the community and it involvement in issues of administering land and relationships with other structures outside of Kya Sands informal

settlement such as government or state organisations as well as neighbouring residents' groups and the businesses and organisations surrounding or neighbouring the settlement. I gained access to the Residents' Committee through a resident of Kya Sands who also happens to be a committee member and was introduced to me through prior research undertaken in the area.

The second group of participants were residents of the community of Kya Sands and the criteria was that these people had to have lived in the area for a relatively fair amount of time and be informed about how processes of land delivery and supply in the settlement work. The Kya Sands Residents' Committee assisted the researcher in identifying these participants. The participants are listed in Table 4.1 below.

The same method of non-random purposive sampling was used for the selection of the third group of participants, who in this case were officials of the City of Johannesburg involved in the management of informal settlements at government level. In the sequence of interviews, this group of participants was the last to be interviewed and this is because the focus of the study was to document local practices adopted by communities in the management of land. Through the processes of interviews with the Resident's Committee and residents of Kya Sands, the City of Johannesburg's Housing Department and its officials came up quite a number of times when residents were asked about issues like land registers and land information management prompting the researcher to include this group of participants to corroborate and clarify some of the information and unanswered questions to residents.

Table 4.1 Table of participants (residents of Kya Sands; excluding members of the Resident's Committee and City officials)

Name	Respondent 1	Respondent 2	Respondent 3	Respondent 4	Respondent 5	Respondent 6	Respondent 7	Respondent 8	Respondent 9	Respondent 10	Respondent 11
Gender:	Male	Male	Male	Female	Male	Female	Male	Male	Female	Male	Male
Age:	52	28	34	49	35	41	46	46	43	60	1980/42
Nationality:	South African	South African	Mozambican	South African	South African	South African	South African	South African	South African	South African	South African
Place of origin:	Mpumalanga	Mpumalanga	Maputo	Limpopo	Kwazulu Natal - eMsinga	Eastern Cape	Kwazulu Natal - Kwanongoma	Kwazulu Natal	Kwazulu Natal - Eshowe	North West - Mafikeng	Kwazulu Natal- Tugela Ferry
Languages spoken:	Sepedi and IsiZulu	IsiZulu and Sepedi	Tsonga, Portuguese and IsiZulu	Sepedi and Isizulu	IsiZulu	IsiXhosa	IsiZulu	IsiZulu	IsiZulu	Setswana and a little bit of IsiZulu	IsiZulu
Source of income:	Self-employed Mechanic	Unemployed - Casual work.	Owner of a spaza shop	Unemployed	Government disability Grant and casual work	Government Grant and Casual work	I am not formerly employed, from time to time I get piece jobs. I also build shacks and have rooms for rental purposes	Employed – factory worker at Kya Sands Industrial area	Rental rooms/units	Government grant - Pensioner	I am currently unemployed.

4.4 METHODS OF DATA COLLECTION

A large part of the time allocated for the research was spent on attempts at clearly defining and understanding terminology on land law, land policies, land management and land administration. Prior to commencing field interviews with the committee, residents and City Officials I visited several websites, libraries and had conversations with a number of people operating in the space of informal settlement upgrading and development planning to obtain information about land policies, land laws, land management and land administration.

The initial process then largely influenced what was then to be a second phase to familiarising myself with the topic. This second stage was a comprehensive literature review I conducted on land administration, land tenure and contextual review of land administration in the context of South Africa. This equipped me with knowledge on the current state of this field as well as academic debates around the topics of governance in relation to land and policy and the differentiated types of tenure systems and how these are constituted.

The third phase involved me going on initial site visits to Kya Sands to develop rapport with residents and community leaders. The first point of access was a member of the Residents' Committee who I had previously worked with in previous school projects. Along with this member of the community initial scoping of the area was done to familiarise the researcher with the environment and to note down the state of land development in the area. Through this scoping phase, I initiated conversations with a number of residents to get to get a feel of the type of people I should target to ensure that I get the most reliable information that would aid the study. Ebrahim and Sullivan (1995) argue that in order for a researcher to understand personal meanings and subjective experiences of the people being studied one needs to fully immerse themself in the culture and practices of the community at hand. As the saying goes "When in Rome do as the Romans do". I attempted on these initial visits to be as unobtrusive as possible and when asked what the purpose of me being there was, I was open and self-revealing. These, Ebrahim and Sullivan argue are the fundamentals of conducting research in an unfamiliar setting. They add that, this allows participants and generally the community at large to be at ease around the researcher. Familiarity can be advantageous in learning sequences and pathways that contribute to the meaning of a phenomenon as opposed to piecing together diverse clues about a people. Further, this allowed me to observe real and verbal behaviours of locals as well

as allowing me to acquaint myself with local slang, which can be used to formulate questions in a manner that resonates with the people being investigated.

On approximately nine subsequent visits to Kya Sands, one-on-one semi-structured interviews were chosen as a primary method of data collection for this study as they allowed me to interact with the participants and observe spoken and unspoken cues during the interview process. The semi-structured nature of the interviews allowed for open-ended and in-depth discussions with participants allowing me to probe and understand the complexity of the issue at hand. These interviews were conducted with the aid of comprehensive guiding interview questions (APPENDIX A and B) that were used to mainly guide me through the interview process and ensure that all required fields of information were adequately covered. I conducted the interviews in English and isiZulu as these are the languages participants mentioned they were comfortable with. With the participants' permission, a notepad and a voice recorder were used to record interviews which were subsequently translated into English and transcribed.

A similar process was used to identify City Officials to be interviewed. The initial phase began by visiting the City of Johannesburg Housing Offices to meet with an official responsible for Human Settlement Policy Planning and Research who assisted me in identifying the appropriate Officials that could aid me in the study. One interview with an official of the City of Johannesburg's Housing Directorate was conducted via the Microsoft Teams platform and there the interview was video recorded, while the other was conducted in person with the aid of a voice recorder and a note pad.

4.5 DATA ANALYSIS

While data analysis to de Vos *et* al. (2005) is a process of bringing order, structure and meaning to a mass of collected information, Kerlinger (1986: 319) stresses the importance of interpreting the data collected, as this assists a researcher to describe the phenomenon and bring meaning to the final research product. Thorne (2000: 70) believes that, regardless of the approach, qualitative research analysis involves the central tasks of "synthesising" common themes of people's accounts and descriptions of their experiences, "theorising" about why these common themes appear and finally "re-contextualising" or analysing your findings in relation to how others have theorised the phenomenon before.

During the initial stages of processing the data, information collected from individual interviews during the study was transcribed onto Microsoft Word. A spreadsheet was created to synthesise and divide the data into common themes, where the researcher identified similarities and differences amongst the study sample relating to responses given during interviews as well as factors such as age and gender of respondents. Strict confidentiality was applied as the files could not be accessible to anyone else but the researcher unless legitimate circumstances arose.

4.6 LIMITATIONS TO THE RESEARCH

The study was limited to looking into the practices of only one informal settlement and a limited sample size. This means that the personal views expressed by respondents are not a representation of the views of the whole population. Further, the information gathered cannot be generalised to all informal settlements as each community addresses the issue of land administration differently and the degrees of state involvement vary. A comparative study of land administration in practice in different informal settlements is therefore recommended as an area for further research.

A further limitation to the research was translating my questionnaires written in English to isiZulu. I attempted to make the interview questions as simple as I could but however had to translate in most cases. The issue was that some terminology used was not easily translatable to isiZulu and in two cases I had to ask questions by giving examples. This may have constrained responses by participants because the questions may have been leading the respondents to an answer.

4.7 ETHICAL CONSIDERATIONS

As it is understood in this research ethics are morals, principles and norms which guide us when conducting research. I took into consideration that this study involved people I considered that this may lead to expectations by some of the respondents. I, therefore, during my research did not raise expectations of respondent households or promise them any form of compensation for participating. It was made clear that the purpose of the research was for an academic project.

The respondents' rights to privacy and anonymity were respected and it was made clear that participation was voluntary, and respondents could at any point end interview if they felt uncomfortable with carrying on. Respondents were also given the option of signing consent forms

which will serve as a record of their participation in the study. Some respondents refused to sign consent forms despite being informed that there participation in the study would remain anonymous. In these instances they did however give verbal consent. Where work that is not my own is used including photographs, written work and/or maps I have acknowledged the authors.

4.8 CONCLUSION

This chapter sought to unpack the process followed in conducting this research. In conducting the research I chose to take a qualitative approach with the use of Kya Sands informal settlement as my case study. The intent was to contribute to the creation of knowledge in areas of urban planning and land administration by showing how under an informal land supply and demand process land and housing land transactions are conducted, who the parties involved are and their roles, as well as the nature of rights, restrictions and responsibilities on the ground. In this light, I considered the single-case study I used appropriate to produce in-depth knowledge of the subject matter however with the understanding that this is complex topic and that the case study is generalisable only in its own capacity. Here the case study approach offers a basis for learning instead of using and applying abstract rules and theories to assist us in moving away from binary ideas about formality and informality (Watson, 2002; Alvarez, 200).

In the preceding chapters, chapter 2 and 3 I provide an explanation of how formal and informal relationships in land administration unfold generally and narrow it to the context of South Africa to place the reader in context but also to show in the following two chapters where in Kya Sands informal settlement I may have picked up similarities, overlaps and differences. I found that using the functions of land administration land tenure, land value, land development and land use as my conceptual framework would be useful in helping to organise my study findings and analyse processes of land administration in Kya Sands.

I further highlight the techniques I used in selecting a subset of the population in Kya Sands I interviewed to get a representative number of people that I could generalise and make inferences about the area and the nature of how land is managed and administered from. I also highlight how the data was collected and how it will further be analysed. In the last two sections I highlight some of the challenges encountered while conducting the research as well as the actions taken and

considerations that needed to be made in order to ensure that information was gathered in the most ethically way.

5 CHAPTER 5: THE CASE OF LAND ADMINISTRATION IN KYA SANDS INFORMAL SETTLEMENT

This chapter introduces findings from the study into the actors, procedures, and institutions involved in managing and administering land in Kya Sands informal settlement (herein referred to as just Kya Sands or the settlement). The findings draw on qualitative interviews conducted over several visits to the settlement where members of the Kya Sands Residents Committee and community members were interviewed.

The chapter attempts to unpack the nature of land administration in Kya Sand informal settlement using the 4 functions of land administration namely, land tenure, land value, land development and land use. The areas to be covered in this section of the report aim to document how in the context of Kya Sands informal settlement the institutional environment is arranged, how land is accessed, what perceptions of tenure security are in the settlement, the nature of land-use, land development and the levels and access to services in the area. The first part is a description of the settlement based on primary and secondary data sources.

5.1 LOCATION OF THE CASE STUDY AREA

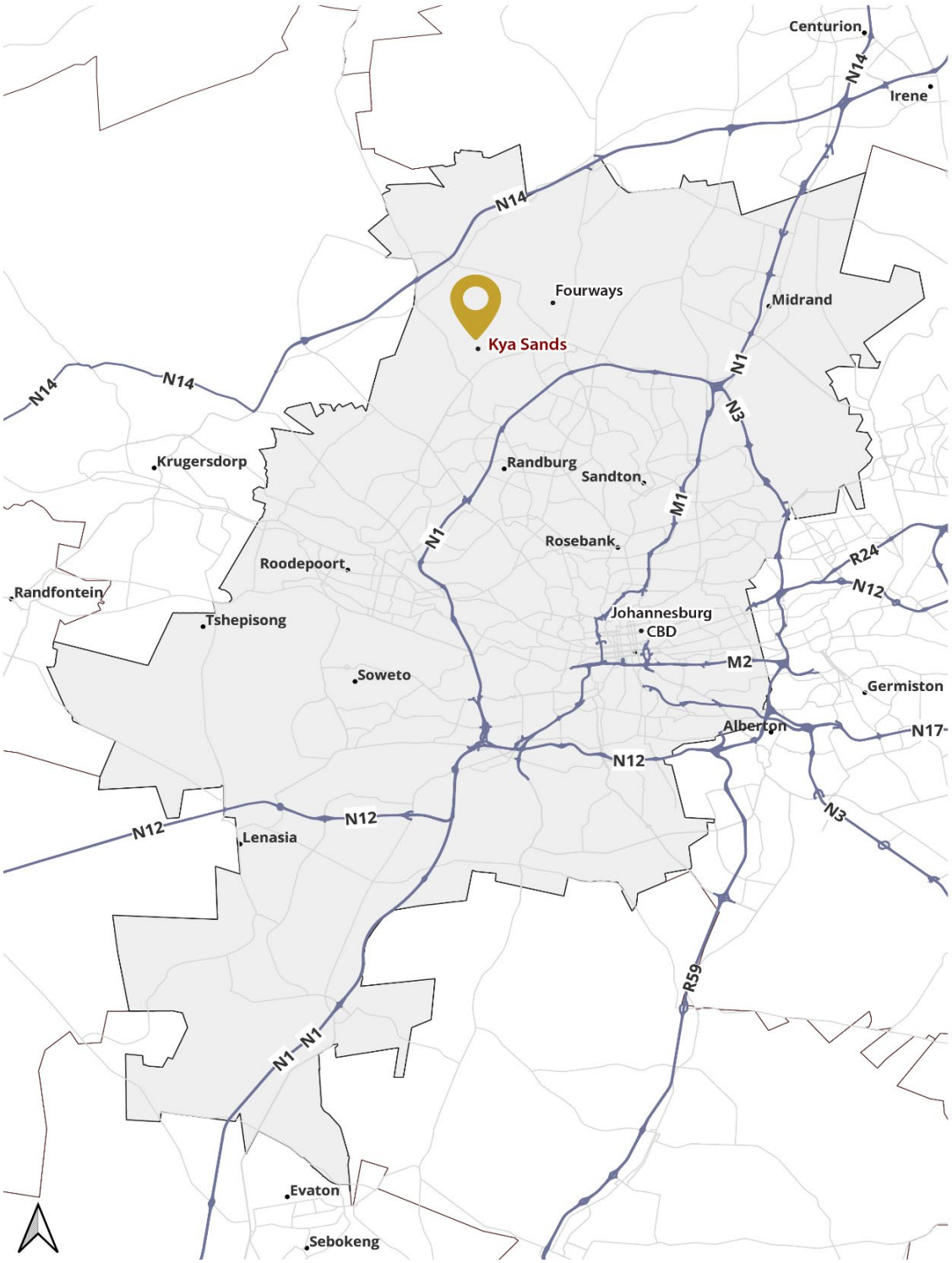


Figure 5.1 Kya Sands in the context of Johannesburg

Kya Sands informal settlement is one of the informal settlements that make up the 320 informal settlements officially listed within the City of Johannesburg Metropolitan Municipality (Personal communication, COJ Housing Official 1, 2022). The settlement is located approximately 35 kilometres north of the Johannesburg Central Business District and is bordered by the Kya Sands Industrial Area to the west, the suburb of Bloubosrand to the east and the old Randburg Landfill Site to the south.

The settlement is located within Wards 115 and 134 of Regions E and C of the City of Johannesburg Metropolitan Municipality's (COJ) administrative regions. The settlement is divided into Sections B and C also known as Old Madala Side and Sections A, D and E also known as Pipeline. The term 'madala' in Nguni languages is an affectionate term used to refer to an old or aged person, in the context of Kya Sands informal settlement the term is used to refer to the oldest part of the settlement where the initial occupation of the land took place. The name "Madala Side" then moved with some residents who were relocated on recommendation by the COJ from Section B to Section E because of concerns over these dwellings being located below the flood line of the North Riding Stream.

5.1.1 A DESCRIPTION OF THE SETTLEMENT

The origins of the settlement can be traced back to the late 1980s as an area that provided informal shelter for people who worked in the neighbouring Kya Sands industrial area, as well as subcontractors who worked at the Randburg Landfill Site. The settlement has gradually developed on vacant land that spans eleven properties owned privately and by the government at municipal and provincial levels. Table 5.1 and Figure 5.2 shows the ownership of the land in Kya Sands.

Table 5.1:Registered Ownership of Land in Kya Sands (COJ, 2022)

Property	Ownership		Size (hectares)	Zoning	Ward
Erf 24 Trevallyn AH (69/193)	Glade Sand and Brick Works Ltd.	Private	2,8717	Agricultural	134
Erf 23 Trevallyn AH (68/193)	Glade Sand and Brick Works Ltd.	Private	2,7602	Agricultural	134
Erf 36 Trevallyn AH	Holding Thirty Six Trevalyn Pty Ltd.	Private	3,0207	Agricultural	134
Ptn 105 Farm 193-IQ	Ryncorp Projects CC	Private	3,015	Special	134

Ptn 58 Inandan AH	Plot 81 Valley Settlements CC	Private	3,234	Agricultural	134
Ptn 1/108 Kya Sands	Randburg Municipality	Local Government	0,2232	Industrial 1	134
Ptn 2/108 Kya Sands	Randburg Municipality	Local Government	0,3069	Industrial 1	134
Ptn 3/108 Kya Sands	Randburg Municipality	Local Government	1,633	Industrial 1	134
RE/108 Kya Sands	Randburg Municipality	Local Government	3,0381	Public Open Space	134
RE/46 Houtkoppen 193-IQ	City of Johannesburg	Local Government	29.89	Agricultural	134
Ptn 51 Houtkoppen 193- IQ	Gauteng Department of Infrastructure Development	Provincial Government	44.8	Agricultural	115 and 134

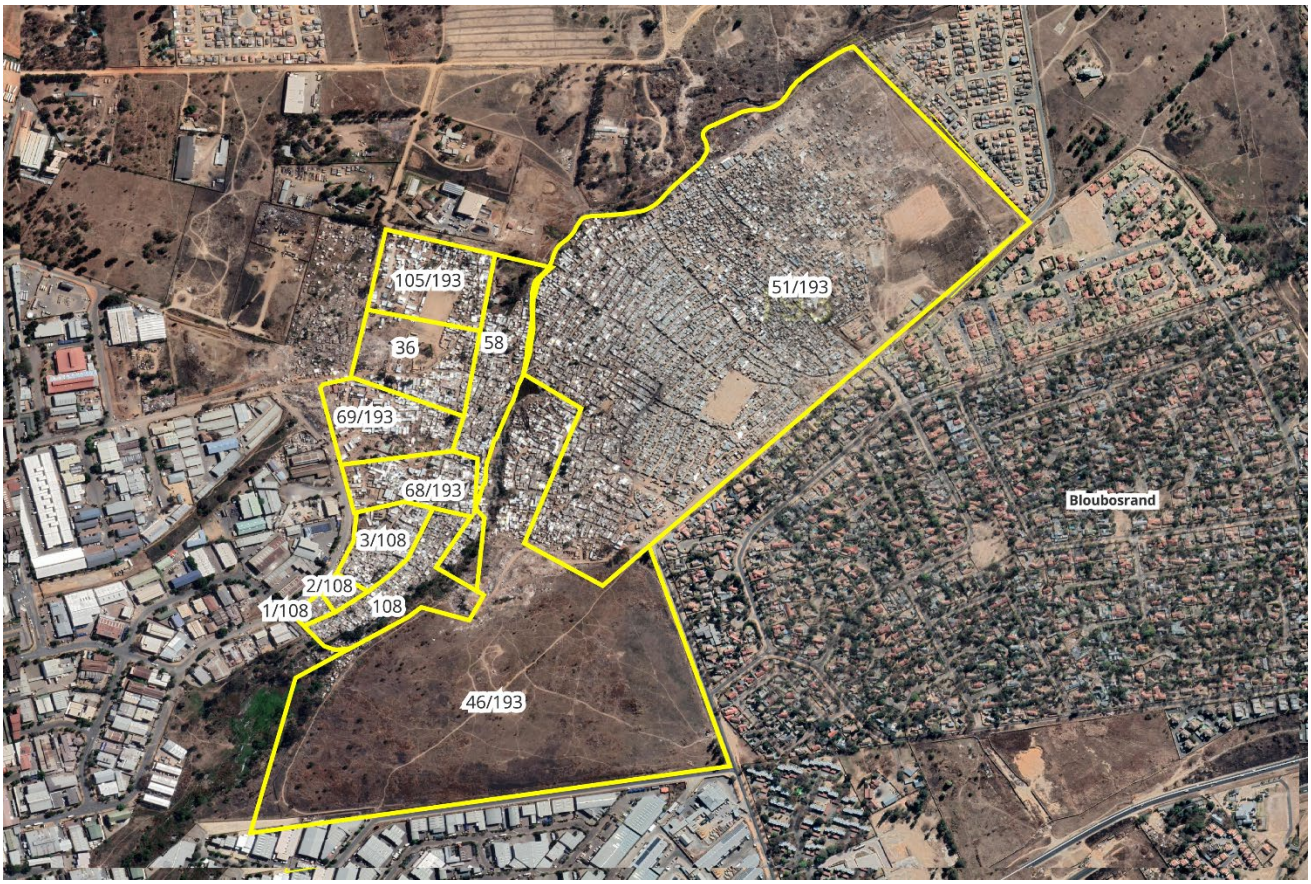


Figure 5.2 Erven and farm portions (adapted from Google Maps, 2022 based on Official data from the CoJ (2022))

Similar to the year of establishment, data on the population size of Kya Sands remains elusive. Huchzemeyer (2011), notes that due to the informal and everchanging nature of informal settlements, data is not easily collected and even when collected this information rapidly becomes outdated. Although the settlement has grown enormously since then, in 2007 the COJ (2007) estimated a figure of more than 7500 people living in 1200 dwelling units. The Professional Mobile Mapping (cited in Weakley, 2013) estimated 16,000 people and the latest figures suggest over 16,238 people, living in 5325 dwelling units (Adegun, 2019). When speaking to the members of the Kya Sands Residents' Committee it is believed that in Section B and C alone there are over 10,000 people constituted by South African, Lesotho, Malawian, Mozambican, Tanzanian, Zimbabwean and Nigerian nationals.

The settlement is characterised by a high density of structures made up of individual family dwellings, a large number of rental units and local spaza shops. On average, I noted that these structures are located 1-1.5 metres apart. The natural environment appears heavily degraded especially as one moves towards the centre of the settlement where Sections A, D and E are separated from Sections B and C by the Northriding Stream. The community has access to the most basic services including communal standpipes meant to provide water for a number of households. From my observations, these standpipes have not been adequately maintained as many of them were heavily leaking and creating burrows in the ground. There are also sets of communal chemical toilets which the Residents' Committee indicated are shared by a number of households and are regularly serviced by members of the community employed by a service provider Supreme Sanitation CC appointed by the City's Joburg Water SOC Limited. The settlement is heavily littered with household waste such as plastic bags and other waste blown into the settlement from the nearby dumping site which according to Pikitup is only open for builder's rubble disposal, however, the site is still being used by companies and people from surrounding suburbs to dump other forms of waste products. Further effluent and waste is channelled towards the settlement and the Northriding Stream from the Kya Sands industrial area.

Figure 5.3: Leaking standpipes (Source: Hopa, Kya Sands, 2022)



Figure 5.4: Communal porta-potties (Source: Hopa, Kya Sands, 2022)



Figure 5.5: The course of burrows created by water (Source: Hopa, Kya Sands, 2022)



Figure 5.6: Household waste scattered throughout Kya Sands (Source: Hopa, Kya Sands, 2022)



5.2 ACTORS IN MATTERS OF LAND AND THE INSTITUTIONAL ARRANGEMENTS

The study identified a number of actors with varying degrees of involvement and influence in processes of land administration in Kya Sands. These actors include residents, a community-level structure, local government institutions and others that will be explained in this section, with overlapping, complementary and to some extent, antagonistic functions.

5.2.1 THE RESIDENTS' COMMITTEE OF KYA SANDS

The first point of entry into the actors in land administration processes in the settlement is the Residents' Committee of Kya Sands. It should be noted that since 2016, Kya Sands informal settlement falls within two separate wards and now two regions of the City of Johannesburg Metropolitan Municipality's 7 administrative regions. This is a result of ward delimitation processes of the Municipal Demarcation Board which take place at five-year intervals before local government elections to equally distribute voters across the different municipal wards in the city. Because of this separation, the Committee is now split between two jurisdictions distinguished by municipal wards. According to members interviewed this split has caused a degree of disintegration of the Residents Committee of Kya Sands. The Residents' Committee of Ward 134 is responsible for Sections B and C of the settlement while the Residents' Committee of Ward 115 is responsible for Sections A, D and E. This study focused on land administration in Sections B and C (Ward 134) of the settlement.

According to members, this has been a long-standing community structure elected by residents of the Kya Sands in the year, 2000. According to members interviewed, this Committee was initially made up of 15 members, some of whom have passed on, while others according to the committee members interviewed are inactive. Present during the interview were 4 female Committee members who indicated that they have had to share roles and responsibilities equally to make up for these absent members. When asked about how the committee was formed, one committee member responded by saying,

> *"The community first suggested who they wanted and then those people were shortlisted, some members though are very inactive when it comes to many serious issues, especially the men." (Personal communication, Residents' Committee Member 2, 2022).*

When asked about their role in the community the Residents' Committee members indicated that they are tasked with identifying community needs, sourcing sponsors and aid for the community from churches, private individuals and companies and firms located in the Kya Sands Industrial area.

In relation to land, the Committee indicated that they are expected to provide residents with proof of residence, enforce rules agreed on by the community and assist the community in resolving issues related to stand boundaries and other types of conflicts. According to the Committee, a common issue that arises with boundaries is when people build their shacks too close together and do not allow space for passages where emergency services like paramedics would be able to gain access. Further, the committee is tasked with managing issues of people who move into Kya Sands unauthorised. 'Residents' Committee Member 1' indicated that they work with the City to try and discourage more people coming in to squat in the area. They also get involved in processes of shack numbering and enumeration, as well as, helping residents register on the COJ Housing's database.

When asked, how complaints and disputes regarding land are resolved, all respondents confirmed that the Committee handles these issues through negotiation with parties and when common ground cannot be reached things are often escalated to the Police who then come back to the Committee to resolve issues amicably:

> *"There are meetings that are held to address the disputes. The Committee will hear the issue and decide on the matter at hand." (Personal communication, Respondent 2, 2022)*

> *"The committees bring the two parties involved and the issue is discussed and after that, a decision would be taken." (Personal communication, Respondent 4, 2022)*

> *"They are solved by the Committee and if you are still not happy with the decision that was taken you can escalate the matter to the Police. They will however come back to the Committee to find a better solution for all parties." (Personal communication, Respondent 9, 2022)*

When asked about their challenges as a committee in carrying out their responsibilities related to land it was indicated that people no longer come directly to the Committee to negotiate access because they know they will be refused. There is an agreement between the Committee and the City

that no more people should be allowed to put up shacks. However, deals allegedly happen on the side via Committee members as well as the Committee of Ward 115 which oversteps agreed boundaries. Residents Committee Members 1, 2 and 3 explained:

> *"You know how we are as committees. You will see someone who has put up a new shack. When you go ask them why? They tell us that they got permission from the Committee. When we follow up, we find that some of our committee members here in Sections B and C are given R2000 or R3000 on the side. What can we do? Because sometimes you will find that it's a woman with children and she tells you she has nowhere else to go. So, we just leave them, but we tell the person that Housing does not want new shacks here and when we do shack numbering to update the list at Housing, we skip them. You will see! Some of them don't have numbers or stickers on the doors." (Personal communication, Residents' Committee Member 2, 2022)*

> *"Sometimes when you ask a person where they got permission to build they mention the name of a member of the Residents' Committee from 115. When you ask the person, they tell that no I just saw a space and could not turn this person away." (Personal communication, Residents' Committee Member 3, 2022)*

> *"We had an agreement with Housing after people were relocated to Section E that as the Committee, we would not allow any new structures." (Personal communication, Residents' Committee Member 1, 2022)*

5.2.2 THE OFFICIALS OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

In addition to the Residents' Committee, one of the key role players in the administration of land in Kya Sands have been officials of the City of Johannesburg Municipality. According to City officials interviewed, the involvement by the City and its officials in Kya Sands informal settlement is linked to the Constitution of the Republic of South Africa, 1996 and the mandate it sets out for local government, national government policies and programmes, as well as an initiative by officials under Region A to build working relationships with the community and proactively manage all informal

settlements within their jurisdiction. When asked about the City's rationale for getting involved in informal settlements and in particular Kya Sands, Officials gave different responses:

The first response was from a senior Housing official who linked the City's involvement in informal settlements generally to broader national and local level policies and programmes. Namely the Upgrading of Informal Settlements Programme and the COJ's Regularisation Programme, however noting that Kya Sands was not a settlement earmarked for Regularisation under the City's Regularisation Programme because of the complexities associated with the nature of landownership and the fact that a majority of the land occupied by Kya Sands informal settlement is privately-owned land.

> *"As a City, we have different responsibilities, one of them is property management. So, you know one of the activities within property management is to continuously count the number of occupants and you'll know the Constitution locates certain responsibilities to the City, look at Chapter 7 it's very specific. We are expected at the local level to provide services, we are therefore compelled to continuously verify and monitor the number of occupants within informal settlements with a view to increase or rather to provide them with what we call rudimentary services.*
>
> *There's a document that is called Upgrading of Informal Settlements Programme. It's one of the 16 programmes contained in the National Housing Code. We also draw from the National Upgrading Support Programme which is one of the tool kits that national* [government] *introduced for cities to standardise their responses within informal settlements, that's where we draw our mandate from when we upgrade informal settlements. Other than that, the city around 2008, introduced Annexure 9999 within its land-use scheme, the idea was to regulate certain spaces and try to shorten township establishment processes. They introduced a policy called Regularisation at that time. The city termed that the In-between Township Establishment Processes and Formalization. I can confirm that Kya sands was not included as part of the settlements in the Annexure 9999. I am not sure if you have specifics or you know what is happening in Kya sands in terms of ownership of property" (Personal communication, COJ Housing Official 1, 2022)*

In an interview with an official responsible for operations in Region A it was indicated that as part of their approach to managing informal settlements they sought to manage and curb growth of Kya Sands and to stop further encroachment onto privately owned land in collaboration with the community. This was done through the enforcement of a number of development controls in conjunction with the community and the Johannesburg Metro Police Department (JMPD). This process included the registration of residents and their shack numbers on the Regions database and the issuance of registration slips to legitimate residents of Kya Sands. As part of their process of managing the settlement the Regional Office of the CoJ also assists community members apply for state subsidy housing.

> *"So, by law we only have to communicate with the ward councilor and the ward committee and remember the committee is only an advisory board. It is always beneficial for ward committees and the* [informal settlement] *leadership to work together, but now you will find that maybe the person who has the portfolio for housing in the ward committee is staying in another informal settlement and then they'll say that you're not going to come here and tell us what to do. Managing informal settlements and what happens inside the settlement, for me, should start with the community and not policy or whatever. They don't understand policy and all of that. So, for me personally it starts with the community and building a relationship with the community and making them understand that they must take care of their environment. I don't live there you do. Take care of your environment. Don't expect somebody else to do it for you. You don't impose. It's the same when you are doing your UISPG* [Upgrading of Informal Settlements Partnership Grant]. *You go to the people and show them the outline of the settlement, how do you see it looking. They must come up with the ideas. When you start planning not everyone will be accommodated, let them come up with the solutions." (Personal communication, COJ Region A Official, 2022)*

The community of Kya Sands indicated that they have built strong relationships with several government institutions included in the following table and further expanded on in the chapter:

Table 5.2: Summary Table of Actors in Kya Sands

Sectors	Actors	Activities	Interests
Community-based organisations	Kya Sands Ward 134 Residents' Committee	– Allocation of sites and *de facto* land and property rights – Enumeration and shack numbering – Control land development – Land dispute resolution	Securing the community's tenure and rights
Settlement residents/structure owners	Structure and stand owners	– Using land for residential and business purposes – Building rental units and Collecting rent	Protecting their investment.
	Residents (owner-occupiers)	– Appointment of Residents' Committee – Access to services – through community projects where money is put together for certain things including a community night watch and building drainage systems.	Securing their rights.
Government organisations	Ward Councilors and Ward Committees	– Represent the municipality at the ward level. – Represent the ward at Council.	Service delivery
	COJ: Housing Directorate (Region A)	– Enumeration and shack numbering to keep a record of numbers in Kya Sands. – Allocation and relocation of people to state subsidy houses.	To keep track of the size of the settlement. To de-densify Kya Sands.
	Joburg Water	– Provide the community with standpipes and water. – Provide the community with bucket toilets through a service provider (Supreme Sanitation CC).	Service delivery
	Pikitup	– Occasionally assist the community with cleaning up and collecting waste in the area.	Service delivery

	Douglasdale South African Police Services	– Assist the community in resolving disputes on many issues including the writing of affidavits as agreements when people sell each other shacks. – Registration of Residents' Committees and committee members to liaise with on issues of crime.	Building working relationships with the community.
	Johannesburg Metro Police Department (JMPD)	– Enforcing development controls – Issuing of contravention or administrative notice.	Control illegal development

5.3 LAND TENURE IN KYA SANDS INFORMAL SETTLEMENT

5.3.1 ACCESSING AND ALLOCATING OF LAND IN KYA SANDS

In a story relayed to the researcher by Residents' Committee Member 1 who has lived in Kya Sands since 1989, the settlement was initially accessed by waste pickers who moved between a number of dumping sites around Johannesburg, Pretoria (now City of Tshwane Metropolitan Municipality) and the East Rand (now City of Ekurhuleni Metropolitan Municipality) in search of food, paper and other items they could consume, use, recycle or sell. Because of overcrowding and the closure of other dumping sites, the Randburg Landfill Site became the preferred site for some of the waste pickers who then decided to settle in the area with their children. The initial occupation of the site was at the old Madala Side, now known as Section B, located on land belonging to the government, without permission. As the word spread about the newly found site, the number of people moving into the area grew from the initial number of 67 waste pickers to include people moving into the area from various parts of the province and other provinces in search of work opportunities in the Kya Sands Industrial area and other neighbouring areas. With this growing number of people, the settlement began to encroach onto privately owned land, also without the permission of the landowner.

Through further interviews with members of the Residents' Committee and individual residents, the three recurring methods people have used to access land in Kya Sands have been a.) through kinship,

moving in with family members and friends who live in Kya Sands informal settlement; b.) through rentals and c.) through the allocation of sites by the Residents' Committees.

From discussions with residents, it became clear to the researcher that family and friendship ties have played a very important role in how many of the residents interviewed came to access and integrate into Kya Sands informal settlement. Of the 15 residents interviewed, all indicated that they ended up in Kya Sands because of family members or friends, either by referral to the Residents' Committee and owners of rental units or by moving in with a family member or relative.

6 out of the 15 respondents indicated that they had moved from their ancestral homes in former homeland areas to the settlement to stay with family members who already resided in Kya Sands while they searched for jobs. 3 of the 6 respondents continue to live with their family members and have either built their own structures or occupied existing structures within their family member's yard.

A further 3 of the 6 respondents who initially moved in with family indicated that they have moved on to acquire their own stand within Kya Sands through the Residents' Committee or rent for a fee from someone else who has built rental units or rooms within the settlement.

One of the respondents Cosmos, went on to inherit his uncle's property after his uncle's death. When asked about why he moved to Kya Sands and if he still resides with the first person he moved in with. He responded by saying:

> *"I came here from Natal to try and build a better life and look for opportunities. You know when we come to eGoli you have to know someone. Fortunately, my uncle already stayed here. So, I moved in with him. I took over from him when he passed on 2 years ago." (Personal communication, Respondent 8, 2022)*

For one respondent, Respondent 3, the move to Kya Sands was from his home country Mozambique, motivated by his relatives who lived in South Africa and seemed to be doing relatively better than they were back home in Mozambique. When asked about his decision to move to Kya Sands, Respondent 3 said:

"I am from Mozambique. I moved here because my family was here and they had a shack, so when I came, they are the ones who welcomed me. I started by renting a shack before I got my own place. I now have my own place which I live in with my, wife and children." (Personal communication, Respondent 3, 2022)

For one resident, 28-year-old Respondent 2 the move to Kya Sands was not of his own will but because of his parents:

"Well, I didn't choose to come here, it was my parents who came here seeking a better life and at that time I was very young. I have been here for 26 years of my life. We moved here from Daveyton." (Personal communication, Respondent 2, 2022)

Family members and friends have also taken on land brokering roles between people looking for a place, owners of rental units and the Residents' Committee. The remaining 7 of the 15 respondents indicated that they had moved from other parts of Johannesburg to Kya Sands for the following reasons: to be closer to work; needing their own space because they were previously staying with family or a friend; land in Kya Sands was easy or cheaper to access, and others moved to the settlement because of the threat of eviction or eviction by the demolition of their structures in their previous places of residence. All 7 respondents indicated that they were referred to the committee or an owner of rental units by a friend or family member who lives in the area. Those who were referred to the Committee then went on to negotiate the allocation of a stand with the Committee. Those referred to stand owners with rental rooms or units then went on to negotiate rent with the landlord.

The researcher questioned the Residents' Committee on how their decision-making process on land allocation works and asked if there is still land available to allocate to new people. The Committee indicated that there is no longer space for new allocations and that they try as much as possible to discourage new people from coming in and setting up houses along the riverbanks even though some committee members end up illegitimately giving people space.

"No there is no more space for allocating land, but people get space to rent from people with rooms. Those that came earlier are the ones that own stands, a person would find space and build before it became full but now it's just rentals only. With rentals a person

discusses with their landlord how they will rent and all their other arrangements" (Personal communication, Residents' Committee Member 2, 2022)

"When allocating stands preference was given to the old residents who were previously renting or children who grew up here and were living under their parents." (Personal communication, Residents' Committee Member 1, 2022)

When asked if any records have been kept of allocations the Committee indicated that:

"Information would be written down then submitted to Housing. The Information is no longer frequently updated because there is no more order on how people get land or houses, Housing does come from time to time and keep things updated. We had our books but stopped keeping records of many things once people started doing things without consulting the committee, now those are kept by the department of housing." (Personal communication, Residents Committee Member 4, 2022)

This was confirmed by City officials interviewed who indicated that records were kept and residents were issued registration slips by the City. However, these slips would be revoked or cancelled when someone is found to be contravening development controls. Officials indicated that regular shack numbering was done in the settlement in order to keep up to date information on the number of structures in the settlement, as well as to manage the growth of the settlement and to distinguish between people who are legitimate residents of Kya Sands and those who were invading the land and not recognised by the residents and Resident's Committee as members of the community. The information was further used to assist the City in pre-screening processes for the allocation of state subsidy housing to people who qualify.

"It was for our databases because we must have a database of who is staying in our informal settlements. Two, it helps us with prescreening, when you're planning for a project because you can take that information, do prescreening so you can see what your split is. To determine that so many are on the waiting list, who would qualify, others we would have to look at another type of housing typology for them so it's that and then also for when they want proof of residence, we are able to access the files. And what we have been doing with that information is so that when people come to the office in Diepsloot

we know that we are targeting these informal settlements. And then also the 1996 story of the war veterans and people with disabilities. You know there are people who think high blood is a disability some people think HIV is a disability, TB is a disability, no it's not a disability. So, then we also refer to those files to say if you're staying at a certain shack number, we then check what was written on the top of the application and have to verify." (Personal communication, COJ Region A Official, 2022)



Figure 5.7 A copy of a registration slip issued by the City to a resident that was later revoked for contravention of development controls (source: COJ Region A Official, 2022)

5.3.2 LAND RIGHTS

As discussed in the preceding section, the initial occupation of Kya Sands informal settlement was without the permission of the landowners. There is agreement across the board from the residents interviewed to the Residents' Committee that this essentially means they are illegally squatting and illegally subdividing privately owned and unalienated government land. When asked if they know

who owns the land Kya Sands informal settlement is built on some residents gave the following responses:

> *"Asikho la ngokusemthethweni (we are not here legally). There is an owner of a part of Kya Sands. He comes here now and then to scare people and tells them he will remove them from here. His name is 'Spikiri'. He once came here with the Red Ants to demolish people's shacks. As they were moving in that direction with the Red Ants, behind them people were already putting their shacks back up." (Personal communication, Residents Committee Member 1, 2021)*

> *"We don't own this place or our stands. The place is owned by someone else who then went on to have an agreement with the government to let people stay here for 15 years. But they only own a section of it, the other part is owned by the government." (Personal communication, Respondent 2, 2022)*

Based on these discussions, the land tenure of the of Kya Sands informal settlement can be categorized as informal and the rights enjoyed by residents *de facto* (squatting on unalienated government and privately owned land).

Three respondents indicated that allocation was noted down in an affidavit signed by both parties (applicant and Residents' Committee) at the Douglasdale Police Station. While the rest of the respondents indicated that there was no form of written contract and that agreements with the committee were verbal. Upon being allocated parcels residents indicated that they have a wide range of rights including the right to own structures; to use the land for residential and/or business purposes; the right to let or rent out a part or parts of one's premises, as well as the right to sell and in the case of death or relocation bequeath their structures to family members.

> *"When someone passes on depending on whether the Committee can locate the family or not. The family will then come and maybe decide if they want to sell the property or not. The family will come to take over or in my case, I have children my stand will be left for my children." (Personal communication, Respondent 9, 2022)*

However, sales are prohibited if someone is being relocated by the City's Housing Department to state subsidy housing. A member of the Resident's Committee indicated that when someone is relocated, they are required by the City to demolish a structure and send proof to housing officials of this demolition.

> *"I take part in the relocations process, after your house has been processed, the assigned I have to go and take photos of it, you will then be called to the Housing office in Diepsloot. After that city officials will inform you about all rules you need to follow when you settle in the area you are relocated to and as well as your relocation date. You are then asked to remove your belongings and your shack will then be demolished. I must take pictures of the demolished shack and send it to Housing to show that we have taken down the shack." (Personal communication, Residents' Committee Member 1, 2022)*

According to the Residents' Committee, when someone has been relocated by the City their responsibility is then to ensure that no one else comes to occupy that vacant space. City Officials indicated that in cases where people are relocated from various informal settlements to state subsidy housing projects service providers are appointed to carry out the relocation processes.

5.3.3 PERCEPTIONS OF TENURE SECURITY

Confirmation bias is identified as one of the most pervasive forms of research bias. Althubaiti (2016) defines this as a psychological bias where a researcher goes into the field holding preconceived ideas about a particular subject matter which may cause them to ignore or overlook contradictory evidence collected during the research process. Going into the case study area I had subconsciously formed a hypothesis of how participants would respond particularly to questions about their perceptions of tenure security and the likelihood of eviction. This bias came about as a result of previous literature on informal settlements I had been exposed to and the common assumption that people living in informal settlements feel insecure about their tenure status. I was taken aback by a majority of the responses the research participants gave. The quotes below represent the responses received from members of the Residents' Committee and the residents themselves when asked if at any point they ever consider that they may be evicted by the City or private landowners.

"We used to fear but now a lot of people have been here for a while. People no longer fear being evicted because they know that the city would have to offer them houses or other alternative accommodation." (Personal communication, Residents' Committee Member 1, 2022)

"If municipal officials had to come and remove me here, they must tell me where they are taking me. The law says you must remove someone before 48 hours, and we have been here for years. We have built now, and there are a lot of us it's impossible to just come and remove all these people at once." (Personal communication, Respondent 1, 2022)

"It's been a while since I stayed here, it won't be easy for the municipality to remove us now. The fact that we have been occupying this place for a while gives us a guarantee that we won't be forced out of Kya Sands, even if we are, we won't leave" (Personal communication, Respondent 2, 2022)

"No, because we have been occupying this place for a long time. We protect each other most of the time, so I do now there is nothing that can happen to me or anyone that is. No one can force us out" (Personal communication, Respondent 4, 2022)

"No, I don't think so, but I do wish to move out to a place better and safer than this one. The City has been coming here on a number of occasions to number our shacks since 2005. They have even built us a bridge. They would not just come and remove us without finding us alternative places." (Personal communication, Respondent 6, 2022)

"I don't think so, if the city wants to remove us, they will give us houses. Even those white people who may want their land back must give us houses. The law does not allow anyone to just come and remove you from your place. Especially because we have been here for a very long time. I personally have been here for 22 years. Back then there were these people called the Red Ants, so back then we did not want to build using brick because we did not know when they would come and remember the land is not ours" (Personal communication, Respondent 9, 2022)

It is clear from the resident's responses that their perceptions of their level of tenure security are influenced by the length of their stay in the settlement, their relationship with the city and their knowledge that there are laws that protect them from being arbitrarily evicted without some form of alternative accommodation or placement into a government subsidy house. For some the minimal level of housing improvement is influenced by the promise of relocation and allocation of subsidy housing at the Riverside View, Cosmo City and Lion Park Mega Housing Projects. Residents' Committee Member 2 did indicate, however, that they would still want some level of legal recognition and improved services from the government to settle in the area properly and permanently. Frustration was raised by residents about the constant shack numbering that has been happening since 2005 without any tangible results.

5.4 LAND DEVELOPMENT

A number of interventions have been planned, executed and announced by the City, as well as provincial and national government. At the national and provincial levels, interventions into Kya Sands have been limited to visits and the announcement of plans by political office bearers. The City has been most involved in matters of land development through a number of interventions which will be detailed below.

Gauteng Provincial MEC for Cooperative Governance and Traditional Affairs, Jacob Mamabolo issued a media statement in response to service delivery protests by the Kya Sands community in 2015. He announced that the province, the City and the National Department of Water and Sanitation were working on the roll-out of bulk infrastructure as part of a multi-billion rand Mega Project. The MEC promised the project would deliver over 15,000 mixed housing clusters under the Lanseria and Cosmo City Mega Projects and the settlement would benefit from these two projects (Gauteng Human Settlements, 2015).

At national government level, in a reply to a question put forward in the National Assembly in 2016 to Human Settlements Minister Lindiwe Sisulu, the Minister announced that not enough land is available to upgrade Kya Sands informal settlement in-situ. As a result, some residents of Kya Sands would be relocated to the Lion Park Project to be located on the Nietgedacht Property near the Lanseria Airport. According to the Minister, this intervention is intended to ease pressure and

densities in the settlement along with other informal settlements. The remainder of residents not relocated will then be upgraded in-situ. The minister had indicated that planning for the project was underway, and that development would commence in the 2019/2020 financial year (Department of Human Settlements, 2016).

At the local government level, the City of Johannesburg Metropolitan Municipality has taken a more nuanced approach to interventions through the provision of basic services in Kya Sands. The most recent significant intervention noted by the Residents' Committee has been the construction of a pedestrian bridge that connects Sections A, D and E to Sections B and C. The Community also noted the standpipes and bucket toilets in the settlement to be interventions by the City. The Residents' Committee has also mentioned that the city assists them to keep a record of the number of households in the area excluding those that were not permitted to reside in the community by the Residents' Committee.

> *"The city provided us with streetlights, the bridge, green toilets and taps in the late 2000s. But the rest we have done for ourselves as a community by collecting contributions from individual households." (Personal Communication, Residents Committee Member 4, 2022)*

When asked about the plans announced by the national and provincial governments, City officials indicated misalignment, unclear mandates, broken lines of communication and centralisation of functions and information as issues they are currently faced with when dealing with the other spheres of government, causing the city to act in reactive manner when developments come.

> *"Let me stop you, they are the worst perpetrators and let me tell you why. You'll hear province is there in Diepsloot doing something and then will only get to know when they hit a snag then you want us to come and do miracles because there's a road that needs to go there by tomorrow and now there are these shacks that are in the way but then when you started did you come knocking at the door and say who you are and what you'll be doing no you didn't. Again, this mega-city in Lanseria. We don't know anything. It's not on the books of the City of Joburg. You cannot put any investment or interest into a project. It has to be on the books of the City of Joburg. What arrangements are there*

between the developer of the property, like what we've done with Value Max? There's a tripartite agreement between the City, Province and Value Max, and then there's one between Value Max and Province on their own. So again, if you want me to assist you with infrastructure, it must be on my books. It has to go to our ESA/executive to adjudicate. What are we going to help with which financial years, roads sewer what exactly?

We've tried to get information from an official from province, can we just have a meeting around this. Where are we? We need to write a report to our principals to say can we get this project on our books and what is the investment we are going to put into there. We must also include in that report who's going to benefit from this project from which informal settlement and what criteria we are going to use. And then there's; no It's someone else's department. He is the one, they do packaged projects.

It's a problem when you sitting up there and decided that you going to shift things and don't consult those who are on the ground. Don't shift it or fix anything that's working. Let's look at best practise model's not a one size fits all. You cannot implement from what we did in Tembisa to Eldorado Park, a place has its own history and dynamics." (Personal communication, COJ Region A Official, 2022)

Both residents and the Committee indicated that very few people have been allocated state subsidy housing in the settlement and a number of them have been relocated to Riverside View but these people were mainly elders and pensioners. The Residents' Committee members highlighted that once a person's shack has been enumerated or numbered they then advise that person to take their shack number to the City's Housing Directorate to go and submit an application for a house.

"The City does want to remove us from here. The problem is Majority of Kya sands residents are working and such individuals' government does not want them benefiting from RDP housing, instead, they then have to look for bond houses that we cannot afford.

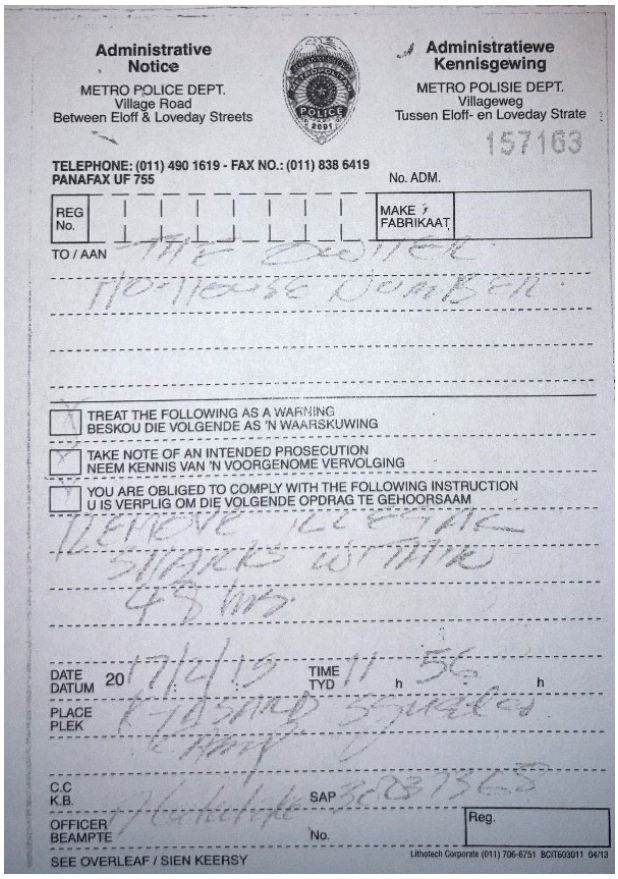

Administrative Notice
METRO POLICE DEPT.
Village Road
Between Eloff & Loveday Streets
Administratiewe Kennisgewing
METRO POLISIE DEPT.
Villageweg
Tussen Eloff- en Loveday Strate
157163
TELEPHONE: (011) 490 1619 - FAX NO.: (011) 838 6419
PANAFAX UF 755
No. ADM.
REG No.
MAKE / FABRIKAAT
TO / AAN
TREAT THE FOLLOWING AS A WARNING
BESKOU DIE VOLGENDE AS 'N WAARSKUWING
TAKE NOTE OF AN INTENDED PROSECUTION
NEEM KENNIS VAN 'N VOORGENOME VERVOLGING
YOU ARE OBLIGED TO COMPLY WITH THE FOLLOWING INSTRUCTION
U IS VERPLIG OM DIE VOLGENDE OPDRAG TE GEHOORSAAM
DATE DATUM 20
TIME TYD
h
h
PLACE PLEK
C.C K.B.
SAP
OFFICER BEAMPTE
No.
Reg.
SEE OVERLEAF / SIEN KEERSY
Lithotech Corporate (011) 706-6751 BCIT603011 04/13

Figure 5.8 Administrative notice issued by the JMPD for illegal structure (Source: COJ Region A Official)

I am 67 years old; I am under Joburg Water [Johannesburg Water SOC Ltd][3] *I do not have the right to get a house. I am old, I should be getting my pension money whilst staying in my own government house." (Personal communication, Residents' Committee Member 1, 2022)*

Many residents expressed frustration with the City and Province stating that there have been promises made since 2005 that allocations will take place at various mega-housing project sites which were subsequently given to people from other informal settlements.

When asked if any rules on the type of building materials people should use one resident gave the following response:

> *"There was a rule when some of us had just arrived that we should not build permanent structures because we will be moved by the government to RDP houses. But then as time went on, we saw that no man, we are being made fools here. They keep saying we are going to be moved, we are going to be moved but that day never arrives. So, we stopped following that rule." (Personal communication, Respondent 9, 2022)*

The resident here may have been referring to a building control measure introduced and enforced by the City's Region A officials along with the JMPD. According to the Region A Housing Official

[3] Johannesburg Water SOC Ltd. is a water and sanitation utilities entity of the City of Johannesburg Metropolitan Municipality (Johannesburg Water, 2022).

interviewed, the City along with the residents and the residents' committee agreed on not allowing people to build permanent structures on the land.

> *"We would have special operations with Home Affairs with the police and Red Ants to demolish structures after notice has been given and tell people to stop building. Now you can't. In some regions JMPD operates different. I don't know why because with us we could call our JMPD and ask for assistance in a particular matter, and they would accompany us to issue notices and we have follow up operations. So it was easy to manage and to monitor. It was open, there was space and now it's heavily populated/dense." (Personal communication, COJ Region A Official, 2022)*

As part of their process of controlling the types of structures, residents could build the City and JMPD would issue administrative notices to residents who were found to be contravening the rule asking them to take corrective measures or risk their structure being demolished or cancellation of their registration slip and administrative notices would also be issued for newly erected 'illegal' shacks by people who are non-residents of Kya Sands.

At the settlement or community level, members of the community put money together and have built a 'stormwater' management system that channels water towards Northriding stream to deal with the issue of surface run-off as a result of leaking standpipes and sometimes rain that pools in certain areas. The Committee indicated that R20 would be collected from households who can afford to cover costs of buying PVC pipes to channel water. A service not provided to the community by the municipality is electricity, according to Residents' Committee Members and some residents electricity is illegally connected by *izinyoka-nyoka,* these are members of the community who are lowly skilled electricians and provide connections at a fee of R400 or R500.



Figure 5.9 Illegal electricity connections by the community in Kya Sands (Source: Hopa, Kya Sands, 2022)



Figure 5.10 Makeshift drainage system built by the community (Source: Hopa, Kya Sands, 2022)



Figure 5.11 Bridge constructed by the COJ (Source: Hopa, Kya Sands, 2022)

5.5 LAND USE

Current land uses in the settlement include land used for residential purposes i.e., residences and a large number of rental units (Figure 5.13). The rental units are built by individuals who are allocated stands by the Committee and are rented out for amounts ranging from R500 to R800 depending on the size of the room and material that it is constructed of. Some of the residents interviewed who own rental units indicated that rental prices have gone up by around R250 in the past ten years.

Other uses include businesses such as spaza shops while others who weld also provide such services on their stands (Figure 5.12). When asked, once you are given a stand, are there any rules about what you can and cannot do on your stand? Residents indicated that:

> *"No there are no rules. you can run a business from your house. You can sell through a spaza or any other business you want to try out. If you want to be umastandi* [landlord] *like me you are also allowed" (Personal communication, Respondent 9, 2022)*

Residents and Residents' Committee both indicated that there are currently no formally written rules about what people can and cannot do on their individual stands. They are however encouraged by the Committee to leave space in between shacks for events like fire and allow passageways for emergency services such as paramedics to access the settlement.



Figure 5.12 Land uses on the ground include spaza shops (top left and bottom) and other home-based businesses such as welding shown above (top right) (Source: Hopa, Kya Sands, 2022)







Figure 5.13 Different types of rental units in Kya Sands (Source: Hopa, Kya Sands, 2022)

5.6 LAND VALUE

Based on what I observed and what I was shown by the Committee as well information from residents the land and property market in Kya Sands can be categorised as free and vibrant. Because of the high demand for land close to the surrounding industrial areas and suburbs coupled with limited availability of land, a large number of stand 'owners' identified the need for rental accommodation. According to the Committee, numbers submitted to the City are only of stand owners, however it was indicate that those who rent make up a larger proportion or number of people living in the settlement. As a result, there is often underreporting on the number of people living in the

settlement because many people rent, this was noted from a report the researcher was shown by City Official from Region A.

Property or land values are primarily calculated based on the quality and size of a dwelling. In some instances of sales, negotiation and social relations are said to influence pricing. Some residents indicated that even rental prices are negotiable. When asked about how pricing takes place when one sells one respondent gave this response:

> *"It depends on the type of structure you are selling because some are constructed of bricks while others are still shacks. A shack starts from about R3000-R4000 and a brick room or house will start at R10 000 going up. It also depends on the size. But if you know the person you can negotiate your own price; even with rent I can't really say there is an exact amount different people pay different rent." (Personal Communication, Respondent 12, 2022)*

This shows that prices are not entirely based on market value but rather on rationalizing the sale or transaction based on a number of elements including familiarity with a seller or landlord and the type of materials used to construct a structure.

5.7 CONCLUSION

This chapter has presented an overview of Kya Sands informal settlement based on the research questions posed in the introductory chapter and according to the conceptual framework developed at the end of chapter 2 of this report. In the I introduce and describe Kya Sands informal settlement through a combination of my personal observations, secondary data sources and through firsthand accounts of the residents of Kya Sands and officials of the City of Johannesburg Metropolitan Municipality that I interviewed. The findings then reveal the institutional arrangements and main actors in matters related to land and drawing linkages between these main actors and identifying areas where their functions overlap, complement and contradict each other, as well as the strengths and limitations of these arrangements. These actors range from a resident's committee, City officials who are representatives of the local municipality, the metropolitan police who serve as enforcers of the rules, the South African Police Services who are mediators when disputes are raised that cannot

be dealt with internally and other entities who service and work together with the community including churches and local businesses.

The findings further reveal how people have gained access to land in the settlement over the years and how records are kept through a joint initiative by the City and the residents of Kya Sands. Through the findings it also revealed that residents of Kya Sands enjoy a variety of informal rights which include the right to use the land, the right to own a structure and the right to inherit or bequeath the properties and according to some residents these rights cannot be easily taken away because of issues related to their right not to be evicted without alternative accommodation as well as the length of their stay in the settlement. When it comes to levels of development in the settlement it was found that the City through its various entities provides the residents with the most basic of services while the community through self-help initiatives try to augment these. There is a minimal level of land use planning in the settlement however the community of Kya Sands widely uses their stands for business, residential and rental purposes where property and rent values are determined based on negotiation.

6 CHAPTER 6: SYNTHESIS AND CONCLUSION

6.1 INTRODUCTION

This chapter reflects on the findings from the case study of Kya Sands informal settlement, provides a summary of the study and finally suggests areas for further research. The research was premised on the idea that the formal land administration system is not satisfying the needs of a wide range of South Africans at an appropriate level. This system, based on high accuracy cadastral surveying and legally complex processes of deeds registration is inaccessible, highly centralised, costly and focuses only on statutorily defined systems of tenure. Adams, Sibanda and Turner (1999) define land tenure as the terms and conditions by which land is held, used, and transacted. From a legal point of view, Enemark (2005) defines land tenure as the allocation and securing of rights to land through legal processes of cadastral surveying, land transfer and management of boundary disputes. From an institutional lens, Ashley (2016) views land tenure as a complex social institution that governs the relationship between people in relation to assets such as land, water bodies and forests. These institutions may either be statutorily, customarily or socially defined. A land administration system supports the integrated management of these relationships and involves processes of determining, recording and disseminating information about tenure, value, use and development of land (Williamson, Enemark, Wallace and Rajabifard, 2010).

The shortcomings of the country's land administration system in recognising the plurality of ways in which people hold and administer land has resulted in many deficient attempts at fitting other forms of tenure, including land held under customary law and various landholdings under what is broadly termed informal tenure, into formal land administration processes. Despite all these efforts, in South Africa, over 5 million land occupations that exist outside of the formal land tenure system are still not accounted for and remain invisible to formal land administration processes. It was then imperative for the study to find out how people operating outside of these statutory processes access, secure, hold and administer land. Kya Sands informal settlement was identified as an appropriate case study to begin discussions on what these systems look like. The main question guiding this research was:

"How do people of Kya Sands informal settlement access, secure, hold and administer land outside of formal land administration processes?"

6.2 EASE OF ACCESS

Through the findings from Kya Sands, it is evident that kinship networks play an important role in how people have accessed and secured land. These networks appear at different stages in the process of land access. People who were looking for a place indicated they were referred to the Residents' Committee by friends or family, these referrals would then lead to a person being allocated a piece of land by the Residents Committee, for those who arrived in the settlement after the year 2000. Before 2000, which is the year the Committee was established people would simply divide the land for themselves, respondents still indicated that they were either told by friends or family of available land in the settlement. Others moved to the area to stay with relatives who had already settled in Kya Sands and one respondent has further gone on to informally inherit property from his uncle who passed on.

Considering the two main ways that people in urban areas formally access land, through the state's housing subsidy programme or through land and property markets. Both systems pose barriers to access for many urban residents. As one resident indicated, she is currently employed by Joburg Water and does not meet one of the main requirements for the allocation of a state-subsidised house, which is that a household's monthly income must not exceed R3,500 per month. At the same time, she is unable to afford to acquire a house through the banks and formal land markets for a number of reasons which were not disclosed during the interview.

Socially dominated systems of land access such as that of Kya Sands are then one of a few options people moving into our cities have for accessing land with relative ease, arguably cheaply and in close proximity to areas of work and job opportunities, social services with reliable transportation connections. These socially dominated systems also do have their own shortcomings where the uncertainty faced by communities over whether the promised move to state subsidised housing will ever materialise has played into the hands of criminal gangs, religious groups and strongmen who use their influence to exploit communities (Amin and Cirolia, 2018). In the case of Kya Sands informal

settlement we have seen members of the residents' committee members not acting in good faith and overstepping agreed boundaries by allocating new people land for a fee.

6.3 LAND RIGHTS

Land rights enjoyed by residents of Kya Sands can be classified as informal or *de facto* (existing in reality but not necessarily sanctioned by law) and these include the right to own premises, the right to occupy the land, use, transact (sell or rent), inherit or bequeath land. Although not legally registered or surveyed, in Kya Sands these rights are ratified by an authority with legitimacy in the community which is the Residents' Committee, the community at large and officials of the City of Johannesburg Municipality through their pragmatic approach of issuing residents registration slips linking each legitimate resident with a shack number although this does not equate to legal recognititon. The community of Kya Sands informal settlement has created sets of claims and rights with varying degrees of social legitimacy that any attempts at upgrading the settlement will have to consider. Downie (2016) notes that household and dependents' information is often available in the urban housing sector as it is captured on housing lists. This is important information for recording the rights of all people in a household and is the first step in protecting the land tenure of all. This data is underutilized, but its potential in the rural sector is no less important. The *de facto* rights and claims of households should be identified in upgrading interventions, and accommodated, where possible. The existence and status of local forms of evidence, and the claims that underpin them, need to be identified when upgrading commences, and either verified or adapted, taking the likely consequences for tenure security into account.

Rubin and Royston (2008) note that potential for conflict and destabilisation exists, especially when the stakes are raised with the prospect of development. The database held by the City and the registration slips issued to residents could be used as evidence to defend claims. The registration system initiated by the City is a low-hanging fruit to begin the process of formal rights registration. The process of surveying and registration can begin with land data being captured on the City's existing Online Land Information System (GeoLIS). This can be done on top of the existing legal rights of the property owners and does not require official registration on the deeds registry or the national cadastre.



Figure 6.1 Left: Proposed graphic representation for defining land rights in Kya Sands, Right: Representation of formal sectional title rights on the COJ LIS (adapted from Tjia, 2014)

Marx and Royston (2008) note that through formal processes rights accrued to holders are often backed by the state or the judiciary. In informal systems of landholding the rights accrued by the holder or occupiers have the potential to influence the next step in the land transaction processes which in most cases is access to services and a formal address. This is seen through the case of Kya Sands where the City has gone on to build a pedestrian bridge, erect standpipes and provide toilets to the residents. The Residents' Committee further indicated that under the previous ward councillor they were allocated batches of documents to provide residents with proof of residence for various purposes including school applications and opening of accounts. I was however unable to get a copy at the time of the interviews.

6.4 PERCEPTIONS OF TENURE SECURITY

Contrary to the idea that informality represents an absence of the state, the relationship between the City and the Residents' Committee of Kya Sands in processes of registering residents on the City's database and processes of shack numbering proved that there is a significant state presence in the settlement. This is further seen through the working relationship the community has established with the Douglasdale SAPS who assist the community in managing crime, as well as resolving land disputes and certifying affidavits by the Residents' Committee and land seekers as legally binding agreements in processes of land allocation. The land administration arrangements that arise from these

community/state interactions and interfaces are best characterised as hybridised forms (Marx and Royston, 2008; Rubin and Royston, 2008; Jones, 2017).

The FAO (2002) notes that sources of tenure security are not directly measurable but are based to a large extent on what people perceive, hence perceptions of tenure security may vary between different contexts. They highlight that the first and most important source of security is the immediate community. When neighbours recognise and enforce a person's rights the person's perception of tenure security increases. The same happens when the government undertakes not to evict people who may be illegally squatting on privately owned or common land. This was confirmed by responses given by the research participants. One community member mentioned that should anyone attempt to evict them they would protect each other as a community. This shows how mutual recognition of each other's rights plays a role in strengthening perceptions of tenure security. Further residents also mentioned that the city is aware that they are illegally occupying the land and has not undertaken to evict them since the City became involved with Kya Sands in 2005.

Another source of tenure security noted by the FAO (ibid.) is recognition by formal legal and administrative processes of the state, this is when the state protects one's property or land from encroachment, often through processes of deeds registration and official surveying of land. For residents, the length of time they have been occupying the land in Kya Sands gives them a certain level of assurance that they will not be evicted stating that the law says illegal occupiers should be removed within 48 hours. Here the respondent is referring to the Trespass Act 6 of 1959 which allows for eviction within 48 hours and has been used by the City of Cape Town among others (Cupido and Hartley, 2010). Residents show their knowledge of the law by stating that whoever attempts to evict them would need to find them alternative accommodation. Here I infer that reference is being made to provisions of Section 4(7) of the PIE Act which requires a landowner to source any occupier of land who has occupied land for more than six months a form of alternative accommodation only if a court grants an order of eviction.

Inversely tenure security may be threatened in a number of ways including a legal owner of land asserting his or her rights on land occupied by squatters or the state deciding to start enforcing existing rules. Despite a relative sense of tenure security some of the residents partially see the

private landowners as an imminent threat because of past experiences where the owners had brought the Red Ants to attempt evicting some residents of Kya Sands.

Van Gelder's (2007) assertion that perceptions of tenure as an individual variable influencing the level of housing improvement is confirmed but also partially challenged by some residents in Kya Sands who stated that the promise of being relocated to state subsidy houses in Riverside View, Cosmo City and Lion Park as the main factor influencing their decision not to invest large amounts of money in improving their houses.

6.5 LAND DEVELOPMENT

State-subsidised housing is viewed as a route out of informal settlements into freehold tenure and ultimately formal land administration processes. This is reflected in many of the residents' responses as well as in the Minister of Human Settlements and MEC for CoGTA's statements presented in Section 5.4 of Chapter 5. Further, the provision of temporary services like standpipes and bucket toilets and ongoing promises to residents of state-subsidised houses show us how the state still views informal settlements like Kya Sands as a transitory phase and an impermanent part of the city. Some residents have become disillusioned with the idea of the state providing everyone in the settlement with subsidised housing. It should be noted however that attitudes and interventions towards informal urban development vary among different authorities and officials at different levels of government.

The disadvantage with assuming that only one system of land delivery is worth recognition dismisses other ways that people access, hold and transact in land as dysfunctional, defective or absent (Marx and Royston, 2008). People in Kya Sands and in other informal settlements are accessing, holding and transacting land in a variety of ways. Seeing these as legitimate urban processes rather than impermanent parts of the city that need once-off interventions helps us understand the complexity of these arrangements. This is further highlighted by Hull *et. al* (2020) who argue that land administration is equally important for those living in off register land and by planners and land administrators not seeing these as once off exercises we can better align our interventions to build on these already existing systems. This is similar to how land administration began as land registers in the West. In Kya Sands informal settlement the material flows of services such as electricity, water

and sanitation stop short of the “last mile” (a term used in transport planning) ending in communal standpipes and communal chemical toilets, for Amin and Cirolia (2018) this last mile is where fragile networks of extension and improvisation are built.

6.6 LAND VALUE

Although the primary mode of accessing land in Kya Sands has been to a large extent dominated by social networks and negotiation. The findings have also revealed evidence of a market logic based on negotiated value and exchange. The sale of dwelling units and consequently the rights to the land the property is located on is a negotiated process between a seller and buyer based on a number of factors including improvements that have been made, such as when a dwelling is built from brick and mortar, the quality of material used to construct the dwelling and the dwelling size.

Further, the community has identified a gap in affordable rental housing in the area for mobile groups who have homes in other parts of the province, such as Pretoria but work in Kya Sands and surrounding areas. As a result, people have decided to build rooms and rent these out to supplement their income, for those who work, while others who are unemployed depend mainly on the rental units to bring in income. For some respondents, housing improvements are largely driven by the rental market, this is further evidenced by the fact that a large number of units built of permanent materials (brick and mortar) in the settlement were said to be rental rooms and some of the landlords interviewed indicated that they own permanent structures but they still occupy corrugated iron dwellings.

Similar findings by Marx and Royston (2008) revealed that people in other informal settlements primarily engage in socially dominated land markets, however, they also do interact with elements of both the state and financially dominated markets over land. For these scholars the failure to recognise social drivers when it comes to land and land transactions results in the conclusion that no financial or market logic exists in informal spaces or that it is thin, defective or dysfunctional in some way. The possibility that markets might not be the same is usually not entertained (Marx, 2009). Because of this, interventions focused on informality are framed solely around a financially dominated market logic and a focus on clarifying only property rights and access to credit from the mainstream idea of what a market is. Marx and Royston (ibid.) argue that reforms need to explore

the interplay between socially dominated land markets and the effective delivery of services which could improve quality of life such as transport, healthcare and anti-crime programmes. This is best achieved in consultation with communities and community organisations which are in many cases, the existing land managers (Rubin and Royston, 2008).

6.7 LAND USE

Rubin (2008), notes that initial steps towards integration should begin with a blanket recognition of settlements, in order to give residents security of tenure, through proclamation or announcement, or more formally, through incorporation into land use management schemes through zoning or re-zoning. Under Section 24(2)(c) of SPLUMA municipalities are required to include provisions that allow for incremental inclusion and enforcement of land use management and regulation in areas including those under traditional authorities, rural areas, informal settlements, slums and other areas previously not subject to land use schemes.

In a case such as Kya Sands authorities will have to contend with the issue that there is a minimal level of land use management in the settlement. In incorporating settlements like Kya Sands into land use management processes and land use schemes it will be important for a municipality to ensure that they adopt an incremental approach to upgrading which works gradually with what currently exists, however taking into consideration that these spaces are fast changing makes it very important to build working relationships with communities and leveraging on these. It will also be important for the municipality to ensure that they do not over-regulate and set standards that are unachievable considering the densities in the area. A minimal level of regulating should apply.

6.8 CONCLUSION AND AREAS FOR FURTHER RESEARCH

This research report through the case study area Kya Sands informal settlement has documented and explained how in the context of South Africa people operating outside of the statutorily defined systems of land tenure and land administration have been able to access, secure, hold and administer land. Through Chapters 2 and 3 I have explained how formal and informal relationships manifest in practice and how despite progressive policies and initiatives by the state, the binary thinking that is ingrained in traditional planning and legal frameworks has not been entirely useful in developing

appropriate responses to resolving issues faced by those operating under non-formal systems of tenure.

In Chapters 5 and 6, through the case study of Kya Sands informal settlement, I have demonstrated that the formal and informal are not mutually exclusive spaces and that the management and administration of land in some areas occurs through collective action and hybrid governance by a wide variety of stakeholders and actors. The assumption that the state and market logic are absent in unregulated areas of South African cities or that it is possible to expand state and market involvement in a way that does not take into account the role social relationships play in shaping access to and in the transaction of urban land when the state or markets are involved are simplistic. Cases such as Kya Sands informal settlement and the relationship the community has established with organs of the state dispel the myth of the state's absence in informal settlements and begin to help us move away from binary thinking about formality versus informality and from the idea that these spaces are vacuums that can only be filled by greater state force or presence. It opens us up to the idea that there are multiple political and socio-economic forces and processes that make up these spaces which need to be unpacked further and leveraged on from both a policy perspective and in the implementation of interventions such as informal settlement upgrading programmes. In our processes it is also important to recognise however that for every attempt made by the state to improve the lives of informal settlement dwellers, the neoliberal economy raises the barriers in the form of monopoly and privatisation, through rising costs of prime real estate and commuting, keeping wages down and by the shedding of labour (Amin and Cirolia, 2018).

The idea that there is a dual economy and that land transactions happening in areas like Kya Sands are rudimentary fails to accept the reality that there is one economy and a single land market encompassing a variety of land and property transactions and that within these markets exist elements of inclusion and exclusion. The neglect of social and spatial needs if it is unprofitable further widens the gap between the haves and have-nots. Instead of dealing with the complex factors that lead to this exclusion, it is perhaps easier to want to erase this second economy and similarly informal settlements, this dismisses the attempts that people make to secure land and to partake in the trading and transacting of land as a resource. In line with other studies on urban informality, findings from Kya Sands have proven that land transactions are highly responsive to formal market forces and

demands such as proximity to job opportunities, places of employment, social services and transportation connections, and this has resulted in a large-scale rental market emerging in the settlement. Cases like these should prompt an expansion of the idea of what market means to assist communities leverage on their available resources to make land markets work for them.

As stated in my methodology in Chapter 4 one of the limitations of studying complex phenomena through a case study approach is the fact that the findings from the case study area are only generalisable to that specific case and not a reflection of what occurs in other informal settlements. For this reason I call on researchers and professionals to continue producing evidence and information from other areas that can be shared with civil society, the state and private institutions on the limitations of the legal framework governing the land tenure system and land administration in South Africa and how these limitations manifest in other parts of the country as well as alternative models used in the management and administration of informal settlements. It has also emerged through literature reviewed and partly through this research that the practices of informal actors are not always benign and that exploitative practices exist in informal spaces where community leaders, bureaucrats and criminal elements sometimes act in their own selfish interest and to the disadvantage of communities. Further research is needed to understand under what circumstances these exploitative practices flourish and how they are dealt with in order to strengthen community initiatives struggling against vested interests.

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7.2 LEGISLATION

Abolition of Racially Based Land Measures Act 108 of 1991

Communal Land Rights Act 11 of 2004

Communal Property Associations Act 28 of 1996

Constitution of the Republic of South Africa, 1996

Deeds Registries Act 47 of 1937

Extension of Security of Tenure Act 62 of 1997

Geomatics Profession Act 19 of 2013

Government Immovable Asset Management Act 19 of 2007

Group Areas Act 36 of 1966

Group Areas Act 41 of 1950

Housing Act 107 of 1999

Ingonyama Trust Act of 1994

Interim Protection of Informal Rights Act 31 of 1996 (IPILRA)

Land Act 2010 Act 8 of 2010

Land Administration Act 2 of 1995

Land Reform (Land Tenants) Act 3 of 1996

Land Rights Act 31 of 1996

Land Survey Act 8 of 1997

Land Tenure Rights Act 112 of 1991

Leases of Land Act 18 of 1969

Legal Practice Act 28 of 2014

Municipal Property Rates Act 6 of 2004

Municipal Systems Act 32 of 2000

Native Land Act 1913

Native Trust and Land Act of South Africa 1936

Native/Black Administration Act 38 of 1927

Planning Profession Act 36 of 2002

Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE)

Property Valuation Act 17 of 2014

Sectional Titles Act 95 of 1986

Spatial Planning and Land Use Management Act 16 of 2013

Traditional Leadership and Governance Framework Act 41 of 2003

Upgrading of Land Tenure Rights Amendment Act 34 of 1996

Upgrading of Land Tenure Rights Amendment Act 6 of 2021

7.3 CASE LAW

CASAC and Others v ITB and Others 2021 SA 437 (CC)

8 APPENDICES

8.1 APPENDIX A: GUIDING INTERVIEW QUESTIONS FOR RESIDENTS COMMITTEE

A. Biographic information

1. Total number of committee members:
2. Number of men:
3. Number of women:
4. Age range:
5. Nationalities:
6. Is there a form of payment for being on the committee?
    a. **Umntu uyabhatalwa for ukuba kule committee?**
7. Different roles in the community:
    a. **Ithini indima yomntu ngamnye kwi committee, umntu wenzani?**
8. Duration of term in the committee:
    a. I**committee iphatha for ixesha elingakanani?**

9. Background to Community Structure

10. What is the name of the committee or forum?
    a. **Icommittee inalo igama? Lithinii?**
11. In what year was the committee established?
    a. **Yaqalwa ngomphi unyaka? Ngobani?**
12. What is the role/ purpose of the committee in Kya Sands?

a. **Yintoni umsebenzi wale committee?**

13. Which sections (out of the four in Kya Sands) of the settlement is the committee responsible for?

    a. **Zeziphi isection ze Kya Sands eziphansi kwe committee?**

14. What is the general process of forming a committee?

    a. **Ihambha njani iprocess yokonyula icommittee?**

15. How was the committee established?

    a. **Yaqala njani indaba yobakho ikomiti eKya Sands?**

16. Did the committee members get voted in by the community?

    a. **iCommittee yonyulwa ngumphakathi okanye ihambha njani?**

17. Who qualifies to be on the committee?

    a. **Ngubani okwaziyo uba kule committee?**

18. Settlement Information

19. Do you know which year the settlement was formed? How did it start?

    a. **iKya Sands yaqala ngomphi unyaka? Yaqala njani?**

20. In your estimation, how many people do you think live in Kya Sands?

    a. **Ngokokucinga kwenu ningathi bangaphi abantu abahlala apha eKya Sands?**

21. What would you say is the balance between men and women who live in this area?

    a. **Ningathi ithini ibhalansi yabafazi nama doda apha eKya Sands?**

22. Who is responsible for allocating plots of land or stands to people who move into the area?

    a. **Ngubani onikezele ngomhlaba kubantu abaqala ukufika abatsha apha eKya Sands?**

23. What do you base their decision to allocate land on (who qualifies for land)?

    a. **Ni decide(a) njani ukuba ngubani ofumana umhlaba apha eKya Sands?**

24. Do women, widows, orphans and other vulnerable groups get special consideration in land allocation?

    a. **Abafazi, abafelokazi (abantu aba shonelwe ngamadoda), intandane nabantu abakhubazekileyo niyabacabngela?**

25. Is there any available land for new allocations in the settlement?

    a. **Usekhona umhlaba for abantu abatsha apha eKya Sands?**

26. Other than the committee, how else do people get land or shelter in Kya Sands?

    a. **iKhona enye indlela abantu abafumana ngayo indawo apha ngaphandle kodlula kwi committee?**

27. Does your committee or any other organisation keep a record of people who move into the area?

    a. **Ngubani ogcina irecord yabantu abangenayo or abafikayo apha? Yi committee or bakhona abanye abantu?**

28. Is there information written down?

    a. **Irecord igcinwaphi? Nibhala phansi okanye?**

29. How often is the information updated?

    a. **Niyayi updatea kengoku? iUpdatwa nini? Qho xakufika umntu omusha?**

30. Where is that information kept?

    a. **Igcinwa phi lo record or loncwadi?**

31. Are any documents issued on registration?

a. **Akhona amaphepha umntu awa tholayo masenimnikeze indawo yokutsho uba ubani wakwabani unikweze indawo ngelanga elithize?**

32. Tenure

33. Which are the possible ways to hold land in the settlement (rent, sub-letting, own)?

a. Umntu xa ehlala apha uya owna qha okanye bakhona abarentayo? Indaba yokurenta isebenza njani funeka kudlulwe kwi committee? Bakhona abantu abarentisa indawo bona abarenta kuzo?

34. Do most people who live in the area rent or own their stands?

a. Abantu abaningi baya renta okanye umntu ibasesakhe istand?

35. Can one person own two stands or more at a time?

a. Umntu uyakwazi ubane stand eziyi two okanye more? Wenza njani umntu?

36. If a person owns the land, what are they allowed to do?

37. Are there any limitations on what they can do on their land?

a. If umntu sesakhe istand yintoni avumelekileyo or angavumelekanga uyenza kwi stand sakhe?

38. If a person rents a stand or someone else's property, are there any limitations about what they can do?

a. Xa umntu erenta istand somunye umntu yintoni avumelekileyo uyenza? Yintoni engavulekanga?

39. Who makes sure that rules people follow the rules about what is allowed and not allowed on the land?

a. Ngubani obeka umthetho wokuba umntu angenza ntoni angenzi ntoni kwi stand sakhe?

40. How do they ensure that people can follow the rules?

    a. **Nenzani njani ukuqinisekisa uba wonke umntu uyawulandela lomthetho?**

41. Are there any penalties or fines for people who do not follow the rules?

    a. **Ikhona inhlawulo or isjeziso umntu asifumanayo for ungalandeli umthetho?**

42. Do you know if the land on which Kya Sands is built belongs to the government, a community or a private owner?

    a. **Umhlaba lo wase Kya Sands ngowenu okanye, ngo ka government or ngowomntu?**

43. Have there been cases where people were evicted or had their houses demolished by the owners, the committee, or the City of Joburg? If so, why?

    a. **Bakhona abantu abake basuswa or ba evictwa?**

44. In your estimation, how many people would you say have been evicted from the area?

    a. **Mhlawumbhi ningathi bangaphi abantu abake basuswa?**

45. In your opinion, do community members fear that they could be evicted by the City of Joburg?

    a. **Umphakathi awunako ukwesaba ukuthi bangasuswa apha? Njenge committee nenza njani ukuqinisekisa uba abantu abasuswa?**

46. What happens to land or property if the owner dies or moves out of Kya Sands?

    a. **Kwenzeka ntoni kwi stand somntu or kwi business yakhe ma ehambha lana or if umuntu angashona?**

47. Are people allowed to sell their land or property or transfer ownership to family members?

    a. **Umntu xa ehambha uyakwazi ukudayisa istand sakhe or ashiyele umndeni wakhe or abantwana istand yena makahambha?**

48. Does the committee keep a record of land transfers?

49. Are the transfers recorded on a register?

    a. **Umntu kumele anazise as icommittee? Niyayibhala phantsi lonto?**

50. Land dispute resolution

51. Does the committee handle disputes about ownership of land, boundaries, or disagreements about rent in the area?

    a. **Zike zibekhona ingxabano or ukungavisisani kwabantu ngendaba yomhlaba? Mhlawumbe ngokuthi istand sam siphelala la esakho siphelela la? Or lesi istand sesami? Okanye ngendaba ze rent?**

52. If not, where (or to who) are these disputes or disagreements reported?

    a. **Ziya reportwa kwi committee or kukhona apho zixazululwa khona?**

53. What usually causes these disputes or disagreements?

    a. **Indaba ye stands, izizathu zokuxabana nge ndaba yomhlaba sube zithini?**

54. On average, how many property ownership, rental or boundary disputes are usually reported per year?

    a. **Ningathi zibangaphi izikhalazo enizifumanyo nina njenge committee zabantu abalwa ngomhlaba?**

55. Where are the disputes reported?

56. What steps does the committee or other parties follow to resolve these disputes or disagreements?

    a. **Nizixazulula njani indaba zokulwa kwabantu ngomhlaba?**

57. What evidence is used to solve ownership/boundary disputes?

58. Are existing records or files about land ownership used as evidence to resolve disputes?

a. **Irecord zenu niyazisebenzisa like incwadi enibhale kuyo phantsi umntu xa nimnika istand for uxazulula indaba zomhlaba?**

59. If a person is not happy with the decision of the committee, is there someone or somewhere they can go to complain/ appeal?

a. **Uba umuntu akonelisekanga nge decision yenu wenza njani?**

60. Land Development

61. What services do you currently receive from the municipality?

a. **Yiwaphi ama services eniwathola ku maspala?**

62. Do you need to pay for these services?

a. **Niyabhadaliswa for lezo services? Malini?**

63. What services does the community provide for themselves in any way, whether legal or illegal?

a. **Kwi services abanye abantu abahla maybe ezindlini or kwi RDP abazifumanayo ku maspala yini nina eningathi anizi tholi niyazenzela? Njani?**

64. When there are services (water, electricity etc. incl. fixing connections) needed how does the community work? Are there contributions that members need to make?

a. **Makwenzeka ukuthi nishelwe yizintambho zogesi or "kubhamuke" opipe bamanzi nenza njani njengo mphakathi?**

65. Land Value

66. On average, how much does it cost to access a standard piece of land in the area?

67. Where does the money for land go to?

68. What is the money used for?

69. Has the cost of accessing land increased over the past 10 ten years?

70. By how much has the cost of accessing land increased and why?

71. On average, how much does it cost to rent out property in the area?

72. Has the cost of rent increased over the past 10 years?

73. If so, by how much has rent increased and why?

74. How many times have there been major land price fluctuations in the last 5 years? What causes the fluctuations?

75. Are transaction fees affordable to the residents?

76. Is the land tenure management system financially sustainable? For example, how are the actors remunerated for their work?

8.2 APPENDIX B: GUIDING INTERVIEW QUESTIONS FOR RESIDENTS

B. Biological information

1. Gender:
2. Age:
3. Nationality:
4. Place of origin:
5. Occupation/ source of income:
6. If employed where and how do you get to work?:
7. Number of people in your household?:
    a. Relation to members in household?
    b. Employed or unemployed?

8. Background

9. How long have you lived in Kya Sands?
10. Where did you move from?
11. Why did you choose to move to Kya Sands?
12. How would you say your life has changed by coming to stay in Kya Sands?
13. Did you know someone who lived here before you decided to move to this area?
14. If so, do you still live with that person or do you have your own place?
15. How did you go about getting that place or stand? (How do people get a stand or a place to rent here?)
16. Are you renting the place you live in, or do you own it?

17. Do you know if the prices have increased since you first moved into the area?

18. Did you sign any contract or was there a verbal agreement before you moved in?

19. Were there any witnesses when you signed or made the agreement?

20. Community Structures (access and dispute resolution)

21. Do you know of any committees or structures where you can report issues to or lay complaints?

22. When new people move into the area, is there a person or committee that they need to ask permission from or report to?

23. When you first moved into the area, were you told of any rules (written or verbal) that you need to follow?

24. Who decides how big the size of land a person is allocated should be, and where one stand starts and ends?

25. Does the community keep a record of who moves into the area, where their stand is located and how big it is?

26. Do you know of any cases in the community where neighbours would fight over space? And what would the reasons be?

27. When people have disagreements with their neighbours, where or who do they report to?

28. How are those complaints and disagreements resolved?

29. Does the community ever hold meetings?

30. What kind of matters are discussed during these community meetings?

31. How often do these meetings take place (e.g. per week, month, etc.)?

32. Tenure

33. How long are you planning on staying here?

34. What do you think could cause you to leave Kya Sands?

35. If you were to move out of Kya Sands, which place would you move to?

36. Do you know of any people who were forced to leave their homes in Kya Sands, or to move out of the area?

37. What were the reasons?

38. Do you think that you may be forced to leave Kya Sands by the City of Joburg or anyone else? Please explain why.

39. What do you think would guarantee your safety and make you feel like you won't be forced to move from the area?

40. Are you allowed to sell or rent out your stand or house?

41. If a person decides to leave the area, what happens to their home?

42. When a person passes away, what happens to their stand or house (who takes over the ownership of their stand)?

43. How do you feel about the government wanting to get rid of informal settlements like Kya Sands?

44. Land Development

45. Are there any rules on how long you should take to build and what type of material you should use?

46. Are residents allowed to extend or add structures on your stand?

47. Where do you get water and toilet facilities?

48. Who is responsible for bringing water and providing toilets in Kya Sands?

49. Do you pay any fee for water and toilets?

50. Where do you throw away your waste?

51. When there are emergencies, how do services such as ambulances, police and fire departments get into the settlement?

52. Besides the City of Joburg, are you aware of any other organisations, companies, government departments or NGOs that assist in the community?

53. If so, what are the names of these organisations?

54. What kind of services do they provide in the community?

55. How has the city been involved and which years?

56. Land Use

57. Once you are given a stand, are there any rules about what you can and cannot do on your stand?

58. Can you run a business from your house?

59. What kind of businesses are you allowed to run on your stand/ home?

60. Is there anyone who checks if people comply with the rules?

61. If you are found to be doing something you shouldn't be doing on your property, how do you get punished?

62. Land Value

63. Do you know that part of Kya Sands is built on land that belongs to someone else?

64. When you move into the area do you have to pay anything to anyone? If so how much?

65. Do you pay any other fee monthly or once-off?

66. If any what are these fees for?

67. How do you think people who own bond houses nearby

8.3 APPENDIX C: GUIDING INTERVIEW QUESTIONS FOR CITY OFFICIALS

Part A

1. How would you describe the City's approach to informal settlements?
2. What is the City's rationale for getting involved with informal settlements?
3. Is this informed by policy? Which policy/ies?
4. What policies at city level guide informal settlement interventions?
5. How is land information collected, disseminated and maintained for informal settlements?
6. Does any form of land surveying take place in COJ informal settlements?
7. Section 24(2)(c) of SPLUMA requires municipalities to incrementally include provisions that allow for incremental inclusion and enforcement of land use management and regulation in areas including informal settlements, slums and other areas previously not subject to land use schemes. How has the city navigated this process in practice?
8. There are often issues of illegality and squatting on privately owned land with informal settlements. What has the city's position been on addressing these issues?
9. How does the city aim to address the issue of rights in areas where informal settlements are located on privately owned land?
10. Is the city in any way involved in processes of allocating people to state subsidy housing?
11. Roughly, what would the figures be in percentages of people who have qualified to be move from informal settlements to state housing?
12. How do you balance the issue of relocation and people moving back into informal settlement?

Part B

13. What is the nature of the City's relationship with the community of Kya Sands informal settlement?

14. Is this informed by policy? Which policy?
15. Which of the City's administrative regions does the settlement fall under?
16. Are you aware of any community-level structure in Kya Sands and what is the nature of the City's relationship with this structure?
17. What is the City's rationale for getting involved?
18. I have noted that there has been shack numbering in the settlement. What was this for?
19. Which other units or entities of the COJ municipality are involved in Kya Sands and what are their roles?
20. What services do these entities provide?
21. Do you know of any other government department directly involved with the settlement?
22. Are there any NGOs or other organisations involved with land in this area
23. Are there any plans in the near future targeted at Kya Sands? What are those plans and their timeline?
24. Has the community been informed or participated in these plans?
25. In 2016 the Minister of Human Settlements, Lindiwe Sisulu mentioned that upgrading plans were underway and would be implemented in the 2020/21 financial year. Are you aware of these plans and what is the status?
26. Are you aware of what the population figures are in Kya Sands informal settlement?
27. What is the nature of land ownership in the settlement?
28. Have there been any arrangements or discussions with the landowners since people moved into the area?
29. Does the city see it as its responsibility to address issues of ownership? If so, how does the city aim to address these issues?

Other Questions

1. Which Wards does Kya Sands fall under? Is it 96 or 115 and 134?

2. In your job dealing with informal settlements, what challenges do you often encounter? Have these been prevalent in Kya Sands?

3. When people are relocated to state subsidy housing it was indicated during the interviews that shacks often need to be demolished and proof provided. Has this been an initiative of the City or Provincial Human Settlements?

8.4 APPENDIX D: PARTICIPANT INFORMATION SHEET

PARTICIPANT INFORMATION SHEET

Good day,

My name is Lutho Hopa, I am a Masters student in Development Planning at the University of the Witwatersrand in Johannesburg. As part of my studies, I am required to undertake a research project, and I am documenting the Actors, Institutions and Procedures behind Informal Land Management Systems. The aim of this research is to find out the nature of informal land management systems, that being; the actors, procedures and the institutional arrangements used in managing off register land and land rights.

As part of this research project, I would like to invite you to take part in an interview. The interview will involve you answering questions around channels of land access, land transfer, dispute resolution and recording of land information; the interview will take no longer than an hour of your time. With your permission, I would also like to take written notes and if you allow, record the interview using a digital recording device (optional).

Taking part in the study is voluntary and you may withdraw at any time or not answer any question if you do not want to. You will not receive any direct benefits from participating in this research, and there are no disadvantages or penalties for not participating. The interview will be confidential and anonymous as I will not be taking any personal details and all the information shared with me will be kept securely and not disclosed to anyone else. In the final report, a false name will be used to represent your participation. Should you experience any discomfort or distress during this interview kindly point this out and we may stop the interview and resume at another time.

If you wish to receive a summary of this report, I will be happy to send it to you (optional). If you have any concerns or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (Non-Medical), telephone +27(0) 11 717 1408, email hrec-medical.researchoffice@wits.ac.za

Should you require any further information or clarity regarding this study, kindly contact me on the contact details listed below.

Researcher

Lutho Hopa
Email: 714089@students.wits.ac.za

Supervisor

Neil Klug
Email: Neil.Klug@wits.ac.za

8.5 APPENDIX E: CONSENT FORM

CONSENT FORM

Research Project: ***The Actors, Institutions and Procedures behind de Facto Land Administration: The Case of Kya Sands Informal Settlement***

Researcher: Lutho Hopa, Masters Student at the University of the Witwatersrand

	Please Initial Box
1. I confirm that I have read and understand the participant information sheet for the above study and have had the opportunity to ask questions.	☐
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason.	☐
3. I agree to take part in the above study.	☐
4. I agree to the interview / focus group / consultation being audio recorded.	☐
5. I agree to the use of anonymised quotes in publications	☐

Name of Participant	Date	Signature
_____	_____	_____

Name of Researcher	Date	Signature
_____	_____	_____

Appendix F: University Ethical Clearance Certificate



SCHOOL OF ARCHITECTURE AND PLANNING
HUMAN RESEARCH ETHICS COMMITTEE

SCHOOL OF ARCHITECTURE PLANNING

CLEARANCE CERTIFICATE
PROTOCOL NUMBER: SOAP057/06/2020

PROJECT TITLE:	Lessons of a Continuum of Land Rights and Tenure Arrangements: The Case of Urban Informal Settlements in Johannesburg
INVESTIGATOR/S:	Lutho Hopa (Student No: 714089)
SCHOOL:	Architecture and Planning
DEGREE PROGRAMME:	Master of Science and Development Planning (M SC DP)
DATE CONSIDERED:	20 October 2020
DECISION OF THE COMMITTEE:	Approved

CHAIRPERSON_____
(Dr Brian Boshoff)

DATE: 21.10.20

cc: Supervisor/s: Neil Klug

DECLARATION OF INVESTIGATORS

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to endure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee.

UNIVERSITY OF THE
WITWATERSRAND
JOHANNESBURG

Private Bag 3 Wits, 2050
Fax:
Tel:

Reference: Ms Charlotte Mosimane
E-mail: Charlotte.Mosimane@wits.ac.za

22 March 2022
Person No: 714089
TAA

Mr L Hopa
132 Sankie Mahanyele Street
Victoria Mxenge
Phillipi Phase 4
7750
South Africa

Dear Mr Lutho Hopa

Master of Science in Development Planning: Change of title of research

I am pleased to inform you that the following change in the title of your Research Report for the degree of **Master of Science in Development Planning** has been approved:

From:	**Lessons of Continuum of Land Rights and Tenure Arrangement: The Case of Urban Informal Settlements in Johannesburg.**
To:	**Actors. Procedures and institutions behind De Facto Land Administration: Lessons form Kaya Sands Informal Settlement.**

Yours sincerely

Mr Yaseen Stoffberg
Faculty Registrar
Faculty of Engineering and the Built Environment

Appendix G: city of johannesburg metro Clearance letter

City of Johannesburg
Department of Housing

11th Floor
222 Smit Street
Braamfontein
Johannesburg
2017

PO Box 1049
Braamfontein
South Africa
2017

Tel +27(0) 11 018 6667
Email: PatrickP@joburg.org.za

www.joburg.org.za

28 February 2022

Enquires:
Mr. Moyahabo Mabala
Tel: 011 018 6767
Ref no.: LUT001

1 Matt Street
Pretorious Park
0081

RE: PERMISSION AND SUPPORT TO CONDUCT RESEARCH FOR ACADEMIC PURPOSES FOR – LUTHO HOPA.

Official permission is hereby granted to Lutho Hopa to conduct research for academic purposes.

The permission is granted based on the research request form and concept paper submitted by Lutho Hopa to the Housing Department of the City of Joburg. The study focuses on Kya Sands informal settlement within the COJ Metro Municipality and Officials at City level who are involved in processes of informal settlement policy planning and implementation with knowledge of Kya Sands Informal Settlement. The research aims to document how people in informal settlements access, secure and hold land and land rights outside of the formal land administration system.

A copy of the research report to be shared with the department on completion of the study. You are also expected to sign an agreement with the department within 10 days after receiving this letter, failing which will render this permission null and void. We trust that all necessary research ethics will be adhered to in the conducting of the study.

We will endeavor to provide whatever support required.

Kind Regards,

.....
Patrick Phophi
Executive Director
City of Johannesburg Housing
Date:

Tel: +27 (11) 018-6667
Fax: +27 (11) 018-6659
Email: PatrickP@joburg.org.za

APPENDIX H: Plagiarism Declaration

Faculty of Engineering and the Built Environment

Private Bag 3, Wits 2050, South Africa * Telephone (011) 717 – 7007 * Fax: (011) 717 7009 * Email: febe.pg@wits.ac.za

PLAGIARISM DECLARATION TO BE SIGNED BY ALL HIGHER DEGREE STUDENTS

SENATE PLAGIARISM POLICY: APPENDIX ONE

I LUTHO HOPA (Student number: 714089) am a student registered for the degree of MSC IN DEVELOPMENT PLANNING in the academic year 2022.

I hereby declare the following:

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

Signature: _____ Date: 31/03/2022