**Why do equity oriented, ‘progressive’ planning policies fail to redress the apartheid city? An examination of Planning Instrumentality in South Africa**

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# Why do equity oriented, ‘progressive’ planning policies fail to redress the apartheid city? An examination of Planning Instrumentality in South Africa

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A thesis submitted to the

Faculty of Engineering and the Built Environment

University of the Witwatersrand, Johannesburg

in fulfilment of the requirements for the degree of

Doctor of Philosophy.

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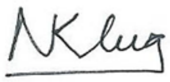
27 September 2023

## CANDIDATE'S DECLARATION

I declare that this thesis is my own unaided work. It is being submitted for the Degree of Doctor of Philosophy at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other University.



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27 September 2023

## ABSTRACT

In the immediate post-apartheid period, the fields of urban planning and housing experienced what some have called a ‘golden era’ during which planning played a significant role in the Reconstruction and Development Programme of the government, through developing new and progressive planning and housing policy instruments. Some of these instruments were designed to expedite the release of serviced land and provide subsidised housing, address the apartheid legacy of spatial segregation and housing backlogs. Despite success in the large number of houses delivered to the poor and increased service delivery to previously disenfranchised communities, by the mid 2000s there was growing criticisms of the state’s failure to redress discriminatory apartheid spatial patterns. South Africa was also experiencing growth in unemployment and inequality between emerging elites on the one hand and the majority of previously disadvantaged in society.

This study sought to examine what role planning policy instruments played in failing to address the spatial legacies of apartheid. Acknowledging the wide range of potential variables contributing to this lack of efficacy, the study took an in-depth grounded, research approach. Using three case studies on different planning and housing related policy instruments and suits of instruments, at different phases of the policy cycle framework, it examined whether or not the state had managed to address housing and other inequalities.  The first case study involved the examination of the processes and practices in formulating a local eviction policy instrument, the second reflected on housing officials’ engagement with the National Housing Code suit of instruments, and the third examined the practices and processes of implementing the Upgrading of Informal Settlements Programme.

The findings of these case studies were that equity oriented, ‘progressive’ planning policies fail to redress the apartheid spatial inequalities because they are either not being selected for use or, where they are being applied, had limited impact because they were being implemented in a watered-down fashion. My thesis shows that there are multiple factors, from broad and complex governance structures to the actions of individual actors, that affect the efficacy of policy instruments.

**Key words:**
Progressive; equity planning; planning policy instruments; housing policy instruments; urban governance; practices of the state; grounded research.

## DEDICATION

I dedicate this thesis to my loving parents Erwin and Muriel Klug who always strove for the best for their sons.

**ACKNOWLEDGEMENTS**

This thesis would not have been achieved without the tremendous support of family, friends and colleagues.

I begin with thanks, to the University of Witwatersrand's Faculty of Engineering and the Built Environment for their five years of financial support through the staff support grant. Also, to all my colleagues in the planning department who always gave me encouragement and space to finish, with a special mention to Muhammed Suleman and our director Mfaniseni Sihlongonyane.

I also wish to thank the University of Sheffield and the colleagues there for hosting me on my sabbatical in 2018, during which time I completed my PhD proposal and presented for approval.

I am grateful for the experience I gained working, with my colleagues at the LHR, Shisaka, SERI, 1to1 and the community members of the Slovo Park Community Development Forum, on the three case study projects presented in this thesis.

Thank you to my two copy editors, Jeanne Enslin and Ronel Gallie for the excellent job they did on the thesis.

Then there are my good friends and colleagues who gave me constant support and encouragement and shared my journey in many different ways with particular thanks to Adrian Bellengere, Paula Meth, Glyn Williams, Robynne Hansmann, Daryl Glaser, Margot Rubin, Phillip Harrison, Adrian Masson, Garth and Megan Seneque, Nqobile Malaza, Solam Mkhabela and Kirsten Doermann. In addition, special thanks to my friends who read parts of my thesis and gave me valuable feedback, Sarah Charlton, Elsje Bonthys, Marie Huchzermeyer and Aly Karam.

I am deeply indebted and grateful to my two wonderful supervisors Claire Bénit-Gbaffou, who despite leaving Wits in 2018 continued to supervise me, and Alison Todes, who has had a long and profound impact on my career having taught me in my first master's degree back in 1988. They provided detailed valuable supervisory guidance, with exceptional response times, despite at times their own pressurised workloads.

I am also deeply grateful to my family, Muriel Klug, Heinz Klug, Gay Seidman, and Dominique Erlank for their constant support and encouragement throughout this journey. Thank you to my children Daniel and Ella for their support and patience.

Finally, my deep gratitude to my wonderful partner, Natasha Erlank for her tremendous emotional support at just the right times, for keeping me on track with her insightful advice, for the invaluable material support in editing parts of the thesis, and lastly patience.

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| | |
|---|---|
| **ANC** | African National Congress |
| **BRT** | Bus Rapid Transit |
| **CAHF** | Centre for Affordable Housing Finance in Africa |
| **CBD** | Central Business District |
| **COGTA** | Department of Cooperative Governance and Traditional Affairs |
| **COHRE** | Centre on Housing Rights and Evictions |
| **CoJ** | City of Johannesburg |
| **CTNGOCI** | Cape Town NGO Collaborative Initiative |
| **CUBES** | Centre for Urbanism and Built Environment Studies |
| **DA** | Democratic Alliance |
| **DP** | Democratic Party |
| **DoHS** | Department of Human Settlements |
| **DOHSFS** | Department of Human Settlements Free State |
| **EDU** | Economic Development Unit |
| **EFF** | Economic Freedom Fighters |
| **GDHS** | Gauteng Department of Human Settlements |
| **GDP** | Gross Domestic Product |
| **GDS** | Growth and Development Strategy |
| **GJMC** | Greater Johannesburg Metropolitan Council |
| **GLU** | Government of Local Unity |
| **HSRC** | Human Sciences Research Council |
| **IDP** | Integrated Development Plan |
| **IMF** | International Monetary Fund |
| **IUDF** | Integrated Urban Development Framework |
| **LFTEA** | Less Formal Township Establishment Act |
| **MEC** | Member of the Executive Council |
| **MLC** | Transitional Metropolitan Local Council |
| **MMC** | Member of the Mayoral Committee |
| **MOE** | Municipal-Owned Entity |
| **NDP** | National Development Plan |
| **NGOs** | Non-governmental Organisations |
| **NHC** | National Housing Code |

| | |
|---|---|
| **NP** | National Party |
| **NPG** | New Public Governance |
| **NPM** | New Public Management |
| **NUSP** | National Upgrading Support Programme |
| **OBPM** | Outcomes-Based Performance Management |
| **PARI** | Public Affairs Research Institute |
| **PMS** | Performance Management System |
| **REC** | Regional Executive Committee |
| **RDP** | Reconstruction and Development Programme |
| **RSA** | Republic of South Africa |
| **SACN** | South African Cities Network |
| **SAHRC** | South African Human Rights Commission |
| **SDBIP** | Service Delivery and Budget Implementation Plan |
| **SDG** | Sustainable Development Goal |
| **SERI** | Socio-Economic Rights Institute of South Africa |
| **SOPs** | standard operation procedures |
| **SPCDF** | Slovo Park Community Development Forum |
| **SPLUMA** | Spatial Planning and Land Use Management Act |
| **Stats SA** | Statistics South Africa |
| **TEA** | temporary emergency accommodation |
| **TEAP** | Temporary Emergency Accommodation Provision policy |
| **TRSAs** | Transitional Residential Settlement Areas |
| **TT** | Task Team |
| **UF** | Urban Foundation |
| **UISP** | Upgrading of Informal Settlement Programme |
| **UN-Habitat** | United Nations Human Settlements Programme |

**PART A**

# CHAPTER 1:
# INTRODUCTION

## 1.1 Background

I am a planning practitioner and academic with more than 27 years of experience in South Africa. I began my career during the death throes of the apartheid system and began practising during the immediate post-apartheid period of immense hope and vision for the future. This hope was based on what we as planners[1] thought we could contribute to a new non-racial, democratic society, in terms of addressing the spatial, economic, social and gender inequalities established during the apartheid era (what I call “progressive planning”[2]). Challenges included racially segregated cities, housing backlogs, and high levels of poverty and unemployment. Since then, the benefits such as improved access to spatial opportunities, adequate housing and infrastructure facilities that have accrued to the most vulnerable have been limited and disproportionate in scale relative to the most well off in our society.

Even before the demise of the apartheid government in 1994, there were progressive planning initiatives, non-governmental organisations (NGOs) and academics who were applying their minds to the post-apartheid South Africa and its implications for urban planning. These initiatives included analysing the effects of apartheid spatial planning and state housing policies while others focused on advocacy work with anti-apartheid civic organisations. As described by Watson (2002a) and Harrison et al. (2008), many of these planners eventually established planning NGOs that were very influential in the negotiation forums of the early 1990s and worked with communities to pioneer new planning policies and practices. “The late 1980s and early 1990s might be seen as a heyday for planning, when planning offered hope of social transformation. Planning came to be seen as a development practice contributing to

[1] For the purposes of this research, planning is defined as: “intentional public/governmental interventions in the land and property development process intended to achieve desirable societal objectives” (Tiesdell and Allmendinger cited in Adams et al., 2005:57).
[2] There is no one interpretation of the word ‘progressive’. I will address this interpretation under my literature review in section 3.

urban social transformation, and to altering the position of the poor" (Harrison et al., 2008:40).

In response to the challenges of the post-apartheid period, the African National Congress (ANC) government immediately formulated a rights-based constitution (Republic of South Africa [RSA], 1996a), which effectively set up the normative basis on which to base its legislation (Klug, 2010). Even before finalising the new constitution, the state promulgated progressive legislation protecting the rights of both formal and informal property occupiers, for promoting land restitution laws and for guiding general land development[3]. Once the new constitution had been promulgated in 1996, all further legislation in this area explicitly stipulated or promoted the value of protecting vulnerable groups, the socio-economic rights[4] of citizens and community participation.

More specifically for my area of interest, The Housing Act of 1997 set out very specific pro-poor principles, which were incorporated into the Housing Code that followed in 2000. This set out the housing subsidy scheme amongst other policy instruments. Alongside social income grants, this has been one of the most direct forms of poverty alleviation mechanisms used by the state for the previously disenfranchised. These policy instruments provide a fully subsidised house and serviced site to South African citizens earning below R3500/month, or free infrastructure in the case of informal settlements, to all the residents. The intentions of this Act were also to address issues of spatial restructuring, the integration of the housing markets amongst other remedies for addressing the apartheid legacy (Charlton, 2009).

However, over the past ten years in particular, there has been a decline in the country in terms of gross domestic product (GDP) growth, and unemployment and inequalities have worsened (Piketty, 2014; RSA, 2017d, RSA, 2017c, Makgetla, 2020). Directly related to the above, particularly prevalent in poor communities, is the narrative around the growing shortages of affordable housing, access to land, and secure land tenure. These narratives have in many cases evolved into protests, "the rebellion of the poor" (Alexander, 2010), averaging about 2.9 protests per day between 2009 and 2012

[3] Restitution of Land Rights Act, No. 22 of 1994; Development Facilitation Act, No. 67 of 1995 and the Interim Protection of Informal Land Rights Act No. 36 of 1996;
[4] Socio-economic rights as set out in Chapter 2 of the SA Constitution of 1996 (RSA, 1996a).

(Alexander and Pfaffe, 2013). These narratives and protests are even more prevalent than those around employment creation as they are issues where people expect state delivery as opposed to private sector provision.

The planning literature has also noted the lack of post-apartheid spatial integration as well as the very slow progress in the deconstruction of the ‘apartheid spatial patterns’ in our cities[5] (see Beall et al., 2002; Tomlinson et al., 2003; Harrison et al., 2008; Murray, 2008 and 2011; RSA, 2012; South African Cities Network [SACN], 2006, 2011, 2016; Harrison and Todes, 2017; Todes and Turok, 2018; Horn, 2020; Turok et al., 2021). The slow rate of change has been attributed to a range of factors including urban planning policies, strategies and governance, particularly at the local government level, where there is a lack of efficacy in driving and implementing such changes, as well as property market forces in reinforcing the status quo (Harrison et al., 2003; Public Affairs Research Institute [PARI], 2014; Sihlongonyane, 2014; Todes, 2014; Turok et al., 2021; Ballard and Hamann, 2021).

Despite new legislation and policies prioritising the poor, particularly relating to housing, land and tenure, the outcomes remain highly contested. Given that housing, access to land, and land tenure security are aspects that all fall directly into the realms of the planning discipline[6], one begins to see a disjuncture between state legislative and policy goals and actual or perceived outcomes, within certainly these areas of planning.

As an example, in the case of informal settlements there has always been an apparently clear policy agenda to in-situ upgrade informal settlements.[7] This agenda has been clearly articulated in legislation and policy documents, in the National Development Plan (NDP), the Housing Code, (incorporating the Upgrading of Informal Settlements Programme (UISP), and in state rhetoric (Huchzermeyer, 2010). Yet, despite all of this, negligible progress has been made nationally on the upgrading of informal settlements over the past 20 years. It could be argued that occupants of

[5] These statements do not negate the fact that there has been a significant amount of service delivery, particularly around low-cost housing and infrastructure services, post-apartheid (Charlton, 2009).
[6] While there is growing tendency, certainly in South Africa, for the creation of a separate discipline and even profession around the provision of housing, I feel that it still falls firmly in the realm of the planning discipline as it involves the making of pieces of town – areas where the city’s occupants reside.
[7] Informal Settlement upgrading is also referred to as slum upgrading in academic literature.

informal settlements are being provided for through allocations into new subsidised housing, but this is limited and involves being relocated to mostly poorer located areas (Charlton, 2009; Huchzermeyer, 2004, 2010).

All the above have motivated me to investigate, in essence, why there appears to be a disjuncture between the 'progressive' goals of planning and what is actually implemented, or not. What are the factors contributing to this apparent gap between seemingly progressive policy goals and their implementation? It will also have broader relevance beyond the borders of South Africa because this growing inequality within the built environment is not a unique situation facing South Africa. Related to the above is the growth in the percentage of people living in informal settlements in the global south (33% of populations in developing countries) (UN-Habitat, 2010).

## 1.2 Problem Statement and Planning Instruments Definition

Confirmed in an International Monetary Fund (IMF) report of 2020, income inequality has grown since 1993 and has remained high since 2005 in South Africa, while its peers on average have seen reductions since the early 2000s (IMF, 2020). Therefore, the call for social justice and greater equity[8] in South Africa remains very prominent. As such, it is an opportune time for the examination of this policy implementation 'puzzle', with the intention of reinforcing the 'progressive' intentions of urban planning in South Africa. Obviously, many variables could be contributing to this 'puzzle'. These include factors emanating from the legacy of apartheid, the deeper economic roots of severe inequality, and how this shapes what planning can do, contemporary external economic forces to the internal macro structure[9] of our economy, amongst other unidentified variables. However, as indicated in the section above, my focus is on those parts of planning and instruments where the state has more control and should be able to do more.

My intention is not to attempt to address this puzzle in its entirety, given the complexities and scale of such an endeavour. Rather, I focus on one possible

[8] The word 'equity' is specifically selected as opposed to equality, as equality means – a state of being equal, given the apartheid legacy of inequality. I prefer the notion of equity, as it incorporates the values of fairness, natural justice (Collins English Dictionary, 2009). 'Equity Planning' is defined as "a conscious attempt to devise redistributive policies in favour of the least powerful and to enhance their avenues of participation" (Krumholz and Clavel, 1994:2).
[9] Stemming from the apartheid legacy.

contributor to this gap within the realm of urban planning, which I examine from a wide range of perspectives. This focus is derived from what I perceive to be a disconnect between the material content and goals of the planning policy instruments we use as planners and how these instruments are interpreted and applied or ignored. My detailed research questions are under section 1.4; what follows is an overview of my broad research focus.

By ‘planning policy instruments’, a term critical to the focus of this PhD study, I mean “policy instruments that fundamentally shape planning outcomes, both in terms of what can be achieved and what is ultimately achieved” (Legacy and Leshinsky, 2016:3), or means used to address public problems (Salamon, 2002). The book that initially guided me to this particular topic titled *Instruments of Planning: Tensions and Challenges for More Equitable and Sustainable Cities* (Legacy and Leshinsky, 2016), merely refers to planning instruments but covers from legally prescribed development controls, broad policy guidelines, targets for affordable housing, financial incentives like transferable development credits, to community deliberation in plan making and 3D modelling options to assist in community deliberations. As such it is a vast range of mechanisms ranging from mere procedural mechanisms to actual designed products.

This expansive approach is also reflected in the governance literature, where Le Galès (2011) derives the following definition from a sociological perspective and from the likes of Hood (1986), Hall (1993) and Linder and Peters (1990) as:

> *“A device that is both technical and social, that organizes specific social relations between the state and those it is addressed to, according to the representations and meanings it carries. It is a particular type of institution, a technical device with a generic purpose of carrying a concrete concept of the politics/society relationship and sustained by a concept of regulation” (Lascoumes and Le Galès, 2007:5).*

From my experiences and from the literature, there are several common reasons given for the lack of implementation of policy instruments. One of the most commonly heard is “lack of political will.” This is a catch all phrase that needs to be unpacked to start being useful. Other reasons are attributed to the lack of capacity of the implementers, or the “policy-implementation gap”, that again would need to be unpacked to be of real analytical value (in all its complexities and layers to understand where the ‘gap’ lies and why); lack of coordination between the different spheres of government; corruption and the clash of rationalities. Over the past decade in South Africa, as criticisms of the state’s service delivery capacity have appeared to increase according to newspaper reports and by personal observations, there has been an increasing exploration by academics and research agencies of these policy-implementation gaps. This exploration has been through the analysis of policy instruments as well as local practices of the state (Van Donk et al., 2008; Berrisford, 2011; Bénit-Gbaffou and Oldfield, 2011; De Satgé, 2014; Bénit-Gbaffou 2018a,c; Cachalia, 2022), to list a few.

Drawing on my experience, I have realised that many of the policy instruments we utilise simply do not resonate with our current realities. In my view, the above reasons are linked to the material content of the planning policy instruments whether they are laws or policies or economic mechanisms, and how their users engage with them. For example, in some cases the content of the instrument is derived from how the planning issue was problematised, directing the user towards particular options and possibly excluding other options/opportunities. In other instances, the nature of the policy instrument is too complex in relation to the level of experience and capacity of the users, resulting in them ignoring components of the policy instrument in the implementation process. There are other cases where the structure and wording of policy instruments are too open to interpretation and enable opposing forces to constrain or even negate their ‘progressive’ implementation. Groenewald (2011) describes an example of this where government officials in South Africa, in the face of pressure to demonstrate progress in meeting the Millennium Development Goals (MDGs), resorted to devising strategies that presented a positive picture in relation to addressing informal settlements. These included semantic changes, such as subscribing to a narrow definition of informality as illegality and shifting responsibility away from particular organs of the state and onto residents, the private sector and other spheres of state. The question then arises as to how did the material content of the Upgrading Informal Settlements Programme (UISP) framework policy instrument enable these semantics?

Many of our land use and housing policy instruments require relatively complex inter-governmental and multi-level governance coordination, through processes of funding and development application approvals as well as policy prioritisation alignments. The bulk of housing policy instruments with regard to tenure, land registration, health and safety (i.e. building regulations) are designed to guide actors in the formal property market (De Satgé and Watson, 2018). This means that in the case of South Africa, they are targeting the minority of households. Similarly, the bulk of our land use instruments, e.g. zoning regulations remain focused on regulating the property development market with too little focus on providing land use opportunities for the poor and marginalised to house themselves and to enable them to undertake activities that contribute to their livelihoods (Görgens and Denoon-Stevens, 2013; Charman et al., 2017; Moodley, 2018; Denoon-Stevens et al., 2022). Many of our policy instruments have been amended incrementally from past instruments, or crudely imported from other contexts (e.g. land use zoning system) (Nel, 2016).

Communities are generally unclear on the state's responsibilities in respect to these instruments as well as their own responsibilities. For example, how is it that there are so many different responses to the same issues of geotechnical conditions and private land ownership affecting informal settlements throughout Gauteng, which are two of the main excuses by officials, for delaying implementation of the UISP? (Huchzermeyer, 2009). Why is it that in a very few cases, using the same policy instruments, officials in some municipalities, simply resolve how to address the geotechnical conditions through technical solutions (engineering and architectural solutions)? (Adegun, 2015). Furthermore, there is a growing dependence on the judiciary to resolve issues in the built environment (although this tendency does not seem exclusive to the built environment), possibly also demonstrating an inability to resolve and negotiate issues through the sector policy instruments designed to address the issues (Everatt and Pieterse, 2022).

Given the above, it is important to examine the realm of planning instrumentality[10], meaning the application of policy instruments or tools[11] to achieve desired ends or at

[10] Word encompassing all planning-related instruments – things which serve as a means to an end (Oxford Dictionary) – and specifically pertains to the study of these instruments.
[11] The literature tends to use the terms instrument and tools interchangeably.

least the stated intentions[12] (Tiesdell and Allmendinger, 2005; Van den Broeck, 2011; Legacy and Leshinsky, 2013, 2016).

To this end, I intend to examine these policy instruments through questioning how they are formulated and implemented by state officials, as an entry point to my puzzle. As argued by Lascoumes and Le Galès (2007), the policy instruments used by the state can reveal the relationships between the governing and the governed in terms of the controls used and how they are applied. Furthermore, the applications of the policy instruments are often not in line with their ascribed intentions, and thereby still have an impact on public policy. In other words, examining policy instruments enables research:

- to identify the true intentions or contradictory/heterogeneous sets of intentions of politicians;
- to determine the intended beneficiaries and who actually benefits from the implementation of the policy instruments;
- to establish how they are interpreted by all stakeholders; and
- to assess how inter-related sets of instruments work or don't work in concert to achieve their intended outcomes.

Within the wide range of planning policy instruments, there are those that are specifically crafted to try and change social and economic circumstances to benefit the poorest, such as those in low-cost housing, spatial restructuring to bring opportunities closer to the poor, transit policies to promote cheaper, safer public transport for the poor etc. However, the range of policy instruments used are too extensive and varied to cover in this thesis. As such, I have selected three housing policy instruments which in effect are framework instruments which contain multiple inter-related sub-instruments which are outlined in section 1.6 of this chapter. As noted by Bénit-Gbaffou (2018a), in most cases policy instruments are inter-related and multi-layered and therefore need to be examined in relation to their inter-related components.

[12] Noting that these desired outcomes or stated intentions are not always clear and often contested, within the state and amongst policymakers.

This entails examining an existing planning policy document or sets of inter-related policy instruments, in terms of how all of them have been designed and framed in response to how the underlying purpose was problematised. It must be stressed that it is a dialectic relationship in that the state's broad purpose guides the discussion, choice and framing of instruments, but that in turn this choice and framing refines or redefines the overall purpose.

## 1.3 Research Rationale

In this section, I explain why I think it is important to study policy instruments and instrumentality.

### 1.3.1 Relevance of this study to Africa and more global research on instrumentality

Internationally, over the past decade, there appears to have been a growing body of academic literature on planning instrumentality, in the context of the growing concern of the negative impacts of neo-liberal policies on environmental sustainability and social equity (Rydin, 2013). According to some scholars, planning has been powerless in the face of neoliberal forces, and has even been used as the instrument to perpetuate neoliberal outcomes (Peak et al., 2009 and Rydin, 2013, cited in Legacy and Leshinsky, 2016). Therefore, there has been a growing recognition of the need to examine planning or even general policy instruments in order to determine and evaluate social and environmental outcomes in relation to issues of social equity and environmental sustainability (Hood, 1986; Tiesdell and Allmendinger, 2005; Van den Broeck, 2011; Macintosh et al., 2012; Legacy and Leshinsky, 2013, 2016).

However, there appears to be a gap in this literature pertaining to the global south. While there are quite accurate and developed studies on policy instruments in the Global North, they are generally not specifically on cities (for an exception see Rosol's work on Vancouver [Rosol, 2013]) or they tend to focus on one policy instrument at a time rather than examining what happens when a multiplicity of policy instruments is deployed. The exception is Brazil, where there is a significant amount of literature on evaluating the implementation of the progressive urban agenda of the early 2000s under the Lula presidency. This literature is particularly useful given the similarities between Brazil and South Africa. Both countries liberated themselves from an oppressive regime and their new governments pursued progressive pro-poor policies. Other significant and more detailed commonalities include the decentralisation of local governments; and the continued existence of what is termed a “traditional political logic, strongly based on clientelism, patronage and control by business interests” (Rolnik, 2011:244). The literature broadly reflects on the challenges of implementing progressive instruments in a complex political environment that is still strongly influenced by the previous political and economic elites (Rolnik, 2011).

Over the past decade there also appears to have been a large amount of literature produced on African bureaucracies and the efficacy of policy implementation. De Herdt and Olivier de Sardan’s (2015) research on African bureaucracies and policy implementation focuses on the norms and practices of government officials rather than looking at policy instruments themselves. Blundo and Le Meur’s (2008) edited volume on day-to-day governance in Africa focuses on broader aspects of a non-normative approach to governance in trying to explain the delivery of public goods in the African contexts. Goodfellow (2013) argues that it is the differing political bargaining environments that impact most on policy implementation as opposed to other factors in his case studies of two African countries. Similarly, and more recently, Cirolia and Berrisford (2017) argued for the concept of ‘negotiated planning’ when examining three planning policy implementation instruments in different African countries. Again, they focused on the implementation processes and practices arising from the policy instruments rather than the material content of the instruments and their impacts on these processes.

Other authors, such Njoh (2010), critically argue that planning and obviously its policy instruments is merely a tool for realising ongoing cultural imperialism from the West.

This is part of a broader global debate on planning theory and the direction that planning and practice have gone in over the past few decades. According to Archibugi (2008), planning theory has lost its focus on the planning process itself and how it can be used effectively to help people figure out what they want, how to get it, and why. He further argues that planning theory has lost its focus on the institutional interconnections of planning processes from national, to state or regional, to local levels, and back up again.

Finally, there have been repeated calls in a few planning theory compendiums and compilations (Healey and Hillier, 2016) for more empirical studies on the policy/action relationship; secondly on the factors that influence practices and most applicable to my focus, on socio-technical systems and micro practices (Versteeg and Hajer, 2016).

### 1.3.2 The importance of studying planning instrumentality academically in South Africa

The lack of transformation in South Africa, as outlined in section 1.1 above[13], has generated a strong debate around issues of transformation and planning change in contemporary South Africa. My work aims to address a gap within these debates. Most of the debates, referred to below, do not focus on the policy instruments and their materiality, and how they may be used to bring about these transformations. As a result, much of the debate and the associated discourse focus on the relatively abstract level of policy implementation, which possibly gives inadequate guidance for amending practices to bring about these changes.

The field of post-apartheid planning instrumentality (which refers to the effectiveness or usefulness of the instruments in achieving their intended outcomes) in terms of equity and the policy implementation ‘disjuncture’ has been, explicitly and implicitly, quite extensively explored in different ways since the early 1990s. The literature focuses on evaluating both intentional and unintentional outcomes of the policies. This literature includes: Sihlongonyane (2014), Charlton on housing policy (2009), Huchzermeyer on informal settlement upgrading policy (2004, 2009, 2010, 2011), Todes on spatial planning (2006, 2008, 2012), Du Plessis (2013), and Todes et al. (2010), again evaluating the outcomes of specific spatial plans.

A large amount of local literature has also studied various planning, spatial and housing-related policy instruments themselves, examining and critiquing non-governmental sector influences or contributions to policy (Harrison et al., 2008; Winkler, 2009; PARI, 2014; SERI, 2016; De Stagé and Watson, 2018; Turok et al.,

[13] The White Paper on Spatial Planning and Land Use Management (RSA, 2001), and recent Human Settlements Draft White Paper (RSA, 2015), also confirm the lack of transformation in South Africa. Other issues such as: the perpetuation of housing shortages (Cloete and Marais, 2021; Tissington et al., 2013; Charlton and Meth, 2017) and related spatial disjuntures and inequalities within South African urban areas, 24 years post-apartheid (Turok, 2012; Piketty, 2014; SERI, 2016; RSA, 2017d), have also been well documented.

2021; Ballard and Hamann, 2021); the dissonance between formal rules and real practices (Bénit-Gbaffou, 2018a,c). Alternatively, where planning policy instruments are examined in terms of their content, it has been mainly on the legislative drafting aspects of planning policy instruments (Berrisford, 2011). Broadly, this literature is all part of planning instrumentality. Many studies remain at the strategic level and have seldom gone to the material and concrete studies of the policy instruments of transformation. Despite the significant amount of research into post-apartheid planning policies there is a need for more and deeper research, particularly grounded case study research into how these policies are being implemented in day-to-day practice.

More broadly, if we accept the premise that instrumentality is a central element to governing a country, instrumentality must be crucial to the ongoing debates on the ‘developmental state’ and South Africa (Van Donk et al., 2008; Edigheji, 2010; Gumede, 2011; De Satgé, 2014). The importance of exploring instrumentality by focusing on the policy instruments themselves is emphasised by De Satgé (2014), who argues that South Africa is placing more and more weight on the ‘techne’ of planning (range of policy instruments), experts and on bureaucratic actors. If this is the case (and certainly the proliferation in housing policy instruments over the past 18 years, and attitudes of officials, as sole providers of housing, can attest to this), it is important that the whole range of relevant policy instruments be subjected to academic analysis in order to obtain a better understanding of their application.

Sihlongonyane (2014:55) maintains that planning instruments in South Africa have remained untransformed – in that they have remained fixated with order and the “coloniality of power” and thereby have the tendency to ignore social processes and the interests of communities. He further attributes the mismatch between the objectives and outcomes of planning practice and the needs of the urban poor, to this fixation with order and colonial values. A possible example is the state’s preoccupation with the “eradication” of informal settlements and the provision of standard 40m² RDP (Reconstruction and Development Programme, an early strategy of the newly democratic South Africa) housing with water-borne sewage systems for all circumstances. This policy has ironically contributed to the proliferation of informal settlers and increased housing shortages (Huchzermeyer, 2011). These instances could be examples of such claims of having a ‘fixation’ with order.

Policy research has tended to look at discourses, processes and outcomes; or the actors engaging with the instruments, sometimes the genealogies and development of specific policy instruments, and at the framing of policies rather than their details. These include the Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs) (Harrison, 2001; Watson, 2002b). This research on policy instruments focuses on specific moments and examples of these policies in various stages of the policy cycle.

This study further responds to Harrison et al. (2008), in their book on planning transformation in South Africa, where they stated that South Africa had a rare opportunity post-apartheid to completely review and redesign its planning system. This process of redesign has provided rich material on the policy instruments adopted post-apartheid, to examine now two decades later. My research, therefore, provides more insights into the plethora of debates on the dissonance between the objectives of policies and their outcomes in Africa and more particularly in South Africa.

### 1.3.3 Relevance of this study for South African politics and planning practice

It is intended that this study of policy instruments will contribute to the current housing policy debates in South Africa, as we appear to be moving away from the path dependent practices of green-fields RDP/mass-housing projects in favour of more incremental and diverse responses to the housing shortages.

South Africa is entering into a period of high political volatility, with a fractured political ruling party, growing dissent amongst the youth on education and land issues, as well as a stagnant economy (RSA, 2012). As such, there is a greater need to reflect on how the state is governing. As part of this reflection on governance, those realms that support poverty alleviation and equity need to be re-examined to mitigate the growing social dissatisfaction and neo-liberal forces at play. Part of this process would be the re-emphasis on reviewing the current instrumentality utilised in the planning discipline at present within this current context.

I believe that planning and its practices, as the discipline that coordinates the operation and development of all the different components (including housing the most extensive land use in cities) of a regional, district or urban area, need to become more effective in addressing issues of equity. The efficacy of planning as a discipline and its ability to assist in bringing about greater social and spatial equity has been questioned, certainly in South Africa (Moodley, 2018; Denoon-Stevens et al., 2022). This debate covers a wide range of aspects of planning from the underpinning philosophical origins and tenets (Pieterse, 2010; Winkler, 2011; Kamete, 2012; Sihlongonyane, 2015; Silva, 2015) to the technical policy aspects of planning (Todes, 2012; Ruhiiga, 2014; Odendaal and McCann, 2016). Ultimately, these concerns are translated into the planning policy instruments used to address public problems and therefore it is important that these policy instruments be a focus of research. The essence of these debates is well encapsulated by Carlos Nunes Silva (2015:25) when he states: “the history of urban planning in Africa is thus full of plans that were revealed to be in practice no more than urban fantasies”. He further concludes his chapter as follows: “The idea that urban planning should ensure equitable distribution of urban services, taking into consideration the specific local context, has been exceptional in the planning discourse in Sub-Saharan Africa. Exceptional has also been the debate on how planning should address urban informality beyond the traditional view that slums must be demolished”.

As a planning and built environment fraternity of professionals, we need to review our practices, of which the planning policy instruments we use are central. This review of our policy tools and instruments is needed to redress the legacy of the role played by planning during the apartheid period. This role was of assisting in spatially segregating the country. The planning profession should rather be seen to be undertaking a role of addressing the needs of the most marginal through effective planning and housing instruments. This will be important to sustain the relevance of planning as a discipline in South Africa into the future, and to demonstrate that planning is not merely the facilitator of economic growth (Rydin, 2013) at best and at worst a waste of government resources. Secondly, for government planning and housing officials, advocacy groups and built environment academics, this research is needed to explore what the transformation of planning practices means in relation to the instruments we utilise. Rather than being frustrated by the unintended consequences of many of the instruments, the instruments need to be more contextually specific and relevant.

Politically, the recent intensification of the land expropriation debate, as well as the ongoing and worsening housing shortages for the poor, is partly related to the lack of efficacy in implementation of many of our planning, land reform and housing policies and programmes to produce more equitable outcomes. I feel that the improvement and reinforcement of the progressive instruments used to implement the above policies and programmes would contribute to better implementation and thereby more equitable delivery of public services and more effective spatial transformation of the built environment. This is now more imperative given the current dissatisfaction of the electorate with the ANC government in terms of service provision, demonstrated by the recent local government elections in 2016 and more so in 2021.

## 1.4 Research Questions

My main research questions form a common thread running through all the publications and chapters that constitute this thesis. This will ensure that my cumulative findings and analysis contribute to the answering of the main research question, and its implications for the future design and implementation of progressive urban planning instruments, while contributing to local planning theory on instrumentality.

Sub-questions related to answering the core question vary according to the focus of each case study paper or analytical chapter.

### 1.4.1 Specific research question

Based on my problem statement and rationale for undertaking this research, the core research question is as follows:

- How does the design and implementation of progressive planning policy instruments limit their efficacy to achieve more equitable cities *in South Africa?*

### 1.4.2 Research sub-questions

The following sub-questions have been formulated to assist in answering the main research question, by exploring different aspects (based on the life cycle of policy instruments (Howlett, 2005), of the design and implementation of specific 'progressive' policy instruments examined in the three case studies set out in detail in Chapter 3 section 3.3 of this thesis.

a) What factors (socio-economic, political; cultural and administrative) affect the 'formulation' of 'progressive' planning policy instruments in a city?
b) What factors influence the implementation of 'progressive' policy instruments from the implementer's perspective considering their institutional context?
c) What are the kinds of factors that affect the efficacy of policy instruments themselves in terms of their content and implementability?

### 1.4.3 Approach to answering the above questions

I selected a case study approach in response to my research questions for two primary reasons. The first is that my subject matter essentially involves the interaction between policy and human behaviour (the implementers of the policy). Secondly, I utilised what has been called the analytical auto-ethnographic approach as well as more conventional approaches (as set out in detail in Chapter 3, section 3.3 to gather evidence in three case studies (Anderson, 2006; Denzin, 2006)). Also, the case studies reflected on the various housing policy instruments through different moments in the policy instrument life cycle: from agenda setting, conceptualisation and formulation, through to policy instrument implementation.

The first case study is on the formulation of a local municipal eviction policy instigated by a Constitutional Court ruling. The case study enabled me to examine the roles of the overall governance architecture, the impacts of institutional and individual agency and power dynamics in the formulation process of a policy instrument.

The second case study enabled me to view a framework of policy instruments within a particular policy environment through the eyes of its implementers. This was enabled through a series of policy training workshops I facilitated with state housing officials. This case study enabled me to examine the complexities of the governance structures, the institutional environments and personal abilities; attitudes; politics and circumstances of policy implementers in relation to the framework of policy instruments.

The third case study is on the implementation of an informal settlement (Slovo Park) using the Upgrading of Informal Settlement programme (UISP) as the framework policy instrument. The case enabled me to examine the consequences of the content of the policy instrument framework in relation to the complex policy and institutional environment and the practices of the stakeholders involved on the implementation process.

## 1.5 Setting the Context – The South African Institutional Transformation

### 1.5.1 Introduction

This section provides a brief historical context to the remarkable institutional, and by association instrumental, transformations that have taken place in the South African governance system post-apartheid. Given that the focus of this research is largely on planning and housing at the local government level, with some references to the intergovernmental linkages to the other levels of government, this section focuses on transformations within that arena. This section covers two main aspects, 1) the historical, political, socio-economic context of South Africa that provides a background to South Africa's post-apartheid governance architecture; and 2) the overriding planning instruments in terms of land use and spatial instruments and housing instruments, applied from the national to the local scales, since 1990.

### 1.5.2 The apartheid legacy and post-apartheid influences

The negative legacy of apartheid legislation and its impacts are too extensive to cover in this chapter and is well documented in the literature. Essentially from an urban planning perspective, the statutory segregation of races created discriminatory structures in all urban areas which led to poor housing and service provision, wasted expenses due to duplication of services, housing backlogs and inaccessible land markets for the majority of black people (Swilling et al., 1991; Harrison et al., 2008). Focusing on the spatial and housing aspects that faced the post-apartheid government at the time of transition, it is important to have a historical understanding of the political and economic context within which the post-apartheid policy instruments were negotiated. Firstly, to understand the political and philosophical underpinnings of the progressive intentions of these instruments and secondly to understand the constraints faced in their formulation and application.

When the ANC was unbanned in 1990, the collapse of communism in the Soviet Union in 1989 had just occurred which was perceived as a victory of capitalism over socialism thus weakening the support for planned economies and those who favoured extensive government interventions, such as the ANC. This was seen as one of the major contributing factors for the timing of the negotiated settlement between the ANC and its alliance partners and the apartheid government. Given that it was not a clear military victory for the liberation movement, a negotiated settlement had to be reached with significant compromises between the government in waiting – the ANC, the apartheid government, and the business elite. This together with other international trends in the globalisation of capital and public management also had significant impacts on the outcomes of the negotiated settlements when it came to governance structures and procedures. For example, the increased globalisation of markets made the SA economy more vulnerable to international market fluctuations and international lending agency assessments, weakening the ANC alliances' negotiating position. Likewise, increased movement of finance between countries and subsequent influence of private multi-national corporations on local economies also made the ANC government more vulnerable to neoliberal influences. For example, at the procedural level the emergence of New Public Management approaches in the 1980s has had a significant impact on government practices (Harrison et al., 2008; Harrison, 2001).

The overall outcome of the negotiations was the establishment of a parliamentary democracy with national elections every five years and local government elections every alternate four years. Institutionally one of the other significant negotiated outcomes was the very structure of government, "South Africa's system of co-operative governance is unique in the way it defines difference spheres of government and tries to constitutionally regulate their relative roles to facilitate intergovernmental relations across the different loci of governance in the country. Section 40 (1) states that the government is constituted as national, provincial, and local spheres of government which are distinctive, interdependent, and inter-related" (Klug, 2010:257).

The above structure has had profound impacts on the functioning of local governments in South Africa as discussed in the second case study in Chapter 5. Local government structures were finalised with the promulgation of the Municipal Systems Act of 2000. This Act set up the core principles, structures and procedures of local municipalities to facilitate the social and economic upliftment of their communities. Relevant to planning, housing and services provision, the Act required municipalities to prepare Integrated Development Plans as a single multi-sectoral strategic plan that guides all developments within the municipality (RSA, 2000).

Along with the institutional changes were radical spatial changes in terms of the re-establishment of provinces from four to nine in 1995, to decentralise governance in the various parts of the country, and in 2000, the re-demarcation of all municipal boundaries to establish back-to-back municipalities to achieve more equitably functional local municipalities (Klug, 2010). This boundary restructuring and the reorganisation of local municipality functions were to align with the normative principles of the Constitution. Furthermore, all racially-based planning legislation had to be repealed which was complicated by the fragmented policy and legislative framework established in different parts of the country by the apartheid state.

Another important institutional component was the establishment of Developmental Local Government (DLG), as set out in the White Paper of 1998, to implement the rights-based agenda of the Constitution. The White Paper set out an ambitious all-encompassing policy mandate for local governments, including poverty reduction, sustained economic growth, sustainable resource use, spatial integration of socially diverse groups and land use in ways that deepen citizenship (Pieterse et al., 2008). These transformations cover the following elements of local government: municipal finances, boundaries, political structures, planning systems, participatory structures, partnerships, and service delivery levels. To achieve this the following implementation challenges would need to be overcome according to Pieterse et al. (2008). Firstly, there would need to be agreement on shared visions for their prospective areas to negotiate their way through competing demands of interest groups; secondly, without such a vision a logical strategic management institution for implementation would not be possible; thirdly, without the human and systems capacity it would not be possible to deliver on the goals and programmes; and finally, proper participation would be needed to ensure meaningful democratic inclusion of all. It is important is to reiterate that South Africa is a relatively young democracy and as such, its ambitious transformation of its developmental local government could be viewed as the South African democratic experiment, according to Van Donk et al. (2008).

Interestingly it was already noted in 2008 in Van Donk et al. (2008), that on reflection of these rapid institutional changes, officials have claimed that it has resulted in institutional memory loss and institutional weaknesses as historical procedures have not been maintained and strengthened. As such the opposing range of philosophical and political influences on policy instrument formulation and implementation as well as the rapidity of the institutional changes have had profound impacts on the implementation of these instruments over time. Possibly in response, Smith and Morris (2008) have noted that in the course of the 1990s there was a rapid increase in partnership initiatives between local municipalities and private sector and increasingly public sector partners to deliver services. They concluded that evidence suggests that outsourcing actually had a negative impact due to the lack of effective municipal regulators of the municipal services entities. These entities tend to be accountable to their shareholders as opposed to the political agenda of the municipality. Similarly, private consultants tend to have their own constraints detailed in Chapters 4 and 8 below.

Furthermore, by the late 2000s there was an ever-increasing number of service delivery protests around the country as well as various studies and literature beginning to reflect on the problems of implementation emerging from local municipalities' inability to deliver on sometimes basic services (Klug, 2010; Alexander, 2010). According to Atkinson, cited in Klug (2010:277), the three main reasons for community's anger stemmed from ineffectiveness of service delivery, poor responsiveness from municipalities to a community's grievances and a culture of conspicuous consumption resulting from the self-enrichment on the part of councillors and staff. "Even as the national government distributes an increasing share of the budget through local government, the transformation of local government – with its accompanying loss of experienced managers and the emergence of 'an organisational culture of incompetence and nepotism' provides the context in which these new institutions are being shaped" (Klug, 2010:282).

The above challenges of local government are largely corroborated by Haferburg and Huchzermeyer (2015) in their edited book on urban governance in post-apartheid cities. They conclude that there is a unique type of governance in South Africa in so far as they characterise it as a triangle of tensions between the neoliberal concepts and policies largely deployed from the north, the rights-based requirements of the Constitution of participation and welfare-type social delivery, and the top-down inadequate delivery regime from the state. The state of local government in South Africa has continued to worsen in the past seven years, due a multitude of factors including poor financial compliance, skills shortages, excessive outsourcing, procurement malfeasance, leading to the physical deterioration and diminished service delivery in many municipalities (Brand, 2018; Ellis, 2021; Friedman, 2021; Slabbert, 2022; Everatt and Pieterse, 2022). Another compelling proposition by Schmidt (2008:118), was that the term 'equity' which underpinned the strong political philosophies and discourses reminiscent of the immediate post-apartheid period, has become used in an ambiguous manner in local municipal service delivery. He argues that ambiguity has both advantages and disadvantages in that it can facilitate consensus in highly conflictual situations but can also result in political laziness, avoidance of big political choices and can produce confusion and a loss of direction and stasis.

Given the above, many people still question and debate whether the existing structure with equal spheres of government is the most appropriate, and at very least as Van Donk et al. (2008) describe it as a democratic experiment still in its infancy.

### 1.5.3 Post-apartheid planning and housing instruments

Given that policy instruments are governance tools that are derived from a plethora of influences from history, culture, global sources, available financial and human resources attributed to a specific country, context is critical. As discussed above, the rapid transformation of the state governance architecture was particularly relevant to urban planning instruments, given the role they had played in the implementation of the apartheid state with respect to group areas and differentiated local governments, as has been well documented (Swilling et al., 1991; Harrison et al., 2008).

“Within the ANC-led alliance there was a diverse set of influences and ideologies at play, and questions around the appropriate role of the state, and of its various levels, in shaping the space economy, were highly contested” (Harrison et al., 2008:57). With respect to the range of influences on the design and formulation of policy in the immediate post-apartheid period, Harrison (2001) clearly sets out the opposing philosophical approaches and the range of associated theoretical, practice and development discourses resulting therefrom. He discusses the example of the formulation of the Integrated Development Plan (IDP) instrument to guide local authority’s strategic planning implementation. The IDP is influenced by discourses from the top-down state-driven approaches evident in the earlier socialist countries (where returning ANC exiles studied) to the New Public Management approaches from neo-liberal western countries and more integrated approaches from neoliberal institutions like the World Bank. Similarly, with the negotiation and formulation of the housing legislation and policies in the early 1990s there were multiple influences, dominated by the notion of a top-down state delivery process as outlined in more detail in Chapter 5 (Rust and Rubenstein, 1996). For example, in the transitional period from 1990 to 1994, the apartheid government, aware of the approaching end to their regime, sought consensus by introducing legislation like the Less Formal Township Establishment Act of 1991 (LFTEA), as a measure to accelerate urban land development for low-income housing developments. Similarly, the Independent Development Trust (IDT) was established to finance low-cost housing developments and site and service developments. This Trust pioneered the housing subsidy approach which would eventually be adopted in the post-apartheid housing policy (Harrison et al., 2008).

The first major programme implemented by the new ruling alliance after the democratic election in 1994 was the Reconstruction and Development Programme (RDP). It was broadly a neo-Keynesian programme of state-led investment in infrastructure and basic services including a low-cost housing component, to address the housing and services backlogs of the apartheid legacy (Harrison et al., 2008).

*Planning legislation and policy instruments*

As part of setting up the RDP programme implementation government set up planning instruments such as the Development Facilitation Act (DFA) in 1995 together with

LFTEA. The DFA incorporated normative principles in alignment with the constitutional rights-based approach and shifted planning in a more developmental and normative direction. However, the DFA had a tribunal approval and appeal system at provincial level which private developers took advantage of to circumvent local government decision making. Furthermore, conflicts around spatial planning at the various scales and overreach by the provincial governments into the terrain of spatial planning ultimately resulted in large sections deemed to be unconstitutional as they contravened the powers and functions set out in the Constitution (Harrison et al., 2008; Greyling and Berrisford, 2016). With its demise the country fell back partly on pre-democratic planning legislation (Berrisford, 2011).

The Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013, was promulgated which finally aligned planning legislation with the new Constitution. SPLUMA offers a framework for spatial planning and land use management, guided by normative principles, norms and standards, in which all spheres of government must prepare spatial development frameworks. SPLUMA also gives guidance on land use schemes and provides for unitary land development procedures at the municipal level. These procedures include the establishment of townships, and the change of land uses which is of direct relevance to human settlement development. Significantly, "SPLUMA seeks to 'provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government. Nevertheless, whether or not this Act can accelerate the processes for informal settlement upgrading remains to be seen" (Greyling and Berrisford, 2016:371).

*Key components of the Housing Policy in South Africa*

After several years of negotiations in the National Housing Forum, a multi-party non-governmental negotiating body comprising 19 members from business, the community, government, development organisations and political parties, the foundation for the new government's Housing policy was developed and agreed. The National Housing Accord was soon followed by the Housing White Paper which was promulgated in December 1994. The promulgation of the Housing Act, 1997 [Act No. 107 of 1997] [the Housing Act] (RSA, 19997) legislated and extended the provisions set out in the Housing White Paper and gave legal foundation to the implementation of government's Housing Programme (Rust and Rubenstein, 1996).

This White Paper on housing published in 1994 ‘confirm(ed) Government’s commitment to the end user capital subsidy programme and to expanding this programme to cater for a wide variety of delivery approaches. “In part a response to deprivation of property rights for the majority of the population in the apartheid past, public subsidy now supported a gift from the state to millions of individuals and households” (Mabin, 2020:465).

In 1997 the Housing Act was promulgated, which, as Harrison et al. (2008) point out, was another compromise as it was based on a one-off capital subsidy paid to private developers to produce housing for the poor. Also, it was an individual solution approach as opposed to a more communal solution (Huchzermeyer, 2003).

The Housing Act aligned the National Housing Policy with the Constitution of South Africa and clarified the roles and responsibilities of the three spheres of government: national, provincial and municipal. In addition, the Housing Act lays down administrative procedures for the development of the National Housing Policy. As part of aligning with the principles of the Constitution the Housing Act is based on two points of departure:

1) “The Housing Act upholds Section 26 of the Constitution which provides that all South Africans have the right to access adequate housing and Government is required to take reasonable legislative and other measures within its resources to achieve the progressive realisation of this right” (RSA, Housing Act of 1997: Preamble).

2) The Housing Act recognises that housing:
   - fulfils a basic human need
   - is a product of human endeavour and enterprise
   - is a vital part of integrated development planning
   - is a key sector of the national economy
   - is vital to the socio-economic well-being of the nation.

In addition, the Housing Act set out eight principles applicable to housing development in Part 1 General Principles – which National and Provincial Government and Municipalities must adhere to.

- The needs of the poor must be prioritised.
- The housing process should provide a wide choice of housing and tenure options, be economically and financially affordable and sustainable, and be administered in a transparent and equitable manner.
- Housing development should occur in an integrated manner that creates socially and economically viable communities.
- Government should encourage and support all individuals and community-based bodies in fulfilling their own housing needs in a way that ensures skills transfer and community empowerment.
- The active participation of all relevant stakeholders in housing development should be facilitated.
- Individuals and communities affected by housing development should be meaningfully consulted.
- The gearing of Government investment in housing by additional finance and other investment by the private sector and individuals should be facilitated.
- The sustained protection of the environment should be promoted (RSA, Housing Act of 1997).

These points of departure and principles are critical in evaluating practices of the state going forward as they are the essential alignment points with the Constitution in terms of explicitly articulating that state housing provision will focus on the most vulnerable and that the process should be undertaken in partnership with those communities.

The Housing Act of 1997 also set out the roles and responsibilities for each sphere of government as well as the various government implementation agencies such as the Housing Development Agency (HDA) and the funding mechanisms. Other related legislation and policy instruments supporting the provision of housing followed such as the Rental Housing Act of 1999 (amended in Act 43 of 2007) (RSA, 2007), the National Housing Code of 2000 (revised in 2009) (RSA, 2009a), a Comprehensive Plan for the Development of Sustainable Human Settlements commonly referred to as Breaking New Ground (BNG) of 2004 (RSA, 2004), The Prevention of Illegal Eviction from and Unlawful occupation of land Act 19 of 1998 (RSA, 1998), and The Social Housing Act 16 of 2008 (RSA, 2008).

### 1.5.4 The implementation period 2007–2022

Over the past 15 years there has been a perception that the South African government delivery of services to its citizenry has been in decline, based on numerous studies presented in reports, books and newspaper articles. It is argued that the grounds for this decline were already in the making prior to 2007. However, 2007 represents the start of the electricity supply crisis (De Vos, 2020), the beginning of the Zuma Era, which was associated with mass corruption through the 'State Capture' project (Zondo Commission, 2022). The indicators most often associated with decline include the following:

- Rising corruption
- Weakening of state and civil society institutions
- Poor economic management
- Skills and capital flight
- Politics dominated by short-termism, ethnicity or factionalism
- Lack of maintenance of infrastructure and standards of service.

What is interesting is that the following signs of decline were identified in the National Planning Commission's Diagnostic Overview back in 2011 where they indicated that elements of these indicators were already visible in South Africa, though at that time their strength and prevalence were uneven and differed from sector to sector. The Diagnostic overview even predicted that if the signs became more prevalent, "the country's progress could be stalled, its gains reversed and even the foundational aspects of democracy unravelled" (RSA, 2011:8).

Housing sector statistics show that national delivery of housing opportunities began to decline from about 2007 (Ramovha, 2022) and have never regained the delivery volumes of the early 2000s. There is a plethora of literature on the causes of such decline (Tomlinson, 2006, 2015; Khan, 2010; Tissington, 2010, RSA, 2017b). Menguelè et al. (2008) argue that the broad scope of the housing programme could have served as the 'flywheel' and 'lynchpin' for integrated development across all sectors and spheres of the government. However, “this potential is undermined by deeply entrenched attitudes that the institution initiating, a policy is the sole mandatory owner and accounting institution for this policy, irrespective of its transversal nature.” (Menguelè et al., 2008:191).

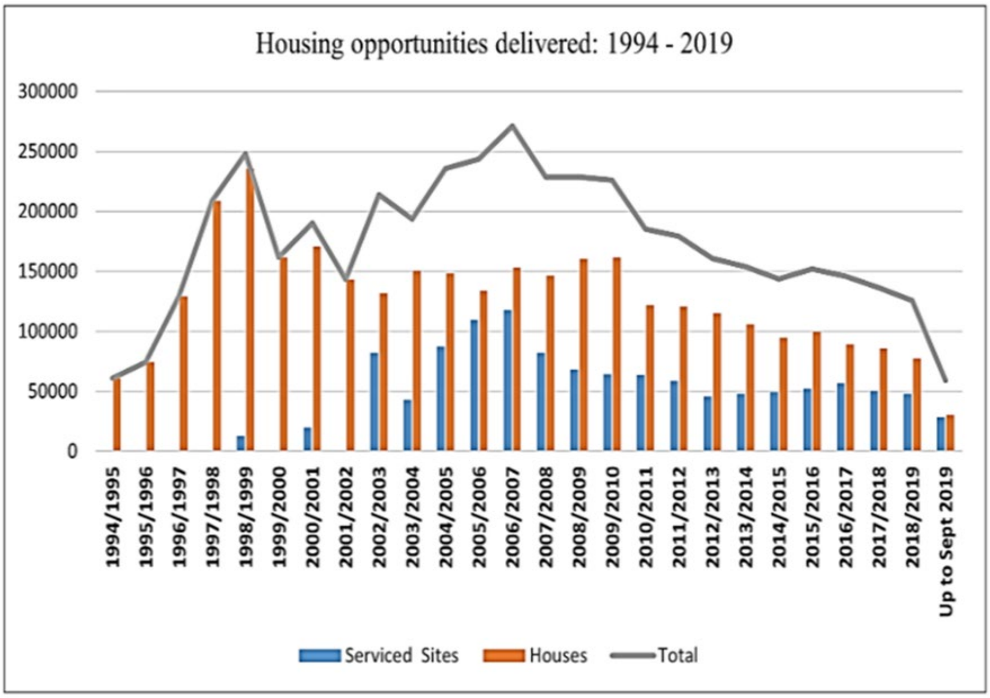


**Figure 1.1 Decrease in housing delivery from 1994–2019**

*Source: Department of Human Settlements (DoHS) (2020 cited in Ramovha, 2022)*

With respect to informal settlements, there has been a steady growth in their prevalence coinciding in a poor response from the state as detailed in later chapters.

The above provides a broad historical and institutional context of the South African rapid institutional transformation undertaken over the past 20 years and its possible impacts on delivering the state’s ambitious spatial and housing targets. Further it outlined the key legislative and policy instruments applied in the case studies presented in this research.

## 1.6 Structure of the Thesis

As detailed more fully in my methodology, the empirical basis of this research is based on three grounded case studies which were originally all intended to be published as articles or chapters of books. However, experience has resulted in a blended research report, with both conventional chapters and stand-alone articles. This is permitted in PhD theses undertaken within the University of the Witwatersrand’s Faculty of Engineering and the Built Environment.

Chapter 2 is the literature review providing an overarching theoretical and conceptual framework that provides a common link between the three case studies.

Chapter 3 is the detailed methodology and methods outlining my approach to the research. Specific research methods applicable to each of the case studies are provided within the case study chapters themselves.

Chapter 4 contains my first case study titled: The politics of formulating policy on housing evictions in post-apartheid Johannesburg. It is written in an article format and is to be published as a book chapter later this year in a book tentatively titled: Local Officials and the Struggle to Transform Cities (TBC): A view from post-apartheid South Africa, edited by Claire Bénit-Gbaffou. The book is being published this year by the University College London Press. A brief description and contribution of the case study is provided in section 1.4.3 above.

Chapter 5 forms the second case study, which is written in a journal article format and is to be submitted to a journal for publication. The case study is titled: A planning instrument through the eyes of the implementers: Applying the National Comprehensive Housing plan (BNG). A brief description and contribution of the case study is provided in section 1.4.3 above.

Chapter 6, 7 and 8 all focus on the Slovo Park case study (the third case study). Chapter 6 deals with the theoretical and conceptual issues of informal settlements as well as the institutional context of the case study. Chapter 7 focuses on the case study area of Slovo Park and provides the empirical evidence based on documents and personal experiences of the project. This chapter also includes the specific research methodology applied in the case study. Chapter 8 sets out the analysis and conclusions on the case study, reflecting back on the research questions posed in this case, on the UISP instrument and its progressive implementation. A further brief description and contribution of the case study is provided in section 1.4.3 above.

Chapter 9 contains my overall analysis of the three case studies and other research and reading. This chapter also responds to my research questions, and findings in relation to the literature as well as setting out the study's contribution to the literature. The chapter concludes with limitations, possible future research, and some personal reflections.

# CHAPTER 2:
# ENGAGING WITH THE DEBATES IN PLANNING, HOUSING AND GOVERNANCE THEORY: PLANNING INSTRUMENTS

## 2.1 Introduction

The purpose of this literature review is twofold, namely to identify concepts and debates that will be useful in making sense of my findings, and secondly, to identify the debates and areas of theory to which this research may be able to contribute. In attempting to obtain a better understanding of the efficacy of urban planning outcomes through studying its policy instruments, this literature review draws on theory and concepts from various disciplines.

In exploring my topic of how the design and implementation of progressive planning policy instruments limit equitable outcomes in South Africa, I begin this chapter with an explanation of the basic concepts of what I mean by the term ‘progressive’ (Campbell, 2005) and explore the term in relation to planning, associated with authors such as Forester (1999), addressing issues of power relations (Miraftab, 2009), insurgent planning to disrupt neoliberal approaches to city building (Fainstein and Fainstein, 2013), and on the social justice and planning. My study, however, mainly draws on the literature that advocates putting equity planning into practice as illustrated in various case studies in the USA (Krumholz and Clavel, 1994).

With the idea of practice, I adhere to the notion of planning as “a process of knowing and learning in which planners use their expertise, experience, and reading of social situations to make practical judgements”, as posited by Davoudi (2015:317). Furthermore, with a focus on ‘praxis’ and on empirical grounded research, this draws from the analytical and procedural strands of planning theory (Beauregard, 2020). As this thesis focuses on the instrumentality of planning it is important to clarify my approach to instrumentality. Davoudi (2015) argues that while it is important to improve the knowledge base of planning, it is too simplistic to equate evidence with facts and to assume that the process of planning is a linear process that begins with the collection of evidence and ends with a blueprint plan. Rather, he argues it is a practice of knowing which planners engage with complex dynamic and uncertain socio-technical systems. In this approach he takes an interpretivist view of the source of knowledge, that of a fluid and dynamic path of discovery rather than a fixed predetermined path of discovery, which I allude to again in my methodology section in Chapter 3. Furthermore, he argues that in conceptualising planning as practice of knowing implies that everyone has knowledge, particularly of planning, as we all experience the built environment. In this frame, Davoudi (2015) describes the practice of knowing as “multidimensional; it is situated and provisional, collective and distributed, purposive and pragmatic and mediated and contested” (Davoudi, 2015:328). Importantly, planning as a practice of knowing also puts emphasis on the planner being self-reflexive as planners need to be constantly reflecting on their assumptions, biases and values that shape their practices (Schön, 1983).

From the macro perspective, urban planning is one of the practices of urban governance and as such I begin by drawing from the vast multi-disciplinary governance literature to firstly, theoretically contextualise the range of governance forms in which the field of planning can be located and secondly, to explore the variety of practices of governance. Urban planning is practised through the implementation of its instruments. To get a better understanding of how instruments are formulated and applied I drew on the policy sciences literature (Howlett, 2011) and public policy instruments. Some of the complexities of studying policy sciences are that policy science is conceived of as both a process and an outcome, and it is always situated in a specific historical and institutional territorial context that largely determines its content (Torgerson, 1985; Howlett, 2011). Given this reliance and importance of context, in its variety of forms, and that policy (and its instruments) are generated by institutions of governance to achieve certain political outcomes, the importance of socio-technical systems as part of that context and the multi-disciplinary nature of policy sciences becomes apparent.

To this end, I explored literature beyond planning theory, in the fields of socio-technical systems (Trist, 1981; Mumford, 2006; Baxter and Sommerville, 2011) and political science, on urban politics and local governance practices (Stone, 1986, 2015; Rose and Miller, 1992; Rhodes, 2007; Sager, 2009). In the fields of economics and social sciences (particularly anthropology) I considered the literature on public administration; public affairs; and institutionalism, which focuses on debates on how bureaucracies are organised and function (Jessop, 2004; Rhodes, 2007; Howlett; 2011; Cairney, 2012). I also focused on the specific fields of policy sciences pertaining to policymaking and instrumentality (Hood, 1986, 2007; Salamon, 2002; Howlett, 2011; Cairney, 2012; McCann and Ward, 2011; Lascoumes and Le Galès, 2007; Lascoumes and Simard, 2011), and examined the literature pertaining to planning instruments specifically (Tiesdell and Allmendinger, 2005; Van der Broeck, 2011; Legacy and Leshinsky, 2013, 2016). Linked to the implementation of instruments I further explored the literature on bottom-up individual agency of state practitioners (Lipsky, 1970 and Benjamin, 2004 cited in Bènit-Gbaffou, forthcoming).

As indicated above, governance practices are dependent on contextual factors such as the political and economic philosophies at the broad scale and local norms and standards, as well as the prevalent specific socio-technical systems. In this respect I explore literature on governance in Africa (Blundo and Le Meur, 2008; Warren and Pieterse, 2014; De Herdt and Olivier de Sardan, 2015; Hoag and Hull, 2017).

The above provides the broad framework of theories and concepts informing the case studies. However, within each case study, given their differences, additional theories and concepts are applied.

## 2.2 Definitions of "Progressive" Planning

In the South African context, the term "progressive" resonates with that characterised by the "self-styled progressive planners in the late 1980s and early 1990s" described by Harrison et al. (2008:40). The values of what was progressive then encompassed promoting strategies and policies that promoted non-racialism; non-sexism; pro-poor actions/policies (incorporated in a general critique of 'free market' or now neo-liberal approaches to planning); non-violent approaches; and importantly, community participation/decision making.

It was in the context of the political alienation based on race; of broader anti-colonial struggles and the role of capital in the perpetuation of apartheid that the term 'progressive' was adopted (Smit and McCarthy, 1984). It was a descriptor for those people who were struggling against apartheid in South Africa, in terms of supporting social reform, equal rights and treatment before the law, as well as equity of access to resources. These perspectives underpin how I use the term ‘progressive’ in this study.

South Africa’s inequalities post-apartheid are still shaped by the legacy of apartheid. Inequalities are in fact growing and need to be acknowledged and addressed in policies going forward. The new post-apartheid state immediately responded to these concerns when they initiated a range of policies and legislation that reflected a redistributive agenda, e.g. the Land Restitution Act and the Housing Act. In a sense, both of these Acts resulted in ‘progressive’ policy instruments. I would consider the in-situ upgrading of informal settlements policy as well as the anti-eviction laws and policies, in respect to dilapidated inner city buildings, to be ‘progressive’ for the following reasons:

a. They focus on the poorest of the poor in our society.
b. They ensure that the residents remain in their chosen locality, wherever possible.
c. The UISP aims to provide necessary basic services, water and sanitation to residents no matter what their circumstances or background.
d. The UISP promotes and facilitates community participation and thereby community-based planning and empowerment.
e. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 (PIE Act) can favour the vulnerable over the more resourced and powerful in our society in terms of rights, in respect of removing or reducing the rights of those with power and resources in favour of those without, in a redistributive sense.

However, despite these Acts and policies still being applied, by the early 2000s this overtly pro-poor redistributive agenda was in decline (Nattrass and Seekings, 2002). Especially with the recent documentation of the “State Capture” (Swilling and Chipkin, 2017; Zondo Commission, 2022) period, there is an emerging realisation in contemporary South Africa that the dream of economic growth and redistribution is at worst dead and at best significantly deferred. It is for these reasons that policy programmes and their instruments need to be exploring more overtly redistributive and equity goals to address the multi-faceted dimensions of poverty and inequality in South Africa.

### 2.2.1 The term “progressive” and its relationship to planning globally

The concept and meaning of progressive, according to the Cambridge Dictionary, is that it is a state of gradual advancement. It also means that ideas or systems are new and modern, encouraging change in society or in the way that things are done. The direction of gradual advancement or change is not specified politically, economically or even morally and is therefore open to wide interpretation. It is not necessarily universally seen as ‘left wing’ politically or ‘welfarist’ economically as even conservative political movements and neoliberal economic advocates have adopted and use the term ‘progressive’ to describe their new positions (Campbell, 2005). Other uses of the term ‘progressive’ which have been applied across the political spectrum include the universal term ‘progressive taxation’ as a signifier, it links the term progressive with actions that support the poor over the rich, and therefore signifies a pro-poor or equity-oriented approach. Even in simple economic terms, ‘progressive taxation’ refers to the poor paying less and the rich paying more, in that sense trying to reduce inequities in income and by so doing create more equity.

The link between planning and the word ‘progressive’ has a long tradition from the ‘progressive movement’ in the USA in the 1890s to the ‘Progressive Cities and Equity Planning’ movement in the 1960s–1980s. The progressive Cities and Equity Planning movements were documented by Krumholz and Clavel (1994) and described the individual efforts of planning practitioners within local governments to institutionalise practices that advantaged the poorest members of society. These included strategies to extract benefits for the poor from property developers, inclusionary housing etc. According to Clavel (2018), this movement’s values were rooted in the progressive civil rights and student movements of the 1960s such as the Student Non-violent Coordinating Committee (SNCC) and the Students for a Democratic Society (SDS). These movements advocated values of pacifism, anti-racism, civil rights, participatory democracy as well as increased workers’ rights and larger governments for increased welfare purposes (Clavel, 2018, 1986; Krumholz and Clavel, 1994).

Campbell (2005) explicitly and comprehensively addresses the issue of the role of ‘progress’ in planning ideology and what it means to be ‘progressive’, i.e. “favouring, advocating or directing one’s efforts towards progress or reform, especially in political, municipal, or social matters” (Online Oxford English Dictionary). Campbell maintains that the power of the concept of 'progress' in planning lies "within its social context, especially as it is allied with other social movements and political institutions and thus takes on normative consequences. For planners, this social context is the built environment: the idea of progress takes concrete form through civic projects that simultaneously improve individual utility, promote collective interests, and symbolise community values and identities" (Campbell, 2005:2).

While Campbell (2005) also acknowledges that the word 'progress' has no one simple definition or single political agenda, he essentially argues that there has been a marked decline in the use of the term by planners since the mid-20$^{th}$ century. This is despite planning having its roots in the 'progressive era' which "imbued planning with its core values of an expanded sense of public interest, good government, social efficiency, housing reform, public sanitation, conservationism and civic aesthetics" (Peterson, 2003 cited in Campbell, 2005:4). Campbell argues that this has been detrimental for planning, as it has resulted in contemporary planning lacking a set of core values and enduring goals to guide them. He further argues that by rejecting the term 'progressive' due to its previous association with modernist planning, it allows opponents of planning to redefine the term 'progress' in narrow terms and use it to counter planning initiatives.

Campbell (2005) essentially argues that planners became disillusioned with the term 'progress' due to three factors, the crisis of modernism and its attribution to various planning woes in recent times; the emergence of sustainable development; and privatised fragmentation of the public interest and public works. The ideology of progress is associated with growth while the notion of sustainable development is broadly linked with the 'limits to growth' ideologies often critical of over-consumption and development associated with expanding human settlements. Campbell (2005) argues that the privatisation of public goods provision, and large-scale mega projects (which are often labelled as 'progress'), instead of remedying market inequities, are actually exacerbating the inequalities produced by the private sector (Castells, 2002 cited in Campbell, 2005).

Instead, planning scholars and professionals should be directed by a clear set of values, based on "quality of life for all" and a leading value of "social equity" – the planning version of social justice is also advocated in Carmon and Fainstein's (2013) edited volume entitled: Policy, Planning and People. In this volume, the authors argue for social justice policies to be underpinned by the following three principles: equity, diversity, and democracy. A central value and goal in the term progressive, is the achievement of greater equity – the quality of being fair and impartial: equity of treatment, fairness and justice. Social justice is defined as the fair distribution of wealth, opportunities and privileges within a society. As we are reminded by Fainstein and Fainstein (2013:32), "…ideas about justice were an integral part of the principal utopian models that influenced planning from the mid-nineteenth Century to the mid-twentieth Century". With regards to the term 'diversity', Fainstein and Fainstein (2013) merely refer to the just treatment of the "other" which could also encompass the notion of social inclusion. Finally, they refer to democracy as the inclusion of subordinate groups into the decision-making processes. However, they acknowledge that these three guiding principles sometimes clash, and in those cases the Krumholz dictum should apply, "to give priority attention to the goal of promoting a wider range of choices for those with little to no choices" (Krumholz et al., 1975:299).

Having established the link between the use of the term progressive and social justice, I concur with Campbell's argument that the word 'progress' and the associated term of 'progressive' needs to be reaffirmed in planning literature, to provide it with clearer guiding values and goals, particularly in the face of increasing neo-liberal forces on the planning profession. I also concur that these values and goals be based on equity, diversity, and democracy, and that they should be incorporated into the goals of 'progressive' planners.

However, the notions of social justice and equity are philosophically more easily understood and agreed upon in abstract terms, and therefore the challenge lies in applying the concepts within particular contexts. I would go a step further, and advocate that a goal of redistribution within countries also be incorporated into the term 'progressive' in planning literature, particularly with reference to those countries in the global south that have legacies of colonialism which have left many with high levels of internal inequity. The bulk of literature on social justice and planning is written in the global north where there is a minority of those who would be considered poor as opposed to the middle classes. As such, the equity policies are advocated to ensure that the poor be equally or fairly included in opportunities for example for housing, public facilities, or mitigate and reverse inequities. Some authors advocate even prioritising the poor through various strategies (Krumholz et al., 1975; Krumholz, 2013 and Gurstein, 2013 cited in Carmon and Fainstein, 2013). Generally, the literature advocates for planning interventions that would direct government spending in areas that would favour the poor, in terms of public goods, public transport and facilities and affordable housing. Possibly, by implication these interventions implicitly mean a form of redistribution[14] of public funds in what appears to be quite an ad hoc manner. However, in the global south where in many countries (largely through colonial historical legacies) most people are considered poor/marginal, such equity approaches may not be forceful enough or adequate to transform the status quo.

Returning to the term 'progressive' according to Clavel (2018), there appears to have been a continued flourishing of 'progressive' initiatives after 2000, but in a wider variety of forms throughout various parts of the world. In response to the arguments posed by Campbell above, as well as the growing urban challenges facing South Africa (SACN, 2016), it is therefore important that the term progressive be maintained as it has a long history of established values that need to be reinforced in planning.

## 2.3 Contextual Theories and Concepts in relation to Governance

### 2.3.1 Governmentality, government and urban governance

Many of the debates around the relationship of the state, or government, to urban governance, have a start point in theories of governmentality. Following Foucault (1977), most broadly understood, 'governmentality' refers to the processes through which citizens become implicated in supporting government in the structures and processes that are intended to bring order to society. The notion draws on Foucault's description of biopower, in which ordinary people become involved in self-policing and self-regulating as a way for the state to exercise power. I mention it here because it has wide use in much planning theory, and it is often drawn upon by planners to explain how different actors become involved in supporting the actions of the state.

[14] The term redistribution in this context refers to the transfer of income or wealth from one group to another through mechanisms such as taxation, charity, welfare, public services, land reform, monetary policies or spatial planning policies.

Governmentality enables a far broader analysis of power relations, in that they are not just top-down or possessed by individuals or institutions but rather all individuals have degrees of power through knowledge, including to regulate themselves but also to possibly influence the governance processes. Furthermore, power is diffused through networks of relationships that operate at all levels of society (Lemke, 2002). This concept is used in analysing some of the processes in formulating the SPRE policy (discussed in Chapters 4 and 9) and in analysing some of the housing officials' experiences in the second case study (discussed in Chapters 5 and 9). For example, to what degree are officials constrained by their own beliefs and what they consider to be their political parameters?

Another useful element of Foucault's governmentality is the notion that current practices, be they around the formulation or implementation of planning instruments, are the result of competing discourses – their history and how they won others over. Therefore, using the concept of Foucault's genealogical approach one can analyse the history and development of power relations in the development of competing discourses. This is useful as a methodology, particularly as it suggests that tracing the history of the various instruments around informal settlement upgrading and evictions, as well as the discourses surrounding them, offers a way of better understanding the challenges to their implementation.

However, I find governmentality often too abstract for the kind of research that I do. Instead, I find Stoker's work on the distinction between government and governance more useful. The debates around the role of the state and governance are extensive and therefore I will just reiterate the linkages between the notions of 'the state', government and governance for the purposes of contextualising the policy instrument process. Stoker (1998) articulates the nature of governance as follows: "Governance is ultimately concerned with creating the conditions for ordered rule and collective action. The outputs of governance are not therefore different from those of government" (Stoker, 1998:17). Here we begin to see how Stoker distinguishes government from governance. This difference is most clearly articulated in the first proposition below, although he also identifies other differences. He set out five propositions regarding the study of governance: (1) governance refers to a set of institutions and actors that are drawn from but also go beyond the government; (2) the responsibilities between them are blurred; (3) paying attention to governance, rather than just 'government' allows us to identify power dependencies between stakeholders; (4) often governance is also performed by autonomous self-governing networks of actors; and (5) governance recognises that government is able to steer the network of actors (Stoker, 1998). These propositions are echoed later in Howlett (2011:8), where governance defined in the broadest sense "is about establishing, promoting and supporting a specific type of relationship between governmental and non-governmental actors in the governing process".

With this shift from government to governance the term governance now refers to the fact that the state does not govern alone, as opposed to government, which assumes that the state is the main authority giving direction (Jessop, 1998, 2004; Howlett, 2011). Jessop (1998) argues that governance essentially fails because given the growing structural complexity of the social world there can be no complete control over an object or set of objects. Another similar argument pertaining to governance is from Rhodes (1996) who coined the phrases – governing without governance – or hollowing out the state in the context of the new public management and intergovernmental changes made in the British government. In that context he argues that networks are complementary to markets and hierarchies as governing structures, and consequently challenge governability because they tend to become autonomous and resist central control. These shifts mean changes in governance approaches from a top-down control to a more negotiated, fragmented, outsourced and some argue a more networked form of governance, even in the case of South Africa (Cairney, 2012; PARI, 2014; Booysen, 2019). In response, there are calls to develop new tools of governance for managing such networks.

This is particularly the case in Africa where states are often dependent on external partners and organisations for technical support, resources and access to markets. This is also referred to as multi-level or network governance where there is a plurality of stakeholders affecting governance (Cubitt, 2014). This often results in local policy outcomes being unconnected to the intentions of the central governments but rather more connected to the conditional partnerships, networks or private and informal relations (Rhodes, 1996). The need to expand analytical attention beyond the state has long recognised to take into account the 'complex webs of power' that shape urban governance in Africa (Lindell, 2008:1880). Relatedly, Ballard (2017) maintains that when used analytically, the notion of 'governance' can be used more broadly to surface the diverse forms of authority, power, institutions and individuals that are actually shaping urban areas, their spaces, usage, and functioning.

Crudely, the nature of the political orientation of the state, e.g. whether neo-liberal or planned economy oriented, often determines the types of governance relationships adopted. Firstly, at the macro level the discipline of political science concerns itself with the nature of the specific government's political philosophy, strategies and processes. As planning instruments are mainly applied at the local level, the literature on urban politics is useful, with respect to how the local state is structured and governed and the role of local politicians and their impacts on planning. In that respect a common thread through this local government literature is how urban political systems shape policy and governance. Urban governance is defined as the formulation and pursuit of collective goals at the local level.

The theory of urban regimes, although developed in the USA, has relevance in South Africa, in that, according to Stone (1986), regimes are made up of groups of individuals and organisations with common interests that work together to maintain power and implement policies in a city. These groups normally form stable coalitions but sometimes due to external factors such as an economic crisis these coalitions can be destabilised. However, over the last 30 years governance research has established that the roles of institutions and politicians have changed particularly at local level. Pierre and Peters (2005), in their book Governing Complex Societies, argued that traditional forms of government in complex societies need a complex system of governance that is adaptable, collaborative and participatory.

These insights are useful in identifying new forms of urban governance in South Africa as will be shown in my case studies in Chapters 4 to 8 and for informing the types of spaces that could be identified or created for the formulation and implementation of policy instruments.

### 2.3.2 Governance: Public administration and socio-technical systems

The type of governance approach adopted in a politically or territorially defined area largely shapes the types of public administration and related bureaucracy that is established, namely the policy tools and instruments used as well as who is involved in their formulation and application (Peters and Pierre, 2012).

A closely related body of literature is that on socio-technical systems, which deals with the organisational aspects of private companies and bureaucracies. According to Mumford (2006), socio-technical systems advocate a philosophy of humane principles for improving working conditions and thereby life conditions of workers. These humane principles are very similar to the progressive principles set out in section 2.1 above. This approach encompasses the social aspects of people and society and the technical aspects of organisational structures and processes (with technical not necessarily implying material technologies but a broader sense of technicalities of the interactions between society's complex structures and sub-structures and human behaviour). For example, one of the socio-technical principles is multiskilling of staff, which would possibly enable them to better engage and innovate with progressive policy instruments, which can be easily assessed. Thus, principles set out in the socio-technical approach are useful in analysing existing workplace environments.

Other notions of governance are described as, "being about establishing, promoting and supporting a specific type of relationship between governmental and non-governmental actors in the governing process" (Howlett, 2011:8). Thus, governance is a useful entry point into the literature on policy instruments. Governance takes place at various scales, national, provincial and at local levels. However, it is broadly acknowledged that implementation mainly takes place at the local level in South Africa, particularly concerning the built environment. For this reason, this research focuses on how instruments are formulated and implemented/applied at the local level of government within its broader governance context (refer to section 2.3.1 above and Chapter 5 case study two).

The literature on public administrations in Africa (Blundo and Le Meur, 2008; De Herdt and Olivier de Sardan, 2015) provides a relevant and broader context to practices in South Africa. This literature includes discussion of issues of brokerage, mediation, and clientelism. "Brokerage and negotiation in my view, is a key point in terms of the exploration of how public services are generated, delivered, negotiated, interpreted, used and consumed, not only as expressing individual and collective logics, but also as producing and reshaping the representation and domain of the state and of the public, thus enacting the political work of composing a common (although contested) world" (Latour, 2002 cited in Blundo and Le Meur, 2008:31).

There is a growing body of literature on urban governance and its public administration in post-apartheid South Africa. Some of the literature focuses on specific issues such as urbanisation and service delivery and the state's responses to them, and thereby deals with governance more implicitly (Pillay et al., 2006; Palmer et al., 2017). The value of these contributions is that they delve into the institutional aspects of the South African government and address issues of capacity, which has significant relevance for my focus on policy instrument formulation and implementation. Other literature has focused more explicitly on governing, whether from an assessment of the developmental local government model adopted in South Africa (Pieterse et al., 2008; Gumede, 2011), or on the actual institutional structures of local government (Todes, 2014), or the various influences shaping the nature of the South African government's approaches to governing urban areas (contributions in Haferburg and Huchzermeyer, 2015).

These arguments provide useful contextual insights into the contemporary complexities and rationalities of how bureaucracies are structured and work, resulting in the fragmentation of units and the lack of coordination between different government entities.

## 2.4 Tools of Government

### 2.4.1 What is public policy?

Public policy is defined as "the set of activities that governments engage in for the purpose of changing their economy and society" (Peters, 2021:1). At a more nuanced level, public policymaking is a component of what public administration does and is a very complex process involving individuals, groups and institutions and the various typologies of policy measures are associated with the different styles of politics of the policymakers (Cairney, 2012).

The study of public policy is a complex field as it derives from several disciplines including political science and public administration, but also important contributions have been made from economics, law, sociology, and ethics, and even within these disciplines there are alternative approaches to understanding how policy is made and implemented (Peters, 2021). To demonstrate the complexity, Cairney (2012) outlines that there are many different perspectives to understanding why certain policies are selected. He points out that one could focus on individual policymakers, or on the institutions and rules that policymakers follow, or one could identify the influencers of how policy is made. Alternatively, one could focus on the socio-economic context within which a government has to make decisions. As such, Cairney (2012) points out there is no unifying theory of public policy.

The study of public policy broadly covers the processes of how policy is made and implemented. Peters (2021) provides a compelling framework for understanding the notion of public policy though what he terms the 'design perspective'. In his approach he sets out three components, of which the first is the model of causation looking at the range of problems to which policies respond. The second is the model of intervention looking at the options available for a state and its allies in the private sector to intervene which includes understanding the policy process and points of potential intervention. These points of intervention may be defined by the policy cycle, with the stages in that cycle (covered in section 2.4.2 below). A central aspect of this intervention model is the instruments or tools used to implement the interventions, which comprise the focus of this thesis and are elaborated upon in the next sections. The third component is the model of evaluation of policy outcomes based on sets of criteria.

Similarly, Howlett (2011) describes public policy as having two interrelated elements, policy goals and policy means, operating at different levels of abstraction. In the first instance they are the aims set by government on what they wish to achieve and the latter deals with the techniques they use (or not) to achieve those aims. These two elements consist, in turn, of a range of activities from abstract principles to concrete steps.

Before focusing on the intervention and implementation approaches or policy means, I briefly outline the policy cycle as an organising framework for my examination of the policy instruments in the following sections.

### 2.4.2 The policy process or cycle

Traditionally there have been two main approaches to manage the study of policymaking. The first is to treat the policy process as a cycle and break it down into a series of stages such as agenda setting, formulation, legitimisation, implementation, and evaluation. The second is to consider a policy making ideal, using a 'comprehensive rationality' approach (Howlett, 2011; Cairney, 2012). It has been recognised in most of the more recent literature, that policymaking is a never-ending process rather than a single event, and that it cannot simply and un-problematically be divided into stages or cycles. The policy cycle model has been critiqued as no longer that useful for various reasons including that it does not produce testable hypotheses; that it is descriptively inaccurate as the stages often run into each other; that it has a top-down bias and that it is too simplistic to address the multiple interacting cycles (Cairney, 2012). As such, policy stages or cycles are now mainly used as an organising framework for the study of policy (Cairney, 2012), which is how I have approached it in this study, as described in my methodology Chapter 3.

The policy cycle consists of five stages as per Lasswell (1956 cited in Howlett, 2011) and are related to the stages of problem solving as follows:

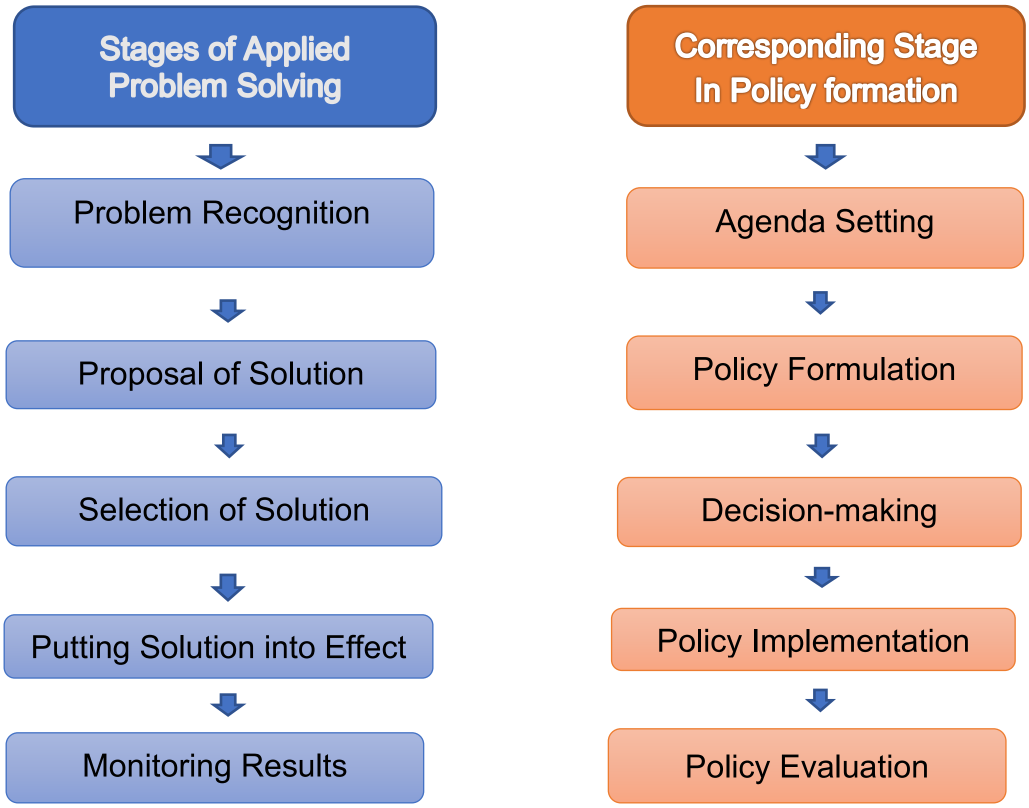

**Figure 2.1 Stages of problem solving**

*Source: Laswell (1956 cited in Howlett, 2011)*

While this policy cycle model is often viewed as a technical process of viewing the various stages of a policy formation, it can also be viewed as a social or political process whereby actors are competing against each other to attain policy goals in the various stages (Howlett et al., 2009 cited in Howlett, 2011). The usefulness of this policy cycle is to be able to examine individual or groups of policy instruments within each of the stages in the cycle, in respect of who the actors were in a particular stage, what processes were followed and what their motivations were for the selection or design of the instruments applied. Furthermore, it can be used as a prescriptive model of how policymakers should operate or as a descriptive model of how policymakers actually operate (Howlett, 2011). Of particular interest to me is the steps between policy formulation and implementation. These steps reveal the genealogy of the decision-making process, firstly in the problem identification, then who and what was decided about intervening and lastly what instruments were either designed or selected to be applied. Furthermore, to determine what resources were then allocated to implement and whether they were appropriate for the instruments applied or whether the instruments were unsuited for the resources available.

### 2.4.3 Policy implementation

Interventions and implementation are central components of the policy process, as they affect the ultimate legitimacy of a political system and are the most frequent point of contact between the state and its society. The implementation literature tends to set out several generations of implementation theory, each building on the next (Paudel, 2009). The earliest theories revolved around trying to understand policy failures (Pressman and Wildavsky, 1973 cited in Paudel, 2009). They developed the concept of 'clearance points' when positive decisions in a programme would need to be taken to ensure its full application. However, there would generally be so many points identified that it actually reduced the probability of success (Peters, 2021). Subsequent literature defined the failures as the 'implementation gap' – the difference between the expectations of policymakers and actual policy outcomes (Hill and Hupe, 2009).

To address these issues, theories focused on trying to improve the systems of implementation to improve success, by identifying success factors that would need to be met. Cairney (2012:35) assembles a range of these conditions taken from a range of authors (Sabatier, 1986; Lipsky, 2010; Hill and Hupe, 2009). These conditions include the following:

- The policy's objectives are clear and well communicated.
- The policy will work as intended when implemented.
- The required resources are committed.
- The policy is implemented by skilful and compliant officials.
- Dependency relationships are minimal.
- Support from influential groups is maintained.
- Conditions beyond the control of policymakers do not undermine the process.

Another approach was of forward and backward mapping (Elmore, 1985 cited in Peters, 2021). This involved shaping programmes on their probability of success. However, the critique of this approach was that policy runs the risk of being driven by feasibility rather than policy priorities (Peters, 2021).

Other dominant implementation approaches in the literature, associated with the second generation of studies, were the top-down and bottom-up approaches. The top-down approach assumes the policy goals set from above can be implemented by setting up certain mechanisms. Those advocating for bottom-up approaches argue that street level bureaucrats were essential for policy implementation through their better understanding of their clients and the public through direct contact with them (Lipsky, 2010). The argument revolved around the extent to which implementing actors at the local level could thwart the intention of the policymakers as the centre and whether the outcomes of such adjusted policy applications at the local level could still be called policy (Cairney, 2012). According to Elmore (1978 cited in Paudel, 2009), failures in implementation are often related to discretion and routine linked to personal malfunctions. One of the compromising outcomes from this debate was that different approaches may be valuable for different contexts (Cairney, 2012).

The third generation of implementation studies sought to create a general theory, to combine the merits of the top-down and bottom-up approaches (Hill and Hupe, 2009).

The macro level operates at a systems level, setting up the processes and organisational structures and framing and positioning individual actions within a relational network.

Other factors that authors have raised are around the interaction of multiple actors at multiple levels, particularly with the shift to networked governance in the implementation process. The negative impacts of multiple actors can be mitigated by institutionalised patterns of interaction which over time also build trust between actors, further improving implementation. Another factor raised is the importance of the psychological element of compliance by both organisations and citizens, which can be related to a lack of trust in the government (Peters, 2021). A further factor also related to multiple actors and local discretion in implementation is the issue of 'drift' and 'sabotage'. This refers to policies being altered in the implementation process for various reasons. These could include misinterpretations of the intention of the policy programme; or due to political pressures, private sector organisations outsourced to implement may have their own values and priorities (Wald, 2012 cited in Peters, 2021).

In her recent PhD, Cachalia (2022) highlighted and raised some additional implementation issues specifically in the context of Johannesburg. These issues contributing to the gap in implementation in crime prevention pertained to practices of path dependency that hampers innovation, the complexity of organisation and formal rules and informal practices within the bureaucracy. A summary of her findings were "policies are constrained by the past; the bureaucracy does not change as quickly; there is often bureaucratic resistance or inertia to policy implementation; Government tends to overregulate; formal systems hamper innovation; lack of resources, skills and capacity; political commitment; the relationship and alignment between politicians and the administration; departments continue to work in silos; and the disconnect between the central administration and departments implementing policy" (Cachalia, 2022:200).

Overall, the debates on implementation have revolved around efficiency and fairness. With the new governance approaches and implementation increasingly dependent on non-state actors, critiques have highlighted the inefficiencies of outsourcing particularly around the delivery of public goods and services. Others have highlighted concerns about fairness related to the levels of discretion involved and the degree to which they should be guided by clear rules and standards, previously just around local street level bureaucrats but now also involving outsourced providers. Different levels of discretion may result in different agencies delivering different levels of service which would be unfair.

The above review of policy implementation literature has provided insights into the complexities and challenges associated with implementation processes.

### 2.4.4 Policy instruments

As described in section 2.4.2 above, policy instruments are the means through which policy implementation is conducted. They basically take the intentions of politicians and translate them into effective actions. The types of instruments that can be applied in different contexts are largely dependent on the system of government and nature of their societies. More autocratic governments would tend to use command and control and enforcement instruments while more compliant democratic regimes would use soft policy instruments (Salamon, 2002).

Hood (2007) distinguishes three broad contemporary strains of policy instrument analysis. The first is the institutions-as-tools approach which includes forms of organisation as instruments; the second is the politics-of-instrumentality approaches that focus on the politics of tool selection (Lascoumes and Le Galès, 2007; Linder and Peters, 1998); and the third includes generic approaches that aim to be institutionally and technologically free. The third approach is a more positivist approach in that it focuses on trying to categorise the different instruments for comparative analysis, ignoring the government context and only observing government society relationships (Hood, 1986). This is an attempt to treat the analysis scientifically and reduce the number of variables in the analysis.

My research draws more from analysing planning instruments, by “emphasizing the politics of policy instruments’ the elaboration as key to understanding policy objectives, beyond the increasing ideological and rhetorical vagueness of policy documents” (Bénit-Gbaffou, 2018a:10). To this end I draw mainly on the work of Lascoumes and Le Galès (2007) and Lascoumes and Simard (2011) who use the analysis of instruments to get insights into the actual effects of instrument implementation rather than the intentions of the instruments and thereby revealing the actual relationship between the government and the governed as they produce their own effects independent of their stated objectives. Therefore, despite whatever political rhetoric may emanate from a government, examining the effects of the instruments they apply often reveals a more accurate relationship between the governing and the governed. Furthermore, they argue that instruments are really institutions because they partly determine behaviours; they create uncertainties in the balance of powers in that they eventually benefit certain interests and present a certain perspective on problems. As institutions they require construction, and it is that process where instruments are selected and operationalised that is analysed. As policy instruments embody particular policy frames and represent issues in a particular way, they are a form of power in themselves. To clarify, the particular policy frames they embody reflect a way of thinking about a problem and therefore how an issue is understood. Because of this, policy instruments themselves have power over how policies get implemented. In so doing they argue that they can interpret changes in governance through the instruments.

Linked to these analytical concepts in that of tracing the genealogy of instruments in terms of exploring how the issues to which the instruments were responding, were problematised and what rationalities were at play (Rosol, 2015). These are useful analytical tools in trying to determine the limitations of ‘progressive policy instruments’ in that one focuses on the material content of the instrument and the processes undertaken to formulate it and implement them – thereby limiting the distractions of the ideological and rhetorical vagueness.

A lot of debate about instruments has been around how to choose the right instruments for the task at hand. Those debating this question generally acknowledge that the choice of instruments is decoupled from consolidated, univocal factors (like ideational frameworks, decision makers’ preferences, constituencies, institutional arrangements and partisan politics), while it emerges that the choice of instruments results from the interaction of these different factors (Capano and Lippi, 2017).

Another distinction between approaches in the public policy field includes those that view instruments across all domains generically (Hood, 1986) and those that are domain specific, such as focusing on health or the built environment.

### 2.4.5 Planning instruments

Planning instruments are the policy instruments used to implement policies relating to the urban planning and housing domains. In urban planning these instruments fall within the procedural aspects of planning which has its basis within the theories ‘of planning’ as opposed to ‘in planning’, how planning is undertaken, how it is actually done as opposed to the substantive issues it deals with.

Ultimately, progressive (as defined in section 2.2 above) planning instruments are directed at making a change to the status quo, to create a just city (Fainstein, 2005, 2010 cited in Legacy and Leshinsky, 2016). Given that planning is also a messy political process involving the built and natural environments (Watson, 2002 and Ney, 2009 cited in Legacy and Leshinsky, 2016), planning instruments are the mechanisms that urban planners use to achieve desired political ends in changing these environments. Alternatively, not all planning instruments could be described as ‘progressive’, particularly those that serve neoliberal interests.

Further, on the productive side, according to Legacy and Leshinsky (2016), the study of planning instruments can provide insights into how planning instruments could play a mediating role between public and private interests, in such a manner as to counter the negative impacts of neoliberal policies and to use instruments to better align outcomes with more equitable social and environmental agendas.

As with all disciplinary practices, urban planning has a set of dominant discourses, norms, routines and instruments, which constitute or make up their practice (Foucault, 1977; Anderson and Grinberg, 1998). My focus is determined by my experience of the implementation side of planning practice, as outlined above, and key to this was the available planning instruments.

Planning instruments have their genealogy in the theories of instrumental rationality, and as Faludi (1973) argued, there was a distinction between substantive and procedural theory, thereby separating the ends of planning from the means to achieving the ends. Gunder (2010:301) succinctly describes it as “the world of rational scientific management; the world of the value free and uncritical planner rationally applying unbiased facts – the only one truth – to instrumentally ascertain the best means to the pre-ordained end”. This was a very modernist approach and was comprehensively critiqued as being too functionalist and for the reasons described by Gunder (2010) by authors such as Healey (1992, 2003), Forester (1999) and Allmendinger (2009).

Contemporary approaches to planning instrumentality have been influenced by communicative planning theories (Forester, 1999); the related planning equity approaches (Krumholz, 1994) also regarded as forms of post-structuralist approaches that are most concerned with cognitive frames, rhetoric, and argumentation. There have also been attempts at categorising planning instruments into various typologies (Allmendinger and Tewdwr-Jones, 2000).

There are also many readings on the neo-liberal state and its impacts on planning and specifically how some planning instruments promote neo-liberal outcomes (Brenner and Theodore, 2005; Peck et al., 2009; Sager, 2011; Taşan-Kok and Baeten, 2012; Rydin, 2013). The edited volume entitled 'Instruments of planning' by Legacy and Leshinsky (2016) appears to be a response to the above literature as they explore planning instrumentality and its potential to deliver social and environmental outcomes in a neoliberal context. This book was one of my inspirations for selecting the topic of planning instruments. In their book they pose two fundamental questions:

(1.) Without structured regulatory frameworks, how can existing affordable housing be protected, and will social equity and environmental sustainability be further compromised?

(2.) Is planning as a method to control and steer development through regulations helping to prevent forms of change?

These questions had direct relevance to my research in that they fed into my questions on 'progressive policy instruments' as despite the South African government's progressive rhetoric it adheres to essentially a neo-liberal economic system, and therefore a common political macro context (Philip et al., 2014; Nattrass, 2014; Cronin, 2014). Furthermore, questions of the existing regulatory framework and its efficacy are analysed in all my case studies.

According to Krumholz (1994), planning's instrumentality (as a shared technical and social exercise), and its capacity to deliver equitable outcomes may be constrained within the context of neoliberal economic growth models (Legacy and Leshinsky, 2016). The book explores rationales of why certain policy instruments were chosen; and how instruments exist within policymaking, statutory, economic, socio-technological and governance contexts. Similar to Krumholz and Clavel's book on Equity Planning (1994), Legacy and Leshinsky (2016) assemble contributions that demonstrate individual cases where despite the neo-liberal context, planners have managed through the application of certain instruments to achieve more socially just (or in my opinion more 'progressive') outcomes.

With respect to defining planning instruments, the Legacy and Leshinsky (2016:3) book is useful in that it provides a broad definition framing planning instruments as, "instruments that fundamentally shape planning outcomes, both in terms of what can be achieved and what is ultimately achieved". They set out how various authors have categorised planning instruments. Tiesdell and Allmendinger (2005) attempted to create more 'market-aware' forms of planning and thus developed a typology of planning tools based on their relationship to particular market characteristics. As such, they derived the following four categories: Shaping tools (i.e. development plans etc.); regulations, stimulation tools (direct fiscal measures); and capacity building tools (social capital). Another approach adopted by Macintosh et al. (2012) was to define instruments by their function and they formulated the following:

**Table 2.1 Typology of planning instruments**

| *Type of instrument* | *Approach* |
|---|---|
| Framing instruments | Policy and strategy |
| Information instruments | Informative |
| Regulatory instruments | Legal |
| Compulsory acquisition instruments | Policy, economic, legal |
| Voluntary instruments | Informative, legal |
| Taxes and charges | Formal, economic, legal |
| Liability shield instruments | Legal, strategic |

*Source: Based on Macintosh et al. (2012 cited in Legacy and Leshinsky, 2016)*

In response, Legacy and Leshinsky (2016) argued that these categories were too functionalist and did not take into account the social justice or environmental sustainability agendas. As such, they draw from the contributions in their book to list four themes incorporating areas for potential reform in which categories of planning instruments are used as follows: (1) Barriers to change and future opportunities (e.g. land use plans, public consultations ); (2) Designing strategies for change (e.g. targets for affordable housing); (3) Instruments for change (e.g. transferable development credits); and (4) Technology in planning supporting urban policy and decision making (e.g. CAD).

While I am not concerned with the various categories of planning instruments, they are useful to identify the range of available instruments. The contributions in Legacy and Leshinsky (2016) tend to focus on single instruments and their ability to affect changes, rather than on the inter-related sets of policy, process and statutory instruments that shape planning outcomes. In very few cases is there only a single policy instrument working in isolation that achieves a planning outcome – even zoning regulations rely on a combination of policy instruments to finally achieve a particular outcome. In some cases, it is the threat of a policy instrument and non-use of a policy instrument that achieves certain outcomes.

## 2.5 Conclusion

There is a broad consensus in the literature that governance forms have changed to a more networked type of approach (also applicable in South Africa, as outlined in Chapters 5 and 6), which in turn has necessitated changes in policy programme implementation approaches and the instruments used to enact governance. These new networked forms of governance are more complex, go beyond the traditional state institutions, and involve multiple actors with varied degrees of power and resources. Furthermore, particularly at the local urban level, governance approaches are also subject to local norms and practices adding to the complexity. As such, as advocated by Le Galès (2011), it is crucial to focus on the instrumentation process, i.e. the socio-political processes by which instruments are selected and operationalised.

It should be noted that this literature review chapter has provided the framework of concepts and debates engaged with in the three stand-alone case studies outlined in Chapter 1 and detailed in Chapter 3. Each of these case studies provides a component of literature review, and contextual literature that is specific to the cases, that may overlap slightly with the above or provide more detail.

The next part of this thesis delves into the methods applied in my research and details of the three case studies used to gather my empirical evidence that explore those processes to identify points of inflection where possibilities for progressive outcomes are being constrained within these processes.

## CHAPTER 3:
## METHODOLOGY

### 3.1 Introduction

In this chapter I set out how I went about trying to answer the following rather broad research question: ***How does the design and implementation of progressive planning policy instruments affect the achievement of more equitable cities in South Africa?*** With regards to the broad scope of the study, I acknowledge that the question assumes a range of linkages. Firstly, that there is a link between an instrument's design and its implementation and secondly, that there is a link between the instruments selected in this study and their potential contribution to creating more equitable cities in South Africa. There are many variables which contribute to why South African cities remain so inequitable. Furthermore, the many variables could never be individually identified and isolated which is why I have followed an interpretive research tradition as detailed below.

### 3.2 Research Approach

My investigation was essentially exploratory in nature and centred around obtaining a better understanding of the factors and processes involved in the formulation and implementation of housing-related urban planning instruments, within a particular historical, institutional/governance, political, cultural, and geographical context. Depending on the context and particular case study I was investigating, I followed one of the various methods and strategies outlined in the next few paragraphs. This involved an overarching inductive research process to establish a better understanding of these factors.

In pursuing my research, I followed an interpretive/constructivist paradigm or epistemology (Abbott, 2002a; McCourt, 2016), which acknowledges that categories of knowledge and reality are actively created by social relations and interactions. I then used literature to try and make sense of the phenomena that I had observed.

As a researcher seeking to develop professional understanding and contribute to knowledge, understanding and planning praxis, I also attempted to approach my research with reflexivity. This allowed me to reflect on my assumptions, perceptions, and contributions in each of the case studies as another layer of analysis of the empirical findings as detailed later in this chapter.

These approaches to research touch on another topic, that of grounded theory and the role of narrative in research (Charmaz, 2003; Babchuk, 2011). Because I was involved to different degrees in all three of my case studies on which my empirical evidence is based, the role of storytelling, dominant narratives during the engagements with these projects played a significant role in guiding the direction and design of my research.

The focus on narrative in empirical studies holds that planning is performed through story (Sandercock, 2003), that planners are “storytellers of practice” (Hoch, 1996:43), that an understanding of planning practice is critical to understanding planning as experienced by “actors” rather than “spectators” (Forester, 1999), and that the practice of planning leads to policymaking (Hajer and Wagenaar, 2003). The ‘practice movement’ (Ligget, 1996 cited in Watson, 2001) is occupied by several notable writers who have taken practice as “the raw material of their inquiry” (Innes, 1995:183 cited in Zack, 2008).

## 3.3 Research Design

I chose to focus my series of case studies on progressive housing-related policy instruments in South Africa and on the formulation and implementation practices involving national through to local housing policy instruments that were aimed at achieving greater equity. This involved examining these policy instruments, in terms of how the instruments had been framed, what their objectives were, whether they were or were not resourced, whether they were usable within their contexts and how they were implemented or not. Their subject of analysis depended on whether it was a policy instrument in the formulation phase or whether it was in the implementation phase. In the formulation phase the point of examination was on their potential ‘outputs’ such as specific tasks and progressive benefits while existing instruments were examined according to their usability, actual outputs and documented ‘outcomes’ and impacts.

In all cases I found that the study of the policy instrument’s historical genealogy, i.e. the process by which it was conceptualised and formulated, was useful in understanding the temporal and contextual influences on the instrument’s formulation. This historical aspect added to the understanding of some of the attitudes associated with the instruments as well as some of their incongruences in the current context. Then through interviews and other forms of engagement (such as training workshops) with local government officials, and other stakeholders, I explored how they managed and applied the policy instruments and the challenges and opportunities they faced in that process. Through these data gathering mechanisms I was able to triangulate my findings between the various case studies and with the literature.

In this way, my research contributes to the gap in planning policy instruments literature, in terms of institutional, technical and political imperatives for achieving higher levels of equity. I feel that these attributes of the word equity are essential to address the post-apartheid planning legacy.

In this section I will set out my research design by firstly outlining my main approach, that of using case studies, followed by detailed descriptions of each intended study. This is followed by more detailed explanations of some of the research methodology to be adopted within the case studies. Finally, I will address the issue of my positionality in relation to these cases studies.

### 3.3.1 Case study approach

This section includes more detail on why I selected a case study approach. Although all my research was informed by the concerns raised in the previous section, the case study approach itself deserves some consideration. I selected a case study approach for two primary reasons. The first is that my subject matter essentially involves the interaction between policy and human behaviour (the implementers of the policy). As noted by Kohlbacher (2005:4), "The distinctive need for case studies arises out of the desire to understand complex social phenomena" because "the case study method allows investigators to retain the holistic and meaningful characteristics of real-life events," such as organisational and managerial processes, for example. “In fact, case studies seem to be the preferred strategy when ‘how’ or ‘why’ questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context" (Yin, 1981). My research asks 'how' (and by extension 'if' at all) the design and implementation of planning instruments has an impact on equity.

Secondly, I also utilised what has been called the analytical auto-ethnographic approach (Anderson, 2006; Denzin, 2006). Auto-ethnography is a form or method of research that involves self-observation and reflexive investigation in the context of ethnographic fieldwork and writing. I also had some limited control over the behaviour of events. In a sense, these specific case study approaches involved a degree of participatory research and co-production of knowledge. Furthermore, being involved in a practice capacity in some way, in each of the case studies explored, I was able in some instances to add a reflexive interpretation or insider's view to the more conventional qualitative data gathered.

The rationale for undertaking three case studies is that each of the case studies reflects on the various housing policy instruments through different moments in the policy instrument life cycle: formulation, training, implementation. This entailed examining various housing-related policy instruments in a broadly linear manner, using the 'project cycle' (Howlett, 2011) as a framework guide, from agenda setting conceptualisation and formulation, through to policy evaluation. In this way, I provided a reflection on the full scope of specific policy instrument development, at the local level of governance, at the point of application, within the context of South Africa. As such the interaction of the case studies constitute three autonomous exemplars of the policy phenomena I am examining as opposed to being comparative studies.

Also, importantly, their specific selection was due to, as indicated above, my personal involvement in each project that the case studies are based on, as a planning practitioner. In the first, my involvement was only four months while for the second and third my involvement was eight and seven years respectively. In the first two I was remunerated for my services while the third was in a voluntary capacity. In all the projects I chose to be involved as they all pursued the goal of great equity. As elaborated on below, the first entailed reworking a draft policy instrument to improve its ability to achieve greater equity for evictees with regards to alternatives. The second involved training of officials to enable them to better execute their tasks in improving the lives of the most vulnerable in respect of housing and services. The third involved advising a community to best achieve the benefits of a potentially progressive informal settlement upgrading policy instrument.

The next sub-sections detail the nature of each of the case studies and the methods applied in each.

#### *3.3.1.1 An eviction policy for Johannesburg: The 'formulation and design of a policy instrument'*

*Selection of this case study*

This case study was selected for the following three reasons:

i. The case study involves a policy formulation process (albeit a revision of an existing draft policy), and therefore involved all the aspects of agenda setting, policy formulation and design.
ii. The draft policy is intended to protect rights of evictees, based on the requirements of the Constitution, and therefore can be viewed as a 'progressive policy instrument'.
iii. I was personally involved in the formulation process between May 2015 and August 2015, which gave me insights, contacts, and background to the process. These insights would not have been possible if I had not been present at many of the design meetings within the consulting team and between the team and the client. As such, I was privy to the debates and negotiations that were had, as well as the issues at stake.

*Description of case study and involvement with process*

In this case, I reflected on a consulting project in which I participated, that entailed a multi-disciplinary team of human rights-oriented consultants formulating a revised policy, the Special Process for the Relocation of Evictees (SPRE) for the City of Johannesburg (CoJ). The consultancy resulted from a group of residents living in an inner city disused industrial building who were sued for eviction. After a series of appeals from the residents as well as from the CoJ to the constitutional court, the CoJ eventually lost and were effectively obligated by the Constitutional Court ruling in 2011 to formulate a policy to ensure evictees were not left homeless on the street (detailed in Chapter 4). Despite the City of Johannesburg's progressive intentions[15], they missed an opportunity to bring about a structural, pro-poor change regarding the issue of evictions in the inner city, by finally settling on a policy instrument entitled, Temporary Emergency Accommodation Provision policy (TEAP) in 2021 (Joburg, 2021). This case study is the story of this process.

When I decided to include this case into my PhD research as a case study, in 2016, I envisaged just focusing on the four-month period between May and August of 2015 that I was involved as part of a consultancy in the preparation of two iterations of the policy. However, by the time I began undertaking my interviews related to the case study in 2019, the policy had still not been finalised by the CoJ. I then decided to expand the study to cover the entire duration of the formulation of that policy from its initiation until adoption (which fortunately for my research happened in February 2022). I decided on this expanded scope for three reasons. Firstly, I was never sure that I had enough empirical evidence from that four-month period. Secondly, it took some time to resolve the ethical question of how much of our closed-door deliberations I could divulge. As it was not a research project at the time, the information gathered during the consultancy, such as minutes of meetings, internal notes, iterations of the policy drafts, and confidential reports were not subjected to an ethics application. As such, once I had chosen to use it as a case study after the completion of the project, my challenge was how to utilise the information obtained in an ethical manner. I overcame this challenge by obtaining an ethics certificate for my PhD proposal and undertaking eight in-depth semi-structured interviews between January 2019 and November 2020, under research conditions (information letters, and consent signed forms). The interviewees included four ex-CoJ officials who had participated in the SPRE policy design at some stage in the formulation process. Two of them were part of the initial conceptualisation of the policy in response to the Constitutional Court ruling, while the other two were our immediate clients during our consultancy. Two of the interviewees worked with me on the consulting project, as such I could cross-reference and triangulate information from our meetings. I could also compare my

[15] The policy objectives were broadly to address the issues of evictions in the City of Johannesburg. While an eviction is not considered 'progressive', the policy was in response to a progressive law, which effectively prohibits people from being evicted without alternative accommodation.

reflections on the events and processes experienced during the formulation process with them.

The guiding questions for each interview were derived from my experiences during the consultancy, thus reducing the need for me to use primary data from the actual consultancy, from an ethical perspective. Rather I used meeting notes, email threads and the contents of reports to inform my interview questions. As an example, the first draft we were given to critique had confidential comments made by the CoJ's private sector legal advisors and as such I could not quote from them. However, I was able to formulate questions relating to them to the officials interviewed and, in this way, indirectly draw on that material. One of the final two interviewees was a consultant who worked on a parallel but related project on inner city housing for the CoJ and was useful to get their perceptions on the eviction's situation in Johannesburg and how they (as a consulting team) thought of addressing the issue of evictions in the inner city. The final interviewee was a political advisor to one of the political parties within the CoJ at the time and could give me some insights into the political debates around the issue of evictions and the draft policy at that time. Another example of my involvement in framing the questions to the interviewees was that as I had been involved in examining the various iterations of the draft policy instrument, I was able to identify some non-progressive changes in the last draft. I was able to pose questions to the political advisor on the role of the politicians in these changes.

Draft copies of my article were given to one of my colleagues interviewed as well as to one of the officials interviewed to peruse. No response has been received to date. Where documents were quoted from, they were all publicly accessible on the web. This included an interim version of the SPRE which was posted on the web for consultation purposes, the final iteration of the SPRE as well as the final TEAP policy.

Thirdly, an examination of the drawn-out process would allow me to provide a more rigorous, comprehensive, and holistic view of the policy formulation process at the local government level.

The following were the questions I focused on:

i. How is the central problem characterisation underpinning the policy document? Is it framed as a problem of housing, of poverty, or illegal invasion of private property?

ii. How are evictees depicted by the state through the policy formulation process? Responses range in a continuum between evictees as culprits (suggesting a level of reluctance to address the court obligation), and evictees as victims (reflecting an empathy towards the obligation).

iii. Whose responsibility is it to provide temporary accommodation to evictees? Is it the sole responsibility of the state, or is it also the responsibility of private property owners conducting the eviction?

*Research material collected*

The material applied to the research included the following:

- The policy brief.
- Meeting notes and minutes.
- Transcripts of stakeholder interviews.
- The consulting team's inception, analysis of draft SPRE report and discussion document.
- Five iterations of the SPRE policy document.
- Final copies of the SPRE Policy Guideline document and Implementation Plan.
- Final TEAP policy.

*Analysis of data*

The enormous amount of documentation assessed and the plethora of aspects arising from the policy formulation process necessitated that I analysed the process through three cross-cutting questions listed above that I tracked in the various iterations of the policy instrument over the formulation period. This was done in the following manner. The first step in my analysis was to construct a timeline table of the formulation process, from the time of the Constitutional Court ruling through to the final adoption of the TEAP policy in 2021, to get a clear framework of events. I then set up a matrix table with a column for the brief and each iteration of the policy document. Against each iteration I compared the three questions posed above, firstly to determine how the problem was defined in the brief and then how questions two and three were handled in each iteration depending on the authors and influences on them. For example, in our inputs as service providers in our iteration of the draft policy we inserted clauses that were more empathetic to the plight of the evictees and proposed greater obligations on the property owners given their resources. In the following iteration, once it had gone through an internal CoJ process, many of those proposals had been removed.

#### *3.3.1.2 **'Bureaucrats and knowledge'** – The perspective from the 'implementers' of the policy instruments*

*Selection of this case study*

This case study was selected for the following three reasons:

i. The case study represented an examination of the implementation of a suite of interlinked policy instruments within their specific institutional and policy environment contexts. This represented another stage in the policy cycle. It is a case study of a capacity building programme requested from the National Department of Human Settlements to improve implementation of their National Housing Code, containing a range of housing policy instruments.
ii. The range of housing policy instruments (consisting of the policy instruments within the Housing Code) are ultimately state interventions directed at addressing equity issues – providing the poorest of the poor with security of tenure, infrastructure and adequate housing opportunities. These policy instruments at times even prioritise relief for children, the aged and women and therefore can be viewed as a set of interrelated 'progressive' policy instruments.
iii. My personal involvement in the development of the training course as well as in the training of the officials over an eight-year period gave me direct insights into the institutional and policy environments of the trainees.

*Description of case study and involvement with process*

In this case study, I reflected on the experiences of training over 400 local and provincial housing officials throughout South Africa, over an eight-year period, 2009–2016. The training provided a window for us as trainers into officials' abilities to interpret, utilise and implement/apply the basket of housing policy instruments (NHC). It also exposed attitudes; and the complex work environments (including power relations with political figures). The interactions with the officials were very interactive with the participants engaging with the material in groups and providing feedback on their answers. These interactions highlighted the impacts the policy environment was having on them in terms of their ability to implement their responsibilities and duties. This interaction exposed the nature of the mismatch between the dry world of policy (the Housing Code[16]) and the real world of operationalisation. The training exposed us trainers to many aspects of their daily work lives that militated against their ability to implement the policies.

The focus of this reflection was on the aspects of the training that provided insights into how they as officials engaged with the housing policy instruments. This included their interpretation and understanding of the policy instruments; internal and external challenges they encountered in applying the instruments. The case study also reflected on the trainees' institutional contexts, in terms of the predominant culture of local and provincial government organisations and how knowledge is produced and disseminated within these organisations.

My initial impressions, based on my experience of this training process, were that the trainees held a wide range of interpretations of the various housing instruments. The trainees' understanding of the purposes and means for applying the policy instruments varied widely across the participants, from almost totally uninformed to well informed. In most cases, the contextual institutional environment was one of fear and frustration. Fear of line managers and political representatives, that they be asked or instructed to partake in malfeasant practices. The trainees were largely frustrated by the lack of technical and knowledge resources as well as poor institutional management. With regard to knowledge dissemination, there seemed to be a significant amount of what appeared to be gatekeeping, of knowledge sources such as the Housing Code documents, for example by upper-level managers. All these factors could be constraining the implementer's abilities to implement their instruments. Alternatively, it could be the content of the policy instruments themselves that are the constraint to implementation.

[16] The Housing Code is a single document containing a basket of inter-related implementation instruments prepared in terms of the South African Housing Act of 1995, to implement the various affordable housing delivery systems in South Africa.

As with the first case study, I chose to use the training consultancy as a case study after the completion of the project, and my challenge was how to utilise the information obtained in an ethical manner. Once again, I overcame this challenge by obtaining an ethics certificate for my PhD proposal and a second certificate specifically for this research together with a colleague who facilitated the same workshops in parallel with me. I facilitated 23, my colleague Dr Margot Rubin from Wits, facilitated 14 and we jointly facilitated three workshops.

Once we had the certificates, we conducted formal surveys of past participants on the courses under strict research conditions with information sheets and letters of consent. These formal surveys interrogated these impressions to provide insights into factors influencing the implementation of policy instrument aspects from the implementer's perspective, within the policy process cycle.

*Research material collected*

- The data is drawn from outputs from 12 of the workshops which were assembled at the time for record purposes. This material included flipcharts from 13 of the workshops, on which the candidates responded to the question: "From your experience, what are the main problems currently being faced in the housing delivery process?". Each group would list their responses on a flipchart. These flipcharts were either kept or they were photographed. As such, one set of consistent data has been used from the workshops.
- Evaluation documentation including individual assessments and course evaluations.
- Photos and written response cards and posters obtained at some of the training sessions.
- These reflections were cross-referenced against a subsequent survey questionnaire sent out, under formal research conditions, to all the 651 registered participants who had attended the workshops over the six-year period. We received 46 responses – a 7% response rate. Ethics clearance was obtained for the research and the questionnaire survey was done on SurveyMonkey (refer to **Appendix 5.1**). The questionnaire was emailed to potential participants accompanied by an information letter which indicated that consent was assumed

with their response. This questionnaire posed 31 questions, starting with background information on where they worked and the nature of that work; education levels and experience; capacity support received; reflections on the workshop content; and perceived outcomes for them. All these related back to the time they had attended the workshops. Finally, they were asked about their current work circumstances.

*Analysis of data*

The case study's unit of analysis was the engagement of the officials/participants with their instruments (through the training process) in terms of their abilities, perceptions, experiences, and expectations, in implementing the National Housing Code as a planning instrument. Based on the above data, the analysis first involved the analysis of the flipchart data from the training workshops. Sixty-four issues were articulated which I categorised into 11 broad themes: Land Issues; Institutional Coordination; Corruption; Political Influence; Capacity Issues; Funding; Problems with Beneficiaries; Service Providers; Blocked projects and Delays; Land Management and Planning Processes and Backlogs – Informal Settlements and Backyard Shacks. Each issue received a tick every time it was listed by a group and finally added up to determine the frequency of issues raised. This established a ranking of importance as articulated by the attendees. In, addition, two questions were then applied to each issue raised. Firstly, what were the probable causes and secondly what implications (if any) they had on the policy environment or the policy instrument (the NHC)?

The answers to the above two questions were then triangulated against data from the evaluation reports, reflections from the facilitators and the questionnaire results. The triangulated data was then correlated with the literature to establish alignments and anomalies relating to the impacts of the policy environment on officials' ability to implement the NHC. An example is that we picked up an issue of how new officials were capacitated or familiarised with the NHC in the flipcharts, which was triangulated with questions in the questionnaire about how they were capacitated within their work environment and against our reflections of discussions within the workshops. These findings pointed to a very non-systematic training approach within their work environments, aligned with narratives in the workshops where candidates had never actually had copies of the NHC, aligned with poor results in the workshop around interpreting programmes within the NHC, to the literature that echoed issues of low capacity among housing officials.

#### *3.3.1.3 The 'question of implementation' – Implementing the UISP instrument*

*Selection of this case study*

This informal settlement was selected as a case study because I have been and am currently assisting the community as a technical advisor on the upgrading process. A few of the salient points follow as to why this was a particularly relevant case study:

- The community's struggle for upgrading has been in operation for some 17 years so there is scope to reflect on what has happened.
- The Slovo Park informal settlement has several characteristics that should theoretically facilitate the implementation of the UISP in a fairly straightforward way, such as a well-organised community, relatively close proximity to bulk infrastructure and relatively low density, which are ideal in-situ-upgrade project conditions.
- There is a large body of recent primary empirical data available on the history of the process and on the community.
- My personal involvement in assisting the implementation process, as a technical advisor started in early 2016. This position gave me direct insights and access to the human interactions, documentation and various stakeholders' views on the processes unfolding. These insights would not have been possible if I had not been present at the Task Team meetings and without direct contact with community leaders, NGO personnel, CoJ officials and their consultants. As such, I was privy to the debates and negotiations that took place, as well as the issues that arose. Personal involvement also adds complexity and challenges as a researcher, which is covered in section 3.4.1 below.

*Description of case study and involvement with process*

The third and final case study documented and recorded the attempted implementation of the Upgrading of Informal Settlements Programme[17] (UISP), as a sub-instrument of the Housing Code (being a package of policy instruments). The case

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[17] The UISP is the formal inter-related set of policy implementation instruments, within the South African Housing Code, specifically for guiding the upgrading of informal settlements in South Africa.

study covered a particular geographical area, namely Slovo Park. This is an informal settlement established some 27 years ago within the jurisdiction of the Johannesburg Metropolitan Municipality (referred to here as the CoJ), comprising a community, which has been trying to in-situ upgrade their settlement with the help of the state since the late 1990s. This case study involved the exploration of the community, local government and professionals' efforts at trying to implement the UISP over a period of six years, from the time of a high court judgement compelling the CoJ to implement the UISP to the end of 2022 (which was my research cut-off time frame).

I have been assisting the community as a technical advisor, representing the Centre for Urbanism and Built Environment Studies (CUBES), a research and advocacy unit within the School of Architecture and Planning at the University of the Witwatersrand. I undertook this role on a voluntary basis with my colleague Professor Marie Huchzermeyer and was involved since 2016. Our role was to assist the community in providing guidance and evaluating technical planning aspects of the upgrade project. These aspects included the UISP process, layout plans and tenure issues. CUBES was invited to be part of the Slovo Park Task Team setup after the high court ruling. As such we attended Task Team meetings, perused consultants' outputs, and minutes of meetings. We also attended strategic planning meetings with the Slovo Park Community Development Forum (SPCDF) and other NGOs supporting the community. This involvement gave me first-hand experience of the events around this upgrading project, officials' interpretations of the UISP, the nature of engagements between the officials and community members, as well as between private service providers, officials, and community members.

The key question addressed in this case study was, why had the UISP as an instrument of the overall housing policy not been successfully implemented in Slovo Park to date, despite the settlement appearing to have ideal conditions for its application? On analysis of the case data, it became apparent that two further questions emerged from the above question. These were: what lies behind the blockages in relation to the bureaucratic processes and stakeholder actions? And the second was: what lies behind the blockages in terms of the UISP instrument's abilities to facilitate and guide implementation?

In addressing these questions, I explored the following aspects:

- The genealogy of the UISP instrument.
- The actual policy text, in terms of how it inter-relates with the existing institutional framework's foci, terminology and structure, and how this affects the way it is interpreted and engaged with (i.e. practices of) officials, NGOs and beneficiaries.
- How the institutional framework affects the different planning practices/cultures of institutions and how individual agency aligns (or not) with the institutional framework to implement the UISP instrument.
- Challenges in respect of how the beneficiary community interprets and engages with the institutional framework in the implementation process.
- The financial mechanisms and coordination procedures specified and adopted to implement the UISP instrument.

*Research material collected*

Primary empirical evidence was based on the following:

- Historical quantitative surveys and qualitative data on the area, its community and the policy and legislative processes undertaken in the area.
- Policy documents applied in the process so far.
- Documentation including minutes of meetings and reports from the Socio-economic Research Institute (SERI)[18] pertaining to the Slovo Park project.
- Personal notes and email correspondence with technical advisor colleagues on the project.

*Analysis of data*

The case study's unit of analysis was the relationship between the contextual institutional framework and material content of the UISP, and how they affected each other. In so doing the case study involved the observation and study of the community, local government, and professionals' efforts at trying to implement the UISP in a particular locality. In this process I extracted 16 actions from the minutes of the Task Team meetings and explored their implications for whether they were compliant with the UISP, for the project, and implications going forward for the UISP instrument itself.

[18] An organisation on the Task team also supporting the Slovo Park Community Development Forum.

Finally, I analysed the findings according to a set of preconditions for scaling up upgrading of informal settlements set out in a South African/World Bank report in 2016 (World Bank Group, 2016) as well as against the seven ‘progressive’ potential paradigm shifting aspects outlined in Huchzermeyer (2006).

## 3.4 Analytical Tools Applied

### 3.4.1 A reflexive approach

Cole et al. (2011:142) argue that a reflexive approach could accomplish a few roles in “developing the student, and in closing the loop between the approach taken to carry out the research, the research findings, the contribution to academic knowledge and how the research practically then informs professional practice”. In my case, I am both a practitioner and academic and thereby familiar with the loop described by Cole et al. (2011) and am possibly more aware of linkages in a practical project. Regarding informal settlement upgrading, I have practically experienced the day-to-day planning process (albeit in an earlier South African context) and have monitored the progress of implementing the policies over 20 years (Klug and Vawda, 2009; Charlton and Klug, 2016). As a result, I have an existing, substantial body of empirical evidence of how and why various housing upgrade instruments worked or did not work.

I found the reflective approach highly applicable in assessing local government officials’ practices in applying planning instruments. Essentially, “reflexivity involves the self-critical consideration of one’s own assumptions and constant considerations of alternative interpretive lines and the use of different research vocabularies…” (Alvesson and Deetz, 2000 cited in Cole et al., 2011:149). This was certainly the case in the second case study, where prior held opinions of officials being poorly motivated were altered by my experiences engaging with them during the training workshops when I was made aware of other factors within their work environment that were negatively impacting on their working abilities.

In addition to the above argument, my intention was not to establish an absolute truth about my subject matter but rather gain a better understanding of the processes and procedures around the formulation and ultimate implementation of planning instruments, within a particular context as outlined in Chapter 1 of this thesis. Linked to the notion of using a critical reflexive methodology is the principle of hermeneutic understanding, i.e. intuition, interpretation, understanding and the relationship between research and the subject of the research (McAuley, 2004 cited in Cole et al., 2011).

Reflexive interpretations can comprise a range of different types of interpretations, as outlined by Alvesson and Sköldberg (2009). These include primary interpretations – those made by the researcher prior to and during interviews about the structure of the interview; secondary interpretations – those related to the actual statements made by the interviewee; and critical interpretation – that challenges the perceptions and values of the interviewees. These interpretations are utilised in both critical discourse and document analysis (Bowen, 2009).

Donald Schön (1983), who wrote on a similar theme on the "reflective practitioner" (prior to the above), takes a more practical approach when talking about the practitioner's role in research. He outlines four types of research to enhance the practitioner's capacity for "reflection-in-action" (Schön, 1983:309). The first is the framing analysis in which practitioners reflect on how they frame problems as it determines how they tackle the research. The second is repertoire – building research involves building up exemplars or precedents to use in further practices. Thirdly, use of fundamental methods of enquiry and overarching theories to assist the practitioner in making sense of or to restructure a new situation. Finally, he refers to research on the process of reflection-in-action, referring to documenting the researcher's own feelings, prejudices, etc. in the process of the research.

In response to the critiques that a reflexive approach may be too subjective for the required academic rigour, I share Cole et al.'s (2011) contention that under almost all circumstances the notion of being able to interact neutrally with research subjects is untenable (especially as an experienced practitioner). Furthermore, they contend that it is in the active interplay between the researcher and the subject, in interviews, that reflexivity is particularly useful, for example, providing opportunities for the researcher to "look behind the prime facie data to explore the understandings of the interviewee" (Cole et al., 2011:142). This was applicable in all three case studies where I was able to inform the formal research components, such as the content of the questions in the questionnaires, through the insights garnered from the direct interactions I had with the interviewees in my prior involvement within the projects.

As an example, in the first case study, on reflection of my experiences in the project, I had a sense that there was a legal bias in the overall approach to formulating the SPRE policy. This sense emerged through observing the disproportionate time given to the legal deliberations and inputs into the drafts as opposed to the planning and housing aspects. Furthermore, even though our immediate clients in the CoJ were planners, the draft documents were always altered by the CoJ lawyers who were in the background. This sense enabled me to explore that bias within the questions posed to the interviewees. If I had not participated in the project, I may never have picked up that bias.

In the second case study the discussions held during the training workshops with the participants contributed to dominant narratives emerging in my mind as a researcher, which were proved incorrect in the analysis of the workshop flipcharts and in the answers to the questionnaires. An example is that my impression from the participants was that limited support from their managers and even gatekeeping of information at times was a significant factor impacting their ability to do their jobs. As such, in formulating the questionnaires, we specifically asked how supported they were as employees by their immediate line or senior managers. However, the formal questionnaires revealed that other factors such as the three-tier institutional government structure and intergovernmental challenges have a far larger impact on their work.

Finally in the last case study my personal experiences of frustration came from the sense of powerlessness as a professional planner to get something implemented in the face of an incapacitated state with the sole power to implement, as stipulated in the policy instrument. As such, it forces one as a practitioner to reflect on one's own practice and range of mechanisms available to overcome the given implementation constraints.

As indicated above, a reflexive approach proved helpful in the use of observation and participant unstructured and semi-structured interviews in all three case studies. In addition to the above approach, extensive use of document analysis (Bowen, 2009) was utilised to analyse the case studies.

### 3.4.2 Document analysis

In all the above case studies a common method utilised was document analysis. As Hull (2012) argues, documents are not just simply instruments of bureaucratic organisations but demonstrate their constitutive rules, ideologies, knowledge, practices, subjectivities, objects, outcomes and even the institutions themselves. In the second case study again, documents played a crucial role, in the instance where we could identify how the various officials interpreted legislation or policy clauses in their responses to our exercises. A frequent example was the interpretation of the Section 26 clause in the Constitution, which is the basis of the entire Housing Act. We provided the trainee candidates with a scenario where someone demands a house immediately in terms of section 26 of the Constitution – how should the officials respond? The majority of officials took a passive position and said the person should put their name on the housing waiting list. However, the constitutional court interpretation is that the state official should demonstrate to the person what the municipality has done to further their right to adequate shelter, through their Strategic Housing Plans, IDPs, etc. and to show the person when they could be provided with shelter assuming they were not in an emergency situation. Such incorrect interpretation of legislation and policy documents has significant impacts on how officials implement the policy instruments.

Document analysis is often used in combination with other qualitative research methods as a means of triangulation. Of particular value is that documents provide a means of tracking change and development. Where various drafts of a particular document are accessible, the researcher can compare them to identify the changes. Even subtle changes in a draft can reflect substantive developments in a project. This was very relevant in the case study on the formulation of the SPRE draft policy (Bowen, 2009).

Finally, as demonstrated in the 3rd case study, the absence of certain instrument documents could be even more important than the available documentation for progressive outcomes. For example, although the planning instruments for informal settlement upgrading (such as **Appendix 8.2**) are still legal documents, they are invisible to potential users as they are not clearly articulated in the CoJ by-laws and thus officials tend to utilise the less progressive instruments clearly articulated in the by-laws (Refer to Chapter 8 for details) (Bowen, 2009).

Given the above and that I am particularly focusing on the material content of policy instruments, document analysis formed an intrinsic part of each case study.

## 3.5 Positionality

As anticipated in my PhD proposal, my positionality has been the single biggest challenge to me throughout this PhD process, in relation to keeping my own assumptions in check, keeping a distance between my research and my professional knowledge, and in wrestling with the tendency to always begin from a normative position rather than simply analysing what is observed. Given my particular roles in the case studies it was also a challenge navigating the complex ethical terrain as a participant and observer/researcher at the same time (Bènit-Gbaffou and Williams, 2022; Moodley, 2022). As indicated earlier in the introduction, the reason I embarked on my PhD research into planning instruments was through a sense of disappointment coming to the end of my planning career in the lack of impact we as planners have had on the challenges facing the living environments of the poorest in the post-apartheid South Africa. Planning colleagues have expressed similar sentiments as articulated by Moodley (2018, 2022). Whilst clearly the reasons for this lack of efficacy in contributing to greater equity in our built environment stems from multiple factors, my particular interest was around the planning policy instruments and their potential contribution to this situation. As a planning practitioner for over 30 years, I have a familiarity with planning policy instruments, particularly those pertaining to the delivery of low-cost subsidised housing, informal settlement upgrading, land tenure and land use management, which has placed me in an advantageous position to explore them in relation to their potential to generate progressive outcomes or not.

All the above relates to my positionality in relation to the research, as indicated above, because in all three case studies used in the PhD, I was involved in the research subject to a lesser or greater degree. This presented both unique opportunities to access certain knowledge, and challenges faced revolved around issues of ethics, confidentiality, and objectivity. In the first case study I was actually appointed as a consultant to prepare the policy. My period of involvement in the process was only three months of a ten-year process, but I still got access to confidential material in that time. During the consultancy I had no intention of researching the process and therefore no formal research protocols were observed at the time, such as ethics clearances or research observation permissions. However, I overcame these issues by firstly getting ethics clearance to research the case study topic. I then undertook interviews with eight of the stakeholders involved in the process under formal research conditions, with interview information sheets, and signed consent forms (refer to **Appendix A**). This enabled me to use my personal knowledge of the processes and issues discussed to inform my questions put to the interviewees.

In the second case study I undertook the training of over 600 municipal and provincial housing officials over seven years, again with no intention to use the experience as a research subject at the time. It was only in retrospect, in discussions with my co-trainer when I realised what incredible insights I got into the working conditions and mind sets of the officials working at the ‘coal face’ of state provided housing that I decided to make it a subject of a case study. Again, no research protocols were observed at the time, such as ethics clearances or research observation permission. Similarly, together with a colleague we arranged an ethics clearance certificate to research the topic of the impacts of short-term training. We then undertook a survey of past attendees of the training courses under formal research conditions. I also used group responses to a particular question on flipcharts gathered during the training workshops, that could only be linked back to specific courses rather than individual participants. Given that the groups were made up of a mix of different municipalities even specific municipalities could not be linked to the responses, ensuring anonymity.

My positionality in the third case study I found more complex, as I found myself to be emotionally invested in the project, which made it more difficult to separate my emotions from the research findings. The following reflection below written during my analysis of case study three expresses some of the complexities regarding my positionality in this case study.

*On a comprehensive read of the minutes and notes pertaining to the last seven years of the Slovo Park Task Team, what is apparent is the circumlocutory language often* *used by the CoJ project manager when chairing the meetings. This left me as well as other members of the Task Team perplexed and feeling too awkward to challenge what we thought we had heard or what had been agreed to. [A prime example is on page 6 of the minutes of the 20 May 2021, which were based on the transcription from a recording of a zoom meeting].*

*Through the above analysis of the records and notes from the various meetings over the past seven years and reflecting on the role that I personally played as well as our role as CUBES as technical advisors to the SPCDF in this process, it is clear we have been ineffectual. The question is why? At a personal level, I often felt that I was unable or reluctant to be more challenging of the city's behaviour, within the Task Team meetings, than the community leadership due to the fear of doing something that would alienate the community from the city officials even more than they were already. Given the fluctuations in activities between changes in official personal running the project from the CoJ's side, it is clear that personal agency of the officials had a huge impact on the project. As such, personally alienating individual officials could have a further delaying impact on the project. This fear was also based on the reality that as a professional advisor my personal circumstances would not be impacted in any way if the project was delayed (as it has been) while my actions may have a negative impact on their material circumstances in that they remain living in their appalling conditions. Also on reflection, the institutional structure of the joint Task Team involving the various state agencies together with the City's human settlements department suggested a collegial working environment with an assumption we were all working towards a common goal. This was constantly reiterated by the enthusiasm expressed by the City's project manager (between mid-2018 and 2022) towards the project and more towards the overall application of the UISP to informal settlements throughout Johannesburg. This further discouraged any thoughts of challenging the actions of the project manager, in a sense we were duped by his supportive narrative.*

*In relation to CUBES another realization is that we simply did not have the time or capacity to strategize around the challenges emerging politically and technically from an unaccountable and poorly capacitated local metropolitan government. While we were able to adequately evaluate documentation such as the proposed layout plans of the various consultants, or the UISP application documentation or the MOU we were* *unable to adequately prepare for each Task Team meeting. Ideally as advocates for the community we should have met with SERI and the SPCDF prior to every meeting to go through the previous meetings resolutions and to strategize going forward but there was never time to do so. Furthermore, each time the CoJ did not deliver on an agreed deadline they should have been formally challenged in writing which would have required additional research at times. For example, the claim by the CoJ's project manager that SERI could not finance the preparation of an alternative layout plan due to "the complexities involved" should have been formally challenged by the Task Team. This would have required research into the Municipal Finance Act, and other CoJ procurement policies. As such it has demonstrated the limitations of the role university research agencies can play as advocacy agents. Such development advocacy roles are better suited to development advocacy agencies who can have dedicated staff assigned to such projects on a continuous basis. The analysis also raises the need for better co-ordination between the legal and development sector agents within the advocacy group to better understand each other's capacities and limitations. – 1 February 2023*

In all three cases studies the following issues I anticipated in my research proposal listed below were relevant in my research on planning policy instruments:

- The need to be reflective enough to challenge or suspend, ground and potentially develop, refine and strengthen, some of my own strongly held normative views, based on experience, against opposing research findings, e.g. in better understanding the obstacles that officials and politicians face in implementing the UISP or SPRE. For example, the stakes are different for each stakeholder. As a consultant or even a technical advisor you can only be fired from that particular project should your normative views be unwelcome; however, as an official or politician one's entire income source could be threatened should one be fired or expelled.
- The need to be reflexive in my research design and analysis of findings, with the awareness of my status of having 'white privilege' within the local context, e.g. reflecting on my value judgements. For example, when placing myself in the position of how I would respond to pressure by a superior to perform an action of

malfeasance, my choices, having more resources at my disposal, may be different to someone with limited choices and bigger survival implications than myself. Similarly, my sense of impropriety in some cases may be different to someone else and I needed to be reflexive in my judgement.

Overall, I feel that my experience has had relevance, particularly with regard to universal planning intentions or desired outcomes, in what I consider to be detailed case study research that counters some of the politics of representation and identity arguments present today.

## 3.6 Limitations to the Methodology

All three case studies positioned as an ‘insider’ provided volumes of data, whether through documentation, participants’ perspectives or observed processes. However, with regards to understanding the internal machinations of the local government ‘Blackbox’ institutions I was always an ‘outsider’. Despite the second case study providing mainly anecdotal insights, I was always an outsider in the first and third case studies. An analogy would be sitting around a dining room table with chefs planning meals for the most vulnerable but having no idea what happens in the kitchen. Moodley (2022) articulates this situation very well in his description of initially being an insider as an employee in local government, but after leaving becoming an ‘outsider’ and going into research.

Related to the above issue of personal participation in the case studies, I established personal working relationships with the other participants which to an extent constrained how forcefully I interrogated their responses in the interviews in case study one. In case study three I refrained from doing any interviews as it remains an ongoing project which I was reluctant to potentially disrupt through research interviews in the middle of the process.

## 3.7 Conclusion

This methods chapter has outlined my essential grounded research approach to this study, based on three case studies. Each case study focused on a variety of aspects of policy instruments in different stages in the policy cycle and from multiple perspectives. While all cases essentially involved a qualitative approach and were complementary in their contributions to answering the research question, they all varied methodologically in terms of timing, personal involvement, data acquisition and analysis, determined by the specific circumstances of each case.

The first case study examined the formulation and design of a policy instrument, while touching on the policy agenda setting, in the context of a networked and multi-level governance environment where the formulation of the policy switched between the state and private sector service providers. My personal involvement in the formulation process was relatively brief but gave me unique access to material which facilitated a longitudinal document analysis with some personal reflections.

This second case study focused on the abilities, attitudes, politics and circumstances of policy implementers, within a specific institutional context referred to as the policy environment, and the limitations derived there from, in implementing a basket of NHC programmes. In so doing it also examined the engagement of policy implementers with the policy instrument in the implementation phase of the policy cycle. This case study had some methodological similarities with the first case study in terms of me being an 'insider' and having personal engagement with the research subjects in the training process, which was more intensive engagement over a longer period. However, the actual data acquisition and analysis differed in that due to the quantity of research subjects the triangulation of data was acquired through a general survey from which the respondents' responses were quantified as a breakdown of percentages to establish the most common factors. This was compared against some material constructed in an atmosphere of trust within the training workshops, and with broader theoretical literature. The material from the workshops was also categorised and quantified to determine the most prevalent factors relating to implementation constraints. Overall, this was a more quantitatively driven case study as opposed to the purely qualitative nature of the first case study.

The third case study examined the complexities of the policy and institutional environment and its limitations on implementing a 'progressive' policy instrument, while also examining the policy instrument itself within a specific institutional environment. This was from the perspective of the city officials and their consultants and the end users/beneficiaries and their assisting NGO, in the context of resource and power inequalities between the various stakeholders. Like cases one and three, my personal involvement in the research subject gave me unique access to material and observations, the engagements in case two were also over a long period but made up of intensive three-day interactions. This similarly enabled a longitudinal study of activities and processes in relation to the policy instrument, but constrained my ability to undertake more in-depth interrogatory research into the various stakeholders as the project is ongoing.

Overall, despite the challenges set out in the chapter, being embedded in the case studies offered unique opportunities to access certain data, personal observation to better contextualise the data collected and assisted in proving a broader perspective in the analysis of the data.

**PART B**

# CHAPTER 4:
# THE POLITICS OF POLICYMAKING IN THE CITY: FORMULATING A POLICY INSTRUMENT TO DEAL WITH EVICTIONS IN POST-APARTHEID JOHANNESBURG

## 4.1 Introduction

This chapter reflects on the process of formulating a potentially progressive local planning policy instrument in the City of Johannesburg (CoJ), South Africa, in the post-apartheid period.

It was initiated in response to the Blue Moonlight case: a 2010 Constitutional Court ruling compelling the state to take responsibility to temporarily accommodate evictees, even if they were evicted by a private property owner. The case was that 86 people living in an inner city disused industrial building were sued in 2006 for eviction by the new owners of the site, Blue Moonlight Properties 39 (Pty) Ltd, having bought the property knowing that the building was occupied. The residents opposed the application on the grounds that they could not be evicted until the CoJ had provided them with alternative accommodation. The Southern Gauteng High Court granted the eviction but also ruled that the Johannesburg housing policy was unconstitutional and that the CoJ was to provide temporary accommodation or pay each resident R850 per month towards the cost of finding alternative accommodation. The CoJ appealed this ruling in the Supreme Court, lost the appeal, appealed again to the Constitutional Court. In a unanimous judgement the Court confirmed on 1 December 2011 that the CoJ has the same obligations to plan and budget around poor people evicted by private landlords as it has with those evicted from public lands (Dugard, 2014).

Between 2011 and 2021, the CoJ had an opportunity to edict such policy – a process in which I was briefly involved as a consultant, and that started in 2011 with the formulation of the Special Process for the Relocation of Evictees (SPRE) and ended with the adoption of the Temporary Emergency Accommodation Provision policy (TEAP) in 2021 (Joburg, 2021). This process, and my participation therein, seemed to open the possibility of contributing to a “progressive” approach to deal with evictions at the municipal level.

By “progressive”, I draw on Campbell (2005) for whom ‘progress’ in planning “takes concrete form through civic projects *[policy instruments]* that simultaneously improve individual utility, promote collective interests, and symbolise community values and identities” (Campbell, 2005:2). In South Africa, my understanding of the term “progressive” derives from my early practices in the early post-apartheid years. The values of what was progressive then encompassed promoting strategies and policies that promoted non-racialism; non-sexism; pro-poor actions/policies, incorporated in a general critique of free-market (or now neo-liberal) approaches to planning; non-violent approaches and community participation in decision making.

The conditions for a “progressive” approach to evictions from privately-owned buildings, leading to a more equitable balance of rights between property owners and occupiers (where the common law was, like in many countries in the world, largely in favour of highly protected property rights) appeared to be favourable. The post-apartheid context was marked by a public rhetoric filled with the need to rectify the imbalances of the apartheid inherited inequalities. This led in particular to the development of legislation prohibiting unlawful evictions, in reaction to apartheid legislation, such as the 1998 PIE Act[19] and 1997 EST Act[20], and other Constitutional rulings limiting the powers of landowners, prioritising the needs of occupants and the homeless on a contested piece of land under certain circumstances. Examples include the 2000 Grootboom and 2017 Daniels v. Scribante Cases, where the Constitutional Court obligated a local municipality to grant emergency shelter to a group of informal settlers, as the alternative meant they would go homeless; and the private property owner to ensure that an occupier of their property lived under conditions that afforded them human dignity, respectively. Here, the state in the first instance and the private property owner in the second instance are obligated to provide alternative

[19] Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) (RSA, 1998) – to provide for the prohibition of unlawful eviction; to provide for procedures for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act of 1951, and other obsolete laws; and to provide for matters incidental thereto

[20]. Extension of Security of Tenure Act 62 of 1997, provides for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated.

accommodation, proving that the courts can obligate both the state and private owner in certain circumstances.

However, the process and the final policy adopted by the City of Johannesburg proved disappointing – and no matter how subjective this appreciation might sound, I want here to reflect more broadly on the sense of progressive possibilities and why it was eventually not followed through, by analysing the policy process, the modalities, actors, and constraints that ultimately shaped it. Indeed, the final approved SPRE/TEAP policy took a narrow interpretation of the Constitutional Court ruling, focusing on the one side of the equation between the landowners and homeless by only addressing alternative accommodation for evictees, to be provided by the state, effectively avoiding any challenge to the common law notion of absolute property rights of the landowner. By not bringing property owners' responsibility into the picture of providing shelter to the tenants they were evicting[21], not only does the policy create the conditions for its own (financial and practical) failure, but it also could be seen even as encouraging developers to take over derelict buildings and promote further evictions of the occupiers, since the municipality would be solely responsible for relocating its residents. The final policy does acknowledge that such a scenario should be avoided but provides limited procedures to counter it.

This chapter undertakes a genealogical investigation of the process of formulating the above policies to illuminate the actors involved in the formulation, the various political pressures and interest groups, as well as the processes and tasks followed in a particular policy venue. It attempts to understand why a state with a strong rhetoric of pro-poor policy, in the redistributive and transformational political space opened by the post-apartheid era, and boosted by a progressive constitutional decision, ended up formulating non-progressive policies. Far from classic analysis in terms of policy-implementation gap (following here Bénit-Gbaffou 2018a), this reflection scrutinises the process of policy formulation, which is argued has led to a non-transformative outcome. My embeddedness in this process, between April and August 2015, alerted me to the complexity of the policy process and gave me first-hand experience of the twists and turns that this policy instrument formulation took – that this chapter attempts

[21] Through for instance making a financial contribution to their rehousing or developing some inclusionary housing as part of the building's redevelopment, for some of these former occupiers.

at unpacking, based on the study of documents in their multiple drafts, and interviews with key players identified through my recollection of this process. A brief methodology of the research approach is set out in the boxed text below.

This research is based on reflections on an actual policy instrument formulation project that took place in 2015, outside of any research environment at the time. To this end, I have adopted a form of performance and reflexive auto-ethnography as advocated by Denzin (2006). There is a major debate between the various schools of auto-ethnography being adopted (Anderson, 2006; Denzin, 2006). On one end of the spectrum are those who advocate a more analytical form of auto-ethnography (Anderson, 2006), combining evocative or emotional forms with traditional forms of enquiry. On the other end are those advocating a more creative, performance and personalised form of auto-ethnography (Denzin, 2006). I have mixed the more conventional methods such as document analysis (which makes up the bulk of the empirical evidence), interviews and focused conversations with local actors, with information derived from personal recollections as an active participant, which provides an insider's view, more realistically acknowledges that as an embedded participant (even as a researcher) we have our own political views and impressions of interactions, and adds a nuanced quality to the empirical data if presented explicitly.

Practically, my data was acquired through critical document analysis, which includes analyses of the various iterations of the developing SPRE policy documents, beginning with the project brief. This included two iterations of the draft policy documents (June and July 2015) as they responded to discussions and comments from the client body. The process of redrafting the policy covered an intensive period of two months from appointment to final submission. I was part of a dual sector consulting team: Lawyers for Human Rights (LHR)[22], the lead consultant dealing with the legal aspects, and myself, with sub-consulting colleagues responsible for the planning and housing aspects of the policy. During this consultancy I attended some three information gathering meetings with various professional specialists, five internal LHR meetings and workshops; five work sessions with planning colleagues; and two meetings with city officials. Post-consultancy, I remained interested in the outcomes of the policy

[22] An independent, non-profit, non-governmental human rights organisation, started by a group of activist lawyers in 1979.

formulation process through informal discussions with officials in the CoJ and the monitoring of newspaper articles and city press briefings. In late 2019, I was personally involved in the academic team providing comments on the evolved versions of the policy, as part of the CoJ's stakeholder engagement process (CUBES, 2019). The information from the above engagements were captured through meeting minutes, notes and personal recollections, data which I also cross-checked and consolidated through seven detailed interviews conducted with city officials and fellow consultants involved in the project (**see references for a list of interviews**).

My motivation in undertaking this research on the process was driven by a sense of disappointment, in that I felt, as engaged consultants (which had been selected for that purpose) we had not optimised the opportunity to make a progressive contribution, in that possibly our efforts did not go far enough in achieving stronger rights for evictees in creating more robust, mitigating circumstances to avoid evictions in the first place, and increased role for evictors in providing relief for the evictees. This sense of disappointment derived from my recollections of the initial hopes I had in the policy's potential, not unlike the sentiments expressed by Moodley (2018) on the lack of achievements of the planning profession.

To analyse this massive archive of documents and memories, I have chosen to focus on three specific questions (or stakes), systematically sought throughout the multiple policy documents' iterations:

i. How is the central problem characterisation underpinning the policy document? Is it framed as a problem of housing, of poverty, of illegal invasion of private property?
ii. How are evictees depicted by the state through the policy formulation process? Responses range in a continuum between evictees as culprits (suggesting a level of reluctance to address the court obligation), and evictees as victims (reflecting an empathy towards the obligation).
iii. Whose responsibility is it to provide temporary accommodation to evictees? Is it the sole responsibility of the state, or is it also the responsibility of private property owners conducting the eviction?

After a short section presenting the theoretical framing of this chapter, and a brief presentation of the inner city urban policy and political context, I analyse the genealogy of the policy, before tracking the three above-mentioned stakes more specifically, to understand when, how and possibly why the progressive potential of the policymaking was lost.

## 4.2 Tracing Urban Policymaking Process, unpacking Officials' Agency within "wicked problems"

In accounting for this case study, as emblematic of processes of policy formulation in African cities, I have taken inspiration from the two following themes, running across planning and political studies: debates on policy design (around the notion of policy circle and how it is researched), in its articulation with planning interrogations around "wicked problems" particularly salient in urban settings (Rittel and Webber, 1973), debates around policy instruments, between planning functional approaches and political studies' genealogical approaches.

### 4.2.1 Policy process and wicked problems

In analysing the above themes, two congruent theoretical conceptualisations of policy formulation processes come in useful.

The first has been to break down the policymaking process into a series of stages, such as agenda-setting, formulation, legitimisation, implementation, and evaluation (Cairney, 2012). While acknowledging that policymaking is a never-ending process, is more circular than linear, and that the cycle cannot simply be divided into stages as they tend to overlap, it is useful as an organising framework for the study of the SPRE policy.

The second approach, acknowledging that policymaking is a social and political process where actors compete against each other to attain goals (Howlett, 2011), examines the main actors, processes, and venues of policy formulation, focusing on the stage of policy agenda-setting and formulation. The definition of the "problem" that the policy intends to respond to (the problem characterisation, or framing), is not self-evident nor neutral: it is contested, subjective or socially constructed, and based on selected forms of evidence to support its characterisation. The way the issue is defined frames the way the objectives are defined, and to some extent the type of responses that will be provided by policy. The formulation phase generally involves many different actors interacting with each other often under intense political pressure from political and other interest groups. This specific phase “is much more of a political netherworld, dominated by those with specialist knowledge, preferred access to decision-makers or a paid position in a government agency or department” (Jordan and Turnpenny, 2015:7).

These problem characterisations are exacerbated as many urban issues can be understood as “wicked problems”, defined as “ill-defined, interlinked, and relying on political judgements rather than scientific certitudes” (Rittel and Webber, 1973:160 cited in Head, 2008). Using the notion of “wicked problems” provides additional insights concerning why many policies and programmes generate controversy, fail to achieve their stated goals, and cause unforeseen effects, while helping to generate a wider understanding of strategies available for managing them (Head, 2008). The issues of evictions could be viewed as a wicked problem, as it lies within the contested terrain of individual property rights vs human rights. Is it a legal problem of interpretation of a Constitutional clause, or is it a social and market problem (SERI, 2016)? Two characteristics of a wicked problem, as set out by Rittel and Webber (1973), are relevant to the issue of evictions. Firstly, there is no definitive formulation of a wicked problem and secondly, every wicked problem can be a symptom of another problem. Requirements for attempting to address wicked problems are better knowledge, better consultation, and better use of third-party partners; but it is frequent that policy leaders choose to take safer, simpler routes rather than a problem-solving approach with its associated risks of failure (Head, 2008).

### 4.2.2 Examining the process through the lens of policy instruments / instrumentation / instrumentality

The study of policy instruments is not new, it could be traced back to the 1500s in relation to Enlightenment era in Europe. Renewed interest in policy instruments emerged around technologies of government, in Weber giving an autonomous role to the material technologies of government (Bevir, 2011) which included its instruments. Contemporary definitions of policy instruments vary from the broadest interpretations to more detailed breakdowns of their intentions and functions. A broad definition is of them being “techniques of governance that, one way or another, involve the utilization of state authority or its conscious limitations” (Howlett, 2005:30). A more detailed definition is that they have two interrelated elements, “policy goals” and “policy means” operating at different levels of abstraction (Linder and Peters, 1990 cited in Howlett, 2011). In the first instance they are the aims set by government on what they wish to achieve, and the latter deals with the techniques they use (or not) to achieve those aims. These two elements consist, in turn, of a range of activities from abstract principles to concrete steps. Traditional approach of policy instruments focuses on the functional dimension of instruments, seen as neutral, or at least a technical device reflecting the objectives of policy intervention, that is adapted to contexts, efficient, costly, easy to implement, leading to intended outcomes.

A more recent approach has been to focus on the instrumentation process, i.e. the formulation and content of the instruments as well as the process of the choice of instruments (Lascoumes and Le Galès, 2007; Bevir, 2011). This approach differs from the functionalist approach in the following ways.

Firstly, it views the power dimensions that underlie instrument choices as important, which explains that their effectiveness is not the only criteria, but only one of a range of aspects for their selected formulation and use (Bevir, 2011). Policy instruments derive from conflicted or negotiated processes. By the same token, policy instruments contain meanings and have implications for social and political interactions: their use and implementation are not neutral, and they produce their own effects, independent of their stated objectives.

Secondly, it reconceptualises instruments as institutions that need to be constructed rather than being readily available objects (Linder and Peters, 1990 cited in Howlett 2011; Salamon, 2002; Howlett, 2005; Lascoumes and Le Galès, 2007). To this end, Le Galès argues that instruments partly affect how actors behave in that they “create uncertainties about the effects of the balance of power; they will eventually privilege certain actors and interests and exclude others; they constrain actors, while offering them possibilities; and they drive forward a certain representation of problems” (Le Galès, 2011 cited in Bevir, 2011:10).

Adopting the above framework helps making sense of the SPRE formulation process, as reflecting relationships between state and society – in the status of "evictees" in the policy process (alternatively criminalised as responsible of their own situation, sometimes salvaged as victims of structural poverty and housing crisis), and in the place given to landlords in the legislation being drafted (partly responsible, including financially, for evictions and evictees; or made completely invisible in the actualisation of housing rights). Adopting such a genealogical approach to the policy process also makes visible power relations within the state, excavating which state entities or actors are the most influential in the process and the final policy.

## 4.3 Contextualising the Issue – the Governance of the Johannesburg Inner City 1994 to 2019

Johannesburg inner city is governed by a complex set of central municipal departments, municipal agencies, and public private partnership initiatives. Fundamentally the inner city lies within Regional F of the metropolitan area and falls within the daily management of that regional administration. However, multiple municipal projects within the inner city are managed by the Inner City Office that falls under direct management of the City Manager. This office in turn deploys various municipal agencies and inter-departmental Task Teams to implement projects and co-manages districts within the inner city as public private partnerships in the form of City Improvement Districts (**Figure 4.1**).

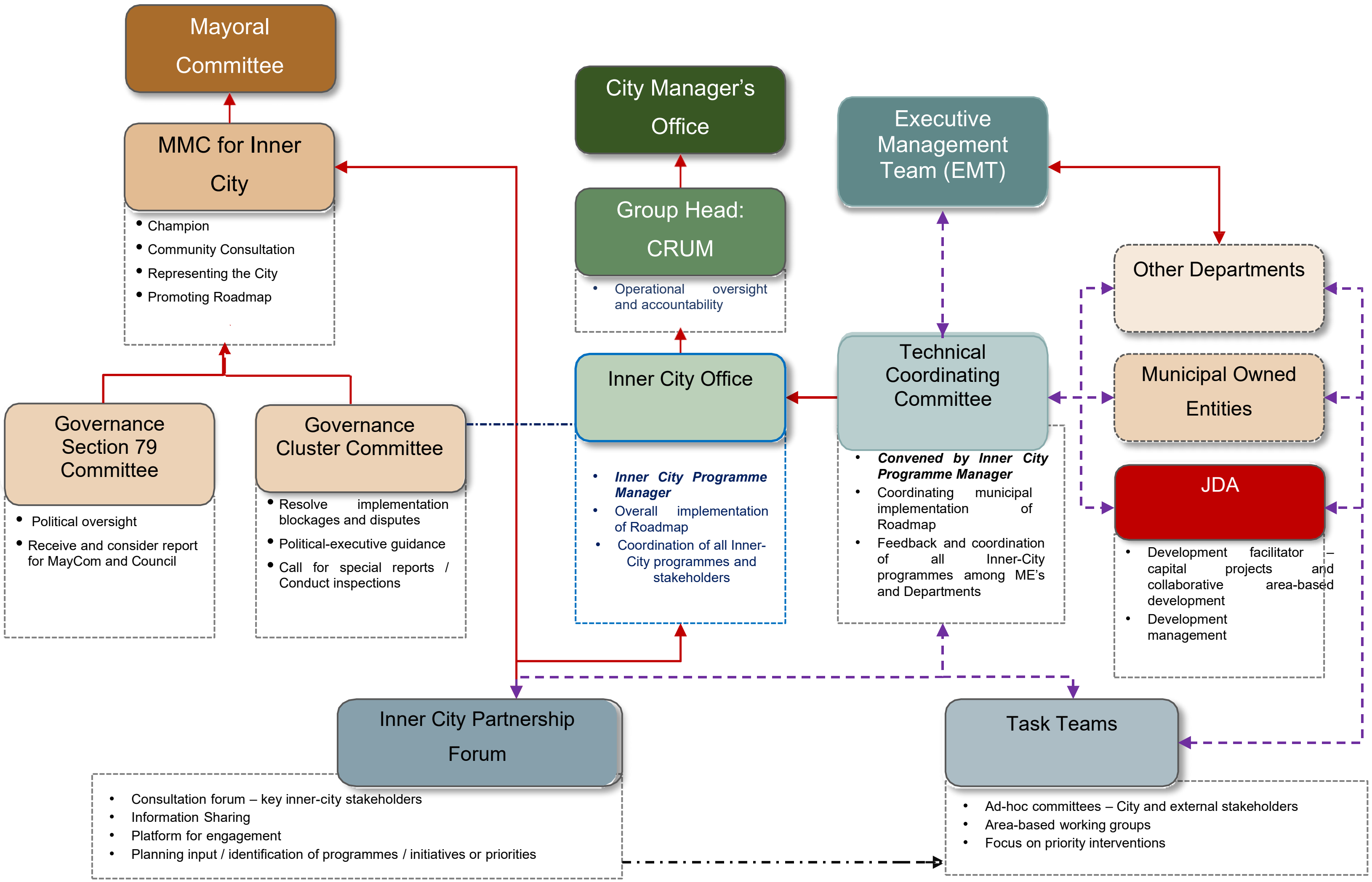


**Figure 4.1: Inner city roadmap – Proposed institutional arrangements**

*Source: CoJ, 2014*

Turok et al. (2021) succinctly cover the history of Johannesburg inner city from the 1980s till the present. The decline of the inner city through disinvestment by the major institutions is due to a range of push factors including congestion and parking problems and pull factors, the desire to reinvest liquid capital in new nodes, in particular suburban property markets (Goga, 2003). This disinvestment took place relatively rapidly through what is described as a herd mentality amongst property managers (Beavon, 2004). As a result, many buildings fell into disrepair due to the decline in mortgage and levy payments by owners and tenants alike. The late 1980s and 1990s also witnessed the rapid influx of poor and people of colour, who had been previously restricted from the inner city by apartheid legislation, moving into the inner city to be better located to work and other opportunities. Many of these people occupied the abandoned buildings left boarded up by the previous owners (Gardner, 2011).

With local government in transition from 1995 to 2000, together with the financial crisis of 1997, the City of Johannesburg (CoJ) was unable to respond to the factors responsible for the decline, despite the call, push, and support from local business interests, gathered under the Central Johannesburg Partnership (CJP) (Beall et al., 2002). The CJP set up various business improvement zones covering Johannesburg inner city. In 2000 the Johannesburg Development Agency, a municipal but autonomous institution, was set up by the CoJ to address rundown areas in the inner city; however, it mainly focused on commercial development and later shifted its focus to public space upgrades to boost the city’s tax-base, as opposed to low-cost housing (Rubin, 2015). Another initiative was the National Treasury’s designation of the inner city as an Urban Development Zone in 2003, with its associated tax incentives for property developments. In 2007 the Inner City Regeneration Charter was launched, bringing together various local stakeholders (state, local businesses, and civil society organisations) to work against urban decline in the inner city (CoJ, 2007).

Of significance in understanding the circumstances that led to the need to address evictions within the inner city, were the three initiatives around the decayed occupied buildings. The first, as part of the CJP developed the Bad Buildings programme, later renamed the Better Buildings programme (BPP). The second was the Inner City Property Scheme developed by the Johannesburg Property Company (JPC), yet another municipal autonomous agency, in the late 2000s and launched in 2011 along very similar lines to the BPP but with a strong empowerment component: trying to support the emergence of a new class of Black landlords. According to Rubin (2015), both these schemes resulted in evictions and displacement of poor people. It was one of these evictions that spurred the Blue Moon light case and the need to formulate the SPRE policy in 2011.

Despite or in parallel to the SPRE process, a third initiative was launched in 2018, under a then DA-led local government[23], in which the City announced that it was offering 50-year leases on 71 properties across the inner city. This scheme again effectively ignored the issue of evictions in favour of another market-based approach to regeneration. While this programme is still underway with limited results to date (mainly because of the evictions dilemma), the private sector (mainly small-scale developers) and several housing trusts have been relatively successful at providing small lower-income accommodation units in the inner city (Turok et al., 2021). While it is acknowledged that these efforts have expanded the supply of affordable rental housing in the inner city, there remains a significant gap for "entry level accommodation to meet the needs of displaced residence and other poor households keen to access urban jobs and livelihoods" (Turok et al., 2021:15).

A former inner city CoJ employee, eloquently describes the state of the inner city from the city's perspective "as a tussle between forces of fixity and flux, and between influx and flight" (Dinath, 2014:236). In this description she outlined three interrelated systemic barriers to the CoJ's acceptance of informalisation and poverty in the inner city. The first is the political imperative to pursue global competitiveness and credibility and to demonstrate the ruling party's competence. The second is the institutional systems in the municipality that render support of any form of informality and participatory citizenship impossible due to the performance management system that focuses on short-term tangible deliverables. The third is the institutional culture and its approaches to urbanity. She describes disparate ways that the inner city is viewed within the CoJ, from those officials who believe the inner city is improving but requires a firm hand to pull it into shape through 'blitzes' and 'crack-downs', while other officials

[23] In 2016, Johannesburg shifted from being governed by the African National Congress (ANC), to being governed by the liberal Democratic Alliance (DA), the strongest opposition party in the country, in alliance with the radical left Economic Freedom Fighters movement (EFF).

have a longer-term vision of regeneration through a 24 hour, inclusive and affordable city which tentatively incorporates informality.

It was these forces that over about three years (2003–2006) evicted almost 25 000 people from their homes in the inner city (COHRE, 2005:19) and threatened a further 67 000 inner city residents (Constitutional Court, 2008 cited in Rubin, 2015). Decayed buildings are an important component of the inner city as they accommodate most of the 8% of the residents who live in the inner city of Johannesburg (Tomlinson et al., 2014). However, and meanwhile, a series of Constitutional Court rulings, including the 2010 Blue Moonlight case, made it very clear that neither the CoJ, nor even private landlords, were authorised to evict tenants if it meant making them homeless. The above residential development trends and their potential gentrification impacts just emphasized how urgent it was for a policy instrument to be developed and implemented around the issue of evictions and accommodating those evicted – whether to accommodate and attract would-be property investors, or out of care for low-income residents, who remain a tremendous majority of inner city inhabitants.

## 4.4 Genealogy of the SPRE/TEAP Policy Document

In response to the Blue Moonlight Constitutional Court ruling, the process of the formulation of the SPRE/TEAP policy unfolded (**Figure 4.2**). This process involved both internal city officials and external consultants, and it took over a decade to achieve an approved policy – which, for the purpose of analysis, I have broken into three periods. Firstly, the period leading up to the appointment of the Lawyers for Human Rights (LHR), which included the formulation (internal to the city) of the first draft policy. Secondly, the appointment of LHR and revision of the draft SPRE policy (in which I was personally involved). Thirdly the post-appointment, which included several rounds of redrafting of the policy internally through the legal department and its ultimately renaming and approval in Council.

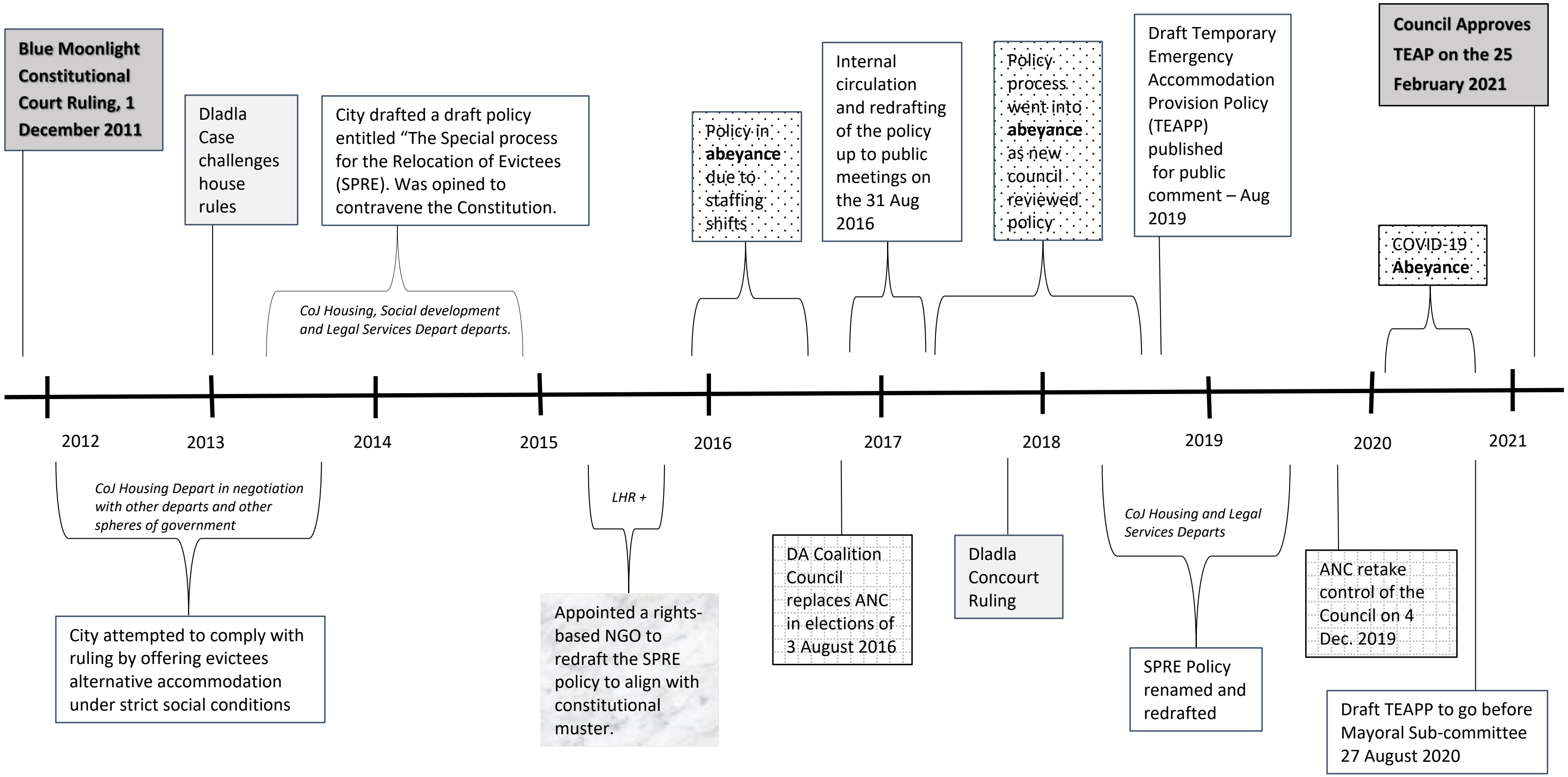


**Figure 4.2 Policy formulation timeline**

### 4.4.1 Preparation of the first draft policy, and appointment of consultants

Within the municipality, the first response to the Blue Moonlight ruling was an assumption that it was a housing problem and therefore the responsibility of the Housing Department. As such, in January 2011 the CoJ handed the matter over to the Acting Director of Management Support in the Housing Department to come up with a response. During 2012, this Acting Director consulted with a wide range of legal specialists at the various levels of government for their interpretation of the ruling to establish who is responsible to implement the ruling (i.e. whose budget it should come from) and to try and establish exactly how many eviction orders were in progress throughout the city. After the Blue Moonlight ruling, the CoJ went from getting a few eviction notices in a year to approximately 10 to 12 a month, which also reinforced the need for a proactive programmatic policy (Housing Official 1, 2019).

A key debate ensued through 2012, around who would be held responsible for paying to accommodate the evictees. Local government officials were of the dominant opinion that it was the provincial government's responsibility, largely because they had no allocated funds for such. The provincial government felt that National Human Settlements should foot the bill. Some of the leading advocates still interpreted the ruling as housing being a joint competence, that the province was responsible for the funding, and the city for supplying the buildings. There was, however, broad agreement that there was a policy vacuum around this issue of alternative accommodation.

CoJ officials then decided they needed to prioritise meeting the Constitutional Court ruling on the Blue Moonlight case and therefore resolved to run a pilot project to house evictees. This involved officials from the Housing Department and from Social Development practically trying to secure and acquire buildings within the inner city to be used for the purposes of 'Transitional Residential Accommodation' (TRA). In this process, they approached a range of programme managers within city entities and departments, including the Johannesburg Property Company (JPC)[24], Inner City

[24] The City of Joburg Property Company SOC Ltd (JPC), established in 2000, is a municipal company mandated to manage and develop the City of Johannesburg's (CoJ) property assets for the purpose of maximising both social and commercial opportunities for the Council.

Property Scheme (ICPC)[25], Johannesburg Social Housing Company (JOSCHO)[26] and Johannesburg Development Agency (JDA)[27]. Housing Official 1 described in detail the conflicts between the various entities in the CoJ around the issue of making buildings available for Temporary Emergency Accommodations – as they all have their own mandates and priorities: all were reluctant to give their buildings to the TRA. The manager of the Inner City Property Scheme even requested them to “back-off trying to obtain buildings in the inner city, as it was putting pressure on the Inner-City Housing Scheme” (Housing Official 1, 2019). The only buildings offered were inappropriate, as they were either office buildings or residential buildings in severe disrepair, both requiring too much money to refurb for TRAs. Housing officials even approached the National Department of Public Works to acquire buildings, to no avail. Eventually they did secure two buildings from JOSCHO, much to its CEO’s dissatisfaction.

These practical considerations raised the debate around the temporary nature of the accommodation to be provided, and how it could be ensured that these residents moved on to permanent accommodation within a specified period. In the existing temporary accommodation facilities run by the CoJ, many residents never transitioned to permanent accommodation, thereby blocking the existing facilities to new evictees. In response, the CoJ developed the “managed care model”: they approached a Christian organisation called the Metropolitan Evangelical Services (MES), an NGO that was accommodating homeless people on a temporary basis and contracted them to run a TRA facility. However, MES management approach was very constrictive to the residents, insisting that residents enter into a management agreement with them before taking occupation. This agreement involved personalised development plans that each resident would contract to, to ensure that they transitioned out of the temporary facility within a specified period and in addition, they needed to agree to restrictive living arrangements involving access controls, limited visitors, etc. (Housing Official 1, 2019). MES conditions soon proved so unacceptable that residents

[25] The Inner-City Property Scheme (ICPS), replaced the Better Buildings Programme in 2011. It focuses on attracting investors to redevelop dilapidated, abandoned and illegally occupied or hijacked buildings in the inner city, through abandonment agreements with the property owners, sales in execution and expropriations, and will include the transfer of dilapidated buildings owned by the City.
[26]JOSHCO was established in March 2004 by the City of Johannesburg (CoJ) with a mandate to provide and manage social and affordable rental housing that services various household income levels.
[27] The JDA is a municipal agency established in 2000 to lead urban redevelopment in the city of Johannesburg, with a specific (but not exclusive) focus on the inner city.

approached SERI, a legal NGO, who took it to the Constitutional Court maintaining that the conditions contravened the constitutional clauses in relation to self-dignity. This was the Dladla case, submitted in August 2014, whose judgement was handed down on 22 August 2014. The judgement ruled against the city in that it declared the rules of the "managed care model" to be an "unjustifiable infringement of the applicant's constitutional rights to dignity, freedom and security of person and privacy in terms of sections 10.12 and 14 of the Constitution" (Dladla Case, 2014).

At a report back by the CoJ's Group Legal and Contracts Department to the Mayor on 13 November 2014, it was acknowledged that the CoJ did not have a plan to deal with temporary emergency accommodation (TEA)[28]. In the multiple proposals made at this report, the Housing Department alluded to the need to prepare a systematic process for dealing with evictees and TEAs. Interestingly, one of the proposals was to relook at what by-laws could be used to hold land-owners accountable for failing to secure their properties (Housing Official 1, 2019).

Meanwhile, with the challenge of the Dladla Case and the threat of personal liability of the mayor and senior officials, the CoJ officials were prompted to proceed to draw up a systematic policy for the handling of evictees in Johannesburg (Wilson, 2014). A Housing Department official formulated the first draft of the policy assisted by a Social Development Department official in early 2014. On completion of this draft policy, called Special Process for the Relocation of Evictees (SPRE), it was sent to the CoJ Legal Department and a private law firm (the CoJ's lawyers) for comments (Housing Official 1, 2019).

Between May 2014 and March 2015, there appears to have been a hiatus in the development of the SPRE policy as the original author of the document left the CoJ in about June 2014. At about the same time, a newly appointed Housing Official took up the role as the Assistant Director at JOSHCO, becoming the liaison person between the Housing Department and JOSCHO. According to him (Housing Official 2, 2019), the job had no clear description and the core task (the preparation of the annual review of JOSCHO for Housing Department) only consumed about 20% of their time. As an individual, they were passionate about issues of inequality and individually identified

[28] TEA: immediate and short-term relief preceding the medium term TRA (Transitional Residential Accommodation).

the draft SPRE policy as an urgent project to have it aligned with the constitutional order and to put in place the “nitty gritty management tools for implementation”. They then took it upon themselves to get permission from their superior to obtain a budget and put a project in place. The budget was taken from an existing running housing project to avoid a new open procurement process for service providers, as they had in mind a particular service provider (consultant) with human rights credentials and “sense of the realities on the ground”, the Lawyers for Human Rights.

During this period, there was also a change in management within the Housing Department with a new Executive Director. Having been updated on the SPRE process, the new director insisted that a university professor in the Wits School of Governance be appointed to undertake the review, based on his affinity to the professor’s work. This prompted debate among the Housing officials who maintained that the professor and his assistant were not specialists in the field. Furthermore, Housing Official 2 indicated that he personally wanted a human-rights based approach and not just a compliance approach inserted into the policy, and therefore an advocacy organisation to review the draft policy. Ultimately, a brief was prepared, and the LHR approached through the Wits School of Governance. The organisation Lawyers for Human Rights (LHR) was contracted through the Wits School of Governance on behalf of the city, as an extension of an existing contract, to review and rewrite the policy in April 2015. It was suggested that the LHR was approached because, “they were not connected to any other parties who had challenged the City in this respect” (Housing Official 2, 2019), unlike the Socio-Economic Rights Institute (SERI), based at Wits, who had great housing and inner city expertise but was key in bringing the city to court in the Moonlight and Dladla cases.

#### 4.4.2 Brief to the consultants and process of external review of the draft policy

In early 2015 a brief was drawn up by Johannesburg Housing Department and sent to LHR for a proposal. The brief was to revise the SPRE policy, to include findings from the Dladla judgement, to update it according to the current context and to provide guidelines for its application. Importantly the brief stipulated that the work was to also include a programme and implementation plan and that the programme was to form the bulk of the outputs, i.e. the procedures, financing, and transitional housing options.

As such, the brief focused on the implementation aspect of the policy rather than on the content of the policy itself (CoJ and WSG, 2015). What followed was the appointment of the LHR and an intense three-month consultancy from 1 May till 31 July 2015, in which two iterations of the initial policy draft (hereafter draft two and draft three), a policy guideline, programme and implementation plan were prepared.

*Inception phase*

The Terms of Reference for the project were received on 1 April 2015, after a series of iterative engagements between the Housing Department and LHR, as well as within LHR, to arrive at a clear and agreed upon methodology for the project, in the form of an Inception Report. As such, the actual formulation of the policy process began in earnest on 5 May, five weeks into a three-month deadline, leaving just seven weeks to formulate the revised policy. This began with meetings with LHR to discuss the comments to our Inception Report and a discussion on the existing draft policy document prepared by the CoJ's legal office with comments from the CoJ's legal consultants and the way forward.

The consultancy group was made up of human rights lawyers and urban planners and housing specialists. The lawyers would undertake the actual redrafting of the policy document ensuring that none of the clauses would be in contravention of the Constitution while also trying to balance the rights of the evictees against those of the CoJ and landowners. The planners (including myself) were to examine the TEA options and how they could be applied, and most importantly to identify a range of housing options into which the evictees could be transitioned (TRA). Given the tight time frames, this involved a few joint workshops to align the housing options with the legal requirements.

*Evaluation of existing policy document*

Our review of the initial policy document (CoJ, 2014) was assisted by prepared comments by the CoJ's legal service providers as well as CoJ officials from the Housing Department (our client). Overall, the legal members of the team agreed that certain aspects of the policy would be unconstitutional. My personal impressions were that the document was a relatively draconian instrument placing evictees into a "managed care programme". Wilson (2014), the then director of SERI, argued that the practice of placing homeless people in a managed care programme "posits the poor as patients with a sickness that can be cured with a short programmatic intervention". The following included some of the onerous and perceived unconstitutional conditions:

- The situational analysis to be undertaken of the pre-eviction circumstances were unspecified/not detailed.
- A list of conditions under which the "evictees" would receive no or limited assistance, including whether they themselves caused their "exceptional need" and whether they provided false information.
- Temporary emergency accommodation (TEA) could accommodate evictees only for six months with an option of staying for 12 months after which they had to leave. Should they not, their possessions would be removed and kept in an office off-site facility for collection.
- Every individual allocated a bed in a TEA would have to contract into a "managed care programme" that included how they were going to access permanent accommodation, acquire additional skills and get access to government grants. Failure to compile or sign such a document would result in expulsion from any assistance.

*LHR discussion document response*

The LHR responded to the client through an internal discussion document. This document had a dual nature: it analysed jurisprudence related to relocation of evictees and identified some of the practical issues the CoJ would have to pay attention to "if the policy was to be realistic and implementable while complying with the principles established by the courts" (LHR, 2015c:1). The document proposed that "the CoJ. considers ways to decrease the number of evictions and share responsibility with building owners who acquire properties with the intention of evicting occupiers" (LHR, 2015c:1). The internal discussion document drafted by the consulting team also referred to two other documents relating to jurisprudence – minimum requirements and a fuller analysis of the SPRE draft identifying gaps and proposals (LHR, 2015d).

**Dealing with evictions: planning & housing versus legal perspectives, a debate within the consultants' team**

In our internal team preparation discussions of these documents, I remember debating with the lawyers the need to pre-empt evictions and to examine the pre-eviction circumstances with respect to the housing conditions that led to up to the circumstances of the eviction (i.e. reasons for the dereliction of maintenance of the "occupied" buildings), as well as bringing into the picture the responsibilities of the landowners from a housing perspective. Evidence of some of these debates is reflected in our discussion document, in which I enquire whether the nature of the local authority's responsibility for alternative accommodation for private evictions could be expanded to also restricting private developers from acquiring such accommodation in the first place to avoid future evictions.

The legal members of the team tended to view these debates from the perspective of what the courts were likely or not to accept. There appeared to be a reluctance to impose legal rights restrictions on private property owners: possibly from a legal perspective the policy was not an appropriate instrument to apply such imperatives. I recall the legal members of the team spending a lot of time with legal terminologies (i.e. the meaning of the term meaningful engagement).

Recollections from internal debates within the Consultant team, NK, 2020.

A key issue related to costs facing the CoJ, acknowledged in the discussion document, was that the CoJ was stuck in what was referred to in the document as a "cycle of evictions" – by providing alternative accommodation and then re-evicting people when they did not move on (referred to as "non-transitioners") after the specified period of 12 months, then having to re-accommodate them in temporary accommodation. This essentially related to three key issues: the city's inability to enforce temporality; the missing housing rung for those only able to afford R500/month and the managed care model that could not be lifelong.

*Draft two of the SPRE document – Engaging with property owners*

The responses by the CoJ Housing Department to the discussion document related to points of clarity rather than any objections to the two main innovations of decreasing the number of evictions and shared responsibility with building owners who acquire properties with the intention of evicting occupiers.

The first draft policy (CoJ, 2014) had made no mention of “meaningful engagement” with building occupiers. The second draft (CoJ, 2015b) inserted the requirement for “meaningful engagement” as a jurisprudence requirement for practical implementation purposes introduced by the LHR. It suggested that it could also include engagement with the owners by the CoJ to find alternatives to the evictions and more specifically to bring them into the picture.

Regarding the place of property owners within the whole process, the second draft also included a section entitled: “Negotiating with Owners re. alternatives to Evictions”, which just stipulated the positive reasons for doing so for the CoJ, mostly saving costs. Generally, however, it only spoke of “negotiating”, rather than mentioning the responsibilities and obligations of property owners in the process leading to eviction.

*Third draft of the SPRE document*

The third draft iteration process commenced on 4 June 2015. There, the team appeared to only make minor technical adjustments, and restructured the sections. With respect to the issue with occupiers and the place of property owners in the policy, the notion of “meaningful engagement” was now merely footnoted referring to a Constitutional Court ruling (and detailed in the accompanying draft Policy Guidelines [CoJ, 2015g]). Engaging property owners was no longer included under “meaningful engagement”, limited to the occupiers. Instead, background information on the property owners and status of the building was included. But no mention was made of any financial obligations of the private property owners with respect to providing relief to evictees, although it maintained a section called “Pro-active Steps” where negotiations with owners regarding alternatives to evictions were proposed.

Finally, the third draft SPRE policy (CoJ, 2015c) was submitted to the Johannesburg CoJ Housing Department on 25 July 2015. This was followed by the preparation of a Policy Guidelines document (CoJ, 2015d), and detailed programme (CoJ, 2015e) for implementing the policy, submitted end August 2015. These latter documents, in respect to funding and engagement, merely set out a brief list of funding options, of emergency funds and budgeting in the Medium-Term Budget, and detailed steps for meaningful engagement. Regarding alternative accommodation options, the team was only able, within the time frames of the consultancy, to identify possible buildings for future feasibility research. This put an end to the consultant team's mandate.

### 4.4.3 Internal re-review of the draft policy

*The internal redrafting and attempted approval process*

The following months were spent by City Official 2 consulting internally with other CoJ departments. However, in late 2015, Housing Official 2's director was moved to the CoJ Manager's office along with Housing Official 2. He requested that the SPRE project be taken with him but that was declined by his immediate line manager who said it had to remain in the Housing Department (Housing Official 2, 2019). As a result, no further work was done to finalise and approve the SPRE policy until late 2016, when Housing Official 2 returned with his original director to the Housing Department.

Through these internal consultations, changes were made to the third draft (CoJ, 2015c) creating a fourth draft (CoJ, 2016), (see **Appendix 4.2**), probably through the city's own legal department. Housing Official 2 circulated and presented the fourth draft to various departments within the CoJ: while some departments gave written comments on the draft, agreements to support the draft policy were never put into writing. He then took the fourth draft through various technical committees and the section 79 Housing committee[29] and finally to the mayoral committee – the mayoral committee being the only committee where the report would be signed off by Heads of departments and at which formal minutes and agreements would be recorded. Housing Official 2 was informed at the mayoral committee that it had to go to public consultation before it could go to Council for a vote.

Coinciding with this time was the ousting of the ANC from the Johannesburg City Council in the local government elections in August 2016. Thereafter Johannesburg was run by a fragile coalition government headed by the Democratic Alliance party (a liberal, pro-business party) with the Economic Freedom Fighters (EFF, a radical left party) as a junior partner. All draft policies were put on hold while they were reviewed by the new coalition government, with high levels of uncertainty.

[29] Portfolio committees with an oversight role in the City, gathering elected councillors from all political parties.

With the fourth draft (CoJ, 2016), the policy became even more legalistic and less human rights oriented. Firstly, the issue of meaningful engagement was reinterpreted again to include the owner only if they were willing to participate; and all clauses referring to "negotiations with owners" regarding alternatives to evictions were removed from the policy. Secondly, it reintroduced relatively severe conditions on residence of temporary accommodation facilities. For example, "Evictees who inter alia, refuse to conclude the necessary agreements, co-operate with the social workers, participate meaningfully in the self-betterment programmes, and abide by the house rules may be removed from the facility" (CoJ, 2016:14). Overall, the fourth draft of the policy (CoJ, 2016) reflected a swing back to a more confrontational approach towards the evictees, confirming their criminalisation, explicitly spelling out that the policy was not intended to "promote queue jumping under any circumstances whatsoever". It also carried a more pro-property owner bias in that it limited even further land-owner involvement and responsibility.

*The retitling of SPRE and emergence of the 'Temporary Emergency Accommodation Provision: Draft policy' (TEAP)*

Between the early 2018 and November 2019, the latest draft of the original SPRE policy was further amended internally by the Housing Department's policy unit and retitled 'Temporary Emergency Accommodation Provision (TEAP): Draft Policy', then distributed for public comment (CoJ, 2020) (see **Appendix 4.2**). The TEAP (CoJ, 2020) was also substantially revised from the final SPRE policy (CoJ, 2016): it focused even more on the emergency need for accommodation rather than the circumstances leading up to that "emergency". In so doing, as reflected in the renaming, the policy was reoriented to focus on the product rather than the subjects of the product.

Furthermore, the document largely extended the restrictive regulatory clauses on potential beneficiaries of the TEAP, included in new sections such as "Qualifying Criteria and Exclusions", "Application for TEA" (Section 13.2), justifying reasons for the city curtailing their obligations to potential beneficiaries. These restrictions were actually stated upfront, under "Policy principles", where out of six principles, half referred to the limited, transitional, and temporary nature of the relief, and several caveats were mentioned about not encouraging queue jumping or illegal occupation of land, in other sections of the policy (COJ, 2019; Joburg, 2021:9).

The Temporary Emergency Accommodation Provision: Draft Policy, was eventually approved by Council on 25 February 2021. It can be assumed that the extended time frame from comments to approval could have been due to the Covid 19 lockdown disruptions. What is noteworthy is the policy was approved without any guidelines, programme, or implementation plans.

## 4.5 Tracking Three Themes in the Policy Formulation Process – Problem Framing, Status of Evictees and Role of Property Owners

SERI eloquently stated in their comments to the CoJ, of the draft four (2016) policy document, "The Policy and Guidelines should be amended to more appropriately reflect the legal principle around alternative accommodation that has been developed in the case law to ensure that the City's obligation is generally more positively framed". Essentially, between the various iterations of the five drafts of the policy, the framing varies broadly from a rather progressive to a more regressive formulation of the issue: initially relatively regulatory and positive in the LHR draft, towards a more regulatory and restrictive policy.

This section demonstrates this and traces these shifts, by tracking three specific threads throughout the formulation process (see **Appendix 4.1**). It starts by interrogating how the issue is framed and how this framing is or is not contested over time (1), continues by analysing how evictees are depicted and treated in the policy (victims or culprits) (2), and ends with a focused attention on the (diminishing) place and role of property owners in the policy relating to evictions (3). Analysing the genealogy of these framings as results of negotiation and political choices, paying attention to the role of specific individual and institutions, assists in understanding the finally rather regressive document that has eventually become policy, in spite of seemingly potential progressive beginnings.

### 4.5.1 Problem characterisation underpinning the policy intent

From the CoJ's response throughout this process, the problem has been expressed as an "emergency homelessness" issue that requires a "temporary solution". The problem for the CoJ was also seen to be caused by the courts' ruling, making it an obligation of the CoJ to provide that temporary housing. So, it was seen by many of the state actors involved as a legal obligation to provide temporary accommodation, as opposed to a societal and market problem the city needed to take seriously. While some interviewees questioned whether it was an emergency issue, and while it was debated by the professional team, the analysis of documentation (see **Appendix 4.1**) confirms that it was not actually contested by any of the role-players.

The continued approach of viewing evictions as an emergency issue (equivalent to a natural disaster), perpetuates a mismatch between the ultimate objectives of the policy (i.e. to provide evictees with alternative accommodation) and the potential policy instruments to achieve that. In treating evictions as an emergency, the priority remains to provide short-term emergency alternative accommodation. Eviction processes begin months before the tenants/occupiers are removed from the premises, which practically should provide ample time to negotiate and arrange longer-term, more sustainable and integrated alternative options. Even in the case of "unsafe buildings", the conditions of these buildings do not deteriorate into imminent danger overnight. In the public review of the CoJ (2019), CUBES expressed the view that the issue of evictions is not purely a housing and legalistic issue, but a consequence of economic affordability and other social factors that are beyond the expertise and scope of housing officials and lawyers. To try and understand why the CoJ adopted this problem characterisation, several reasons are posited.

A first argument around how responsibilities were initially allocated in response to the court ruling, talks to a well-known proverb – "If your only tool is a hammer, then every problem looks like a nail" (Maslow, 1966), or, similarly in political sciences, what is known as "the garbage can model of decision-making" (Cohen et al., 1972), uncoupling the perceived problem from the choices of responses to solve the problem, by adopting the set of policy instruments that already exists (what is within the "garbage can"), and framing the issue so that the existing instruments might seem to respond to the issue – without considering other framings that might call for the creation or invention of new instruments.

In restricting the issue of evictions to a purely legal matter, linked to a temporary housing issue, of course the scope of this "wicked problem" (Rittel and Webber, 1973) is narrowed and seemingly possible to respond to by simple instruments. This would not be the case if the issue was characterised as being about poverty and inequality, as well as local economic development and the property market and speculation issue: which would be far more difficult to tackle. By attributing the responsibility of policy formulation to the Housing Department, by focusing the brief to consultants around finding housing alternatives for the evictees (in rapid and narrow response to the court requirements), only the tools of planning practitioners and lawyers were applied, which constrains the choices of policy instruments to be considered to solve the problem. On reflection, all role-players from the client to the various service providers could be apportioned blame for assuming, that despite the awareness that the problem was multidimensional, their skills sets could resolve the problem. This could, however, just reflect the growing dependence in South Africa on legal prescripts to get the state to deliver services and to mediate societal contestations.

To further complicate matters, according to the project manager of the LHR project team (LHR Project Manager, interview, 2019), the "senior management simply did not advocate for a human rights approach" when viewing the issues of evictions in the CoJ, even though human rights lawyers were pushed by one housing official to be appointed as consultants. More broadly, it can be argued that lawyers, leading the policy drafting process from the city as well as the consultants' perspective (in the context of litigation), are not equipped to formulate policies (Provincial Social Development Official, interview, 2019). As evictions always involve a court order, the resolution of eviction issues through engagement mechanisms would negate the need for a legal process, which would not to be in the legal fraternity's interests. Several strong accusations were made by the interviewees in this respect, against lawyers on both sides: CoJ attorneys and public interest lawyers. Claims that the CoJ lawyers had financial interests at heart on constant litigation, while the other accusation against the human rights lawyers were that it was a "shake-down" by building occupants supported by lawyers who are mainly set on winning legal precedents (Social Development Official, interview, 2019). Tissington (2018) amply documented how more generally, ongoing, lengthy, and constant litigation makes it difficult to have an inclusive and constructive policymaking process, rigidifying relationships (internal to the city, and between city and civil society at large) in fear and antagonism and, on reflection, closing avenues for pragmatic resolutions of the policy issue.

A second important argument is that there also might be some benefit, or at least some policy interest, in framing the issue as “an emergency” one rather than a structural policy issue: this relates to “the elephant in the room” (Tissington, 2018), the issue of funding for alternative or affordable accommodation in the inner city. Characterising its obligation to construct a plan for inner city affordable housing as an emergency was an opening, for the City of Johannesburg, to tap into the national Emergency Housing Programme (EHP) funding. City officials repeatedly argued that it was the role of national and provincial government to provide funds for emergency housing (Housing Official 1, 2019; Tissington, 2018), in the context where all funding for affordable housing is allocated by the national Department of Human Settlements (via the provincial government to local governments), in response to applications made to the provincial government in terms of the various existing public housing programmes. The implication of this is that by restricting the problem to an emergency housing one, the city can apply for funding for Temporary Emergency Accommodation via the Emergency Housing Fund, one of the housing programmes in the Housing Code.

### 4.5.2 The depiction and treatment of evictees in the policy

An examination of the various iterations of the SPRE and TEAP draft policies exposes how the framing of the policies fluctuated from a relatively harsh position towards evictees in the initial draft (resulting in it being considered non-constitutional) to more evictee ‘friendly’ or empathetic in the LHR formulations in drafts two and three and back to even more regulatory and hostile vision in the last SPRE and TEAP drafts four and five, amended and formulated internally by the CoJ (see **Appendix 4.2**).

The Blue Moonlight constitutional ruling saw evictees as vulnerable people who needed state assistance, at least in the short to medium term, to be safely housed post-eviction. However, from the outset there were indications of hesitancy from the CoJ about taking on the obligation which I argue implicitly demonstrated a mistrust and negative perception of evictees, by the CoJ.

Firstly, the debates and attempts to avoid responsibility for the Concourt stipulated obligation, centred around who should be responsible for funding the temporary accommodation. Even prior to establishing the need to formulate the SPRE policy, the CoJ attempted to redirect the responsibility for funding of alternative accommodation to other levels of government. While this reluctance to take responsibility centred around the financial implications for the CoJ, it also indicated that such expenditure was low on their priority list despite the Concourt ruling.

Secondly, in the first draft (CoJ, 2014), the mistrust of the evictees was expressed in the highly regulatory framing of the policy. These regulatory clauses would impose time frames on the evictees to respond to terms and conditions, failing which the CoJ would no longer be obligated to them. The LHR's draft (CoJ, 2015c), reversed the emphasis on the evictees, by saying that the CoJ had to prove that they had attempted to engage with the evictees rather than purely leaving it to the evictees to respond to a deadline. In the drafts five and six (CoJ, 2016 and 2020), the CoJ policymakers reverted to imposing the obligation onto the evictees to respond and further specifying that the policy was not to "promote queue jumping" of the municipal housing waiting lists – again, implying that evictees were purposely getting evicted to jump the housing subsidy allocation lists.

Councillors and senior officials were reluctant to support the SPRE policy, afraid that they were "rewarding bad behaviour" by providing temporary accommodation to residents occupying decayed buildings that they were jumping the queue of people waiting for public housing (Housing Officials 1 and 2, 2019; Political Advisor, 2020). This attitude worsened with the defeat of the ANC Council in the 2016 municipal elections, replaced by a coalition council led by the DA with the EFF being a major influencer on policies. According to the Political Advisor (2020), even after the last iteration of the policy renamed the TEAP in 2019, it "was seen as a dirty sock which no-one wanted to touch". Yet, it was the lack of a proper Temporary Emergency Accommodation solution that torpedoed Mayor Mashaba's Inner CoJ property release programme (Inner City Specialist, 2020). Essentially, the CoJ's inability to relocate existing residents from the intended upgrade buildings resulted in the effective suspension of the implementation of the programme. Another impact at the time was the reluctance of the EFF to approve the draft SPRE policy in early 2017 as they did not like the term "Evictees" in the title of the policy, as it suggests they condone evictions.

### 4.5.3 The status and role of private or individual landlords in the process

The question of the private landlord's involvement in the eviction process in terms of sharing the obligations set out in the Concourt ruling, arose in the early debates surrounding the preparation of the initial draft policy. "Why not impose a fee to say: you've allowed a slum to evolve, you benefit commercially, if this changes, why can't we charge you for the cost of sorting this out?" (Social Development Official, 2019). These debates were corroborated by Housing Official 2 (2019), when he was explaining how he took the draft three policy through internal consultations within the CoJ. He explained that one of the repeated concerns raised was why should the municipality have to provide accommodation in private-led evictions? As that was already stipulated by the Concourt as an obligation, he stated: "So maybe yes, it is the municipality with the logistical responsibility; but mustn't the private sector have to pay for eviction? If they bought a building like for one Rand, fully occupied illegally, then why is it that they can get away scott-free through the evictions process, not even covering the cost of relocation, let alone transitional housing?". However, these interrogations did not seem to make it formally into the policy brief or drafts.

Yet, with regards to private landlords' involvement in the process, the LHR inserted a section under "Proactive Steps" which referred to the need to discuss with owners about alternatives to evictions but was watered down in the internal draft four (CoJ, 2016) to giving the landlords an option of whether they "wished to engage". In the final version (CoJ, 2020), there are only references to negotiations with landlords if they are "willing".

Based on my recollections and the interview transcripts, there was a reluctance from all legal actors, both on the CoJ and the LHR side, to explicitly incorporate a shared obligation on the private landowners and landlords. Consternations at the LHR's reluctance was expressed by Housing Official 2 (2019):

> "I was wanting to test a lot more and I was feeling that they were a lot easier on the private sector than you needed to be. Because we could test this in court. And I think in the end it was just a blank spot there ... because they didn't want to test it legally. I don't remember if it actually made it into the policy or not, that the private sector should pay".

The discrepancy in expectations around including the private landowners into the obligations possibly stems from the disjuncture in understanding between the legal and planning role-players. By this I mean the legal actors involved based their inputs on case law, i.e. how the Constitution had been interpreted in various cases pertaining to the issue of evictions and on the wording of the ConCourt ruling; whereas the planners based their inputs on normative values and pragmatic proposals of how to address the issue of evictions and alternative accommodation. Human Rights lawyers tend to use "strategic litigation": it is easier to argue in law that the state has obligations, particularly in relation to housing where the Constitution has already established that Housing is a state obligation. In the case of the SPRE draft four (CoJ, 2016), the LHR attempted however to extend the obligation horizontally to the landlords to find alternative solutions to the evictions prior to the actual eviction. These clauses however were changed to make the obligation voluntary on behalf of the landlords from draft five.

Moreover, according to the Social Development Official (interview, 2019), the Inner City Property Scheme had considered the idea of a contributory trust to address this issue, involving property-owners. This trust was never set up. While an appropriate instrument per se, he maintained that neither the scheme nor the policy were the right avenue to implement it: "there's a lot of instruments that can resolve it, but you need a piece of joined-up government thinking to do it, and SPRE was designed to be that. But institutional problem goes back. It's still designed as a housing standard operating procedure". This point alludes to the silo departmental structures between provincial and local government, both having housing mandates.

Ultimately, the exclusion of the private sector obligations in the final policy is the result of converging logics, and avoidance of the huge political battle required to tax or constrain private property owners (a point also evident in the case studies presented by Krumholz and Clavel [1994]). On the one hand the CoJ were afraid that private landlords would take them to court to fight the policy obligations, and those in favour of making them share responsibility were in a minority in the city; on the other hand, the CoJ lawyers and group legal were biased towards getting a quick win based on existing legislation and state housing obligations, rather than challenging the established practised case law property rights.

## 4.6 Conclusion

It took over a decade to respond to a Constitutional Court ruling and approve a policy that was intended to ameliorate the negative impacts of evictions on the most vulnerable members of our society. This time gap is testimony to the complexity of the issue (a wicked problem with competing framings), the absence of ready-made instruments, the reluctance of the municipality to address it: resource stricken, unable to mobilise other levels of government to fund alternative inner city housing, and unable or unwilling to challenge the private property market to contribute. Evictions have been dealt with as a legal issue within the CoJ despite it involving housing and stemming from social development issues. While all three departments were involved, with the Housing Department being responsible for overseeing the drafting process and ultimately providing alternative accommodation, the legal sector (in the form of Group legal) appears to have had the final say as it was ultimately about legal compliance, with social development remaining marginal in the process.

When the approved TEAP policy instrument is operationalised, it will comply with the court order as it provides the court with a response to providing evictees with an institutional path to receive temporary accommodation after an eviction. The framing of the issue by policy is one-dimensional, as a legal compliance and housing solution, rather than a more multi-sectoral issue to be addressed through multiple inter-departmental interlinked policy instruments. It is also framed as an "emergency service" rather than as a structural issue: affordable housing provision in the inner city. On reflection of the consultancy, the tight time frames for producing the policy limited the ability of the LHR team to focus on other aspects such as implementation strategies that could leverage a better balance of rights between landowners and occupiers. Ultimately a pragmatic solution was sought, of identifying outside funding to cover the costs of "emergency housing" and taking stock of the city's reluctance to address politically the issue of evictions as part of a long standing, structural housing policy issue.

In terms of the individual role-players, despite the progressive attempts by some officials within the CoJ and some of their consultants to produce a more rights-based policy instrument, there were definitive moments that altered the course of the formulation process when different stakeholders reviewed the policy drafts – finally returning to a regulatory and punitive approach to policymaking. The vagaries of the institutional structures (staff movements); the lack of interdepartmental protocols for addressing contested objectives; the divisive impacts of opposing outside consultants' advice and contributions, reflected the different power blocks within the CoJ. Linked to this appears to be an animus towards evictees by some politicians and officials alike, while at the same time a fear or reluctance to confront the property owners/evictors around the issues of joint responsibilities for evictions. All these factors have played a role in undermining and delaying the policy formulation and adoption and possibly the implicit rejection of the draft policy and guidelines produced by the LHR back in 2015.

This is essentially a narrative revealed through the analysis of a policy instrument formulation process of how a “progressive state” has danced around the issue of evictions at the local level, as it sits as an anomaly between their humanist ideals and neoliberal practices. In theory there was a unique opportunity to address the issue of evictions at the local level in a more comprehensive and multi-sectoral policy covering how to address the circumstances leading to evictions and the possible consequences but chose only the latter. It is difficult to surmise what could have been achieved. However, by defining the problem more broadly, taking a more humane approach to evictees and by sharing aspects of the obligation with the private sector, the policy document could have acted upon the legal instruction in a more progressive manner. In this way the “passing of the legal instruction into the social world” (Wilson, 2021) could have created opportunities to change individual or institutional behaviours or practices to further challenge the existing property rights orthodoxies in South Africa.

## Appendix 4.1: Formulation process

| (1) Problem framing - Link to broader affordable housing policy / how temporary accommodation is framed | | | | | |
|---|---|---|---|---|---|
| **Consultants Brief – April 2015** | **Draft 1 – December 2014** | **Draft 2 – 3 June 2015** | **Draft 3 – 30 July 2015** | **Draft 4 – November 2016** | **Draft 5 – February 2021 Final Approved Policy** |
| Asked to define a problem statement in the status quo section. | Makes clear in the background section that policy is in response to a court order obligation to provide Temporary Emergency Accommodation. | This draft assumes the problem is to provide alternative accommodation. It reinforces the point that it is a legal imperative to do so, and that previous court judgements have classified evictions as an emergency. | As per previous draft. | In the preamble the reason for the policy is stated as follows: "In response to the jurisprudential developments, a revision of the CoJ's existing housing policy in terms of how it provided temporary assistance to evictees in emergencies became essential. This Policy takes cognisance of the changes in the status quo of evictions in the CoJ thereby ensuring the CoJ rises to the challenge of meeting its constitutional and statutory obligations in the provision of TEA in Emergencies". | It is important to note the ambit of emergencies has been significantly extended in the text of the Emergency Housing Program and includes, inter alia, floods, earthquakes, sinkholes, hail, snow, strong winds, severe rainstorms, evictions, house demolitions as well as household and communities living in dangerous conditions such as under power lines and on dolomitic land. |
| Brief requests that transitional housing accommodation types are investigated | Those qualifying for housing subsidies will have to join the various project waiting lists and will not be prioritised as evictees over other waiting list of beneficiaries. | Defined TEA land and buildings as separate options, with TEA land having the potential to become permanent "if upgraded in terms of housing programmes". | As per previous draft. | States TEA buildings will be Managed care facilities.<br><br>Introduces TRA as opposed to TEA (land). Although TRA can also become permanent if studies show they can become a permanent housing solution. | As per previous draft. |

| (2) How evictees are viewed (victims or culprits) | | | | | |
|---|---|---|---|---|---|
| **Consultants Brief – April 2015** | **Draft 1 – December 2014** | **Draft 2 – 3 June 2015** | **Draft 3 – 30 July 2015** | **Draft 4 – November 2016** | **Draft 5 – February 2021 Final Approved Policy** |
| One area of the proposal is entitled “Assessment. Tracking and trajectories” within which it asks about resolving various issues with evictees such as difficulties around tracking and assessing their circumstances; and about how long the CoJ needs to accommodate them in a transitional manner. | The detailed procedures section has seven sub-sections of which two deal with “Assessing of applications” and “Acceptance of terms and conditions for TEA”. Both these sections list highly regulatory clauses suggesting the evictees are culprits trying to play the system.<br>An example: “Failure to accept the terms and conditions of the TEA within 7 days (5 working days for those accommodated at an initial Site) will be deemed to be a rejection of the relief. In such a case, the Coj will have no further obligations to provide TEA to the occupier”. | This draft negated the entire section on assessing applicants and simply required them to enter into an agreement stipulating the rules of the TEA. In the policy included a section on ‘meaningful engagement with potential evictees and owners’ re. above point. Also includes presenting alternative options to evictees.<br>The same issue of evictees not accepting relief from the City is worded as follows in this draft: “If occupiers refused to engage with the CoJ, the CoJ must be able to show how it attempted to engage with occupiers (steps it took, information it provided to occupiers). If occupiers refuse to engage with the CoJ despite reasonable steps taken by the CoJ to engage meaningfully with the occupiers, the CoJ will not be able to aid or TEA to these occupiers”. | In this draft the agreement between the evictees and the CoJ is detailed more. People staying in the TEA for longer than 12 months could be relocated to TEA land. | In this draft it took out the need for the CoJ to show how it attempted to engage with the occupiers and only stipulates - Where Evictees do not apply for TEA and/or are not willing to engage with the CoJ, despite its reasonable effort to do so, evictees may not be provided with TEA.<br>Furthermore, this draft introduced the notion that “it was not promoting queue jumping”: stated twice in the policy. | This draft has more restrictive sections and statements to discourage people moving into the inner city: such as in the preamble: “The Policy should not, under any circumstances whatsoever, be interpreted as a tool to encourage influx in and around the inner city of Johannesburg or seen to be promoting the unlawful occupation of land”, and this type of temporary assistance offered by the CoJ does not detract from its overall responsibility as a municipality in terms of the Constitution and Housing Act, does not promote queue jumping and is limited to temporary assistance in Emergencies.”<br>Under “Exclusions”:<br>“The Policy is not intended to:<br>a) People who are unlawful occupiers of a property at an event of a dispute between the landlord or a person in charge and the occupier.<br>b) Assist affected persons that can address their housing need out of their own financial or other resources.<br>c) Accommodate individuals / persons that sublets units and relocate to informal settlements.<br>d) Then where TEA Application may be disqualified: have been found after investigations that they have caused and intended their exceptional housing need to make themselves a priority.<br>e) Housing Emergency can be remedied through the provision of time to vacate their current residence.<br>f) Where they have provided false or misleading information to the CoJ regarding their circumstances.<br>g) When persons are found to be using the property as a second residence/ subletting and or have primary residence in the informal settlements or formal dwelling.<br>Finally, occupants of TEA will need to contribute financially towards their management and upkeep. |

| (3) Mention and role of property owners | | | | | |
|---|---|---|---|---|---|
| **Consultants Brief – April 2015** | **Draft 1 – December 2014** | **Draft 2 – 3 June 2015** | **Draft 3 – 30 July 2015** | **Draft 4 – November 2016** | **Draft 5 – February 2021<br>Final Approved Policy** |
| Under Stakeholders - Determine delegation of responsibilities. | Only in the situational assessment, where it requires all facts and circumstances applicable to the occupiers and owner. | Introduced a section called 'pro-active Steps' where a section dealt with negotiations with owners re. alternatives to evictions. | As with previous draft, except this draft gave reasons for this aspect in terms of controlling the number of evictees at any one time to enable the CoJ to arrange alternative accommodation. Secondly, to minimise the costs of finding alternative accommodation – more cost effective to pay constitutional damages to property owners or expropriate properties. | Removed the 'Pro-active steps section' and instead inserted: "the Engagement process will also include the Owner if that Owner is willing to participate in the process".<br>Courts have remarked that, "engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process." In the same vein, guidelines under "Policy Statement" are inserted advising to: "Create an enabling environment where the CoJ, Evictees and Owners engage with each other to reach a mutually beneficial outcome."<br>However,<br>"The Policy will be implemented in the context of competing priorities and available resources and is not intended to:<br>a) Assist Owners with suitable forms of alternative accommodation for Evictees evicted from their properties in the ordinary course.<br>b) Provide alternative accommodation to evictees where such onus is on the Owner. | The final approved policy had seven new sections of which the following section 9 had relevance to property owners. Section 22 on Meaningful Engagement had simply been amended from the previous draft policy.<br>Firstly, under Section 9, "Exclusions", it states where the Policy is not applicable to:<br>9.1) "Serve as an option for owners or persons in charge in the ordinary course of eviction proceedings.<br>9.2) Provide accommodation to persons where the onus rests with the owner or person in charge.<br>9.7) Deal with properties and owners whose matters are being dealt with by the By-law on problem properties" (CoJ, 2021:Section 9).<br>Above section sets out where landlords cannot take advantage of the policy.<br>Secondly, under Section 22.1, "Meaningful Engagement" the engagement shall include but not be limited to:<br>a) "listing the implications of a delay to the Owner;<br>b) whether mediation between the Evictee and Owner is possible as envisaged in section 7 of PIE; and<br>c) the interests of the Owner and of the CoJ;<br>d) Evictees and Owners should approach the Engagement process in good faith and with a willingness to listen to the concerns of each party and need not necessarily reach agreement on every aspect of the dispute. There are no *numerus clauses* of objectives that must be achieved during the Engagement process; and<br>e) In the case of evictions from private property, the engagement process will also include the Owner if willing to contribute to the efforts to provide alternative accommodation" (CoJ, 2021:Section 22). |

**Appendix 4.2: SPRE and TEAP drafts four and five, amended and formulated internally by the CoJ**




# City of Johannesburg
# Special Process for the Relocation of Evictees (SPRE)

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**DEFINITIONS**

**"CoJ"** means City of Johannesburg Metropolitan Municipality;

**"Disaster"** means a disaster as defined in the Disaster Management Act 57 of 2002;

**"Emergencies"** means emergency situations of exceptional housing need as referred to in Part 3 of the National Housing Code, 2009;

**"Emergency Housing Programme"** means the programme provided for in Part 3 Volume 4 of the National Housing Code, 2009;

**"Engagement"** or **"Engage"** means a process by which CoJ, evictees and property owners engage in meaningful discussions with a view to reaching a collective outcome that will benefit all or most parties;

**"Evictee"** means a person who has been or will be deprived of occupation of a building or structure or the land on which such building or structure is located;

**"Owner"** means the registered owner of land and property, including an organ of state;

**"Policy"** means this Policy together with the annexures set out in this document, as amended from time to time;

**"Temporary Emergency Accommodation" (TEA)** means temporary assistance provided to Evictees who may find themselves in Emergencies;

**"TEA building"** means either the whole building or a part only of the building which is used for TEA;

**"Temporary Relocation Area" (TRA)** means a site where Evictees are intended to be accommodated on a temporary basis.

## 2. PREAMBLE

On 1 December 2011, the Constitutional Court ruled in the matter of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39(Pty) Ltd and Another* 2012 (2) SA 104 (CC), *inter alia*, the CoJ's housing policy "*...is declared unconstitutional to the extent it excludes the Occupiers and other persons evicted by private property owners from consideration for temporary accommodation in emergency situations.*"

In response to the jurisprudential developments, a revision of the CoJ's existing housing policy in terms of how it provided temporary assistance to Evictees in Emergencies became essential. This Policy takes cognisance of the changes in the *status quo* of evictions in the CoJ thereby ensuring the CoJ rises to the challenge of meeting its constitutional and statutory obligations in the provision of TEA in Emergencies.

## 3. INTRODUCTION

This Policy seeks to establish a framework for the implementation of TEA to Evictees who find themselves in Emergencies by reason of an eviction. This policy has a limited housing focus, in that, it only deals with the provision of TEA in a TEA building or TRA and as such does not address permanent housing solutions.

The provision of TEA does not detract from the municipality's overall objectives in regard to facilitation access to permanent housing in terms of the section 26 of the Constitution of the Republic of South Africa, 1996 ("Constitution") or the Housing Act, 1997 (Act No. 107 of 1997) and does not promote queue-jumping. The Policy further seeks to clarify the processes and procedures involved in the provision of TEA and to ensure that all role-players understand their part in contributing to the successful implementation of this Policy.

## 4. POLICY STATEMENT

The CoJ recognises its constitutional and statutory obligations to provide temporary accommodation to certain Evictees in Emergencies. In order to achieve this, it must endeavour to have a coherent policy or programme that is implemented within its available resources. This Policy is implemented in furtherance and fulfilment of these obligations and lays down certain guidelines in this regard.

The provision of TEA in terms of this Policy, should not be construed to mean the progressive realisation of the right of access to housing for the Evictees. The main objectives of this Policy are to:

a) *Facilitate the provision of TEA to Evictees who may find themselves in an emergency situation of exceptional housing need, namely in one or more Emergencies;*
b) *Provide guidance to municipal officials who identify or encounter situations of potential risk or high vulnerability that requires an emergency housing response;*
c) *Provide an execution plan for TEA in the form of the SPRE Implementation Guidelines;* and
d) *Create an enabling environment where the CoJ, Evictees and Owners engage with each other to reach a mutually beneficial outcome.*

The Policy will be implemented in the context of competing priorities and available resources and is not intended to:

a) *assist Owners with suitable forms of alternative accommodation for Evictees evicted from their properties in the ordinary course;*
b) *provide alternative accommodation to Evictees where such onus is on the Owner;*
c) *assist Evictees that can address their housing need out of their own financial or other resources; or*
d) *promote queue jumping under any circumstances whatsoever.*

## 5. LEGISLATIVE FRAMEWORK

There have been numerous jurisprudential developments relating to the role of municipalities in evictions. In this context, the CoJ recognises that it has a shared responsibility within available resources to provide TEA to those Evictees who may find themselves in an Emergency. This section highlights some of the key legislation and policy.

### 5.1 The Constitution of the Republic of South Africa, 1996 (Constitution)

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

Several other rights enshrined in the Bill of Rights are affected by the "right to have access to adequate housing," These include,

Section 9(1) - *"Everyone is equal before the law and has the right to equal protection and benefit of the law."*

Section 10 - *"Everyone has inherent dignity and the right to have their dignity respected and protected."*

Section 12 – *"Everyone has the right to freedom and security of the person…"*

Section 14 – *"Everyone has the right to privacy…"*

Section 25(1) - *"No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."*

Section 27 (1) (c) - *"Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance."*

Section 28 (1) (c) - "*Every child has the right to basic nutrition, shelter, basic health care services and social services.*"

Section 36 (1) – "*The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –*

*a) the nature of the right;*
*b) the importance of the purpose of the limitation;*
*c) the nature and extent of the limitation;*
*d) the relation between the limitation and its purpose; and*
*e) less restrictive means to achieve the purpose.*"

Sections 152 and 153 respectively sets out the objectives and developmental duties of municipalities.

5.2 Housing Act 107 of 1997 (Housing Act)

Section 4(1) of the Housing Act requires the Minister to publish a code called the National Housing Code. In terms of section 4(2) of the Housing Act the Code must contain national housing policy and may after consultation with every MEC and national organisation representing municipalities include administrative and procedural guidelines in respect of the effective implementation and application of national housing policy and any other matter that is reasonably incidental to national housing policy. Furthermore, in terms of section 4(6) the Code shall be binding on the provincial and local spheres of Government.

Section 9(1)(a)(i) and (ii) of the Housing Act states that every municipality must, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis and that conditions which are not conducive to the health and safety of the inhabitants of its areas of jurisdiction are prevented or removed.

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

PIE was enacted to give effect to section 26(3) of the Constitution. Section 4 (2) of PIE states, *"At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction."*

Section 4 (6) and (7) obliges a court to consider all the relevant circumstances before it may grant an eviction order, including, the rights and needs of the elderly, children, disabled persons, households headed by women and whether land has been made available or can reasonably be made available by a municipality or other organ of state. Courts are often reluctant to grant eviction orders where the eviction will result in homelessness unless some form of temporary accommodation has been provided.

Section 7 makes provision for the municipality to mediate by appointing one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of PIE.

5.4 National Housing Code, 2009 (Housing Code)

The Emergency Housing Programme is contained in Part 3 Volume 4 of the Housing Code and states that the programme will apply to emergency situations of exceptional housing need and refers to situations of "Emergencies" as follows:

a) *Have become homeless as a result of a declared state of disaster, where assistance is required, including cases where initial remedial measures have been taken in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002) by government, to alleviate the immediate crisis situation;*
b) *Have become homeless as a result of a situation which is not declared as a disaster, but destitution is caused by extraordinary occurrences such as floods, strong winds, severe rainstorms and/or hail, snow, devastating fires, earthquakes and/or sinkholes or large disastrous industrial incidents;*
c) *Live in dangerous conditions such as on land being prone to dangerous flooding, or land which is dolomitic, undermined at shallow depth, or prone to sinkholes and who require emergency assistance;*

d) *Live in the way of engineering services or proposed services such as those for water, sewerage, power, roads or railways, or in reserves established for any such purposes and who require emergency assistance;*
e) *Are evicted or threatened with imminent eviction from land or from unsafe buildings, or situations where pro-active steps ought to be taken to forestall such consequences;*
f) *Whose homes are demolished or threatened with imminent demolition, or situations where proactive steps ought to be taken to forestall such consequences;*
g) *Are displaced or threatened with imminent displacement as a result of a state of civil conflict or unrest, or situations where pro-active steps ought to be taken to forestall such consequences;*
h) *Live in conditions that pose immediate threats to life, health and safety and require emergency assistance; or*
i) *Are in a situation of exceptional housing need, which constitutes an emergency that can reasonably be addressed only by resettlement or other appropriate assistance, in terms of this Programme.*

## 6. SPECIAL PROCESS FOR THE RELOCATION OF EVICTEES (SPRE)

### 6.1 *Application for TEA*

The CoJ shall establish a properly constituted SPRE Unit within ninety (90) days of adoption of this Policy. The SPRE Unit's powers, functions and objectives shall be properly recorded in a memorandum and approved by the Executive Director: Housing.

Evictees who wish to receive TEA must apply to access such assistance by following the process prescribed by the CoJ. The SPRE Unit will thereafter evaluate the applications on a case-by-case basis and make a determination as to whether or not the Evictees qualify for TEA. The process for TEA will only begin when the CoJ confirms an Emergency does in fact exist. Evictees who wish to make an application for TEA must begin by registering with the CoJ's Expanded Social Package (ESP) programme by prior arrangement with the SPRE Unit. The full details of the registration process is set out in the Implementation Guidelines which forms an annexure to this Policy.

Applications for TEA may be disqualified or limited assistance provided where Evictees:

a) are in a position to address their housing Emergency from their own financial or other resources or from such other sources, which may include the proceeds of superstructure insurance policies and whether they have previously benefited from permanent housing assistance from the State;
b) have caused their exceptional housing need;
c) housing Emergency can be remedied through the provision of time to vacate their current residence;
d) have provided false or misleading information to the CoJ in regard to the provision of TEA;
e) refuse to engage;
f) refuse to apply for TEA;
g) have previously benefitted from state-subsidised housing.

Evictees who received initial remedial assistance in terms of the Disaster Management Act 57 of 2002 (Disaster Management Act) following a declaration of Disaster can also apply for TEA in certain circumstances. Evictees who are able to return to their homes or procure alternative accommodation out of their own financial or other resources after the Disaster will not qualify for TEA. Evictees who continue to face homelessness through no fault of their own upon receiving initial remedial assistance in terms of the Disaster Management Act qualify to apply for TEA. The CoJ will endeavour to assist Evictees in applying for TEA on an expedited basis under these circumstances so as to ensure the process is completed before the expiry of the period allowed for remedial assistance in terms of CoJ's disaster management policy.

### *6.2 Application for temporary on-site assistance*

Whilst it is not the aim and scope of this Policy to deal with this category of assistance, brief reference thereto is warranted in the circumstances. Where settlements have been damaged wholly or partially by fire, storms or other weather elements and is not declared a Disaster, Evictees may apply in writing to the SPRE Unit for temporary on-site assistance. The application process for temporary on-site assistance differs from the application process for TEA and the SPRE Unit shall be expected to finalise the application process in the shortest possible time thus allowing for individuals and families to return to their normal everyday lives. Evictees may also be required to provide an affidavit on oath confirming their alleged place of residence prior to receiving any such assistance. Depending on the circumstances of each case the SPRE Unit will determine the most suitable form of assistance to be provided taking into consideration, among other factors, reducing Evictees vulnerability, building method and materials to be used.

### 6.3 *Meaningful Engagement*

There will be a process of meaningful Engagement with Evictees. The Engagement process can occur before and after the implementation of the Policy and can include an agreement to relocate voluntarily. When CoJ receives an application for TEA, either from the Evictees directly or through their legal representatives, it should immediately begin a process of initial Engagement. Where possible, the CoJ should initiate the Engagement process and continue to make reasonable efforts to engage with Evictees when initial efforts are resisted.

The Engagement shall include, but not be limited to:

- the number and circumstances of the Evictees;
- any special circumstances of the Evictees;
- the circumstances at the property;
- the location of the property in question;
- the current use of the property;
- the typology of the structure occupied by the Evictees;
- the availability of suitable temporary accommodation or vacant land within the area of the property;
- the circumstances giving rise to the eviction;
- the willingness of the Evictees to engage;
- the living conditions at the property;
- whether in the City's view the eviction is likely to lead to homelessness,
- the implication of a delay to the Owner;
- whether mediation between the Evictee and Owner is possible as envisaged in section 7 of PIE; and
- the interests of the Owner and of the CoJ.

The CoJ, Evictees and if applicable, Owners should approach the Engagement process in good faith and with a willingness to listen to the concerns of each party and need not necessarily reach agreement on every aspect of the dispute. Parties should not make unreasonable demands or adopt an intractable attitudes. There is no *numerus clausus* of objectives that must be achieved during the Engagement process.

The Engagement process should be open and transparent and any agreement resulting from the process shall be recorded in writing. The CoJ shall furthermore ensure proper record keeping of each step of the Engagement process. In the case of evictions from private property, the Engagement process will also include the Owner, if that Owner is willing to participate in the process. Courts have remarked that, "engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process." Where Evictees do not apply for TEA and/or are not willing to engage with the CoJ, despite its reasonable effort to do so, Evictees may not be provided with TEA. An Engagement with the Evictees may take place in on sessions or over several phases.

*6.4 Presenting alternatives to Evictees*

In the course of the Engagement process, the CoJ will use its reasonable endeavours to present the Evictees with alternative accommodation options for permanent housing, such as, but not limited to, RDP houses, affordable rental or social housing options. This presentation is based on the understanding that Evictees must comply with the relevant application procedures prescribed by the prospective landlords and/or State. The CoJ shall also take reasonable steps to provide Evictees with information on formal rental opportunities in the vicinity but will not be obliged to facilitate any further intervention. In these instances Evictees will negotiate and interact with the prospective landlord directly to the exclusion of the CoJ.

Evictees who have not registered for or benefited from state-subsidised housing previously and who satisfy the qualifying criteria must apply for subsidies for permanent housing provided for under the National Housing Code. Where possible, the CoJ will guide Evictees in this regard.

### 6.5 *Categories of Assistance*

Where an Evictee's application for TEA is successful, the typology, terms and conditions of relief provided may differ from case to case. Eligible Evictees may be assisted in one or more of the following ways:

#### 6.5.1 *TEA buildings*

TEA buildings consist in managed care facilities and are designed to accommodate Evictees on a temporary basis. TEA buildings will be required to continuously serve new Evictees and as a result thereof Evictees are not to consider TEA buildings a permanent housing solution under any circumstances whatsoever. As managed care facilities, TEA buildings will include the implementation of the managed cared model which involves the provision of social assistance to the Evictees in order to empower them thereby improving their personal circumstances and allowing them to become self-sustaining with the possibility of finding a permanent housing solution. House rules shall be applied at TEA buildings, which shall be fair and reasonable. The house rules that are to be applied may differ among TEA buildings. The CoJ shall be entitled, to the extent necessary, to move Evictees to temporary accommodation at another TEA building following a process of Engagement with the Evictees.

#### 6.5.2 *TRAs*

The CoJ may provide Evictees with a TRA with basic municipal engineering services (water, sanitation and refuse removal). Where the CoJ provides Evictees with a TRA, it may provide materials to Evictees for the constructions of shelters, undertake the construction of the shelters itself or through a service provider or provide other forms of shelter as it deems appropriate. The materials or shelters provided shall at all times remain the property of CoJ and are intended for reuse, once Evictees vacate, return to their reconstructed homes (where their homes have been damaged by fire, storms or other severe weather elements and the site became temporarily unavailable) or enter into other formal housing programmes. Evictees in a TRA are not excluded from participating in and benefitting from the managed care model. Whether or not the managed care model will be made available to occupants of a TRA will be determined on a case-by-case basis. TRAs differ from TEA buildings in that there is the possibility of it becoming a permanent housing solution where studies demonstrate the site can be formalised and the CoJ decides to formalise the settlement. The decision to undertake such studies and to formalise the settlement shall be solely at the discretion of the CoJ. The CoJ shall be entitled, to the extent necessary, to move Evictees to temporary accommodation in another TRA following a process of Engagement with the Evictees.

*6.6 Eligibility for TEA*

Evictees who qualify for TEA shall be accommodated in either a TRA or TEA building subject to the available resources of the Codi. Evictees shall be accommodated for a period of six (6) to nine (9) months, which can on application to the SPRE Unit, be extended to twelve (12) months in order to allow Evictees additional time to access alternative accommodation. Evictees who qualify for assistance in TEA buildings or TRAs shall be required to conclude agreements where, *inter alia,* the rights and obligations of the parties are fully set out. Evictees who have not been able to access alternative accommodation at the end of this period may be relocated to a TRA so that the TEA building is vacant and available for incoming Evictees. This ensures TEA is accessible to other Evictees in need.

The application for extension from the initial six (6) to nine (9) months period to twelve (12) months will be evaluated based on various factors such as - need, behaviour, efforts made by the Evictee to find alternative accommodation, efforts made by the Evictee to secure adequate employment and individual participation in self-betterment programs that have been provided. Evictees are expected to co-operate with the social workers and participate in the self-betterment programme offered at facilities so that they can improve their socio-economic circumstances and find other permanent accommodation as opposed to developing a dependency on the Codi. Evictees who *inter alia,* refuse to conclude the necessary agreements, co-operate with the social workers, participate meaningfully in the self-betterment programmes and abide by the house rules may be removed from the facility. Such conduct on the part of the Evictees shall be construed to mean their rejection of the relief provided by the Codi.

Where applicable, the Codi will request the Court to specify the period of accommodation of an Evictee in a TEA building after which an Evictee may be relocated to a TRA. This will negate the need for a new court order to relocate an Evictee upon expiry of the period in the TEA building.

### 6.7 *Identifying TEA buildings or TRAs*

In identifying and providing TEA facilities, the Codi will take the following factors into consideration, *inter alia,*

- demographic profile of Evictees;
- proximity of TEA from where the Evictees have been displaced;
- provision of basic municipal services such as water, sanitation, refuse removal and other municipal services;
- prospect of the allocation of permanent housing opportunities to the Evictees;
- budgetary implications;
- availability of resources;
- strategic considerations;
- any other relevant factor.

### 6.8 *Logistics of Relocation*

Where Evictees application for TEA is successful, the CoJ may assist the Evictees with transport to the TRA or TEA building. Where necessary, a reasonable timetable for the relocation should be made available to the Evictees. Property of Evictees, apart from their personal effects will be noted in a register and shall be signed off by the relevant CoJ official and countersigned by the Evictee who owns the property. The property will then be placed in secure storage until such time the Evictees leave the TEA facility and collect their property or until a period of two months has passed since the Evictee left TEA after which the CoJ will dispose of the property as it sees fit.

### 6.9 *Recordal of TEA applications*

Aside from the mandatory requirement that all Evictees who apply for TEA must apply in the prescribed manner through registration on the ESP system, the CoJ shall also keep a database of all the Evictees who have been allocated TEA in terms of this Policy including but not limited to, for the purposes of:

- detection of trends;
- good governance; and
- reporting.

### *6.10 Principles of SPRE*

i. TEA is a form of relief of distress in an institutional context designed to provide an emergency and short-term respite from a housing crisis and to provide an opportunity for empowerment and upliftment of occupiers through programmatic interventions and assistance supervised by an assigned social worker. It is thus an institutional environment offering a time-limited programme of managed care and is not a residence or home in the sense contemplated in section 26 of the Constitution.

ii. Absence from the TEA building or TRA for a period of seven (7) days or longer without prior written consent from the CoJ and/or its authorised service provider may result in the Evictees forfeiting his or her allotted space.

iii. A minimal contribution to costs shall be payable by the Evictee staying at a TEA building or TRA in terms of this Policy. The value of the contribution payable shall be determined by the SPRE Unit in line with the CoJ's parameters for the making of such determinations.

iv. The CoJ in recognition of its shared constitutional and statutory obligation in relation to the role of municipalities in evictions shall pro-actively plan and budget for TEA and/or TRA in its Integrated Development Plan (IDP). The prospect for developing a TRA into a permanent housing solution where the TRA might be found to be suitable should also be provided for in the IDP. Whilst the CoJ will endeavour to fund TEA out of its own means, it has the right to apply for funding for temporary accommodation from the Provincial Department as prescribed by the Housing Code.

v. The vehicle for the implementation of SPRE shall be the SPRE Implementation Guidelines.

vi. The programme contained in this Policy does not replace any Provincial or National Department of Human Settlements (NDoHS) housing programme. This Policy shall replace any existing CoJ emergency housing programmes forthwith from date of implementation.

vii. This Policy shall replace any existing CoJ emergency housing programmes forthwith from date of implementation.

viii. The CoJ shall provide the necessary resources, create awareness and build capacity to support the implementation of this Policy.

ix. Where a state of disaster has been officially declared and Evictees initially face homelessness, interaction, must first occur within CoJ's disaster management framework. This Policy under no circumstances replaces the powers and functions performed by the CoJ Emergency Management Services (EMS) Unit.

x. Procurement processes must be fair, equitable and transparent for the acquisition of TEA goods or services and the CoJ must be guided by the Preferential Procurement Policy Framework Act 5 of 2000 and guidelines thereto.

## 7. SHORT TITLE AND COMMENCEMENT

This Policy together with the annexures set out in this document is the only document that regulates TEA and shall be called the Special Process for the Relocation of Evictees (SPRE) and shall come into operation on the date of final adoption by the Council of the CoJ.

# City of Johannesburg Temporary Emergency Accommodation Provision: Draft Policy

DRAFT

**DOCUMENT CONTROL**

Responsible Unit: Policy, Planning & Research Directorate

Version number: 5.0

Document status: Working Document

**Current review date: 30/ 08/ 2019**

Approval date:

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**1. DEFINITIONS**

**"Affected persons"** means beneficiaries of emergency housing including but not limited to an Evictee residing in the jurisdiction of the COJ and who cannot address his or her housing emergency from their own or other available resources and who makes an application to the CoJ for TEA assistance in the prescribed manner;

**"CoJ"** means City of Johannesburg Metropolitan Municipality;

**"Disaster"** means a disaster as defined in the Disaster Management Act 57 of 2002;

**"Emergencies"** means emergency situations of exceptional housing need as referred to in Part 3 of the National Housing Code, 2009;

**"Emergency Housing Programme"** means the programme provided for in Part 3 Volume 4 of the National Housing Code, 2009;

**"Engagement"** or **"Engage"** means a process by which the COJ, Evictees, property owners and other stakeholders participate in meaningful discussions with a view to reaching a collective outcome that will benefit all or most parties;

**"Evictee"** means a person who has been or will be deprived of occupation of a building or structure or the land on which such building or structure is located;

**"Owner"** means the registered owner of land and property, including an organ of state;

**"Person in charge"** 'means a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question;

**"Policy"** means this Ppolicy together with the annexures set out in this document, as amended from time to time;

**"Problem Property by-law"** means the City of Joburg By-Law on Problem Properties, (as amended)

**"Property"** means any piece of land registered as a separate entity of land in a deeds registry as an erf, lot, plot, farm, stand or agricultural holding and includes any unit and land contemplated in the Sectional Title Act, 1986 (Act No. 95)

**"Temporary Emergency Accommodation" (TEA)** means temporary assistance provided to beneficiaries of emergency housing who may find themselves in Emergencies;

**"Temporary Assistance"** means assistance provided to beneficiaries of emergency housing in the form of TEA units or TRAs for a period not exceeding twelve (12) months'

**"TEA building"** means either the whole building or a part only of the building which is used for TEA;

**"Temporary Relocation Area" (TRA)** means a site where applying residents are intended to be accommodated on a temporary basis.

**"Provincial department"** refers to the Gauteng Provincial department of Human Settlements

**"Emergency housing grant"** refers to the nationally administered grant, which provides rapid response to immediate adequate temporary shelter to households affected by disasters

**ACRONYMS**

| | |
|---|---|
| CoJ | City of Johannesburg |
| EHG | Emergency Housing Grant |
| EHP | Emergency Housing Programme |
| EMS | Emergency Management Services |
| ESP | Expanded Social Package |
| IDP | Integrated Development Plan |
| ID | Identity Document |
| MTEF | Medium Term Expenditure Framework |
| NDoHS | National Department of Human Settlements |
| NDMC | National Disaster Management Centre |
| NGO | Non-Governmental Organization |
| PIE ACT | Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 |
| PDoHS | Provincial Department of Human Settlements |
| PDMC | Provincial Disaster Management Centre |
| TEA | Temporary Emergency Accommodation |
| TRA | Temporary Relocation Area |

## 2. PREAMBLE

The COJ, as a local authority recognises the important obligations that section 26 of the Constitution of the Republic of South Africa, 1996 (**"the Constitution"**) places on organs of state in relation to the right of access everyone has to adequate housing (section 26(1)), the taking of reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right (section 26(2)) and that no one may be evicted from their home or have their home demolished without an order of court after considering all the relevant circumstances (section 26(3)).

The CoJ further recognises that those circumstances that constitute Emergencies may lead to affected persons being rendered homeless indefinitely or for a prolonged period of time.

The policy therefore aims to provide pro-active measures that the CoJ will adopt and implement when dealing with the provision of TEA to affected persons who are rendered homeless or who run the risk of being rendered homeless as a result of finding themselves in one or more categories of Emergencies. It is important to note that the provision of TEA can be pro-active or reactive and based on predictable and unpredictable Emergencies.

The policy also enables a uniform process and approach to be followed by municipal officials, legal practitioners and the public at the large when dealing with Emergencies thereby mitigating risk and decreasing the vulnerability of the affected persons.

The Policy should not, under any circumstances whatsoever, be interpreted as a tool to encourage influx control in and around the inner city of Johannesburg or seen to be promoting the unlawful occupation of land, rather, it is aimed at assisting the CoJ in achieving a consistent and balanced approach when dealing with emergency housing arising from one or more criteria constituting Emergencies.

## 3. INTRODUCTION

The CoJ as a local authority recognises its shared obligations, inter alia, to assist affected persons who might be rendered homeless temporarily or indefinitely as a result of one or more criteria constituting emergencies.

In recognising this shared responsibility, this policy should not be seen as a vehicle to achieving the rights set out in section 26(1) and section 26(2) of the Constitution. The primary purpose of this policy is to address emergency housing assistance on a temporary basis.

The Emergency Housing Programme and the role of local authorities in evictions have over the years received significant attention through various constitutional court judgments such as the *Joe Slovo* and *Blue Moonlight* cases, and others. In line with the EHP, the policy aims to implement an emergency housing response thereby enabling the CoJ to respond to a plethora of emergency housing situations.

The CoJ has over the years primarily dealt with emergency situations through its Emergency Management Services department. The focus of EMS has been to respond to emergencies consisting in disasters as provided for in the Disaster Management Act (No. 57 of 2002) and the CoJ Disaster Risk Management Policy. The relief provided by EMS is often limited to emergency assistance for a period of up to 72 hours. During this period different aids would be provided to give support to, and make the affected persons' situation more bearable. Where affected persons are rendered homeless resulting from the disaster, they often provided with shelter in the form of tents, accommodation in community centres et cetera.

It is important to note the ambit of Emergencies has been significantly extended in the text of the EHP and includes, inter alia, floods, earthquakes, sinkholes, hail, snow, strong winds, severe rainstorms, evictions, house demolitions as well as household and communities living in dangerous conditions such as under power lines and on dolomitic land.

Often these affected persons remain homeless temporarily or indefinitely after having received some form of initial assistance from EMS and are required to be accommodated. These affected persons then become the prerogative of the Housing department.

Whereas the EHP has prescribed responses with options of applying for funding when dealing with Emergencies, the CoJ has experienced several challenges in endeavouring to adopt and implement these responses, particularly within the inner city where there is the highest demand for TEA and where there is little or no available land. To this end, the City will have to primarily rely on, and utilise its own resources to provide TEA for affected persons in the inner city.

This type of temporary assistance offered by the CoJ does not detract from its overall responsibility as a municipality in terms of the Constitution and Housing Act, does not promote queue jumping and is limited to temporary assistance in Emergencies.

In the event that one or more provisions contained in this policy is found to be in conflict with one or more provisions contained in the City of Johannesburg By-Law on Problem Properties, then the provisions as set out in the By-Law will take precedence over the provisions contained in this policy.

4. **POLICY INTENT**The CoJ recognises its constitutional and statutory obligations to provide TEA to affected persons. In doing so, the policy also seeks to highlight the responsibility of property owners in relation to their properties as well as the consequences in failing to execute those responsibilities as provided for in the By-Law on Problem Properties. This Policy is implemented in furtherance and fulfilment of these obligations and lays down certain guidelines in this regard as follows:

- Provision of temporary assistance in the form of TEA buildings and TRAs subject to engagement with the affected persons
- The policy does not apply to normal housing development projects;

- Normal qualification criteria in relation to permanent, rental or social housing do not apply;
- qualification criteria as determined by the CoJ may vary from case to case;
- The policy should not be construed to mean the progressive realisation of the right to have access to adequate housing.
- The Policy will be implemented in the context of competing priorities and available resources and is not intended to:
  - a) Assist affected persons that, upon assessment, are found to be able to address their housing need out of their own financial or other available resources.
- The policy is not intended to replace any existing CoJ disaster management programmes;

## 5. POLICY OBJECTIVES

The main objectives of this Policy are to:

5.1. To provide a rapid to affected persons who find themselves in circumstances constituting Emergencies

5.2. Facilitate the provision of TEA to affected persons in Emergencies;

5.3. In conjunction with the By-Laws on Problem Properties enable municipal officials to identify or encounter situations of potential risk or high vulnerability that require an emergency housing response;

5.4. To provide for an environment of meaningful engagement in Emergencies

## 6. SCOPE OF THE POLICY

The policy applies to the following emergency housing situations, including but not limited to:

6.1. Homelessness as a result of a declared state of disaster, including where remedial measures have been taken in terms of the Disaster Management Act;

6.2. Homelessness as a result of extra ordinary occurrences such as floods, strong winds, severe rainstorms, hail, snow, devastating fires, earthquakes, sinkholes or large disastrous industrial incidences;

6.3. Households or communities living in dangerous conditions such as – dolomitic land, threat of eviction from unsafe buildings/land or under power lines

6.4. Households or communities that live in the way of engineering services such as water, sewerage, power

6.5. Affected persons that have been evicted or face the threat of an imminent eviction.

6.6. Where homes are demolished or threatened with imminent demolition

6.7. Displacement as a result of civil unrest or conflict; and

6.8. Live in conditions that pose immediate threats to life, health and safety

## 7. POLICY PRINCIPLES

7.1. **Pro-poor:** the prioritisation of the affected persons that may be poor and responding in a caring and effective manner within the City's available resources;

7.2. **Temporary Relief:** the provision of temporary assistance in emergency housing situations.

7.3. **Transparency:** ensure transparent and consistent responses by the City in various emergency housing situations.

7.4. **Uniformity:** to ensure that the assistance provided for emergency housing situations is consistent and uniform;

7.5. **Transition:** to ensure affected persons are able to transition from TEA to a more permanent housing solution through various housing options.

7.6. **Limited in Scope:** The policy does not confer certain rights that affected persons might have enjoyed prior the emergency housing situation, does not replace any housing policy or programme of the NDoHS or PD and serves to augment other existing CoJ policy and programmes to the extent they pertain to emergency housing situations.

## 8. QUALIFYING CRITERIA

Where appropriate and justified, TEA will be provided to affected persons in the following categories:

8.1. Households whose monthly income is below R 3, 500.00

8.2. Minor headed households;

8.3. Elderly persons

8.4. Persons without dependants;

8.5. Persons who do not own any immovable property in the Republic;

8.6. Persons who have not previously received assistance;

8.7. Illegal foreigners and /or prohibited persons as defined by the Immigration Act (No. 13 of 2002) will be attended to but dealt with in consultation with the Department of Home Affairs.

## 9. EXCLUSIONS

The Policy is not intended to:

9.1. Serve as an option for owners or persons in charge in the ordinary course of eviction proceedings;

9.2. Provide accommodation to persons where the onus rests with the owner or person in charge

9.3. Serve as a dispute resolution mechanism where disputes exist between an owner or person in charge and a tenant as envisaged in the Rental Housing Act

9.4. Assist affected persons that are capable of addressing their housing need out of their own financial or other resources;

9.5. Encourage queue jumping or promote self-created emergency housing situations;

9.6. Deal with properties and owners that are being dealt with by the By-Law on Problem Properties.

## 10. DURATION OF TEA

10.1. The CoJ will provide TEA to affected persons who qualify for TEA for a period not exceeding six (6) months.

10.2. The period of six (6) months may be reduced subject to evaluations or such other conditions that may require an affected person to be relocated or removed from the TEA building or TEA. The CoJ will issue a notice to this effect to the affected person should this be the case.

10.3. Illegal foreigners or prohibited persons may or not be accommodated subject to directions from the DHA.

10.4. The maximum period of six (6) months may be extended or reduced at the CoJ's discretion.

## 11. LEGISLATIVE FRAMEWORK

There have been numerous jurisprudential developments relating to the role of municipalities in the provision of alternative accommodation where persons are faced with the risk of homelessness. In this context, the CoJ recognises that it has a shared responsibility within available resources to provide TEA to those residents who may find themselves in Emergencies. This section highlights some of the key legislation and policy.

11.1. The Constitution of the Republic of South Africa, 1996

11.2. Housing Act 107 of 1997

11.3. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

11.4. National Housing Code, 2009

11.5. City of Johannesburg By-Law on Problem Properties, 2014 (as amended from time to time)

## 12. *PROCESS TO BE FOLLOWED WHERE EMERGENCIES RESULT FROM A DECLARED DISASTER OR EXTRA ORDINARY OCCURRENCE RESULTING IN HOMELESSNESS* EXCLUDING EVICTIONS IN TERMS OF THE PIE ACT

The section shall apply to the following Emergencies:

12.1. Have become homeless as a result of a declared state of disaster, where assistance is required, including cases where initial remedial measures have been taken in terms of the Disaster Management Act by government, to alleviate the immediate crisis situation;

12.2. Have become homeless as a result of a situation which is not declared as a disaster, but destitution is caused by extraordinary occurrences such as floods, strong winds, severe rainstorms and/or hail, snow, devastating fires, earthquakes and/or sinkholes or large disastrous industrial incidents.

Where either one, or both of the above-mentioned Emergencies have occurred, the following process shall be followed when dealing with or managing the Emergencies:

12.3. The Emergencies shall first be reported to the COJ's EMS department;

12.4. In the event that there is a likelihood of indefinite homelessness resulting from the Emergencies, the relevant official from EMS must forewarn the ED: Housing or his or her delegated official to this effect;

12.5. If the situation warrants the Housing Department's intervention, then the Head: Emergency Housing Unit or his or her delegated official together with any other official shall visit the affected area and affected persons to determine the extent of damage and make a preliminary assessment;

12.6. To the extent the situation requires the intervention of the NDHS, the Housing Department will contact the relevant officials thereat and inform them of the need for assistance;

12.7. In the meanwhile, the EMS department will provide initial remedial measures to alleviate any immediate crisis in accordance with the prescribe framework.

12.8. The Housing department will inform the PDMC of any application for assistance that might have been made to the NDHS;

12.9. Where it is determined the COJ will in fact need assistance from the NDHS, the Housing department will endeavour to expeditiously complete an application process for a Disaster Grant Approval;

12.10. The City Manager or his or her delegated official shall be tasked with signing of the application form to the NDoHS for assistance;

12.11. So soon thereafter of the application for assistance being approved, the Housing department will render further assistance to the affected persons.

**13. *"PROCESS TO BE FOLLOWED WHERE EMERGENCIES RESULT FROM EVICTIONS IN TERMS OF THE PIE ACT"***

**Application for TEA or TRAs**

The following process will be followed in instances of evictions or where there is the threat of imminent evictions and TEA will be required by the affected persons:

a) An application for TEA or TRA to be initiated through the EHU in instances where the CoJ has been enjoined to eviction proceedings in terms of a court order to report on TEA or provide TEA where the unlawful occupiers face the risk of homelessness in the event an eviction order is granted.

b) In the event an assessment has been made that lives would be in danger if occupation is continued on the property, the application for TEA/ TRA will be initiated with the CoJ Housing

c) TRAs will be offered solely at the discretion of the CoJ and only in certain circumstances. Affected persons in applications for TEA or

TRAs will be subject to an assessment process. A detailed report will thereafter be compiled and a determination made on the type of assistance that will be required in each case

d) Provided that they qualify, affected persons will also be invited by the EHU to register with the CoJ's Expanded Social Package (ESP) programme in order that they may access certain benefits.

**14. Applications for TEA may be disqualified or limited assistance provided where Evictees:**

a) After assessment are deemed to be in a position, beyond the emergency incident stage, to address their housing Emergency from their own financial or other resources or from such other sources, which may include the proceeds of superstructure insurance policies and whether they have previously benefited from permanent housing assistance from the State;

b) have caused their exceptional housing need;

c) Housing Emergency can be remedied through the provision of time to vacate their current residence;

d) have provided false or misleading information to the CoJ in regard to their circumstances

e) refuse to engage;

**15. Recordal of TEA applications**

Aside from the mandatory requirement that all residents who apply for TEA must apply in the prescribed manner the CoJ shall also keep a database of all the Affected Persons who have been allocated TEA in terms of this Policy including but not limited to, for the purposes of:

a) detection of trends;

b) good governance; and

c) Reporting.

**16. TEA buildings/ Units**

a) Whereas the CoJ will endeavour to ensure there are sufficient TEA buildings/TRAs to cater for Emergencies, the CoJ can only do so within its available resources. ;

b) TEA Buildings/TRAs will be standardised insofar as this is possible to avoid inconsistent expenditures and budgeting;

c) Depending on the circumstances of each case, it remains at the sole discretion of the CoJ whether to offer affected persons a TEA Building or TRA.

d) The CoJ will ensure that the TEA building or TRA conforms to the applicable legal norms and standards.

e) Affected persons may be differentiated for purposes of allocating TEA, for instance, families will be accommodated in family rooms whereas singles may be accommodated in dormitory style rooms.

f) Where the CoJ cannot meet the demand for TEA out of its own resources it may proceed to make an application to the PDHS for financial assistance.

**17. FUNDING ARRANGEMENTS**

The Programmes following funding streams will be utilised for policy implementation;

Disaster Grant for temporary relief (temporary shelter & relocation) as a result of a disaster;

a) Emergency housing Programme in line with Emergency housing code Programme for other

b) Reconstruction of damaged houses and services; and

c) Acquisition of land where required;

d) Planning and facilitation;

e) Interim/temporary basic engineering services on a shared basis (5 families per facility);

f) Temporary shelters where required in the inner City through City's allocated funding for the provision of Temporary Emergency Accommodation (TEA) as a result of evictions;

g) Temporary shelters and services to Informal Settlement Upgrading Programme projects

**18. FUNDING ALLOCATION CRITERIA FOR EHG**

The grant funding is intended to address the housing needs of households who for reasons beyond their control, find themselves in an emergency housing need such as:

a) existing shelter has been destroyed or damaged by a disaster

b) displaced from their existing houses due to a disaster

c) relocation due to prevailing material (i.e. physical) conditions posing an immediate threat to the adequacy and safety of their existing housing as a result of a disaster

d) The grant is allocated to provincial administrations/municipalities on application and approval thereof by the Accounting Officer of the national DHS

**19. CONDITIONS FOR EMERGENCY HOUSING GRANT (EHG)FUNDING**

a) Shelter solutions funded from the grant must comply with the National Building Regulations and utilise material that comply with the SABS standards.

b) Funds may only be spent on items and activities included in the application approved by the Accounting Officer of the National Department of Human Settlements.

c) The City must submit a report within 30 days of the end of the quarter in which the funds are spent, outlining expenditure of the funds and documentary proof of services rendered. Thereafter monthly reports shall be submitted to the NDHS until the funds are fully utilised.

d) Emergency procurement system as guided by MFMA/Treasury Regulations should be invoked to ensure immediate assistance to the affected communities.

## 20. ROLES AND RESPONSIBILITIES

### 20.1. National Department of Human Settlements

a) Advise and guide the City about the existence of the EHG and how it can be accessed;

b) Develop and publish the EHG application form template, in consultation with National Treasury and the NDMC;

c) Monitor programme implementation including establishing and maintaining a register or database of human settlements disasters;

d) Support the City to plan for potential disasters. This includes identifying communities/households that reside in unsafe conditions posing a threat to health and safety as well as households who live in areas prone to flooding and/or other disasters.

e) Monitor the planning and priority development for communities/households residing in unhealthily and life-threatening circumstances and provide implementation assistance where required

f) Facilitate a coordinated housing assistance intervention response in circumstances where disasters affected more than one Province/municipality.

g) Coordinate assistance with the NDMC to ensure there is no duplication of funding with the provincial and municipal disaster grants.

h) Seek approval from National Treasury for the disbursement of funds to provinces **within 10 days** of receipt of an application for funding from this grant.

i) Notify the relevant provinces and provincial treasury of a transfer at least 2 days before transfer.

j) Funds must be transferred no later than five days after notification;

k) Transfer funds to the provincial administration with a clear stipulation of the purpose of the funds.

l) Provide National Treasury with written notification of the transfer within 10 days of a transfer of the grant.

m) Submit financial and non-financial reports to National Treasury within 20 days of the end of each month.

n) Provide a performance report, within 45 days of the end of the quarter in which the funds were spent, to National Treasury using the disaster allocation monitoring template agreed to with the National Treasury.

o) Together with the provinces monitor the implementation of funded projects.

**20.2. Provincial Department of Human Settlements**

Provinces are responsible for providing the first response in the immediate aftermath of a housing emergency

a) Conduct initial assessments of disaster impacts to verify the applications for funding **within 5 days** following the occurrence of a reported incident that meets the conditions;

b) Conduct assessments of disaster impacts together with the affected municipalities, to verify applications for funding, within 35 days of the incident while adhering to the requirements of the emergency housing programme;

c) Confirm support to be provided by emergency housing programme to prevent duplication of support and resources;

d) Submit requests for funding, monitor projects and provide reports to the NDHS, and Provincial Treasury.

**20.2.1. In instances where Funding is required through the Emergency Housing Programme,**

a) Provide guidance and assistance to municipality.

b) Collaborate with municipality in initiating and preparing application.

c) Ensure coordination with any disaster management initiatives and other role -players.

d) Consider application.

e) Submit application to MEC with comments.

f) Provide funds for projects through reservation/reprioritisation

g) MEC considers application.

h) Approve application.

i) Conclude agreement with municipality.

j) Monitor progress.

k) Control and disburse funds.

l) Provide assistance and support to ensure successful completion of the project.

20.3. **City of Johannesburg: Housing**

a) Prepare and submit a complete application for the EHG in the event of disaster incidents occurring within their jurisdiction

b) Upon approval of the application and receipt of funding, implement the intended relief measure **(emergency housing solutions)**

c) Submit required reports to the **National Department of Human Settlements** on the expenditure of funds received

d) Manage implementation of emergency interventions including establishing and maintaining a register or database of human settlements disasters and emergencies in the municipality

e) Plan disaster mitigation measures in collaboration with the relevant Local Disaster Management Centre; these include:

i. public awareness and community outreach initiatives in respect of disaster mitigation

ii. identifying communities/households that reside on inadequate land posing a threat to health and safety

iii. identifying households in areas prone to flooding and/or other disasters;

f) Facilitate the release of municipal owned land for emergency housing and resettlement purposes;

g) Facilitate that identified and prioritised communities and/or households are relocated and properly housed in formalised townships that comply with human settlement development norms and standards;

h) Ensure that the shelter solutions **comply with the municipal integrated development plan, the National Building Regulations** and utilise material that complies with the South African Bureau of Standards;

i) Monitor the planning and priority development for communities/households residing in unhealthy and life-threatening circumstances and provide implementation assistance where required.

**20.3.1. In instances where Funding is required through the Emergency Housing Programme**

a) Plan proactively.

b) Investigates and assess emergency housing need.

c) Collaborate with the province in initiating and preparing applications.

d) Submit application to PD.

e) Implement.

f) Provide undertakings.

g) Develop permanent housing solution.

## 21. Meaningful Engagement

The City to undertake a process of meaningful Engagement with affected persons in Emergencies as soon as is reasonably possible. The Engagement process can occur before and after the implementation of the Policy. These may result in an agreement to relocate voluntarily during court application in the case of an eviction pending or permanent relocation in cases where areas or building is at permanent risk.

### 21.1. Engagement

The engagement shall include, but not be limited to:

a) the number and circumstances of the Affected Persons;

b) any special circumstances of the Affected Persons;

c) the circumstances at the property;

d) the location of the property in question;

e) the current use of the property;

f) the typology of the structure occupied by the Affected Persons;

g) the availability of suitable temporary accommodation or vacant land within the area of the property;

h) the circumstances giving rise to the circumstance in the case of an eviction;

i) the willingness of the tenants in evictions to engage;

j) whether in the City's view an eviction is likely to lead to homelessness,

k) the implication of a delay to the Owner;

l) whether mediation between the Evictee and Owner is possible as envisaged in section 7 of PIE; and

m) The interests of the Owner and of the CoJ.

n) The CoJ, Evictees and if applicable, Owners should approach the Engagement process in good faith and with a willingness to listen to the concerns of each party and need not necessarily reach agreement on every aspect of the dispute. Parties should not make unreasonable demands or adopt an intractable attitude. There is no *numerus clausus* of objectives that must be achieved during the Engagement process.

o) The Engagement process should be open and transparent and any agreement resulting from the process shall be recorded in writing.

p) The CoJ shall furthermore ensure proper record keeping of each step of the Engagement process.

q) In the case of evictions from private property, the Engagement process will also include the Owner, if that Owner is willing to participate in the process.

r) An Engagement with the Evictees may take place in sessions or over several phases.

**21.2. Presenting alternatives to Evictees**

a) In the course of the Engagement process, the CoJ will use its reasonable endeavours to present the Evictees with alternative accommodation options for permanent housing, such as, but not limited to, BNG houses, affordable rental or social housing options.

b) This presentation is based on the understanding that Evictees must comply with the relevant application procedures prescribed by the prospective landlords and/or State.

c) The CoJ shall also take reasonable steps to provide Evictees with information on formal rental opportunities in the vicinity but will not be obliged to facilitate any further intervention.

d) In these instances Evictees will negotiate and interact with the prospective landlord directly to the exclusion of the CoJ.

e) Affected Persons who have not registered for or benefited from state-subsidised housing previously and who satisfy the qualifying criteria must apply for subsidies for permanent housing provided for under the National Housing Code. CoJ will make itself available to guide Affected Persons or Evictees in this regard.

**22. Implementation Plan/ development for TEA**

The department to develop an implementation plan for the provision of TEA or alternative temporary accommodation.

a) TEA buildings consist in managed care facilities and are designed to accommodate Evictees on a temporary basis.

b) TEA buildings will be required to continuously serve new Evictees and as a result thereof Evictees are not to consider TEA buildings a permanent housing solution under any circumstances whatsoever.

c) As managed care facilities, TEA buildings will include the implementation of the managed cared model which involves the provision of social assistance to the Evictees in order to empower them thereby improving their personal circumstances and allowing them to become self-sustaining with the possibility of finding a permanent housing solution.

d) House rules shall be applied at TEA buildings, which shall be fair and reasonable. The house rules that are to be applied may differ among TEA buildings.

e) The CoJ shall be entitled, to the extent necessary, to move Evictees to temporary accommodation at another TEA following a process of Engagement with the Evictees.

f) This should include the proactive identification of identifying and providing TEA facilities, the CoJ will take the following factors into consideration, *inter alia*,

i) demographic profile of Affected Persons;

ii) proximity of TEA from where the Affected Persons have been displaced;

iii) provision of basic municipal services such as water, sanitation, refuse removal and other municipal services;

iv) prospect of the allocation of permanent housing opportunities to the Affected Persons;

v) budgetary implications;

vi) availability of resources;

vii) strategic considerations and any other relevant cases;

viii) Ensure comply to the standardised model for City's emergency housing

**22.1. Provision of TRA's**

a) The CoJ may provide Affected Persons with a TRA with basic municipal engineering services (water, sanitation and refuse removal).

b) Where the CoJ provides Affected Persons with a TRA, it may provide materials to residents for the constructions of shelters, undertake the construction of the shelters itself or through a service provider or provide other forms of shelter as it deems appropriate.

c) The materials or shelters provided shall at all times remain the property of CoJ and are intended for reuse, once residents vacate, return to their reconstructed homes (where their homes have been damaged by fire, storms or other severe weather elements and the site became temporarily unavailable) or enter into other formal housing programmes.

d) Affected Persons in a TRA are not excluded from participating in and benefitting from the managed care model.

e) Whether or not the managed care model will be made available to occupants of a TRA will be determined on a case-by-case basis. TRAs differ from TEA buildings in that there is the possibility of it becoming a permanent housing solution where studies demonstrate the site can be formalised and the CoJ decides to formalise the settlement.

f) The decision to undertake such studies and to formalise the settlement shall be solely at the discretion of the CoJ.

g) The CoJ shall be entitled, to the extent necessary, to move residents affected by an emergency to temporary accommodation in another TRA where necessary, following a process of Engagement with the Evictees.

22.2. **Logistics of Relocation**

a) Where an application for TEA is successful, the CoJ may assist the Affected Persons with transport to the TRA or TEA building.

b) Where necessary, a reasonable timetable for the relocation should be made available to the Affected Persons. Home property of tenants in a TEA, apart from their personal use belongings, will be noted in a register and shall be signed off by the relevant CoJ official and countersigned by the tenant who owns the property.

c) The property will then be placed in secure storage until such time the tenant leave the TEA facility and collect their property or until a period of two months has passed since the tenant left the TEA after which the CoJ will dispose of the property as it sees fit.

**23. Exit Strategy**

The Department to develop an exit strategy to ensure the accommodated household are able to exit within the specified time. The exit strategy should include but is not limited to:

a) Management of the units

b) Maintenance plan for the units

c) Identifying possible permanent solutions for resettlements

**24. SHORT TITLE AND COMMENCEMENT**

This Policy together with the annexures set out in this document is the only document that regulates TEA and shall be called the Temporary Emergency Accommodation Provision (TEAP) Policy and shall come into operation on the date of final adoption by the Council of the CoJ.

## Appendix 4.3: List of interviewees

| | Interviewee | Institution | Ref in text | Date of interview |
|---|---|---|---|---|
| 1 | Zunaid Khan | CoJ Urban Strategy, Private Consultant | Housing Official 1 | 9am, 21 January 2019 |
| 2 | Simon Mayson | Past CoJ employee, now PHD candidate | Housing Official 2 | 12.30pm, 6 March 2019 |
| 3 | Msizi Khuhlane | CoJ Housing | Housing Official 3 | Brief telephone call August 2020 |
| 4 | Jack Koseff | Provincial Premier Office | Social dev. Official | 12.20–13.15pm, 10 December 2019 |
| 5 | Louise du Plessis | Lawyers for Human Rights | LHR Lawyer | 11.30am, 3 March 2020 |
| 6 | Nico Bezuidenhout | Ex Lawyers for Human Rights sub-consultant and project manager | LHR Proj Manager | 29 March 2019 |
| 7 | Tanya Zack | Private Consultant, often working for the City | Inner City Specialist | 2.30pm 19 February 2020 |
| 8 | Nicholas Botha | Strategic advisor: City MMC for economic development | Political Advisor | 04 November 2020 |

**PART C**

## CHAPTER 5:
## IMPACTS OF A POLICY CONTEXT ON THE APPLICATION OF A HOUSING POLICY INSTRUMENT: APPLYING THE NATIONAL HOUSING CODE IN SOUTH AFRICA

### 5.1 Introduction

Before 1994 there were negotiations taking place around post-apartheid housing policy in a National Housing Forum established in 1992 (Rust and Rubenstein, 1996). This demonstrated the importance the post-apartheid ANC[30] placed on state-provided housing as a symbol of redress for the victims of apartheid and later in 2008 as an anti-poverty strategy (Cross, 2008). These negotiations culminated in the Housing White paper of 1994, the National Housing Code (NHC) of 1995, updated in 2000 and 2009 and the Housing Act of 1997. The NHC consists of the full suite of policies and instruments for state housing delivery and is anchored around the provision of give-away serviced sites with core houses to those households earning below R3500 ($200) per month in 1996[31].

Ambitious targets for the delivery of subsidised houses were set at one million houses in five years. This figure was achieved within seven years, attracting high praise from the United Nations (Khan, 2010). However, at the same time there was a growing criticism within the country of these houses. As a result, there was a review of the housing delivery programme and in 2004 a new Comprehensive Plan for the development of Sustainable Human Settlements: 'Breaking New Ground' (BNG) was adopted. To achieve the imaginary of this new BNG programme would require, "more sophisticated and refined conceptions of governance, institutional integration and intergovernmental relations and the activist developmental state", due to the dependence of many of the inputs on other government sector departments (Menguelé et al., 2008:180). This was such a major reorientation that the department

[30] African National Congress (ANC), the organisation that came to power in the first post-apartheid democratic government.
[31] It is noted that this amount has remained the same till the present, which with inflation has resulted in the decline of potential beneficiaries.

even changed its name from the National Department of Housing to the National Department of Human Settlements. From the outset, the BNG programme's success was going to be dependent on key aspects such as political, technical and implementation capacity. Furthermore, it would require complex institutional reforms within state and civil society (Menguelé et al., 2008).

In 2008, the department put out a tender for short course training of their officials to adapt to the BNG reorientation. Shisaka Development Agency, to which I was affiliated, won the tender and this paper is based on this training project. It was not anticipated to be a research project; however, after completing the training and realising the insights obtained from officials about their working environment, I decided to reflect on it from an academic perspective. Therefore, it is not a conventional research project beginning with questions but rather a body of empirical evidence which raised further questions. These include how officials have engaged with the actual policy instruments, in this case the National Housing Code (NHC). The NHC is the main housing policy document, which sets the underlying policy principles, guidelines, norms, and standards which apply to the South African government's 16 housing assistance programmes.

Many academic articles/publications on housing in South Africa have evaluated and commented on the implementation of the housing policy, its successes, and failures. Regarding the latter, 75% of South African households were dissatisfied with municipal service delivery (including housing opportunities for the poor) (Stats SA, 2017). Similar dissatisfaction was expressed in relation to housing-related outcomes of spatial transformation by urban planners mandated with the task of spatial redress (Moodley, 2018). Given these levels of dissatisfaction, few reflect on the challenges faced by the officials tasked to implement the actual housing policy instruments.

The article draws on my experience of facilitating this housing training intervention. In so doing, I reflect on whether the policy environment has an impact on the housing officials' abilities to implement the policy instrument; and secondly, whether the NHC (the policy instrument itself) is an appropriate instrument given the policy environment and capacity of the tasked officials. This resonates strongly with questions raised by James Ferguson (2015), contrasting traditional left policy instruments that are hugely complex, with neoliberal and quite blunt, simple (perhaps simplistic) instruments, but that can still be used (very efficiently he argues) for strong redistributive purposes. The distinction leads to a broader question: can state ‘housing’ officials with limited or no urban planning skills and knowledge really understand and deliver on integrated urban environments? What challenges do these housing officials face implementing a policy instrument which is made up of complex, multi-sectoral, inter-related and interdependent components? These challenges are illuminated by examining how officials engaged with the NHC in their everyday practices.

At the broad theoretical level, this chapter (the second case study) explores the question of policy implementation (Cairney, 2012; Peters, 2021) and institutional theory (Peters, 2011) in the context of declining housing delivery, by examining the institutional context (policy environment) in which the policy implementers are attempting to work. This environment, viewed through the street level bureaucrats, (Lipsky, 2010) includes aspects around capacity constraints, skills, institutional structures, practice norms and standards, and issues of non-compliance, procedural constraints, and corruption raised through everyday practices, and here through reflection and assessment of these processes (Olivier de Sardan, 2015; Chipkin, 2016; Ledger, 2020). Policy implementation is undertaken through the application of policy instruments. Therefore, I also examine the effects the selected policy instruments have on the implementers within that institutional context in relation to their abilities to implement their policy instruments.

As such, this article contributes to two theoretical debates. The first contributed to the debate on the different approaches to studying the use of policy instruments, as a lens to methodologically examine state policies and the intensions behind them (Hood, 1986, 2007; Lascoumes and Le Galès, 2007; Le Galès, 2011; Lascoumes and Simard, 2011). In examining the NHC and how officials engage with it within a particular policy environment facilitates the unique exposure of certain practices that either enhance or constrain the implementation of policy goals. The second contributes to the policy environment debates, which are an aspect of policy implementation (Cairney, 2011). In this, the chapter emphasises the importance of understanding the policy environment when formulating policy instruments and to mitigate the negative impacts the environment could have on policy implementation.

## 5.2 Background

To provide context to the above, I explore how the current housing policy emerged in South Africa. I then go on to outline how its implementation evolved between 1995 and 2015. The one million house target mentioned above was planned to be delivered through the RDP (Huchzermeyer, 2011). A subsidised housing approach[32] was adopted by the then Government of National Unity in March 1994, through the RDP (Adler and Oelofse, 1996 cited in Rust and Rubenstein, 1996), to address the 1.5 million house backlog from the apartheid era. The adoption of the Housing Act of 1997 confirmed the subsidy approach and set the framework for a range of policy instruments such as the NHC of 2000 and Breaking New Ground of 2004. The initial subsidy was calculated to cover the costs of land, services and a standardised house core unit, as a basis for beneficiaries to expand at their own cost. These were commonly referred to as the RDP houses. It is noted that other housing delivery programmes were also set out in the NHC, such as social housing, and most importantly, self-help housing titled the Peoples Housing Process. Each of these programmes had funding attached to them (Tissington, 2010).

By the early 2000s it was apparent that the RDP programme (having already delivered over one million fully serviced houses, with freehold title to beneficiaries), was the most implemented of all the NHC programmes. By the mid-2000s the first criticisms began to emerge from academia, and government evaluation reports regarding the poor locality of these housing estates that were located on the peripheries of urban areas because of availability of land and land costs (Bradlow et al., 2011; Huchzermeyer, 2001; Tomlinson, 1999, 2015). Another major issue was the poor quality of build, as most were being built by the private sector with tight profit margins (Tissington, 2010; Tomlinson, 2015). Schools, clinics, and other community facilities were never built resulting in non-sustainable poorly serviced residential areas (RSA, 2015, 2017b; Khan, 2003; Manomano et al., 2016; DoHSFS, 2019). Some even suggested that the RDP entrenched old apartheid spatial planning, keeping the poorest of the poor (still

[32] This was a once off capital subsidy scheme that included a range of subsidy types, project-based; individual, credit-linked, and consolidation subsidies to cover a range of housing products including newly constructed units; units in refurbished buildings, existing houses, site and service scheme plots being upgraded in-situ and incremental housing schemes. Beneficiaries would be subject to strict conditions such as limited to SA citizens with household incomes less than R3500/month who had not received any previous subsidy from the state.

largely made up of black residents) to the periphery of urban areas (Karam and Sihlongonyane, 2004).

The revised Breaking New Ground (BNG) programme introduced a wider range of housing typologies and tenures (inclusionary mixed-income housing); financing of land acquisition and servicing of non-residential land uses to ensure an integrated settlement in the form of the Integrated Residential Development Programme (IRDP). In addition to the IRDP programme, housing assistance in emergency housing situations and an Upgrading of Informal Settlements programmes, were added as additional programmes within the code (DoH, 2004 cited in Huchzermeyer, 2011). The most critical aspect of this new BNG programme was the reorientation of the housing policy to focus on the building of sustainable integrated human settlements as opposed to only the delivery of housing top structures.

Despite these criticisms and long-term cost implications of servicing and maintaining these areas in the future, the state appeared to doggedly continue the roll out of the RDP type delivery model, despite the BNG and associated adjustments to the NHC. Between 2009 and 2014, housing delivery consistently declined to between 110 000 and 140 000 units per year from a peak of 235 000 units in 1999 (Tomlinson, 2015). According to Chenwi (2015:68), “The situation remains critical in South Africa, with many poor households living in difficult conditions, facing the risk of eviction and unable to access adequate housing. This is despite the myriad of progressive housing laws, jurisprudence, policies and programs that exist in South Africa”. Even according to the DoHS the growing backlog in housing demand was becoming less likely for the state to address due to growing budgetary constraints (RSA, 2017a). Also of significance, the 2009 to 2016 period was the so-called ‘state capture’ period during which there was significant political interference in state enterprises and departments to serve political and personal interests which contributed to the budgetary constraints (Chipkin, 2016).

As indicated in the introduction, the state’s response was to facilitate a series of three-day training workshops on housing policy for middle to lower-level housing officials from both provincial and local government, held throughout South Africa between 2009 and 2016, titled: Introduction to Housing Policy for Housing Administrators. A company called Shisaka won the bid and rolled out the training over a six-year period.

Essentially, each capacity building officer in each province would assemble up to 16 candidates from up to five local municipalities to attend the three-day training workshop. The capacity officer would organise a venue within their province and all the candidates as well as the facilitator would assemble there. In this process I was able to engage with over 450 state officials, holding a range of positions within housing departments. The stipulated outcomes of the training programme were to equip housing administrators to:

- demonstrate an understanding NHC of the housing delivery process;
- demonstrate an understanding of the intent and key points of housing policy and legislation;
- demonstrate an understanding of municipal housing policy and responsibilities; and
- apply this understanding of housing policy and the housing delivery process to their work activities, for effective housing delivery.

Overall, the workshops were intended to assist officials in obtaining a contextual understanding of the legal and policy aspects of the housing delivery process, to give them the big picture to enable them to see the value of their inputs. The last outcome suggests changing practices in making delivery more effective and to get participants to understand the breadth of policy options. These workshops were donor-funded and were in recognition of a need for further capacity building to improve governance.

The content of the training workshops consisted of the following sections:

1. Understanding the housing challenge
2. Introduction to housing policy
3. The foundations of housing policy
4. The backbone of housing policy: the legislative framework
5. Municipal housing policy and activities
6. The housing delivery process
7. The role of the housing administrator.

The workshops took the candidates through the process of firstly, understanding the low-cost housing challenge in term of the backlogs as a by-product of the apartheid legacy, but also the current funding requirements and challenges to meet them. The next section introduced the candidates to what policy is and why it is needed. This was followed by an explanation of the South African rights-based constitution (in which the access to shelter is an entrenched right) and the legislative frameworks stemming from the constitutional rights related to the provision of low-cost housing. The workshop then covered the 16 policy instruments stemming from the housing legislation through to the NHC (RSA, 2009). The workshop also provided an overview of the actual housing development process in relation to the sequence of tasks that are undertaken to develop a 'greenfields' housing development. Finally, the candidates had a reflective session, on their role in the process and how they could improve their effectiveness in doing their job.

The revised NHC (RSA, 2009) covers six volumes. It is not only voluminous but also non-user-friendly, both as a document and as a policy. The latter is due to the complex net of intergovernmental permissions and funding flows that the various programmes and interventions necessitate. Of the 16 programmes only two, the People's Housing Process (PHP) and the Upgrading of Informal Settlements Programme (UISP), support people's own efforts in building their own settlements and top structures. Furthermore, several of the programmes are standalone while others such as UISP are interconnected with other programmes. The first three phases of the UISP includes all residents of the settlement, whereas the fourth phase is restricted to certain beneficiaries to be addressed by other programmes within the NHC, depending on their beneficiary status. As such, the policy instrument itself is a complex tool for local officials to engage with.

## 5.3 Governance, Declining Policy Implementation and the Policy Environment

At the broadest level, governance relates to the complex processes and interactions that constitute patterns of rule (Bevir, 2011:2). The concept of governance has transformed over the past 30 years from considering the state as a monolith in how it governs to seeing the process of governance increasingly as a set of interrelations between state, private and societal actors, referred to as networked governance (Bevir, 2011). Such a network of governance requires a greater degree of cooperation, coordination, and collaboration than the previous concept of government required (Bingham, 2011 cited in Bevir, 2011). Particularly, local policymaking and public service delivery increasingly take place in the "context of multi-agency networks that cross traditional jurisdictional boundaries (both vertical, across levels of government, and horizontal, between different local governments) and cut across the public-private divide" (Denters, 2011 cited in Bevir, 2011:325). According to Ring and Van de Ven (1994), collaboration involves a complex construct of five variable dimensions: governance, administration, organisational autonomy, mutuality, and norms and that public managers should know these five dimensions and manage them intentionally to collaborate effectively.

Ring and Van de Ven's (1994) process framework implies that for collaboration to evolve, the integrative elements manifest in personal relationships, psychological contracts, and informal understandings and commitments need to supplant the aggregative elements manifest in formal organisational roles and legal contracts. Finding the right balance between integration and aggregation — not relying on formal institutional structures such as memoranda of agreement and standard operating procedures — may be the key to sustaining collaboration over time. An important part of formal institutional structures includes standard operating procedures (SOP) defined as established or prescribed methods to be followed routinely for the performance of designated operations or in designated situations (Merriam-Webster Dictionary, 2022).

Having set out conceptually the requirements of local governance and the need for collaborative practices, I now focus on how this is operationalised, with a particular focus on the policy instruments mobilised by governments to govern. There are three broad approaches to understanding policy instruments (Hood, 1986). The first, named the politics of tools, focuses on questions around the choices and connections between a public policy objective and means of reaching it (Linder and Peters, 1989; Howlett, 2005, 2011). These authors argue that cognitive and subjective factors along with issues of familiarity with certain instruments weigh on choices. These choices are sometimes "conceptualised in terms of 'path dependencies', policy learning, institutional or national style, state structures, ideology or professional bias" (Lascoumes and Simard, 2011:8). The second approach articulated crudely focuses on the classification of policy instruments to compare them in arriving at the best fit for a particular policy aim (Salamon, 2002). The third approach that treats instruments as 'sociological institutions' in respect of them partly determining how actors are going to behave as they privilege certain actors while constraining others. They determine what resources can be used and by whom. Furthermore, instruments have their own effects independent of their stated objectives. In this regard they can play an aggregative effect, bringing actors together in a network to work together and thereby coalescing their interests which makes them resistant to change and external pressures. Secondly, the instrument represents a specific representation of the issue being addressed, and finally the instrument is always linked to contextualised expropriations, i.e. new competencies being developed by professionals around the particular instrument or reformulations of the instrument to suit certain interests or power relations between actors (Lascoumes and Le Galès, 2007; Le Galès, 2011; Vargas and Restrepo, 2019).

To contextualise the implementation problem, I draw on theories of policy implementation and institutionalism in terms of structure and agency and multi-level governance (Cairney, 2012); bottom-up implementation, policy instruments particularly the first and third approaches above, and personal agency (Lipsky, 2010); and everyday governance, bureaucratic modes of operation and cultures in African states (Blundo and Le Meur, 2008; Olivier de Sardan, 2015; Cirolia and Berrisford, 2017).

The literature covering the 'policy environment' is largely associated with policymaking as opposed to policy implementation. This policy environment is defined as the larger governance context made up of a defined set of institutions, actors and practices within which policies are made (Howlett, 2011). This context influences how the problems to be addressed are defined; the pressures that policymakers are under to address them; as well as the resources they have available to address them (Cairney, 2012).

The literature review on policy implementation is outlined in Chapter 2 of this thesis but tends to focus on debates about whether to adopt a top-down or bottom-up approach and the conditions for successful policy implementation rather than the contextual factors that could impact on these conditions (Sabatier, 1986 cited in Cairney, 2012). For example, one of the seven conditions set out by Sabatier is that policy should be implemented by skilful and compliant officials, which is very normative and requires specific institutional capacities and further does not account for conditions where this may not be possible.

Cairney (2012) conceptualises the policy implementation environment in terms of three elements: the individuals who make policy decisions, the institutions in which they operate and the policy conditions. He sees the policy environment as a question of structure (set of parts put together in a particular way to form a whole – economic structures and institutional rules) and agency (ability of an actor to realise their goals).

Beginning with individual agency within the bureaucracy of the housing/human settlement departments I draw on Lipsky's (1971) 'Street level Bureaucracy'. It explores the levels of discretion in their decision making, when faced with constraints such as time, information, and capacity. This concept is also viewed as 'bottom-up' policy implementation which challenges the notion that central government is the main influence of policy implementation (Cairney, 2012). Lipsky (1971) argues that through this discretionary behaviour street level bureaucrats effectively make policy in terms of actual implementation. Implementation of policy instruments involves individual agency, whether it be various state officials undertaking individual initiatives to contribute in what they consider the 'right/progressive' way in interpreting policy or utilising their discretion in less 'progressive' ways in response to the practical needs of their jobs (Lipsky, 1971). As such, with this individual agency comes the question of intentionality of individuals. Accepting that the state is a complex, and often contested institution of multiple rationalities (De Satgé and Watson, 2018), interests and objectives, particularly multi-level state structures, the question of intentionality becomes more important. In addition to the notion of 'state rationalities' as described by De Satgé and Watson (2018), and Bénit-Gbaffou (forthcoming) identifies several framings of intentionality of state officials or politicians. Some debates are around the beliefs, desires and also awareness of what is possible within a particular context or alternatively their intention failed due to their lack of awareness (of real possibilities, possibly due to their lack of skills and experience). In the South African context there often appears to be a consistent bias against beneficiaries of welfare when it comes to state interventions or at best internal contradictions in the state's pronouncements and actions (Charlton et al., 2018 cited in Bénit-Gbaffou, 2018b).

I further examine the individual agency concept through the official and practical norms practised in South African governance structures. “If the copious literature on the state, administrations and public services in Africa agrees on one thing it is on the existence of considerable gaps between the ‘official’ or ‘professional norms’ that govern these institutions and the actual behaviour of their employees” (Olivier de Sardan, 2015:1). In conceptual terms three broad sets of differentiated norms are referred to: official norms (constituting, legal, professional and bureaucratic norms), which are the rights and obligations recognised by public and professional institutions. Then there are the social or cultural norms that regulate the private sphere (non-professional and official). However, Olivier de Sardan (2015) argues that these social norms do not always explain the behaviour of officials who do not comply with the official norms and thus postulates for a third norm which he calls ‘practical norms’ which he defines as “the various informal, de facto, tacit or latent norms that underlie the practices of actors which diverge from the official or (social norms)” (Olivier de Sardan, 2015:8). He argues that the advantage of this defined norm is that it extends the concept of norms while being embedded in daily practices.

Olivier de Sardan (2015) further describes the notion of actors ‘gaming’ the norms in their selective switching between official, social or practical norms from one day to the next depending on the immediate circumstances. For example, he maintains that it could even operate through the moral legitimation of some practical norms at the expense of official norms in the case of favouring the moral choice of pity as opposed to sanction. Another example given, is that of the effects of social conformism, where officials’ actions are based on “do as the others do”. Essentially, he postulates that “norms are no longer considered as external constraints that are imposed on actors but as a repertoire of available guides to action” (Olivier de Sardan, 2015:20).

## 5.4 Methodology

The empirical content of this study is based on the reflections on the series of three-day housing policy training workshops held between 2009 and 2016. The reflections are on the experiences of the facilitators as well as the responses of the trainees to the workshop’s content. I refer to ‘us’, as the 40 workshops undertaken were divided between two facilitators. I facilitated 23, my colleague Dr Margot Rubin from Wits, facilitated 14 and we jointly facilitated three workshops.

The training workshops were very interactive, with the participants engaging with the material in groups and providing feedback on their answers. This process, together with many discussions with the participants, provided insights into factors influencing the implementation of policy instruments. We obtained insights into the everyday practices of local bureaucrats of middle management level and local level administrative officials. For example, insights into candidates' understanding of the problems, as well as their actual knowledge base were garnered through verbal questions and discussions in the workshops. In this manner we were also able to get insights into how the officials themselves viewed day-to-day issues such as 'non-compliance', 'capacity constraints', 'procedural constraints' and 'corruption' from their perspective.

*The data is drawn from outputs from 12 of the workshops which were assembled at the time for record purposes*[33]*. This material included* flipcharts from 13 of the workshops, on which the candidates responded to the question: "From your experience, what are the main problems currently being faced in the housing delivery process?". Each group would list their responses onto a flipchart. These flipcharts were either kept or they were photographed. As such, one set of consistent data has been used from the workshops. Sixty-four issues were articulated which I categorised into 11 broad themes: Land Issues; Institutional Coordination; Corruption; Political Influence; Capacity Issues; Funding; Problems with Beneficiaries; Service Providers; Blocked projects and Delays; Land Management and Planning Processes and Backlogs – Informal Settlements and Backyard shacks. Each issue received a tick every time it was listed by a group and finally added up to determine the frequency of issues raised. This established a ranking of importance as articulated by the attendees. In addition, two questions were then applied to each issue raised. Firstly, what the probable causes were and secondly, what implications (if any) they had on the policy environment or the policy instrument (the NHC).

Additional data includes the evaluation reports submitted by the facilitators for each workshop which were examined to identify any dominant characteristics that emerged during the workshops and the level of acknowledgement based on overall results from

[33] The client, the Human Settlements Department, requested that we took photographs of the workshops proceedings as well as samples of the outputs as evidence for evaluation and compliance purposes.

tests written. Furthermore, the reflections of dominant points and issues raised by the participants during the workshops were discussed and recorded between the facilitators. These reflections were cross-referenced against a subsequent survey questionnaire sent out, under formal research conditions, to all the 651 registered participants who had attended the workshops over the six-year period. We received 46 responses – a 7% response rate. Ethics clearance was obtained for the research and the questionnaire survey was done on SurveyMonkey. The questionnaire was emailed to potential participants accompanied by an information letter which indicated that consent was assumed with their response. This questionnaire posed 31 questions, starting with background information on where they worked and the nature of that work; education levels and experience; capacity support received; reflections on the workshop content; and perceived outcomes for them. All these related back to the time they had attended the workshops. Finally, they were asked about their current work circumstances. In the data that follows below, the figures give some sense of responses – and in collecting information on where people learned about the NHC, they indicated all sources of knowledge.

## 5.5 Local Context

I now focus on South Africa’s post-apartheid governance of local municipalities. In relation to the structural elements, the institutional structures, De Visser (2009) sets out the fundamental transformation that took place in local governance systems post-apartheid. Namely that local government in terms of the constitution, became a distinctive sphere of government with their own elected councillors, allocated ‘original’ powers and functions, although balanced by interdependence and interrelatedness with the other two spheres of government. The other two spheres of government being the national and the provincial spheres[34]. Thus, the basis of a well-functioning local government for planning, development and service delivery is good intergovernmental relations as set out in the Intergovernmental Relations Act of 2005. However, this shift towards public sector responsibility for housing and service delivery at the local level overlooked the parlous state of local government capacity and finances. It ignored the fact that South Africa’s 278 municipalities had vastly different capabilities – and that only about 50 of them had dedicated housing departments (Jeffery, 2015:6). This

[34] There are nine provinces in South Africa

provides an institutional framework to contextualise my findings on the every-day practices of applying the NHC policy instrument in South Africa.

Related to this concept of ‘interdependency and interrelatedness’, is the notion that planning implementation in Africa is best described as ‘negotiated’ rather than as a result of discursive and collaborative decision making towards a shared vision (Cirolia and Berrisford, 2017). This reinforces the idea that these diverse negotiation processes are probably undertaken through the practices of practical norms, which further explains the practices of the housing officials who participated in the workshops.

In terms of the local policy environment, significant transformative changes have taken place post-apartheid at local government level. This transformation involved giving greater autonomy and revenue generating powers to local government, through to redefining them as developmental local governments (Municipal Systems Act of 2000) (RSA, 2000). It also involved the re-demarcation of the country into 272 local municipalities to cover the country in a wall-to-wall manner, i.e. incorporating both urban and rural areas into the same municipality. The responsibilities of individual municipalities were now extended to maximising economic growth and social development, integrating and co-ordinating between the different spheres of government, democratic development and public participation (De Visser, 2009).

The creation of three spheres of government, the national, provincial and local, with equal powers created the necessity for competent intergovernmental cooperation. It was essential particularly in the case of low-cost housing delivery, where Part A of Schedule 4 in Chapter 14 of the Constitution lists housing, urban and rural development and regional planning and development as functional areas of concurrent national and provincial legislative competence. As such housing is a delegated function, which means the responsibility is transferred but authority remains with the original sphere of government, in this case national and provincial. In the case of the metropolitan municipalities those delegations have been partly made; however, in most of the smaller local municipalities the provinces maintain sole functions and responsibilities over housing delivery. This is an ongoing tension with many of the local municipalities as they are still solely responsible for municipal planning, i.e. the spatial location of land uses through the Spatial Development Frameworks and land use management systems. This has created confusion amongst many of the housing officials about roles and responsibilities between the spheres of government.

In addition to the key changes of refocusing municipalities from just delivering key service such as water, sanitation, solid waste, and electricity under apartheid to becoming developmental local governments with a much wider set of responsibilities and functions, there were significant internal institutional structural changes. The shift represented the change from a largely administrative institution to one that made policy. This involved the shift from municipalities being effectively run by a 'town clerk' (a non-elected technocrat), with a weak small executive council and ceremonial mayor, to a system of executive leadership. This entails a large council with strong executive authority, chaired by a separately elected speaker and an administration headed by a municipal manager, who is appointed by the Council. The municipal executive is now expected to initiate policy, oversee the administration and take executive and administrative decisions, and thereby a much stronger leadership role for elected politicians (De Visser, 2009).

While the above transformation of governance at the local level had progressive intentions, the first decade plus of implementation, particularly within the housing sector, has contributed to a challenging policy environment for housing officials. As indicated above, over the past two decades housing delivery has declined as housing waiting lists and demand have increased steadily.

When examining individual agency and non-compliance in the South African local government, Ledger (2020) provides insights into the reasons underpinning behaviours which in many cases resonate with the concepts of practical norms. Ledger (2020) argues that there is widespread non-compliance among state officials in South Africa's local government structures. She quotes a litany of instances of non-compliance from management of procurements and contracts to the appointments of unqualified personnel into key management positions within local municipalities, in spite of the gazetting of Minimum Competency Levels in 2007 and again in 2018. For her, local government is over-regulated and therefore, it can be assumed that non-compliance is not due to gaps in the regulatory system.

For her, the two dominant explanations of this non-compliance are ‘capacity’ and ‘ethics’. The first alludes to officials not having the technical skills and knowledge of the applicable regulations to apply them adequately. The second alludes to incorrect ethical behaviour by officials seen as corrupt. I concur with Chipkin (2016) and Ledger (2020) that the crude attribution to corruption lacks nuance, and an examination of local practices and practical norms, i.e. ‘from the actor’s point of view’ (Olivier de Sardan, 1999 cited in Ledger, 2020:46), would serve as more useful for determining some of the explanations for non-compliance.

## 5.6 Understanding the Impacts of the Policy Environment on the Operationalisation of Policy Instruments

The findings from these reflections and research are focused on those elements that provide insights into the policy environment described earlier in this piece, within which many South African housing officials attempt to implement policy, and possible implications for the contents the NHC instrument. These elements included the overall institutional structure and its associated norms and rules; the institutional capacity of the human settlement departments generally reflected by their material facilities to support staff as well as the capacities of the actual staff from managers and professionals to support staff. Also examined was the role of politicians as well as the day-to-day practices of the staff in respect to their behaviours and attitudes which in turn affect their discretionary decisions as street level bureaucrats.

### 5.6.1 Institutional structure, norms and rules

A critical aspect of the overall institutional environment was the three-tiered structure of government, which featured frequently in the flipchart responses under the macro category of Institutional Co-ordination. The lack of intergovernmental co-operation and collaboration fell within the top ten most consistent issues recorded (out of 79). There is a significant amount of literature providing evidence of the lack of intergovernmental coordination and collaboration between the various spheres of DoHS departments (Tissington, 2011; Tomlinson, 2015; RSA, 2017b). The reasons for this could range from the lack of capacity of officials, to politically motivated delays (especially where the different spheres are run by different political parties), discussed below.

A consistent reflection I had through the training period was on whether local government officials were guided by standard operating procedures (SOPs). In all the training sessions only officials from the Western Cape confirmed that they were guided in practice by SOPs. Examples provided demonstrated that they were adequately detailed (Western Cape Government, 2016). Perusal of a set of technical performance indicator descriptions (2019–2022) for the Free State province specified very inadequately detailed SOPs linked to the targets. For example, for the target: “12.1. Number of hectares of well-located land acquired and/or released for human settlements development by March 2020”, the standard operating procedure was simply the “Identification of land for transfer to municipalities, acquisition and/or release of land, transfer of land” (DoHSFS, 2019). The SOP offered no breakdown of tasks and would be open to a range of interpretations by officials. This issue also talks to the issue of capacity, as experience shows that poorly qualified officials tend to apply SOPs in a very inflexible and non-discretionary manner which can become overly bureaucratic and inefficient. Ideally, guidelines such as SOPs should be applied with a degree of discretion to accommodate unique scenarios that may not be covered within the detailed SOP.

### 5.6.2 Institutional capacity

Regarding capacity, the average experience of all the respondents (ex-participants in the workshops) in the survey was 5,5 years in their jobs at the time of the workshops, which correlated with the sense of employment churn we had during our period of facilitating the workshops. In the 2019 survey it was established that there had been an 11% shift from people working in local governments to working in the provincial level of government. This was unexpected as with the intended shift to accrediting local authorities with more housing functions it would have been expected that there would have been a shift of staff from the provinces to the local authorities.

The figures that follow are indicative, rather than precise, of how people accessed knowledge, and the support they had available to them (not everyone responded uniformly to the survey). A high percentage of respondents indicated that they were supported by their managers at the time of the workshops (83%). The reasons of the 17% who maintained they were not supported ranged from the manager being new to the job, no support in terms of information or direction, to the manager ignoring their views and not sharing information. This could be correlated to senior managers with higher qualifications changing jobs for more senior appointments, more frequently, or to senior managers with lower qualifications acting as gatekeepers of information to secure their positions. On reflection of the dominant narratives from the workshops, gatekeeping by managers was given as a reason indicating the candidates had limited access to policy documents such as the NHC in their offices.

Regarding actual qualifications, the survey found that 52% had matric or a post-matric diploma; 41% had undergraduate or honours degrees and only 7% had postgraduate degrees (Masters or PhD) in such a highly technical field as housing and human settlements. This broadly aligns with a recent report that out of 2,747 municipal officials in South Africa, only 1,565 officials (53%) met the minimum competency levels (Felix, 2021). In terms of material support to the staff, there was generally a high level of resources available such as a desk (96%); or internet connection (86%); telephone and computer (100%); access to transport (75%), printer or photocopier (93%); templates (90%). Two possible areas of concern are access to the internet and transport.

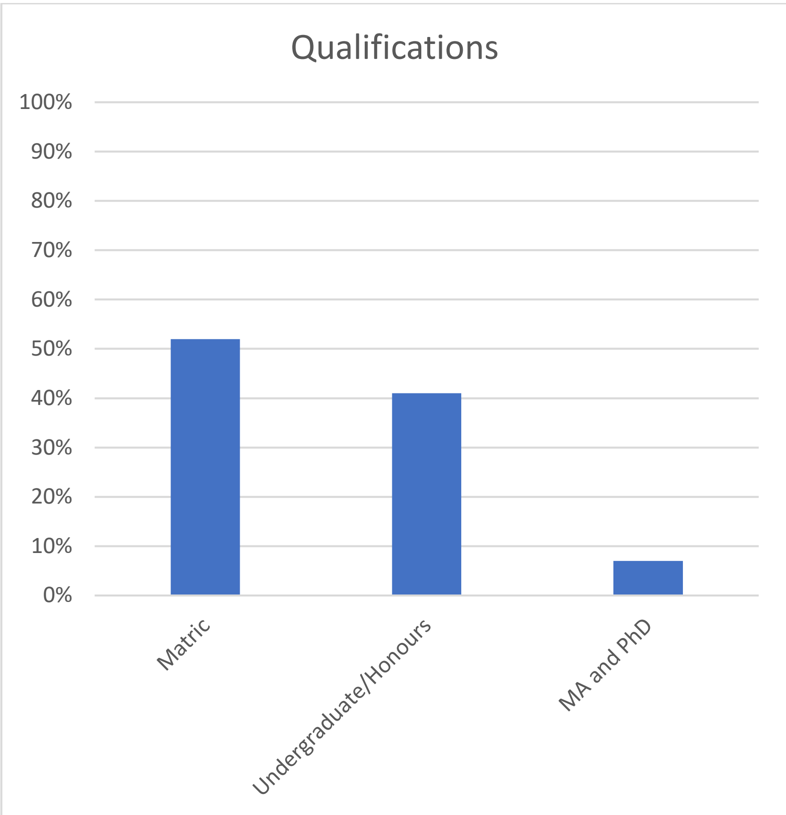



**Figure 5.1 Qualifications**

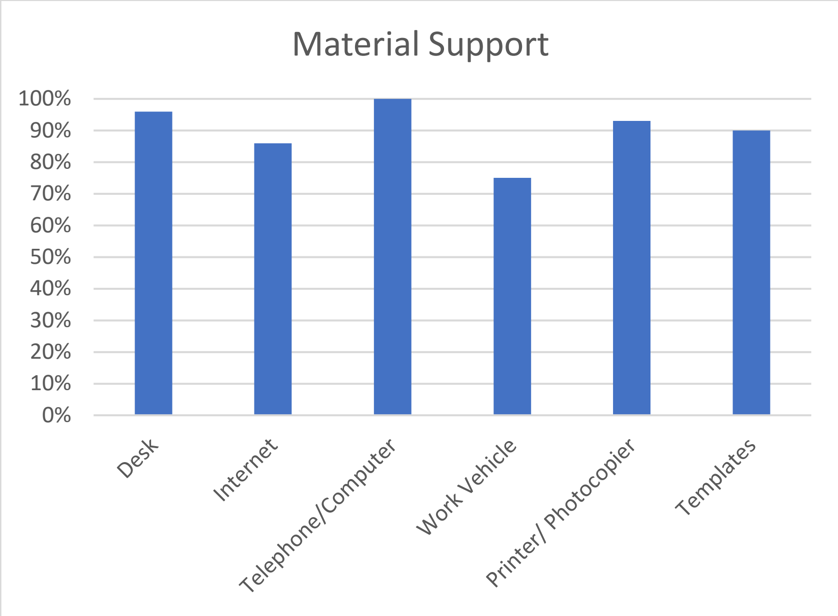



**Figure 5.2 Material support**

Despite the above, the survey raised a concern around how these employees were trained. The survey found that officials were exposed to a very wide range of information, from different sources, on housing instruments. Not all of the information was of the same quality.

The highest percentage of information was collected from ‘conversations with supervisors or colleagues’ (65,5%), 48% was collected from formal training courses, and 55% from department manuals or handbooks. Also, alarming was the small percentage who obtained information from journals and academic articles (14%) which could explain a lack of innovative exploration, otherwise the remaining sources of information were from the internet (55%), intranet (41%), or talking to people outside of the organisation (41%). Although 90% had indicated that they had access to templates, their discretionary ability to apply them appeared limited, as evidenced through debates and assessments in the workshops. Overall, this suggests a lack of a systemic approach to inducting and capacitating staff within these institutions.

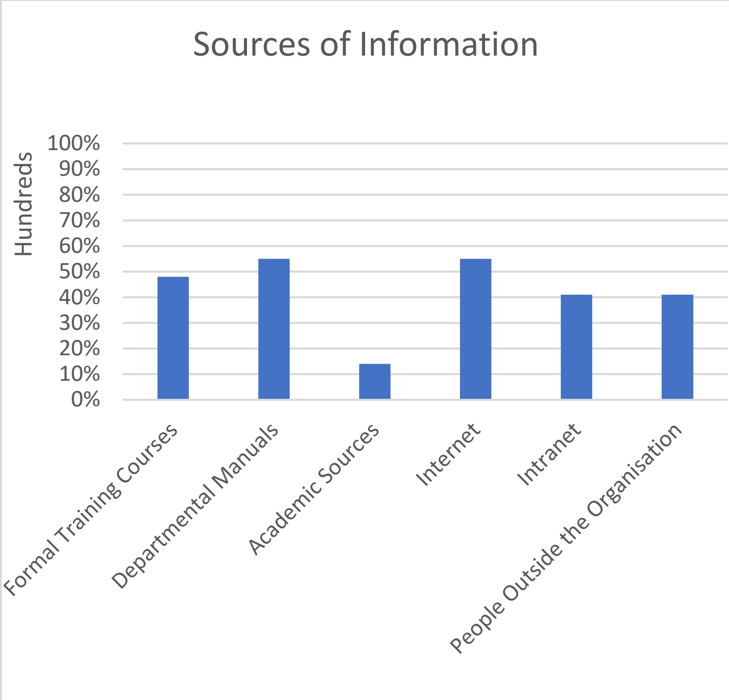



**Figure 5.3 Sources of information**

Interestingly in the survey, 76% of respondents indicated that they were provided with information to familiarise themselves with the NHC when they began their jobs. Some gained information through more than one source (in some cases from three sources, see the figure below). Some only from one source. The figure above references the fact that not everyone had access to a training manual but had to get their information from some other sources. Seventy-three percent learnt about the NHC from a manual. A verbal briefing from a colleague gave 41% of respondents their information, an induction also supplied 41% with information. However, during the workshops a consistent question asked (through a show of hands), was how many of the candidates had read the NHC, and generally the response was below 25%. This was confirmed through the assessments where generally the lowest marks obtained within the assessments were on the sections where the candidates had to determine which programmes were applicable to certain real-life scenarios, indicating a poor grasp of the NHC itself. What was particularly noteworthy was how few officials throughout the country, except for some officials in the Eastern and Western Cape provinces, had had any contact or experience with either the PHP or UISP programmes.

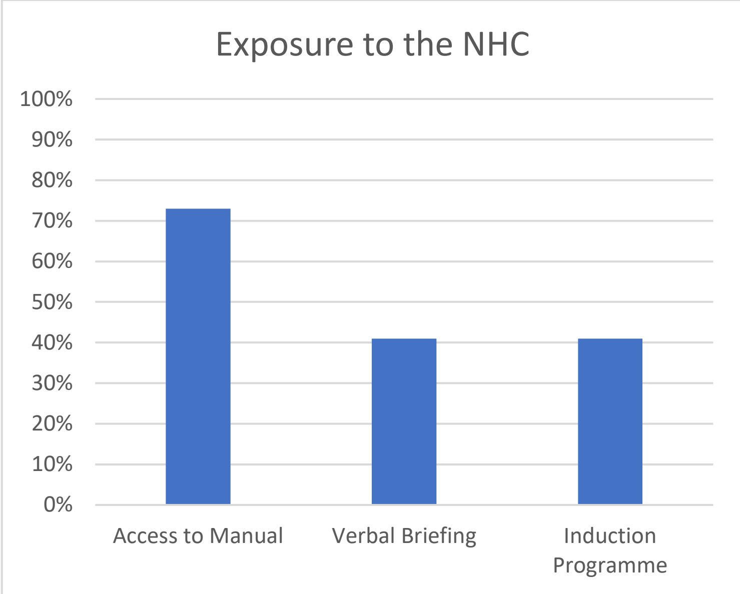



**Figure 5.4 Exposure to the NHC**


**Figure 5.5 Familiarity with NHC/informal responses during training workshops**

Another aspect derived from the findings from the flipcharts was around the intersection of political interference and capacity. These issues were raised in several categories related to either non-compliance or poor management capacity (under-qualified managers) from the flipcharts. Issues of poor workmanship and incomplete projects due to unqualified appointed contractors ranked 5th out of 64 [or 2nd out of

51] (alluding to non-compliant procurement processes) and poorly skilled staff (including managers) ranked 6th out of 64 [3rd out 51] (alluding to non-compliance with appointment skill requirements).

According to Chipkin (2016), the above could in turn have many unintended repercussions, least of all when, as according to the Public Service Commission reports, people are appointed with inadequate skills, knowledge or experience for their posts. Participants in the survey also noted that problems are exacerbated when under-qualified appointments are made at the management level. Based on the flipchart analyses, many of the reasons, particularly under the 'capacity' category could be attributed to poor management (lack of fore-planning and problem-solving). Consequences of this poor management also relate to many of the reasons for 'blocked and delayed housing projects' (ranked 6th out of 64 [3rd out 51] – alluding to non-compliance with appointment skill requirements). The highest number of responses under this category was poor 'waiting list' management which could also be argued to be a lack of capacity issue.

The above references to the lack of skills are confirmed through the evaluation reports of some 36 workshop sessions in which the most persistent feedback was that the majority (and in some cases every participant) were completely unfamiliar with the NHC. This was further confirmed in their assessments where in almost every workshop the lowest marks were attained in the exercise where the participants had to use the NHC to identify the appropriate programme against a given housing need scenario.

### 5.6.3 Political environment

On the list of reasons impinging on officials' ability to implement the NHC, interference by politicians was listed seventh highest out of 64 individually articulated reasons. However, when grouped under themes, political influence was 8$^{th}$ out of 11 themes of grouped reasons. Despite this, it is a significant factor as while it did not feature as prominently as other reasons on the flipcharts it was consistently raised and a significant amount of discussion, during the workshops, was on what officials could do when approached by a Councillor to undertake a task that could be considered malfeasance or in contravention of policy. Thus, the impression obtained was that some Councillors were ignorant of policy and regulations or were intentionally attempting to get officials to do things for them that furthered their party or individual interests. Furthermore, through our discussions in the workshops it became apparent that many junior officials did not have the knowledge of policies and regulations to counter or protect themselves from such interferences/requests from politicians or senior managers in some cases.

As an example, a recurring narrative during the workshops was that officials were approached by Councillors or a senior manager to approve or sign a financial claim form on work undertaken, mainly construction work on a BNG housing project, prior to the work having been completed. When the officials hesitated to do so they were threatened with disciplinary actions for insubordination. In most cases the officials indicated that they felt helpless in such situations and largely complied with the request. "It is become the institutional norm for officials to follow these 'political' instructions, even when they require non-compliant actions" (PARI, 2019 cited by Ledger, 2020:51). In some cases, this could be malfeasance if there were kick-back payments from the contractors to the Councillors or senior managers or it could just be non-compliance to meet some New Public Management, KPI schedule due to a time deadlines. Alternatively, even if there were financial kickbacks, these were not necessarily to benefit the individual interests of the Councillor or senior management but could have been channelled into political party coffers as indicated in many of the narratives on the recent 'State Capture' evidence assembled in the Zondo Commission of Enquiry[35] (Zondo Commission, 2022).

From our workshop experiences, I concur with the arguments postulated by Chipkin (2016) and Ledger (2020). Chipkin (2016) argues that these actions are often crudely defined as corruption; however, he maintains that this interpretation is inherently limited as these so-called corrupt practices are also discursive in that they are often based on political-ideological commitments. According to him, the ANC state saw itself as the legitimate representative of the people and was therefore able to define what was the public good. As part of this understanding, they adopted a political logic in the appointment of state officials to counter the counter-revolutionary forces within the

[35] A governmental commission appointed to investigate wide-spread state capture and corruption in South Africa between 2018 and 2022.

state bureaucracy at that time who were perceived as undermining the post-apartheid state. As such, through a process of cadre deployment the ANC took control of the administration and then used decentralisation to support economic transformation through the outsourcing of government contracts to the emergent black capitalist class. He further argues that the ANC lost control of this process to factionalism within the party which has resulted in, “The internal strife revolves around contestation for power and state resources rather than differences on how to implement policies of the movement” (ANC, 2012a:9 cited in Chipkin, 2016:16).

### 5.6.4 The role of individual agency

While generally we found the workshop candidates to be dedicated and, in some cases, passionate state officials, determined to improve the lives of fellow South Africans, they were not immune to popular anecdotal assumptions and prejudices. A common observation in the workshops was an attitude of paternalism by officials towards their ‘clients’. This was often expressed as a very top-down approach – knowing better than the community and having tremendous mistrust of communities, particularly of those in informal settlements [one participant even admitting that he carried a gun when working in informal settlements]. This paternalism is alluded to in respect of the dominant production of RDP houses, “…. to what extent the incoming government itself recognized the political gain to be made from the paternalist and demobilizing aspects of the standardized product-linked capital subsidy approach” (Huchzermeyer, 2003:601). This paternalistic attitude could be developed and reinforced through the very policy programmes within the NHC that the officials appeared to be most familiar with, such as the Project based RDP/BNG housing and the Integrated Housing Programmes (both top-down and greenfield-oriented programmes).

Dominant narratives within the workshops illuminated a common bias against beneficiaries and foreigners by state officials. Firstly, there was a common resentment that beneficiaries received a 40m² house with a serviced site while they as housing officials could not qualify for the subsidy (due to their earnings) and could not afford such a product within the market. Secondly, there was a particular bias against informal settlement dwellers who were perceived as ‘invading land’ to ‘jump’ the waiting list queue, by forcing the local municipality to provide services and to include them into housing projects. A popular refrain was that many informal dwellers were in fact quite well-off and chose those living circumstances to game the system. Another popular narrative was that foreigners dominated the creation of informal settlements and were largely responsible for the renting of BNG houses from beneficiaries placing a further undue burden on the housing delivery system.

These attitudes have in some cases contributed to officials either ignoring or very reluctantly pursuing housing delivery options on behalf of informal dwellers (Huchzermeyer, 2003 and 2010). These attitudes were also reflected in the second most reported feedback from the workshop evaluation reports, in that the participants took a particular interest and engaged in heated debates about the constitutional obligations of providing housing. What was evident is that many participants incorrectly interpreted the Constitutional Obligations of Section 26 – The right to Housing. This was particularly so with section 2 of the Right, where officials merely saw themselves in a reactive role as a state official, waiting for potential beneficiaries to put their names on a waiting list rather than the officials demonstrating what they have done to proactively address the Right.

## 5.7 Analysis and Conclusions

The findings from this case study show a networked governance environment with complex webs of power (Lindell, 2008), with local municipal human settlement departments dependent on funding from provincial departments to undertake projects, interdependencies with other state agencies such as the Housing Development Agency to get access to land for housing. In addition, almost all implementation of housing projects from professional planning through to construction is undertaken by private sector service providers. As such, this network of governance requires complex communication and legislative agreements to function smoothly, which according to the flipchart findings above, is not the case.

Correspondingly, the very nature of the NHC policy instrument in its interdisciplinary, inter-governmental collaboration and technical requirements is a mismatch with the local public administration and socio-technical systems in place. The complex national institutional environment of concurrent spheres of government has parallel responsibilities and silo institutional structures with poor inter-department communication and even worse communication between provincial and local government human settlement departments.

Furthermore, there is a dearth of qualified technocrats and institutional operational mechanisms to support individual agency to implement the NHC effectively (such as Memorandums of Agreement, adequately detailed SOPs, etc.). At the individual agency level, there is no systemic capacitation or mentoring. Conversely, issues of poor staff capacity with limited ability to apply discretion where necessary complicates the application of SOPs. Thus, it mitigates against the evolution of a collaborative approach between the different spheres of government and sector departments.

Actual practice norms and standards appear to be a significant issue in relation to individual agency, involving political interference for personal or party gain (sometimes associated with factional ruling party politics), fear of politicians, frequent churn of staff (particularly senior managers who often occupy acting positions), instances of under-qualified senior managers down to administrative staff (through cadre deployment), and in some cases corruption. This raises the question of individuals' discretionary powers and their intentionality around the application of the policy instruments (Lipsky, 1971). As discussed above (Bénit-Gbaffou, forthcoming), the lack of awareness of how to deal with pressure to undertake dubious tasks for politicians under threat of suspension, or their lack of awareness and skills to apply tools to effect interventions, mitigates the achievement of officials' intentions to make progressive changes to the lives of their clients.

The combined, common paternalistic attitude towards beneficiaries in daily practices, together with their generally poor knowledge of the more intensive community engagement programmes like the UISP and PHP programmes suggests officials generally prefer applying the top-down greenfield BNG housing delivery programmes over the above programmes. These preferences are possibly reinforced through the quicker delivery time frame of their performance management requirements and the overall perception of the ruling party politicians that housing is the most practical and visibly means of delivering to the poor. These factors demonstrate the possible aggregative effect that policy instruments can have on officials, in that the training workshops demonstrated that most of the officials were much more familiar with the BNG green field housing project instrument than any of the other instruments and thus preferred it. Furthermore, the findings indicated that many officials also ideologically supported the BNG greenfields instrument because of its aesthetic appeal and because of the associated process of waiting-list approved beneficiaries rather than queue jumpers which they associated with informal settlement upgrade projects (UISP).

Essentially the findings of this research support the argument that, while there are other useful ways of examining a country's governance practices through for example the institutional structures of governance, an examination of how officials engage with its policy instruments provides useful insights into implementation constraints as well as revealing the implicit intentions of the state. In this case it is apparent that the implementation of the NHC maintains a top-down approach which continues the state's apparent intention to control the provision of low-cost housing as a key demonstrator of delivery to the poor by the ANC government. This is apparent in the attitudes of the officials in how they interpret implementation of the policy, as well as how politicians feel it is within their rights to interfere in the processes.

As facilitators we were sceptical that a three-day workshop could bridge the significant skills and knowledge gaps observed amongst some of the participants, but also acknowledged the value in giving voice to many concerns not anticipated in the formulation of public policies. Most significant for us was the realisation of the impact that the broader policy context or environment has on each official's attempts to follow the official norms to implement the NHC policy.

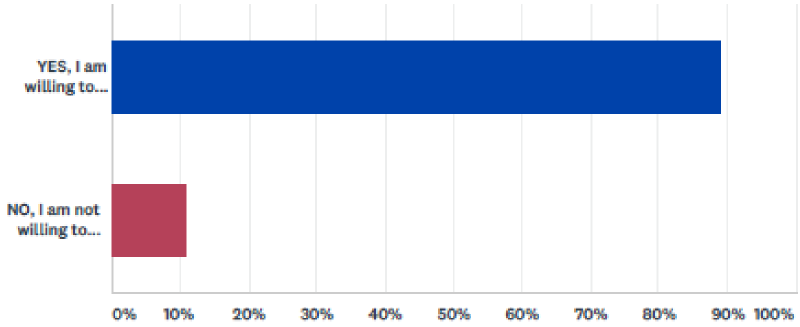
Finally, on the question whether a policy instrument designed within a networked governance structure is appropriate for the current DoHS policy environment, the evidence suggests it is inappropriate. To improve housing service delivery and enable innovation one would have to either amend the policy instruments to suit the policy environment or alter the contradictory and delinquent power relations and management culture within the policy environment together with individual official's capacity and agency. To this end, the latter would be more difficult but sustainable in the long term. As such, the call to professionalise the South African government bureaucracy by organisations such as PARI should be supported.

# Appendix 5.1: SurveyMonkey



## Q1 Are you willing to participate in the survey?

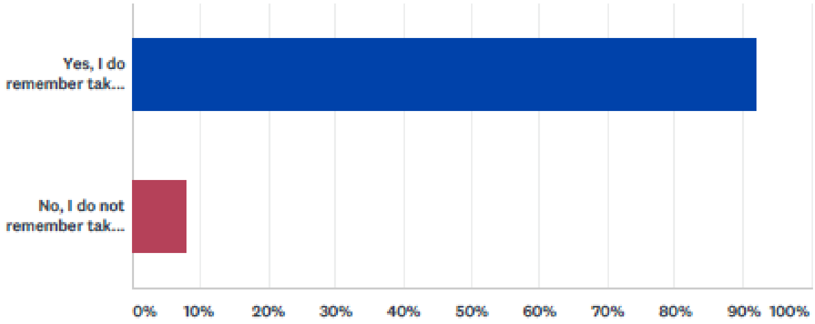
Answered: 46 Skipped: 2




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| YES, I am willing to participate. | 89.13% | 41 |
| NO, I am not willing to participate. | 10.87% | 5 |
| TOTAL | | 46 |

## Q2 Do you remember participating in the Introduction to Housing Policy for Housing Administrators course run by Dr Margot Rubin and Neil Klug?

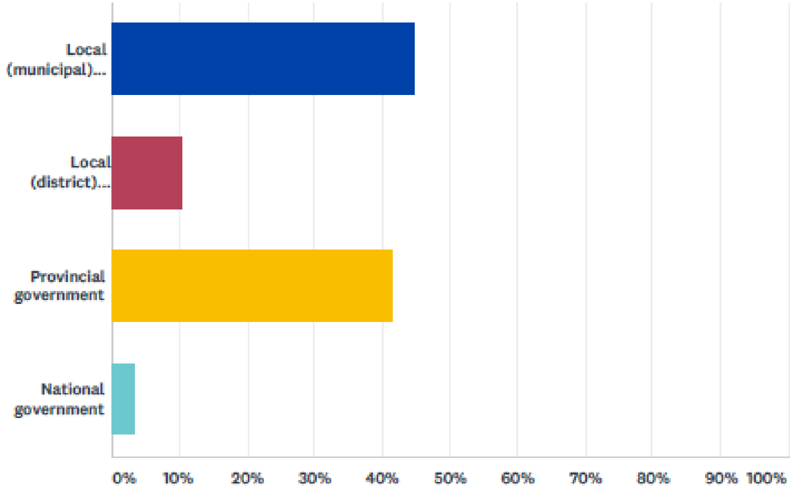
Answered: 38 Skipped: 10




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes, I do remember taking the course | 92.11% | 35 |
| No, I do not remember taking the course | 7.89% | 3 |
| TOTAL | | 38 |

# Q3 Which sphere of government did you work in when you participated in the Housing Policy Short Course?

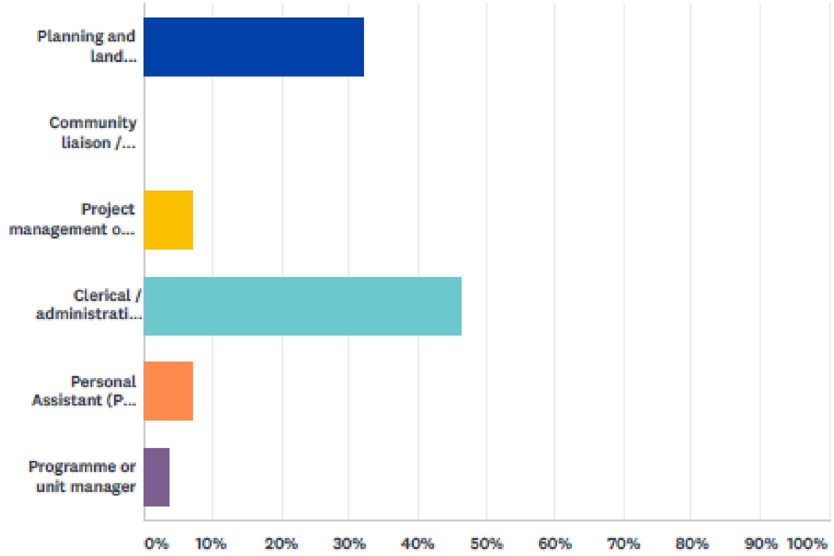
Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Local (municipal) government | 44.83% | 13 |
| Local (district) government | 10.34% | 3 |
| Provincial government | 41.38% | 12 |
| National government | 3.45% | 1 |
| TOTAL | | 29 |

## Q4 Which category best describes the work you were doing when you participated in the Housing Policy Short Course? If your work fell into more than one category, please choose the category that took up most of your time.

Answered: 28 Skipped: 20

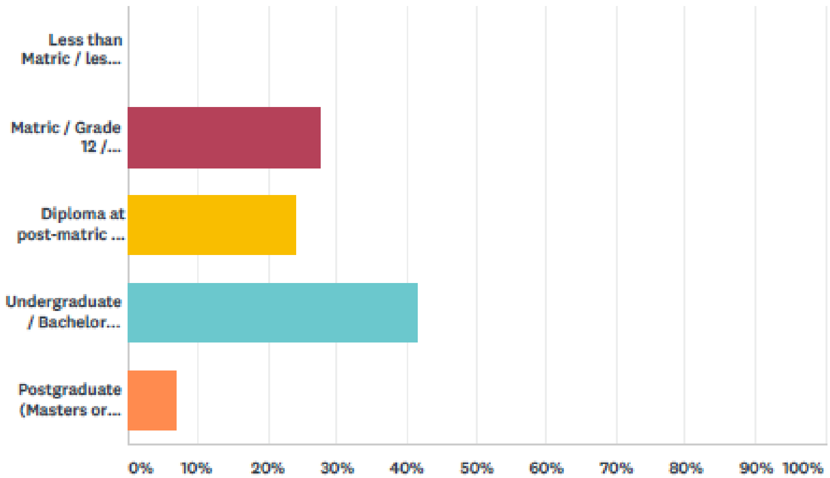



| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Planning and land administration (such as planning approvals, layouts, land identification, land consolidation and so forth) | 32.14% | 9 |
| Community liaison / community education | 0.00% | 0 |
| Project management or contract management (including liaison with developers) | 7.14% | 2 |
| Clerical / administration work (including data entry) | 46.43% | 13 |
| Personal Assistant (PA) / assistant to a manager / secretarial | 7.14% | 2 |
| Programme or unit manager | 3.57% | 1 |
| TOTAL | | 28 |

| # | OTHER (PLEASE SPECIFY) | DATE |
|---|---|---|
| 1 | Policy and Research | 8/12/2019 4:50 PM |
| 2 | Housing Property Management asset register | 8/2/2019 2:36 PM |
| 3 | Service delivery, housing subsidies | 8/2/2019 2:20 PM |

# Q5 What was your highest level of education when you participated in the introduction to Housing Policy course?

Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Less than Matric / less than Grade 12 / certificate at less than Grade 12 | 0.00% | 0 |
| Matric / Grade 12 / certificate or diploma at Grade 12 level | 27.59% | 8 |
| Diploma at post-matric / post-Grade 12 level | 24.14% | 7 |
| Undergraduate / Bachelor degree / Honours degree / Undergraduate plus diploma | 41.38% | 12 |
| Postgraduate (Masters or PhD) | 6.90% | 2 |
| TOTAL | | 29 |

# Q6 Think back to when you participated in the course: at that time, how long had you been working in the Housing and Human Settlements sector in government? (IN YEARS)

Answered: 28 Skipped: 20

| # | RESPONSES | DATE |
|---|---|---|
| 1 | 1.0 | 8/23/2019 9:51 AM |
| 2 | 7.0 | 8/19/2019 4:17 PM |
| 3 | 15.0 | 8/15/2019 10:52 AM |
| 4 | 10.0 | 8/15/2019 10:38 AM |
| 5 | 8.0 | 8/15/2019 9:25 AM |
| 6 | 5.0 | 8/15/2019 1:28 AM |
| 7 | 2.0 | 8/14/2019 5:47 PM |
| 8 | 0.3 | 8/14/2019 5:40 PM |
| 9 | 2.0 | 8/14/2019 4:55 PM |
| 10 | 8.0 | 8/12/2019 9:18 PM |
| 11 | 5.0 | 8/12/2019 6:30 PM |
| 12 | 5.0 | 8/12/2019 4:51 PM |
| 13 | 1.0 | 8/12/2019 4:50 PM |
| 14 | 2.8 | 8/12/2019 3:24 PM |
| 15 | 1.0 | 8/8/2019 11:07 AM |
| 16 | 9.0 | 8/8/2019 10:50 AM |
| 17 | 6.0 | 8/6/2019 5:49 PM |
| 18 | 14.0 | 8/6/2019 2:34 PM |
| 19 | 2.0 | 8/6/2019 1:29 PM |
| 20 | 7.0 | 8/6/2019 1:28 PM |
| 21 | 1.0 | 8/6/2019 1:18 PM |
| 22 | 6.0 | 8/6/2019 10:25 AM |
| 23 | 5.0 | 8/2/2019 3:19 PM |
| 24 | 3.0 | 8/2/2019 2:36 PM |
| 25 | 5.0 | 8/2/2019 2:35 PM |
| 26 | 10.0 | 8/2/2019 2:29 PM |
| 27 | 9.0 | 8/2/2019 2:20 PM |
| 28 | 6.0 | 8/2/2019 1:29 PM |

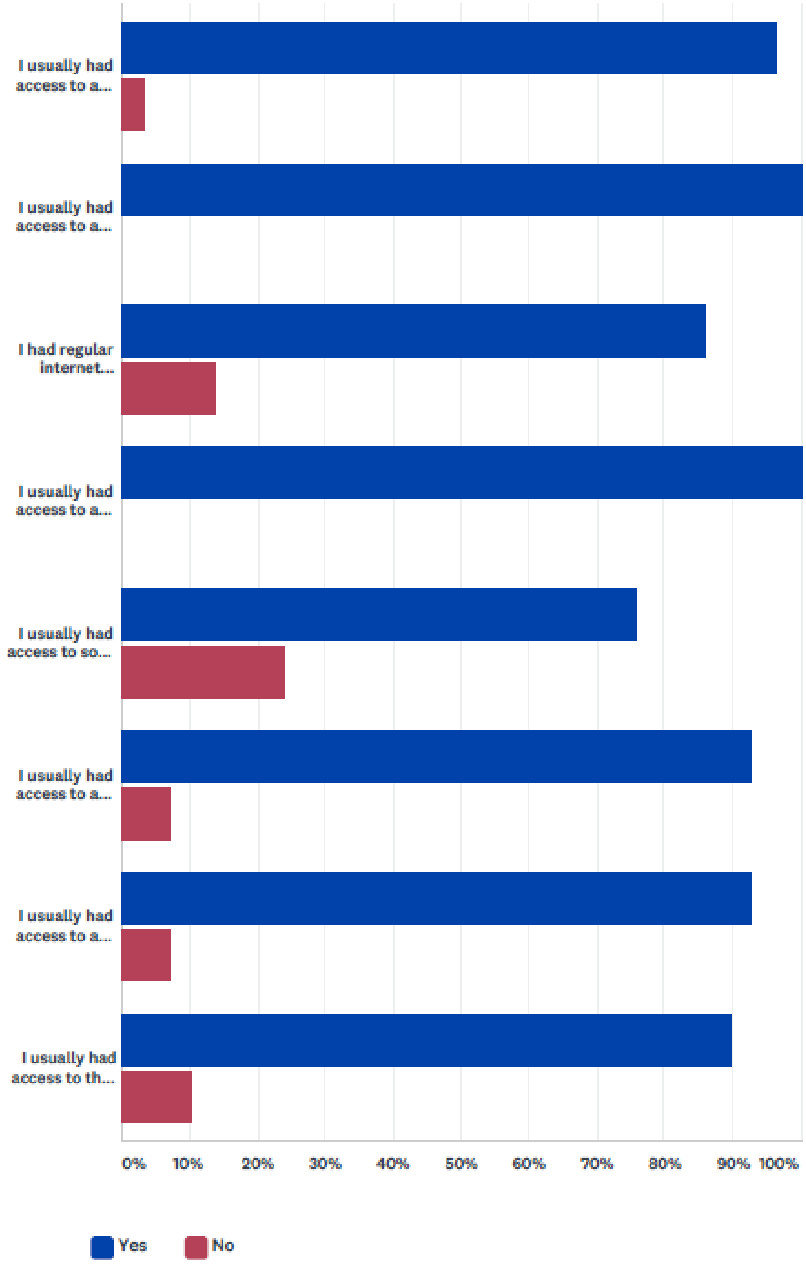
# Q7 Think back to when you participated in the course: at that time, how long had you been working in government in total (i.e. including any other positions or sectors in government that you have worked in)? (IN YEARS)

Answered: 29 Skipped: 19

| # | RESPONSES | DATE |
|---|---|---|
| 1 | 1.0 | 8/23/2019 9:51 AM |
| 2 | 7.0 | 8/19/2019 4:17 PM |
| 3 | 15.0 | 8/15/2019 10:52 AM |
| 4 | 25.0 | 8/15/2019 10:38 AM |
| 5 | 8.0 | 8/15/2019 9:25 AM |
| 6 | 5.0 | 8/15/2019 1:28 AM |
| 7 | 2.0 | 8/14/2019 5:47 PM |
| 8 | 4.0 | 8/14/2019 5:40 PM |
| 9 | 2.0 | 8/14/2019 5:23 PM |
| 10 | 3.0 | 8/14/2019 4:55 PM |
| 11 | 8.0 | 8/12/2019 9:18 PM |
| 12 | 6.0 | 8/12/2019 6:30 PM |
| 13 | 5.0 | 8/12/2019 4:51 PM |
| 14 | 6.0 | 8/12/2019 4:50 PM |
| 15 | 6.3 | 8/12/2019 3:24 PM |
| 16 | 1.0 | 8/8/2019 11:07 AM |
| 17 | 9.0 | 8/8/2019 10:50 AM |
| 18 | 11.0 | 8/6/2019 5:49 PM |
| 19 | 12.0 | 8/6/2019 2:34 PM |
| 20 | 2.0 | 8/6/2019 1:29 PM |
| 21 | 7.0 | 8/6/2019 1:28 PM |
| 22 | 2.0 | 8/6/2019 1:18 PM |
| 23 | 4.0 | 8/6/2019 10:25 AM |
| 24 | 5.0 | 8/2/2019 3:19 PM |
| 25 | 4.0 | 8/2/2019 2:36 PM |
| 26 | 6.0 | 8/2/2019 2:35 PM |
| 27 | 3.0 | 8/2/2019 2:29 PM |
| 28 | 9.0 | 8/2/2019 2:20 PM |
| 29 | 6.0 | 8/2/2019 1:29 PM |

## Q8 Think back to when you participated in the course: at that time, did you have access to the following resources and infrastructure? Please choose as many options as are applicable to you

Answered: 29 Skipped: 19

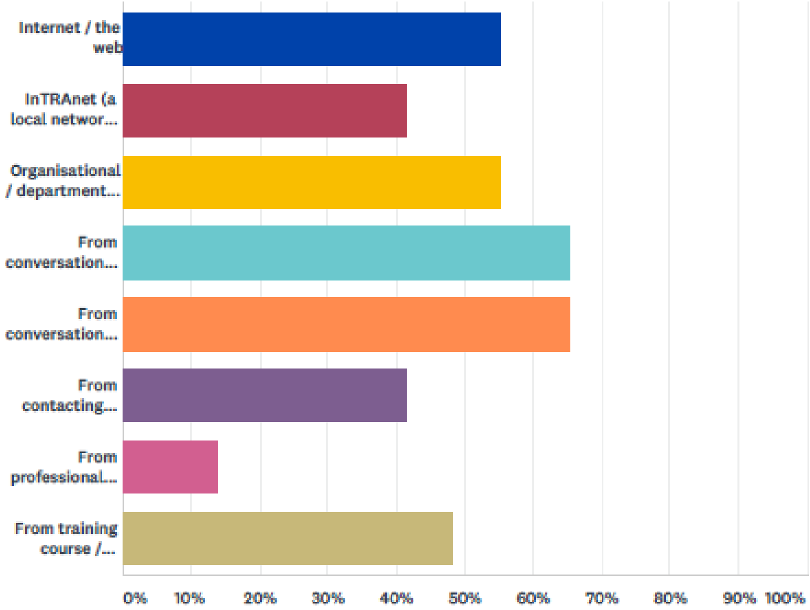



| | YES | NO | TOTAL |
|---|---|---|---|
| I usually had access to a desk | 96.55%<br>28 | 3.45%<br>1 | 29 |
| I usually had access to a working computer/ laptop | 100.00%<br>28 | 0.00%<br>0 | 28 |

| | | | |
|---|---|---|---|
| I had regular internet connection | 86.21%<br>25 | 13.79%<br>4 | 29 |
| I usually had access to a landline or cellphone | 100.00%<br>29 | 0.00%<br>0 | 29 |
| I usually had access to some form of transport for use at work, including petrol if I needed it | 75.86%<br>22 | 24.14%<br>7 | 29 |
| I usually had access to a working printer | 92.86%<br>26 | 7.14%<br>2 | 28 |
| I usually had access to a working photocopy machine | 92.86%<br>26 | 7.14%<br>2 | 28 |
| I usually had access to the forms / templates I needed for doing my work | 89.66%<br>26 | 10.34%<br>3 | 29 |

## Q9 Think back to when you participated in the course: at that time, how did you obtain day-to-day information and guidance on your job? You CAN choose more than one option:

Answered: 29 Skipped: 19

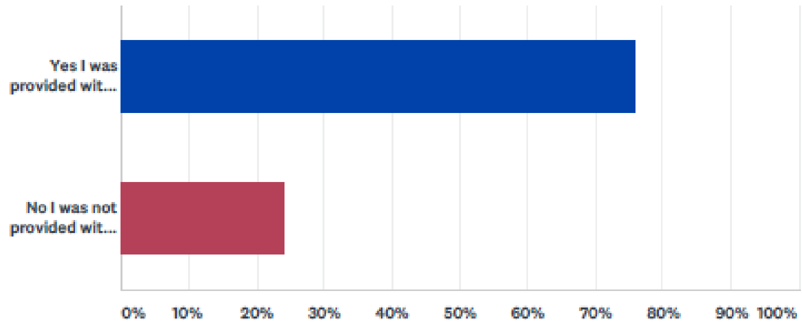



| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Internet / the web | 55.17% | 16 |
| InTRAnet (a local network or platform online for use by people in your organisation) | 41.38% | 12 |
| Organisational / departmental manuals or handbooks | 55.17% | 16 |
| From conversation with my manager / supervisor | 65.52% | 19 |
| From conversation with other work colleagues (i.e. in my organisation) | 65.52% | 19 |
| From contacting people in my professional network outside the organisation | 41.38% | 12 |
| From professional / academic articles / journals / books | 13.79% | 4 |
| From training course / capacity building sessions | 48.28% | 14 |
| Total Respondents: 29 | | |

| # | OTHER (PLEASE SPECIFY) | DATE |
|---|---|---|
| 1 | hss | 8/2/2019 2:36 PM |
| 2 | My textbooks | 8/2/2019 2:20 PM |

## Q10 Think back to the job you had when you participated in the course: were you provided with information to familiarise yourself with the Housing Code when you started that job? This may have taken the form of a workshop / training, a briefing from a colleague, or it may have taken the form of written information about the Housing Code.

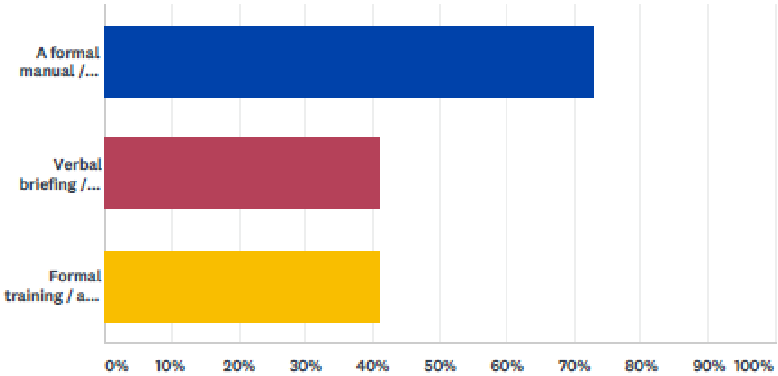
Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes I was provided with information to familiarise me with the Housing Code when I started that job | 75.86% | 22 |
| No I was not provided with information to familiarise me with the Housing Code when I started that job | 24.14% | 7 |
| TOTAL | | 29 |

## Q11 Regarding the information you were given when you started the job you were doing when you participated in the Housing Policy course: what form did that information on the Housing Code take? You can choose more than one option.

Answered: 22 Skipped: 26

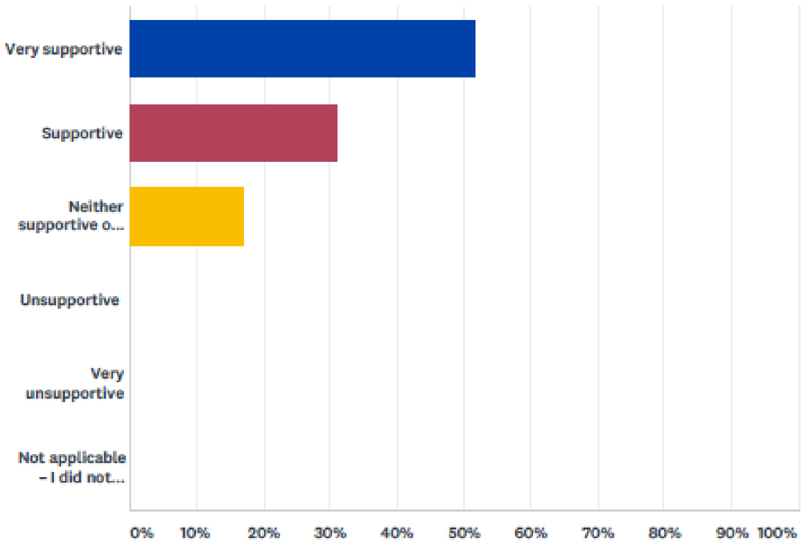



| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| A formal manual / written documentation | 72.73% | 16 |
| Verbal briefing / verbal information from a colleague | 40.91% | 9 |
| Formal training / a capacity building session / an induction programme | 40.91% | 9 |
| Total Respondents: 22 | | |

| # | OTHER (PLEASE SPECIFY) | DATE |
|---|---|---|
| | There are no responses. | |

## Q12 Think back to when you participated in the course: at that time, was the person responsible for supervising your work / line manager supportive of you in your work?

Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Very supportive | 51.72% | 15 |
| Supportive | 31.03% | 9 |
| Neither supportive or unsupportive | 17.24% | 5 |
| Unsupportive | 0.00% | 0 |
| Very unsupportive | 0.00% | 0 |
| Not applicable – I did not report to a supervisor / line manager | 0.00% | 0 |
| TOTAL | | 29 |

## Q13 What was the reason that you said your supervisor / line manager was unsupportive, or ‘neither supportive nor unsupportive’?

Answered: 5 Skipped: 43

| # | RESPONSES | DATE |
|---|---|---|
| 1 | No thorough direction in work to be done | 8/14/2019 5:49 PM |
| 2 | Both of us were newly appointed | 8/12/2019 6:31 PM |
| 3 | We had to learn on the job from either peers or other colleagues | 8/12/2019 4:52 PM |
| 4 | Ones opinions do not matter | 8/2/2019 2:31 PM |
| 5 | Doesnt like sharing information | 8/2/2019 2:25 PM |

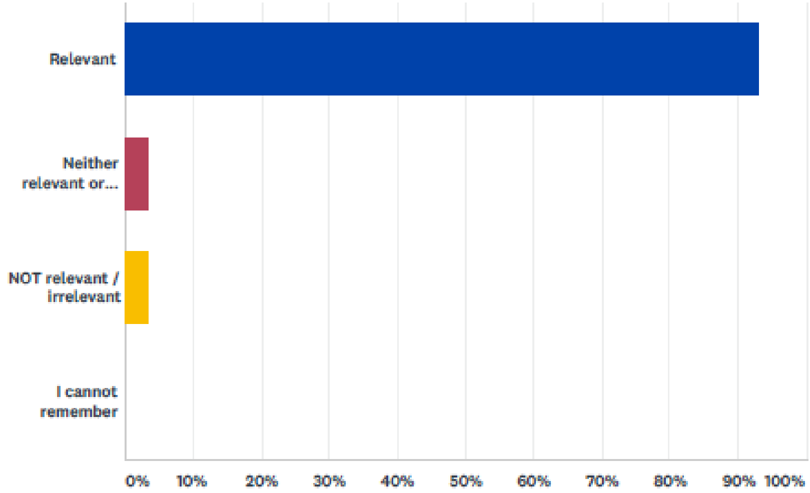
# Q14 What were the most important learnings / insights for you from the course, if any?

Answered: 24 Skipped: 24

| # | RESPONSES | DATE |
|---|---|---|
| 1 | The environment that we work in is huge and from time to time we need this training | 8/15/2019 10:41 AM |
| 2 | Processes in the housing value chain | 8/15/2019 9:27 AM |
| 3 | The subsidy schemes | 8/15/2019 1:31 AM |
| 4 | Local Housing processess | 8/14/2019 5:50 PM |
| 5 | n/a | 8/14/2019 5:42 PM |
| 6 | Presentation | 8/14/2019 5:26 PM |
| 7 | none | 8/14/2019 4:57 PM |
| 8 | Informal settlement and Housing code | 8/12/2019 9:24 PM |
| 9 | Understanding the housing code and where does it come from | 8/12/2019 6:33 PM |
| 10 | Batho Pele principle and guidelines to how I must conduct myself within my job | 8/12/2019 4:54 PM |
| 11 | The various roles and responsibilities of the different spheres of government | 8/12/2019 4:53 PM |
| 12 | That upon receiving an RDP House, one should get a title deed along with it. | 8/12/2019 3:27 PM |
| 13 | understanding housing code in terms of administration work | 8/8/2019 10:53 AM |
| 14 | the policies, especially Rental | 8/6/2019 5:52 PM |
| 15 | LEARNING ABOUT WHITE PAPER POLICY | 8/6/2019 2:38 PM |
| 16 | different housing codes which relates to beneficiaries | 8/6/2019 1:33 PM |
| 17 | Housing legislation | 8/6/2019 1:32 PM |
| 18 | I have gained a better understanding of human settlements process or chain as well as relevant legislation | 8/6/2019 10:28 AM |
| 19 | public participation is very much important in human settlements programmes | 8/2/2019 3:22 PM |
| 20 | the housing code ,housing act and all the housing subsidy programme | 8/2/2019 2:58 PM |
| 21 | understand housing policy clearly | 8/2/2019 2:38 PM |
| 22 | The importance of adhering to policies | 8/2/2019 2:35 PM |
| 23 | the project life cycle, clear understanding of the housing code | 8/2/2019 2:27 PM |
| 24 | If the lecturer/facilitator is knowledgable the course becomes somewhat easier to grasp. | 8/2/2019 1:30 PM |

## Q15 Did you feel that the course content was relevant to your work at that time?

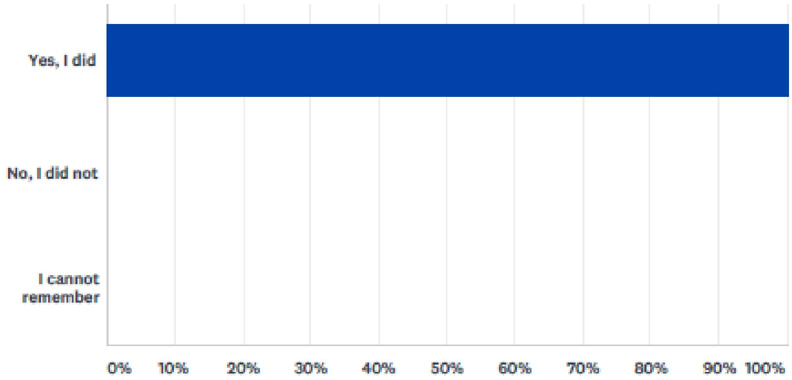
Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Relevant | 93.10% | 27 |
| Neither relevant or irrelevant | 3.45% | 1 |
| NOT relevant / irrelevant | 3.45% | 1 |
| I cannot remember | 0.00% | 0 |
| TOTAL | | 29 |

## Q16 Did you gain factual information from the course that you did not have before?

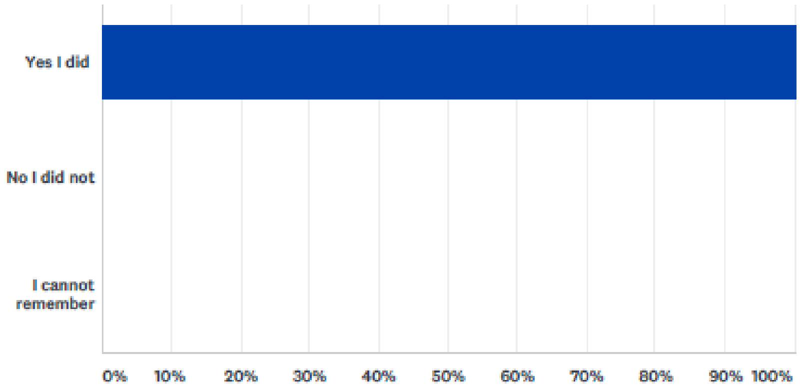
Answered: 28 Skipped: 20




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes, I did | 100.00% | 28 |
| No, I did not | 0.00% | 0 |
| I cannot remember | 0.00% | 0 |
| TOTAL | | 28 |

## Q17 Did you gain an improved understanding or insight into the housing delivery environment in which you worked?

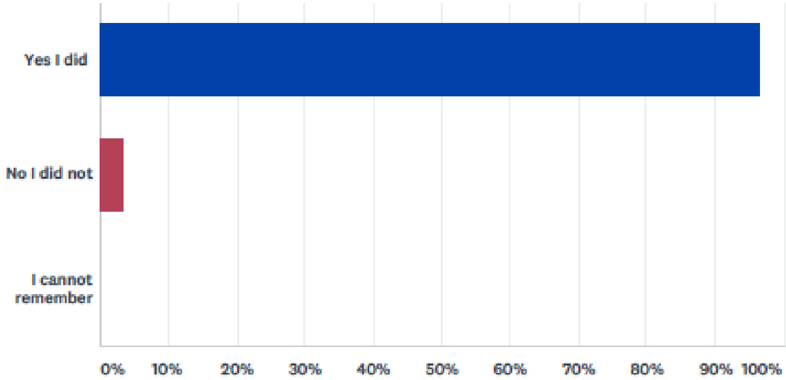
Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes I did | 100.00% | 29 |
| No I did not | 0.00% | 0 |
| I cannot remember | 0.00% | 0 |
| TOTAL | | 29 |

# Q18 Did you gain new tools, approaches, or ideas for undertaking your work?

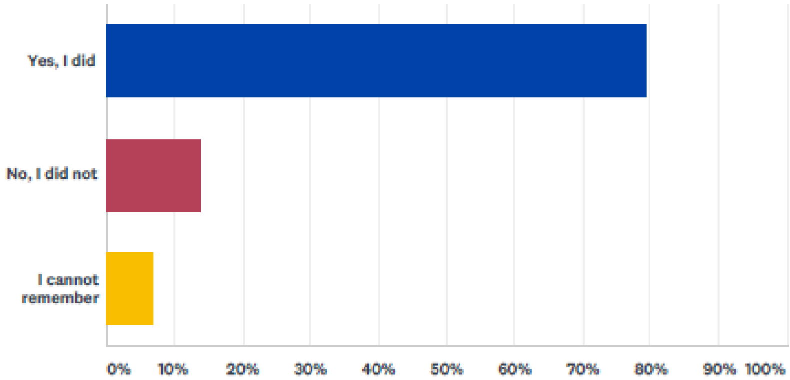
Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes I did | 96.55% | 28 |
| No I did not | 3.45% | 1 |
| I cannot remember | 0.00% | 0 |
| TOTAL | | 29 |

## Q19 Did you / do you ever go back to your notes/readings from the course?

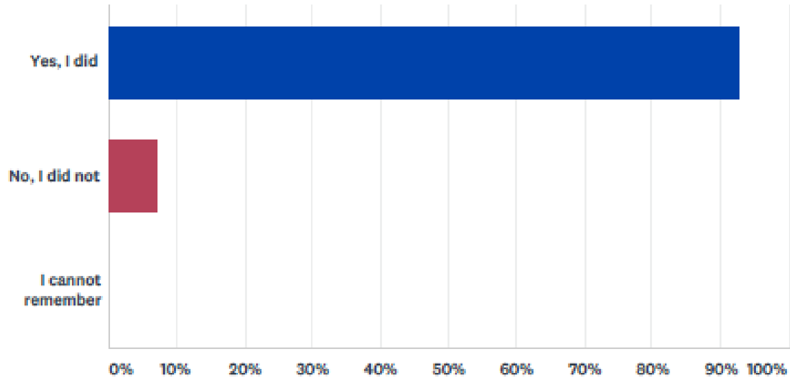
Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes, I did | 79.31% | 23 |
| No, I did not | 13.79% | 4 |
| I cannot remember | 6.90% | 2 |
| TOTAL | | 29 |

## Q20 Did you / have you ever discussed or debated the issues that emerged from the course with colleagues or other professionals in your network?

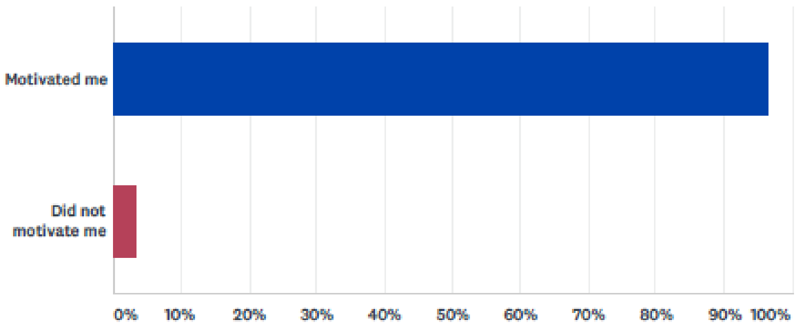
Answered: 28 Skipped: 20




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes, I did | 92.86% | 26 |
| No, I did not | 7.14% | 2 |
| I cannot remember | 0.00% | 0 |
| TOTAL | | 28 |

## Q21 Did your participation in the Housing Policy Course motivate you to want to change anything about your work practice / programmes / approach to your work? This question asks about motivation and does not assume you were able to make any changes.

Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Motivated me | 96.55% | 28 |
| Did not motivate me | 3.45% | 1 |
| TOTAL | | 29 |

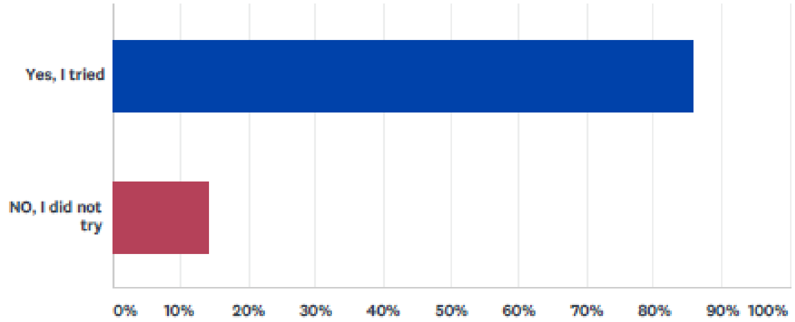
## Q22 What was the reason you did not feel motivated to make changes to your work practice / programmes / approach to your work as a result of participation in the Housing Policy Course?

Answered: 1 Skipped: 47

| # | RESPONSES | DATE |
|---|---|---|
| 1 | I left municipal employment shortly afterwards | 8/19/2019 4:18 PM |

## Q23 Did you try and make changes (or add something new) to your work practice / programmes / approach to your work as a result of participation in the Housing Policy Course?

Answered: 28 Skipped: 20




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Yes, I tried | 85.71% | 24 |
| NO, I did not try | 14.29% | 4 |
| TOTAL | | 28 |

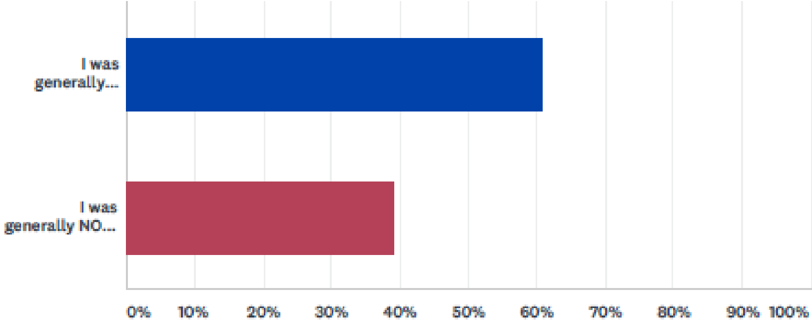
## Q24 What were the reasons you did not try? Even though you were motivated?

Answered: 3 Skipped: 45

| # | RESPONSES | DATE |
|---|---|---|
| 1 | lack of motivation | 8/14/2019 5:50 PM |
| 2 | Supervisor decision is always finL | 8/14/2019 5:29 PM |
| 3 | I was doing clerical and data capturing unable to execute my knowledge on the ground | 8/6/2019 1:35 PM |

## Q25 Were you ABLE to successfully implement/change anything in your work practise that emerged from the course? Please be frank / honest in your assessment.

Answered: 23 Skipped: 25




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| I was generally successful in implementing changes / new work / work approaches | 60.87% | 14 |
| I was generally NOT successful in implementing changes / new work / work approaches | 39.13% | 9 |
| TOTAL | | 23 |

# Q26 What do you think constrained or limited you from making changes / new work / approaches after the Housing Policy Course – here we are thinking about the environment in which you work and your own approaches?

Answered: 6 Skipped: 42

| # | RESPONSES | DATE |
|---|---|---|
| 1 | Resistance from my line managers | 8/15/2019 9:28 AM |
| 2 | Unavailability of resources | 8/15/2019 1:33 AM |
| 3 | not enough support | 8/14/2019 4:59 PM |
| 4 | lack of development in the whole institution | 8/2/2019 2:42 PM |
| 5 | My status of occupation will not have an effect to management | 8/2/2019 2:38 PM |
| 6 | no one likes change, people were very resistant | 8/2/2019 2:29 PM |

# Q27 What were the nature of these changes you made / what kind of changes?

Answered: 13 Skipped: 35

| # | RESPONSES | DATE |
|---|---|---|
| 1 | better understanding of housing issues and how to approach it | 8/15/2019 12:39 PM |
| 2 | We start working together do planning and budget before we do anything | 8/15/2019 10:44 AM |
| 3 | Learning on informal settlement | 8/12/2019 9:26 PM |
| 4 | I've incorporated the information of the housing code in the Housing consumer education sessions | 8/12/2019 6:36 PM |
| 5 | Time management , honest, values, redress | 8/12/2019 5:00 PM |
| 6 | I had meetings with the Knowledge Management Directorate in my Department to brief them on the nature of the course, the contents and the structure as I thought the course was well-structured and well presented. This work would then inform the manner in which the Knowledge Management Unit would conduct Induction Sessions for new appointees. | 8/12/2019 4:56 PM |
| 7 | Were to adhere to the Batho Pele principle and be honest with the client. | 8/12/2019 3:30 PM |
| 8 | consumer education, consultation. | 8/8/2019 10:59 AM |
| 9 | i managed to help poeple who were rental desputes | 8/6/2019 5:55 PM |
| 10 | Sites and Housing waiting lists were updated | 8/6/2019 1:35 PM |
| 11 | when we complete the eedbs forms we were giving the beneficiaries invitation letters to come to the community hall and some times when we visit the house we dont get the beneficiaries we just left the letters under the door and by the date of completing the forms at the hall only few will come we then come with the good profiling method we just go to the municipality they print us the list of people together with the contact number of the owner to can contact them if they dont come to complete the forms and this system worked very good to us as the municipality also assist us to can trace those beneficiaries. we also suggest to write the request to policy officials to can come and assist the beneficiary with affidafit and cerfify copies at the same venue we were operating then this things speed up service delivery to our people as our goal was to transfer property to the beneficiaries who accured the property before 1994. | 8/2/2019 3:29 PM |
| 12 | our municipalities use to not co-operate when request them to co-ordinate the consummer education, we had to use CDWs to reach the communities | 8/2/2019 3:25 PM |
| 13 | I was appointed as a mentor for a PAY intenr and i ran through the HS delivery chain with her. | 8/2/2019 1:35 PM |

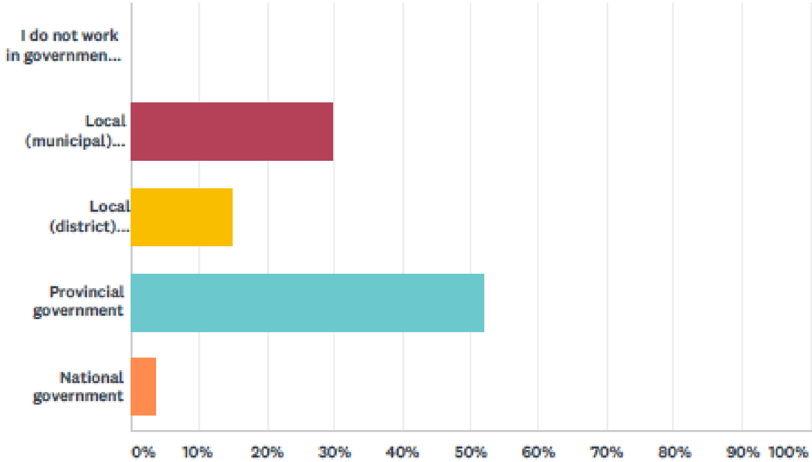
# Q28 What do you think enabled you to make changes / new work / approaches after the Housing Policy Course – here we are thinking about the environment in which you work and your own approaches?

Answered: 13 Skipped: 35

| # | RESPONSES | DATE |
|---|---|---|
| 1 | The knowledge I gain by attending this course | 8/15/2019 12:39 PM |
| 2 | The training help a lot and change the way I do my business | 8/15/2019 10:44 AM |
| 3 | Housing | 8/12/2019 9:26 PM |
| 4 | The knowledge gained at the course | 8/12/2019 6:36 PM |
| 5 | With resources in place you start to see new ways of how to approach your work or assist colleagues to make your job easy | 8/12/2019 5:00 PM |
| 6 | The environment within which I work is open to innovation and implementing changes, where possible and feasible. | 8/12/2019 4:56 PM |
| 7 | I was of the wrong conception at the time, and the new information I gained from the course changed it. | 8/12/2019 3:30 PM |
| 8 | educating citizens in terms of how things are done in terms of the policy in human settlement. | 8/8/2019 10:59 AM |
| 9 | the Rental policy | 8/6/2019 5:55 PM |
| 10 | I was willing to explain the main aim of the National Development Plan and to Elaborate Housing code | 8/6/2019 1:35 PM |
| 11 | there is a different between a person who reads books and those who are not reading or have read books and now stopped to read at all .the course have assited me with the knowledge of housing delivery process and housing policy and helps me to see things in a professional way .you know knowing wrong and right in policies is very good in the implementation of the housing programmes . | 8/2/2019 3:29 PM |
| 12 | the knowlwdged gain from the course and the support from the supervisor | 8/2/2019 3:25 PM |
| 13 | I understood it better and was able to expalin to a newbie my understanding of the course in a nutshell. | 8/2/2019 1:35 PM |

# Q29 Which level of government do you currently work in?

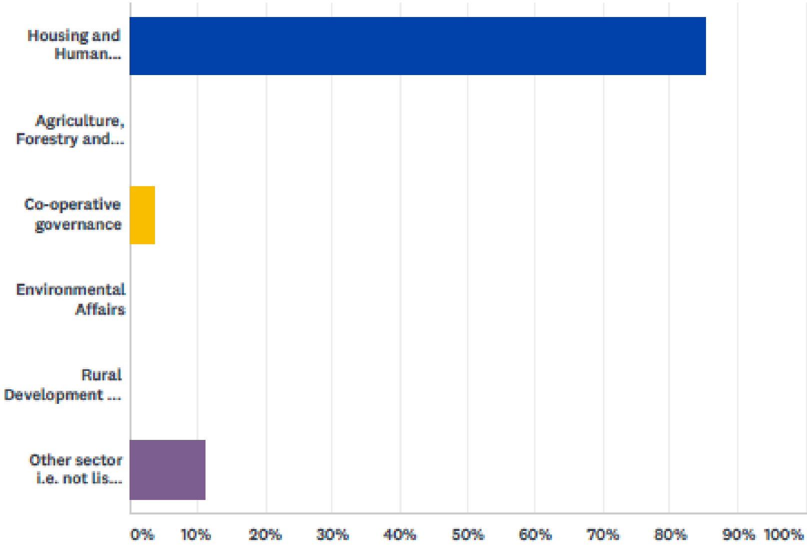
Answered: 27 Skipped: 21




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| I do not work in government anymore | 0.00% | 0 |
| Local (municipal) government | 29.63% | 8 |
| Local (district) government | 14.81% | 4 |
| Provincial government | 51.85% | 14 |
| National government | 3.70% | 1 |
| TOTAL | | 27 |

## Q30 Which sector do you currently work in? Please choose the description that best suites your sector (whether in government or not)?

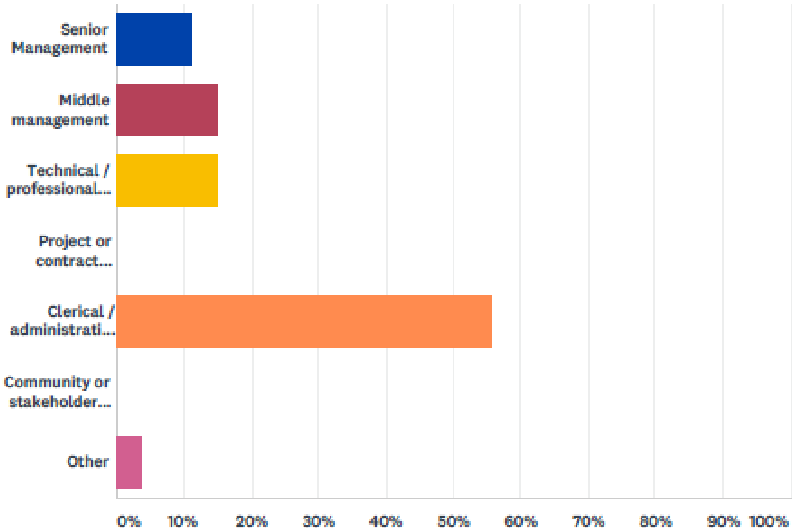
Answered: 27 Skipped: 21




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Housing and Human Settlements | 85.19% | 23 |
| Agriculture, Forestry and Fisheries | 0.00% | 0 |
| Co-operative governance | 3.70% | 1 |
| Environmental Affairs | 0.00% | 0 |
| Rural Development and Land Reform | 0.00% | 0 |
| Other sector i.e. not listed above | 11.11% | 3 |
| TOTAL | | 27 |

# Q31 Which of the following descriptions best describes your current function / role in your organisation?

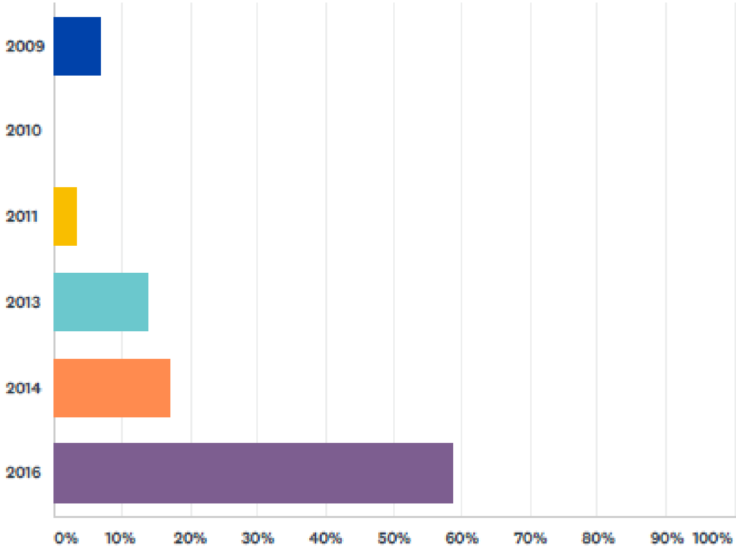
Answered: 27 Skipped: 21




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| Senior Management | 11.11% | 3 |
| Middle management | 14.81% | 4 |
| Technical / professional role | 14.81% | 4 |
| Project or contract management | 0.00% | 0 |
| Clerical / administration / secretarial | 55.56% | 15 |
| Community or stakeholder liaison/ education /capacity building | 0.00% | 0 |
| Other | 3.70% | 1 |
| TOTAL | | 27 |

## Q32 In which year did you participate in the Introduction to Housing Policy course?

Answered: 29 Skipped: 19




| ANSWER CHOICES | RESPONSES | |
|---|---|---|
| 2009 | 6.90% | 2 |
| 2010 | 0.00% | 0 |
| 2011 | 3.45% | 1 |
| 2013 | 13.79% | 4 |
| 2014 | 17.24% | 5 |
| 2016 | 58.62% | 17 |
| Total Respondents: 29 | | |

# Q33 How old are you?

Answered: 27 Skipped: 21

| # | RESPONSES | DATE |
|---|---|---|
| 1 | 30 | 8/23/2019 9:56 AM |
| 2 | 36 | 8/19/2019 4:19 PM |
| 3 | 43 | 8/15/2019 12:39 PM |
| 4 | 50 | 8/15/2019 10:44 AM |
| 5 | 35 | 8/15/2019 9:29 AM |
| 6 | 33 | 8/15/2019 1:34 AM |
| 7 | 35 | 8/14/2019 6:01 PM |
| 8 | 29 | 8/14/2019 5:51 PM |
| 9 | 46 | 8/14/2019 5:31 PM |
| 10 | 25 | 8/14/2019 5:01 PM |
| 11 | 48 | 8/12/2019 9:28 PM |
| 12 | 37 | 8/12/2019 6:37 PM |
| 13 | 33 | 8/12/2019 5:01 PM |
| 14 | 30 | 8/12/2019 4:57 PM |
| 15 | 35 | 8/12/2019 3:31 PM |
| 16 | 35 | 8/8/2019 11:00 AM |
| 17 | 48 | 8/6/2019 5:56 PM |
| 18 | 44 | 8/6/2019 2:40 PM |
| 19 | 29 | 8/6/2019 1:37 PM |
| 20 | 53 | 8/6/2019 1:36 PM |
| 21 | 30 | 8/6/2019 1:22 PM |
| 22 | 39 | 8/2/2019 3:32 PM |
| 23 | 39 | 8/2/2019 3:26 PM |
| 24 | 32 | 8/2/2019 2:43 PM |
| 25 | 56 | 8/2/2019 2:38 PM |
| 26 | 36 | 8/2/2019 2:29 PM |
| 27 | 36 | 8/2/2019 1:36 PM |

## PART D

This part of the thesis covers the extended case study three and is made up of three chapters. The first one, Chapter 6, introduces the case and sets out the broad theoretical and policy context; the following chapter, Chapter 7, sets out the case itself; and the final chapter, Chapter 8, is the analysis and conclusions which will feed into the overall thesis analysis.

# CHAPTER 6:
# CONTEXTUALISING THE ‘QUESTION OF IMPLEMENTATION’: IMPLEMENTING THE UISP INSTRUMENT

## 6.1 Introduction

> *“The front-line service delivery failures of our municipalities often only rise to the top of our collective media attention when a tragic event like the death of a resident takes place, stemming from the failure of service delivery. Like Andries Tatane being brutally murdered in a protest, or five-year-old Michael Komape dying in a pit toilet in Limpopo, or eight-year-old Musa Mbele drowning in a river in QwaQwa while fetching water” (Dickson, 2023:1). Then there are other cases that go unnoticed such as the death of a two-year-old, drowned in a broken pit latrine in Slovo Park in November 2020.*

In this paper I endeavour to separate emotion from academic evidence as I reflect on seven years of deep frustration, as an ‘insider’ technical advisor to the Slovo Park community between 2016 and 2022, as they attempted to in-situ upgrade their informal settlement in Johannesburg, South Africa, with very limited success. The question in my mind is how could there have been so little achieved despite the huge number of resources applied to the project in both time and financial resources. Correspondingly, at the national scale, despite the Upgrading of Informal Settlement Programme (UISP)[36] acknowledged as a policy priority by key government departments such as the Department of Human Settlements; COGTA and the National Treasury. The government at all levels has continued to show an ambivalence towards the

[36] UISP being one of the instruments in the National Housing Code (NHC), made up of a suite of 16 policies and instruments for state housing delivery in South Africa.

programme (CTNGOCI, 2019). “When it comes to “people-centred” development, particularly in terms of water, sanitation and housing in South African cities, there has been so much knowledge, so much policy, so much agreement on what needs to be done, and so little to show for it” (Bradlow et al., 2011:268). Similarly, my overwhelming sentiment is that rarely has there been as much written about a topic of in-situ informal settlement upgrading with so little implementation on the ground, within the context of South Africa.

The literature on informal settlement upgrading and the possible approaches to undertaking the upgrading is vast. I am not going to attempt to provide additional solutions, rather this case study is about obtaining a more detailed and therefore better understanding of the challenges faced by a particular informal settlement’s upgrade implementation process, in South Africa. The aim is to use grounded research, focusing on the planning policy instrument used in this case to determine some of the underlying actual intentions of the state as well as the role of the instrument content in the situation.

In April 2016 the Johannesburg High Court handed down an important judgement in the *Melani* case which found that the City of Johannesburg (CoJ) had acted unlawfully in not applying the UISP to the Slovo Park informal settlement (SERI, 2020; CTNGOCI, 2019). It is this case that is the subject of this paper, and is underpinned by the question of *why, despite an apparently clear policy instrument (the UISP), was there a failure in implementation of the policy instrument in the Case of Slovo Park?* This question, after some analysis derived another two questions. The first being, *what lies behind the blockages in relation to the bureaucratic processes and stakeholder actions?* And the second being: *What lies behind the blockages in terms of the UISP instrument’s abilities to facilitate and guide implementation.* Although I do allude to possible answers for the first, drawing on literature the focus of this chapter is on the latter.

In attempting to answer these questions, the focus of this paper is twofold, firstly on the implementation process of the Upgrading of Informal Settlements Programme (UISP) in Slovo Park informal settlement in Johannesburg, and secondly, the limitations of implementing the UISP policy instrument itself. I explore the possible underlying reasons for this failure, from the perspective of the non-state stakeholders involved in the process (from the outside of the state looking in). The latter is contextualised within the current institutional framework, from multiple perspectives, within the policy implementation stage of the policy process cycle.

The specific nature of this case study is that it is grounded research in that the evidence came first from observed and noted details of actual events backed up with written evidence such as minutes and practical material development outcomes, rather than subjective views of all the state stakeholders involved (which could be the subject of further research). What is relatively unique about this case study is that the events to date have been in response to a high court ruling in terms of the South African Rights-based constitution and secondly the level of detailed data compiled for the study over a six-year period.

The argument I pursue here is that there are a range of factors that are mitigating the progressive implementation of the UISP policy framework and its sub-instruments (which have been the subject of many authors, e.g. Huchzermeyer (2010, 2011), Huchzermeyer and Karam (2006), Ziblin (2013), Fieuw (2015), Patel (2015), Cirolia et al. (2016), and Georgiadou et al. (2016). While most of this literature has researched disparate elements or a combination of elements, such as community participation and co-production or it has largely been at a national to metropolitan scale of analysis, most focused on one dimension, either the institutional structure, or subsidy instrument or community participation. Others have undertaken single case studies of informal settlement upgrades but have tended to focus on one or two aspects (Huchzermeyer, 2006; Winkler, 2016). De Satgé and Watson (2018) have provided one of the most detailed and multi-dimensional studies of a housing mega-project implementation involving informal settlement upgrading using the UISP policy instrument, which shines a light on the complexities and contestations between the multiple actors involved (see under section 6.2.1).

The chapter is structured as follows: The first section engages with the concept of slum/informal settlement/favela in situ upgrading, the growth of these settlements internationally and the range of interventions advocated over the past 50 years. The second section covers some theories on policy implementation governance practices in Africa. These two sections provide the broader context to the South African situation, which I address in the third section where I provide the local context to the actual case study from the national to the local level.

## 6.2 Background and Approaches to Informal Settlement Upgrading

Referred to as slums, precarious settlements, squatter settlements, informal settlements or favelas, amongst other terms, these settlements largely emerged since the 1950s with rapid urbanisation, de-industrialisation, and the growth of inequality in the developing world (Davis, 2007). In the case of Brazil, up until the 1990s there was a complacent approach in policy about the growth of favelas, while simultaneously promoting systematic actions of favela eradication (Bueno, 2000 cited in Magalhães and Di Villarosa, 2012). This paradoxical approach is still applied in many African states as well as in South Africa in some cases.

Because the terms ‘slums’ and ‘squatter settlements’ have negative connotations (Huchzermeyer, 2014), for this thesis I use the term informal settlement. I also use the Huchzermeyer and Karam (2006:3) definition of these settlements (most applicable to the South African context). This description is as follows: “those settlements of the urban poor that have developed through unauthorised occupation of land. Tenure insecurity is the central characteristics of informal settlements, with varying attributes of unhealthy and hazardous living conditioned to which overcrowding and lack of basic services may contribute”.

Globally, up until the early 1970s there were broadly two approaches by governments to these settlements, slum clearances (relocation to peripheral locations) or ‘benign neglect’ (Huchzermeyer, 2003; Smit, 2016). Although these two approaches continue in many instances to this day, in the 1970s a new discourse of in situ upgrading emerged. This was influenced by John Turner (1977) which highlighted the self-help approach. The World Bank eventually adopted the self-help approach focusing on physical infrastructure through project-based provision of site and services. Variations on this approach were developed by other organisations which adopted a more support-based in situ upgrading approach where communities were supported to play a leading role in the upgrading process. A reality identified in Brazil was that there were different dimensions to informal settlements as Magalhães and Di Villarosa (2012) outline, namely the physical, urban and architectural aspects, the social and participatory components and the institutional and managerial issues. As such, the support-based in-situ upgrading approach was advocated by those who argued that slums were not viewed holistically or comprehensively enough, and therefore did not consider their economic and social dimensions as well as their connections to higher income areas of the city, in more technically-oriented upgrades (Ferreira, 2007 cited in Magalhāes and Di Villarosa, 2012). While 'informal settlement upgrading' does not have a clear definition, Abbott (2002b:307) describes it as an intervention "that results in a quantifiable improvement in the quality of life of the residents affected". The most common interventions include physical upgrading of infrastructure, increasing security of tenure and social and economic interventions such as building social capital and community facilities (Smit, 2016).

In the 1990s for various reasons, including the shift to subsidised state provided housing, the focus on informal settlement upgrading diminished and only came back into policy predominance at the turn of the century, with the World bank and UN-Habitat Cities Without slums initiatives and the United Nations Millennium Goals (Target 11 of Goal 7)[37] in 2003 (Huchzermeyer, 2011; Smit, 2016). However, as indicated by Huchzermeyer (2011), programmes such as the UN-Habitat Cities without slums were interpreted in some cases as the physical eradication of slums rather than their upgrading to remove the slum conditions. To illustrate the different physical approaches to upgrading there is 'total redevelopment' where residents of an informal settlement are evacuated and relocated to new housing projects elsewhere or 'total redevelopment by Roll-over' where residents are temporarily accommodated while their original site is completed redeveloped. An alternative 'in situ incremental' approach entails developing the existing informal settlement, at where it is, by gradually extending to the residents, land tenure, infrastructure, and social services, such as water, sanitation and electricity (Del Mistro and Hensher, 2009, Charlton and Klug, 2016). This was seen in South Africa, where within the in-situ upgrading approach, the former has been the most dominant.

Although global initiatives like the MDG Target 11 of Goal 7, to be achieved through 'slum' upgrading initiatives sound progressive, it depends on how they are to be implemented. Organisations such as Cities Alliance, the World Bank and UN-Habitat

[37] 'By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers'.

advocate for the prominent role of private sector and public private partnerships in 'slum' upgrading initiatives. This needs to be seen in parallel with the dominant global governance narrative of 'good governance' and by deduction those countries with extensive 'slums' are poorly governed and therefore have no capacity and need to outsource to the private sector (Huchzermeyer, 2011). As such there is a fear of private service providers extracting maximum profits from the most marginalised land development projects, favouring profits over quality provision.

Another consequence of the renewed interest in informal settlement upgrading has been the plethora of 'best-practice' guides, plans, policies aimed at supporting upgrading of informal settlements, in addition to the multitude of academic articles representing a wide range of discourses on informal settlements (Cirolia, 2017). Without oversimplifying these discourses, Cirolia (2017) usefully identifies four prominent discourses[38], namely the technological and design, institutional, rights-based, and structural discourses. The technological and design discourses focus on the range of physical or material interventions, while institutional discourses cover issues of regulations, land markets, governance frameworks. The rights-based discourses are generally based on using human rights as a basis for their arguments and include the international Right to the City movement. This discourse is popular in South Africa given its rights-based constitution. The structural discourses focus on the overall structural reasons for the existence of informal settlements such as capitalism and the neoliberal economics. This research mainly engages with the institutional and rights-based discourses, as they relate to my case study and because the variety of discourses on how to undertake informal settlement upgrading is beyond the scope of this chapter.

In the international literature on institutional aspects of informal settlement upgrading, one of the most consistent and dominant narratives is community involvement in the process, with most case studies indicating that the processes need to be community driven or at least in partnerships or co-2014 production relationship between the

[38] 'Discourse' can be defined as "an ensemble of ideas, concepts and categories through which meaning is given to social and physical phenomena, and which is produced and reproduced through an identifiable set of practices" (Hajer, 2005:300 cited in Cirolia, 2017:444).

community and state (Ziblin, 2013; Georgiadou et al., 2016; World Bank Group, 2016; CTNGOCI, 2019; UN-Habitat, 2022).

### 6.2.1 Institutional/governance aspects relevant to informal settlements

Here I examine some of the generic governance issues affecting the implementation of policy instruments, in this case the UISP. Here I cover integrated planning approaches linked to networked governance structures, bottom-up vs top-down governance.

As with the development of ‘brownfields’ or ‘greenfields’ areas within any city, an integrated planning approach is required to provide infrastructure and community facilities for the existing or future residents. These are generally considered to be public goods which are delivered by the state, either at a local or district level which requires co-ordinated and collaborative governance. Given the multi-sectoral components of upgrading informal settlements, as with developing any new suburb or a city, increasingly networked governance described below is applied.

As indicated in both Chapters 2 and 4 of this thesis, the analytical concept of governance has transformed over the past 30 years from considering the state as a monolith in how it governs to seeing the process of governance increasingly as a set of interrelations between state, private and societal actors, referred to as networked governance (Bevir, 2011). Local policymaking and public service delivery increasingly take place in the “context of multi-agency networks that cross traditional jurisdictional boundaries (both vertical, across levels of government, and horizontal, between different local governments) and cut across the public-private divide” (Denters cited in Bevir, 2011:325). These concepts are elaborated upon in Chapter 2 section 2.3.1 and Chapter 5 section 5.3.

To contextualise the problem of poor implementation around informal settlement upgrading , I draw on theories of policy implementation and institutionalism in terms of structure and agency and multi-level governance (Cairney, 2012); bottom-up implementation and personal agency (Lipsky, 2010); and everyday governance, bureaucratic modes of operation and cultures in African states (Blundo and Le Meur, 2008; Olivier de Sardan, 2015; Cirolia and Berrisford, 2017) [covered in Chapter 2 of this thesis].

Beginning with the implementation literature, I draw on normative theories of implementation (Sabatier, 1986; Hill and Hupe, 2009; Cairney, 2012) as elaborated on in Chapter 2 section 2.4.3. Although the circumstances these authors describe for implementation rarely exist, particularly in the African governance context (Blundo and Le Meur, 2008; De Herdt and Olivier de Sardan, 2015), it is useful to identify aspects that have worked in other contexts that may be able to be appropriated into our local context. As such, the first key aspect that needs to be in place for implementation in relation to informal settlement upgrading is legitimacy and institutionality in terms of support from both the potential beneficiaries and from government structures. This includes support and involvement of government leadership and officials which have been found to strengthen the possibility of building appropriate institutional structures to implement programmes. This means that the implementing institutions need to be structured in the appropriate manner matching the implementation requirements of the upgrading process (UN-Habitat, 2014a; Magalhāes and Di Villarosa, 2012). This is a critical requirement given that informal settlements by their very nature are occupied by communities. The second key requirement is effective intergovernmental relations and networks, whether between spheres of government or sectors within government, co-operation, and procedures to implement effectively (UN-Habitat, 2014b), also referred to as networked governance, discussed above. Also linked to the above is capacitation, that all stakeholders from the beneficiary communities to the government officials and outsourced service providers need to be sufficiently capacitated to undertake the implementation of the upgrading process (UNHabitat, 2014a; World Bank Group, 2016).

More generically the implementation literature also indicates a range of factors could also be attributed to the lack of implementation of policies such as lack of capacity addressed above (qualified personnel), insufficient direction from political leaders, opposition to the policy itself, corruption (Smith, 1973), lack of local capacity and will (question of motivation) (Paudel, 2009). According to Paudel (2009:38), "Motivation or will is influenced by factors largely beyond the reach of policy environment stability; competing centres of authority, contending priorities or pressures and other aspects of social-political milieu can also profoundly influence an implementer's willingness". Other barriers to implementation described by Peters (2021) include legislation that is either too vague or has too ambitious goals (politically populist) or has too complex implementation structures. Another barrier is politics – intergovernmental challenges in federalist regimes. Similarly, multiple implementation actors can also be challenging within the new networked governance systems.

In the South African context, unfortunately both governance and legal literature have covered the issues of declining capacity and delivery by local governments (Ledger, 2020; De Visser, 2009; Palmer et al., 2017). De Satgé and Watson (2018) illustrate many of the points raised above in their analysis of a mega housing project in Cape Town called the N2 Gateway project. In their analysis they narrate the range of different interpretations and contestations around the very *technê* of planning within the state as well as amongst the various intended beneficiaries of the project. For example, amongst state officials relating to changing political power in the local municipality after the launch of the project which resulted in criticism of the project management by the new mayor which in turn resulted in the city being removed as the implementer of the project and replaced by a private non-profit entity with limited experience. This private entity struggled to deliver and eventually went insolvent and was replaced by the Housing Development Agency established through an act of parliament. Overall, De Satgé and Watson (2018:132) characterise the state's involvement in the N2 Gateway project as, "Actors in the state see what they want to see until they are forced to broaden their view. They often fail to see one another because of their inward looking and functionally prescribed fields of view. Increasingly state officials employ a wilful blindness to critique and seek to subdue messy socio-spatial realities with metrics of delivery and their imagined transformations of the urban landscape". With regard to the beneficiary communities, they also recorded a multitude of contestations for example between the 'Cape Borners' and the migrants based on "fundamentally different readings of space, place and associated interpretations of belonging" (De Satgé and Watson, 2018:201). The basis of their argument in understanding the complexities experienced in the implementation of the N2 Megaproject is the notion that the different stakeholders and actors have conflicting rationalities. "The concept of conflicting rationalities referred to in this book suggests that a central tension which plays itself out in such cities is between, on the one hand, techno-managerial, modernising and marketized systems of state planning, administration and service provision, various forms of alliance or collusion with other actors such as profit driven land developers, and on the other hand , marginalised and impoverished urban population surviving largely, but not only, under conditions of informality or ‘illegality’" (De Satgé and Watson, 2018:29).

Another consequence has been that over the past decade there has been a growing concern in legal scholarship around the struggles the most vulnerable members of our society have in realising their rights to adequate housing and scholars have examined the approaches and strategies the courts have used to implement these rights. In the literature I use the courts are acknowledging the non-delivery issues at local government level, in their shift in rulings described between two legal articles. The first, Chenwi (2015) argues that the courts were tending to take a ‘reasonableness’ approach in that they were giving leeway to the political branches of government to make appropriate policy choices to meet their socio-economic rights obligations. So the courts consider whether the measures taken were reasonable as opposed to whether more favourable choices could have been made. However, according to Everatt and Pieterse (2022), prior to 2016 the courts gave local municipalities more margin of discretion and stayed out of political oversight processes; however, they have now become more interventionist in that they have even on occasions endorsed community self-help signalling an evolution in judicial conceptions of civic responsibility. According to Everatt and Pieterse (2022), since 2016 local government has been in steady decline with some collapses as rent-seeking has become endemic with the line between state and party disintegrating. From their evaluation of recent judgements, they conclude that they signify an increased judicialisation of South African local government politics. Further, that the courts have seemingly all but abandoned the margins of discretion, mentioned by Chenwi (2015), and now appear to be imposing solutions from forced interventions to actual sanctioning of local government entities. They conclude with the words: “There are even hints that, in courts’ acknowledgement of the futility of assuming municipal competence and the concomitant gradual softening of their stance towards community self-help, an evolution in judicial concepts of civic responsibility may be under way” (Everatt and Pieterse, 2022:804). Finally, a key requirement is the appropriate policy instruments required to implement, in terms of policy guidelines, legislation and regulations, procedures and funding mechanisms (UN-Habitat, 2022).

All the above implementation literature assumes largely that the state is at least steering the process of implementation, even if other actors are involved in the process. As a more radical alternative, particularly in the context of informal settlement communities, although raised more broadly in the context of poor communities in Southern Africa, Ferguson (2015) poses an argument for a completely different way of state intervention. He explores a new way of thinking around distributive politics, involving cash transfers in specific and broader areas of service delivery. These types of distributive means he links back to historical injustices and dispossessions, in the South African context, as further justification for exploring new forms of distributive politics. I link this thinking back to my introduction and the need for more 'progressive' and appropriate policy instruments. In the context of informal settlement upgrading, I interpret Ferguson's proposals as using more blunt instruments such as cash transfers and promoting empowering communities to become self-sufficient, than the complex development processes of providing the poor with housing. Obviously, land tenure security and infrastructure services are public goods that must be provided through state assistance. This thinking broadly aligns with the early self-help, community-driven development literature on informal settlement upgrading emanating from the seminal work of John Turner (1977).

## 6.3 Informal Settlement Upgrading in South Africa

### 6.3.1 Background of the first decade post-apartheid

Access to adequate housing remains a big challenge in South Africa, despite efforts since 1994 to deliver affordable housing to about 2.3 million poor households through the project-linked housing subsidy scheme. Information on the number of informal settlements in South Africa is difficult to ascertain as most of the available information is over five years old and needs to be viewed within the context of varying definitions of informal settlements. However, the most up to date data obtained from a Housing Development Agency (HDA) presentation in 2022 is that there are 3309 informal settlements in South Africa containing some 1.54 million households. This is an increase of 1000% from the 300 settlements recorded in 1994.

Local academic literature on informal settlement in-situ upgrading began to emerge in South Africa, reflecting on the Turner Burgess debates of the 1970s, in the early

1990s. The literature emerged as reflections on some of the earliest informal settlement upgrading projects in South Africa financed by the Urban Foundation and the Independent Development Trust (IDT) (UF, 1991; Minnar, 1992; and Van Horen, 2000). Over the last three decades there has been a plethora of literature on informal settlements in South Africa, emerging from many different disciplines and discourses, as set out in section 2 above. Within the broader housing context in South Africa, Cirolia et al. (2016) succinctly outlines the history of informal settlement upgrading in South Africa, post-apartheid. Starting with the rights-based constitution and the commitment to building developmental local governments within which the commitment to upgrading informal settlements was central. This was envisaged through the supply-side production of subsidised housing through the then Reconstruction and Development programme (RDP). It should be noted that the original RDP houses were starter core houses to be expanded through incremental means by the occupants. However, due to political pressures these core house parameters were constantly expanded in size and quality resulting in unintended consequences of poor spatial location (Charlton and Kihato, 2006; and Tissington, 2011 cited in Cirolia et al., 2016) and diminishing delivery numbers due to increased costs. Furthermore, several studies were showing that despite the high delivery of housing informal settlements were still growing, in size and number, and that the RDP housing model was financially and spatially unsustainable (Khan, 2003).

### 6.3.2 Post-2004 - Breaking New Ground Policy

In response to the above issues the Breaking New Ground Policy (BNG) was introduced in 2004 which brought in three new progressive programmes. These were the Upgrading of informal Settlements programme (UISP); the Emergency Housing Programme (EHP) and the Integrated Residential Development Programme (IRDP). According to Huchzermeyer (2006), the formulating of the UISP was influenced by several events in the early 2000s. Firstly, the then Housing Minister Mbandla had a human rights background and brought the issue of farm worker housing and informal settlements back onto the agenda. Secondly, the evaluations of the first decade of housing policy delivery were coming in that indicated that poverty and unemployment were on the rise despite a general satisfaction with the government housing delivery programme. Finally, there was engagement with the Brazilian Ministry of Cities at that time, who had experience in informal settlement upgrading together with the international initiatives such as the MDGs mentioned above (Huchzermeyer, 2006).

To date most assessments of South Africa's shift from the RDP to the BNG housing policy argue that implementation has been a challenge (Klug and Vawda, 2009; Pithouse, 2009; Tissington, 2011; Huchzermeyer, 2011; Ziblin, 2013; World Bank Group, 2016; Van der Westhuizen et al., 2017; RSA, 2021). Various theories have been posited as to why this is the case. Huchzermeyer (2003) posed an argument that control and patronage were exercised through the then financial mechanism of the project-led capital subsidy scheme with respect to intervening in upgrading of informal settlements. This meant that the subsidy was geared at the individual household in giving them an asset rather than having a financial model that supports a people-driven and support-based intervention. As such, the process was focused on the top structure as opposed to the more complex "legal organisational and infrastructural challenges of what is termed 'land regularisation' and upgrading in other countries" (Huchzermeyer, 2003:601). Linked to this Huchzermeyer (2003) argued that the initial conceptualisation of the national housing policy (strongly influenced by the then Urban Foundation) matched the ANC's interpretation of democracy in terms of a centralised vision for the state. Furthermore, "the concept of a civil right to housing (though dismissed by the IDT) could be considered compatible with the concept of a universal entitlement to a once-off capital subsidy" (Huchzermeyer, 2003:604).

This argument was a precursor to a later article where Huchzermeyer (2010) argues that most of the funding went to private contractors building new houses, replacing the homes the informal settlers built themselves and into which households from informal settlements were relocated. They argue that informal houses were perceived in a negative light by the state and that incremental self-build programmes like the People Housing Process were not supported. Also linked to this funding argument was that there was inadequate budget allocated to do away with the housing backlog by 2014 as it would have taken till 2030 to achieve, following the RDP/BNG new housing build approach (Del Mistro and Hensher, 2009). A similar argument related to funding was posed by Bradlow et al. (2011), who investigated why the housing subsidy programme in South Africa had had so little impact on poverty reduction despite its scale and generous funding. They argue that with the principle focus by the state on mass delivery of completed serviced houses the contractors have received most of the funding. They advocate three aspects: to develop a multiplicity of strategies to housing and neighbourhood development, to reshape the institutional environment to match, and to change the flow of money to support 'people centred' development.

Other researchers have alluded to the modernist spatial and land use planning approaches adopted by the state, as is succinctly articulated by De Satgé and Watson (2018:50), "Given the prevalence and persistence of informality in African Cities, it is an issue which often lies at the heart of 'conflicting rationalities' between the urban poor, with their ambitions to survive and thrive, and urban planners, managers and politicians, with world views shaped by notions of orderly planning and space making, and the need for some kind of acknowledgement of modernity and progress from the rest of the world". Similar arguments on the inappropriateness of South African planning instruments have been expressed by Sihlongonyane (2014:55) who maintains that planning instruments in South Africa have remained untransformed – "in that they have remained fixated with order and "coloniality of power" and thereby have the tendency to ignore social processes and the interests of communities. He further attributes the mismatch between the objectives and outcomes of planning practise and the needs of the urban poor, to this fixation with order and colonial values". More specifically Klug and Vawda (2009), in their study on informal settlement upgrading with reference to the BNG implementation in Cape Town and Johannesburg, identified the planning statutory mechanisms of township establishment to be a constraint. This was in regards to legal recognition of the residents' rights to occupy the land.

An example of the above is articulated by Cirolia et al. (2016:8), "Despite the progressive and flexible policy instruments, implementation has largely followed earlier RDP logics. For example, the overwhelming majority of UISP projects are not in-situ. Instead, they have followed classic township establishment and housing development processes". The result has been that many of the RDP criticisms have remained, i.e. that in many cases most residents are relocated into peripheral IRDP developments or even temporary settlements, with limited participation and incrementalism on behalf of communities. Furthermore, according to Cirolia and Abrahams (2016 cited in Cirolia et al., 2016), this lack of implementation can be attributed to the lack of institutionalising of the new policies in terms of support, political will, programmatic budgeting, and too ambitious targets.

In 2009 the state attempted to address these issues through putting in place support structures such as the National Upgrading Support Programme (NUSP), the Housing Development Agency (HDA) and the Cities Support Programme, additional financial instruments, and the devolution of powers to metropolitan municipalities and more realistic targets in the form of the Outcome 8 Agreement (RSA, 2014). The key role of NUSP was to provide technical assistance to provinces and municipalities; capacity building and training to practitioners and community; as well as sharing knowledge and information with the upgrading community of practice. The HDA role is determined by Act of Parliament, The Housing Development Agency Act No. 23 of 2008 (RSA, 2008). It has two primary functions: first is to identify, acquire, hold, develop, and release well-located land and buildings for human settlement. The second is to provide project delivery services in the form of planning, capacity support and capability, and project management. The main role is to fast track the delivery of houses to the poor, according to the then Minister Lindiwe Sisulu at its launch. Out of its 12 stipulated functions two relate directly to informal settlements, the first to identify, acquire, hold, develop and release state, private and communal land for residential and community development, and the second to assist organs of state with the upgrading of informal settlements.

A 2013 study to ascertain the progress made in the implementation of the UISP instrument, in terms of the 2014 target to eradicate all informal settlements, found that despite there being comprehensive national legislative and policy frameworks in support of the slum upgrading initiatives in place, an apparent gap between the policy rhetoric, and the reality of implementation, which was characterised by notable inconsistencies, tensions, and problems. Furthermore, these issues have continued to hinder the programme’s ability to make realistic improvements in the lives of slum dwellers. The report identified the following governance challenges: failure by municipalities to adequately adhere to the basic principles of structured in situ upgrading as opposed to total redevelopment of slums; the lack of community involvement and choice in decisions of slums upgrading; the lack of clarity in municipal inclusion criteria of settlements for upgrade; the lack of access to well-located land for upgrading projects, amidst limited funding for land acquisitions; and finally, the lack of capacity and material resource shortages, untimely release of funds, which tended to delay project implementation (Ziblin, 2013).

Linked to the literature on the poor state performance in informal settlement upgrading has been the literature of top-down vs bottom-up approaches to upgrading (Georgiadou et al., 2016; Cirolia et al., 2016; Georgiadou and Loggia, 2021). The common theme in this literature is that informal settlement is not only about physical housing delivery per se (adopted by the techno-managerial approaches referred to by De Satgé and Watson (2018)), but more about a socio-technical approach that delivers social capital, empowers communities by generating skills and livelihoods.

A more nuanced argument for approaching informal settlement upgrading was posited by Amin and Cirolia (2017) in taking a socio-technical approach in that they add matter and materiality as an important factor to the predominant narrative of governance as a relationship between the state and non-state actors. By materiality they include the monotonous aesthetics of many informal settlements and the negative impacts on residents' ability to innovate, or the length of time leadership in a settlement have been in place or the actual physical configuration of the settlement that may enhance the sense of community. Finally, even the service flows within a settlement often ending in communal facilities often engender networks of extension and improvisation amongst the local community. In their argument they firstly remind the reader that purely community-driven development also has its perils driven by its survivalist circumstances, inexperience, and serendipitous leadership which are often difficult to sustain. In response they argue that in taking into account the plurality of state progressive policies, local practices as well as the materialities of these settlements, could better guide the state in being more effective in where and how it intervenes in informal settlement upgrading. Some of the local practices and materialities raised in their article resonate with my case study in Slovo Park to be addressed in Chapter 7.

Since 2017, NUSP as well as various NGOs have produced detailed implementation manuals on how to in-situ upgrade informal settlements (Misselhorn, 2017; NUSP, 2015; CTNGOCI, 2019; UN-Habitat, 2022). It is for this reason that the lack of implementation progress of an informal settlement upgrade in the metropolitan area of Johannesburg a decade later is so disappointing. There are no financial shortages for informal settlement upgrading; to clarify – there is not enough money allocated to keep up the overall housing needs and full upgrading of all informal settlements. However, on an annual basis the money allocated is not all spent due to capacity constraints to implement and spend the money (World Bank Group, 2016). A recent South African Human Rights Commission (SAHRC, 2021) report on Gauteng metro's expenditure on informal settlement upgrading showed Johannesburg had spent a mere 11% of their 2020/21 budget by halfway through the budgetary year. Despite these funding and capacitation resources as well years of experience of upgrading lessons, the challenge of implementation remains. I now explore the instruments available for in-situ upgrading of informal settlements.

### 6.3.3 Policy instruments related to informal settlement upgrading in South Africa

According to Greyling and Berrisford (2016) and World Bank Group (2016), between 1995 and 2010, there were planning instruments that expedited the land development process which would have also served the informal settlement upgrading agenda. The Development Facilitation Act of 1995 (DFA) allowed for 'initial ownership' rights, both instruments permitted certain planning regulations to be circumvented – mainly by bypassing local planning mechanisms and relying on the provincial decision-making mechanisms. The Less Formal Township Establishment Act (LFTEA) (CAHF, 1991) allowed various laws and regulations pertaining to planning and building standards to be made inapplicable if they were seen as obstructing the development of the land. In 2010, sections of the above legislation were challenged by some metropolitan municipalities in relation to Schedules 4 and 5 of the Constitution that set out the functional areas of responsibilities between the various spheres of government. According to Schedule 4B, Municipal Planning is a local function, and the metropolitan municipalities felt that the provinces were side-lining and undermining their spatial planning mechanisms through the DFA Development Tribunal. The 2010 Constitutional Court case City of Johannesburg vs Gauteng Development Tribunal ruled that all decisions around land use and land use planning should be taken by the local municipality, portions of the DFA were ruled unconstitutional and repealed. By implication all planning around informal settlements should be by the local municipality. There was a planning logic in the ruling, especially in the need to align housing projects with the overall city spatial development plan. However, the logic collapses should the local government be unable or unwilling to deliver on their planning mandate. In this case around it was planning for the upgrading of informal settlements.

In 2013 the national legislation guiding planning in South Africa was promulgated, the Spatial Planning and Land Use Management 16 of 2013 (SPLUMA). Both the DFA and LFTEA instruments were repealed by the SPLUMA, although it retained elements of the previous instruments such as the substantive development principles set out in the DFA, although it did not make provisions for short-cuts in terms of land release and development (Greyling and Berrisford, 2016). This Act specified that municipalities pass bylaws that must include in their Act land development procedures and provisions that accommodate the access to secure tenure and incremental upgrading of informal settlements. With SPLUMA proclaimed the CoJ promulgated its consolidated land use scheme in 2018 in terms of the Johannesburg Planning By-laws of 2016. Three significant issues resulted from the above legislative changes that could impact on informal settlement upgrading. The first is that planning for informal settlement upgrading is the sole responsibility of the local municipality (unless they do not have the capacity to undertake it); secondly, all environmental approvals remain with the provinces, so approval for upgrading plans need to be obtained from two tiers of government; and thirdly, land acquisitions for housing lies with the provincial tier of government, but has been made part of the Housing Development Agency’s responsibilities, adding further intergovernmental layers of networked governance to the development process.

Regarding instruments specifically designed for informal settlement upgrading, today there are three main policy instruments within the NHC that address informal settlements interventions, the EHP, the PHP and the UISP. The former merely is a funding mechanism to provide temporary housing in the case of an emergency, while the second only applies in the final implementation phases of a project focusing on the building of houses/top-structures. The latter instrument addresses how one upgrades informal settlements, from initial conceptualisation through to implementation of infrastructure and land parcels with some form of tenure security. As my case study only covers the early planning phases of an in-situ upgrade I only detail the latter instrument.

### 6.3.4 The upgrading of informal settlement programme

Listed under incremental interventions in the Housing Code, the UISP was prescribed specifically for the in situ upgrading of informal settlements in accordance with the UN Millennium Goals (as mentioned in section 6.2 above).

The programme deals with the processes and procedures as they relate to the provision of grants to assist municipalities to fast track the provision of security of tenure, basic municipal services, social and economic amenities, and the empowerment of residents in informal settlements. It is noted that the programme "includes, as a last resort, in exceptional circumstances, the possible relocation and resettlement of people on a voluntary and co-operative basis as a result of the implementation of upgrading projects" (RSA, 2009:9). Legislatively the programme is instituted in terms of section 3(4) (g) of the Housing Act, No. 107 of 1997.

The three main policy intentions in Section 2.1 of the programme are listed as (1) tenure security; (2) health and security through provision of basic services; and (3) community empowerment by building social capital through participative processes. Under Section 2.2 'policy principles', it is made clear that grants are made to municipalities and that local government is the main implementing agency, while using public to public partnerships to establish co-operative governance structures to implement the projects. Also important under principles, is that the national norms and standards in respect to serviced sites would not apply to this programme but just serve as a guideline. The need for community participation is also emphasised under the following principles, 'A holistic approach' and 'Community Partnership'.

The most significant aspect of the program is that under Section 2.4 it is stipulated that all households and individuals residing in informal settlements qualify for assistance, as opposed to other grant funded programmes in the code that have set criteria for determining beneficiaries of the grant.

Key features of the UISP are that it is broken into three phases, designed to enable a level of incremental development; however, the funding mechanisms attached align with a fixed time project approach (Huchzermeyer, 2006). Phase 1 is the Project Application including registration and funding reservation. This requires an interim business plan to be prepared which incorporates pre-feasibility information on the settlement.

Phase 2 is the Initiation of Project which includes the acquisition of the land, socio-economic survey of the community, agreement between the community and the municipality on the participation process; enrolment confirming approval for the suitability of the land for housing from the NHBRC; provision of access to interim services; and undertaking pre-planning studies.

Phase 3, Project Implementation, involves a business plan containing 20 different aspects including beneficiary profiles and tenure arrangements, a township layout and design, alignment of other public sector funding streams, and a strategy for relocation if necessary. Also, a monitoring and evaluation framework and time frames for Phase 4 are included. Several of the items in these Phases 2 and 3 are mistimed in terms of tasks that need to happen before others can be resolved. A key example is under section 3.6 Progress Payments where the tables on pages 61 and 62 show payment tasks for Phase 2 and Phase 3, and the payments for dispute resolution are in Phase 2 prior to layout and approval in Phase 3. Therefore, there is no payments made available for dispute resolution in the preparation of the layout where it is most needed. This assumes all disputes would have been resolved prior to the layout being prepared. This is shown in the next chapter to have been one of the main sticking points in the Slovo Park project as layout plans generally generate disputes which need to be resolved simultaneously in the layout process, ideally in a co-productive manner with the community.

Contentious aspects of the policy instrument include identifying undocumented migrants living in the settlement; an agreement on participation between the municipality and community which sets out no minimum requirements from either party or details of roles and responsibilities; and a strategy to avoid re-invasions or further growth of the settlement in Phase 3 which could all be defined as ‘wicked’ problems. For example, by not setting out any minimum parameters around community participation, umpteen examples set out in the literature show how the state implementers merely inform communities of progress in a top-down fashion as opposed to a bottom-up co-productive manner (Ziblin, 2013; Fieuw, 2015; Patel, 2015; Georgiadou and Loggia, 2021). This will also be demonstrated in the Slovo Park case in Chapter 7 below. Also lacking was an active implementation of a livelihoods approach in the early phases of the UISP to sustain the future phases of the upgrading process (Klug and Vawda, 2009).

At the end of the three phases, the beneficiaries of the UISP would have received access to land (including security of tenure), basic municipal services, and access to social amenities and services, such as sports fields and community centres. It is important to remember that this happens on an incremental basis and not all at once.

**Box 6.1: Consideration of Business Plans by the MEC**

The MEC shall, in considering the business plans submitted, take the following criteria into consideration for selection of projects to be approved under this programme:

- Policy intent and prescripts;
- Availability of funding;
- Technical feasibility;
- National priorities;
- Targets set nationally and provincially for the upgrading of informal settlements;
- Capacity of the municipality to undertake the project;
- Alignment with the IDP;
- Suitability and cost of the land;
- Number of households who will benefit from the upgrading of the settlement;
- Whether the settlement is situated in an area suitable for upgrading;
- Value for money;
- Whether the project includes the relocation of the community;
- Municipal counter-funding;
- Contracting strategy;
- Public sector resource requirements;
- Illegal immigrants;
- Management of relocations;
- Relationship between the municipality and the residents; and
- Proposed Housing Consolidation (Phase 4)

*Source: RSA, 2009:57*

Furthermore, instrument complexities include the 19 criteria (all requiring relatively high level technical inputs) by which the MEC evaluates the final business plan for funding approval (refer to Box 6.1 above); unclear timings by when various agreements between Provincial Department (PD) responsible for human settlement and the municipality need to be finalised and finally the complexity of having to identify and determine what to do with illegal immigrants living in the settlement. All these factors mitigate against timeous decision making if at all. At least nine of the criteria could be so complex to resolve that they inhibit progress on the project, given current capacity levels. To delve into just three examples – national priorities can be endlessly debated at a local level; suitability and cost of land is subject to various value judgements such as use vs market value, what is value for money in the case on an existing settlement? Finally, how to resolve the issue of illegal immigrants especially when they are long integrated into the existing communities through marriages and other relationships, which is a foreign affairs matter (RSA, 2009).

Huchzermeyer (2006) outlined seven aspects of the then newly formulated UISP as being potentially a paradigm shift in terms of achieving more progressive outcomes for the poor. These included, firstly**,** the incorporation of a funding for land rehabilitation, which could mitigate for more land being made suitable for residents to remain in-situ. Secondly, funding made available for land acquisition, which could mean securing of tenure where people are located, even on private land. Furthermore, the acquisition of additional land is always required for those households who must be relocated to make space for infrastructure installation in dense settlements. Thirdly, the provision of social and economic facilities would begin to address empowerment and employment issues. Fourthly, provision of interim services, to address immediate health risks to the community. Fifth, tenure security through in-situ upgrading rather than relocations, which would also advance social inclusion of the community. Sixth, a community-based subsidy ensuring all residents are included in the upgrade process, as opposed to an individual subsidy. Finally, seventh, the advocacy for a participatory layout planning approach to ensure that each household's structure and needs are accounted for. These aspects will be reflected upon in the evaluation of the Slovo Park case study.

*Critiques of the UISP instrument*

Although there is a plethora of literature on informal settlements in South Africa, there is limited literature on the actual UISP instrument itself. However, what there is focuses on the ambiguities such as in the policy around the expenditure of public funds around issues like land acquisition, land rehabilitation and interim services. As these expenditures involving tenure rights and interim services happen prior to the geotechnical studies and other environmental studies, officials are concerned that they may be seen to be misspending public funds. According to Tissington and Clark (2016), this has resulted in officials preferring to follow the formal Township Establishment development approach rather than incremental upgrades, utilising for example **Appendix 9999** in Johannesburg, **(see Appendix 8.2)**.

The USDG funding has been the main source of funding for the three phases of the UISP in the metros (including Johannesburg), as experience has shown that they use it more flexibly. This means that metros do not have to submit business plans to the relevant provincial departments of human settlements to implement the first three phases of the UISP (Van der Westhuizen, 2017). As such they have tended to use the funds on 'greenfields' housing projects and relocated informal residence to them while attributing the numbers to their informal settlement upgrading KPIs. As a consequence, the NDHS introduced a special funding instrument exclusively for the upgrading of informal settlements, the Informal Settlement Upgrading Partnership Grant (ISUPG) in 2021/22. The Centre for Affordable Housing Finance in Africa (CAHF), in their assessment of the 2023/24 Human Settlements budget (CAHF, 2023:10), concluded that "Ultimately, the sector needs to move away from these narrow performance indicators in order to better reflect a shifting delivery model, towards incremental housing and a more inclusive functioning residential property market".

### 6.3.5 Johannesburg informal settlement upgrading instruments

In 2008 already the CoJ developed an innovative land use planning instrument called the 'Regularisation programme' to address informal settlement upgrading. Based on the Brazilian 'Zones of Social Interest' (ZEIS) land use regulatory approach, it was intended to bring the previously excluded informal settlements into the city's regulatory framework thus affording the residents certain rights in land tenure security and access to services while being on a projectory to full formal integration into the city (CoJ, 2008 cited in World Bank Group, 2016). The instrument would designate those informal settlements suitable for in-situ upgrading as a 'Transitional Residential Settlement Areas' (TRSAs) zone within the CoJ town planning scheme (Abrahams, 2013). Once this was promulgated into the land use scheme, the informal settlement would no longer be ‘illegal’ and the CoJ service departments could proceed with servicing and other investments to unlock upgrading. This instrument was formally gazetted by the Gauteng province on 24 June 2009 as Amendment Scheme A9999 which led to the declaration of 25 land portions as TRSAs (Provincial Gazettes [Gauteng], 2009).

According to Harrison (2023 cited in Bènit-Gbaffou, forthcoming), the formalisation programme was launched by the CoJ Planning Department in 2008 to implement the new instrument. It is noted that the Gauteng province were against the programme from the start as they were not keen on regularisation of informal settlements at that time, rather into relocations into ‘greenfields’ BNG housing projects. Despite this the CoJ declared 12 areas under Appendix 9999 as TRSAs (excluding Slovo Park). Despite significant support from the then mayor Amos Masondo, the issue was funding to implement. The Planning Department only had operating budgets and therefore had to rely on the Housing Department (which had capital budgets) for implementation. A special unit was set up as a joint decision-making body between the Planning Department and the Housing Department. The programme was eventually wholly moved into the Housing Department. Unfortunately, it never got momentum as the Housing Department were unhappy that planning was involved as it took away their, on the ground, discretionary making powers around informal settlements. Furthermore, the housing officials’ KPIs were based on number of subsidised housing units delivered rather than informal settlements upgraded. The only aspect they were interested in was the formalisation in order to deliver bulk infrastructure into the areas. Another perspective according to Abrahams (2023) was that the Housing Department simply did not understand the intricacies of the instrument and therefore did not buy into it. Thus, the programme died in the Housing Department.

On tracking the remnants of this programme in the current planning instruments the following was found. In the CoJ Land Use Management Scheme of 2018, “Transitional residential settlement area” was defined as – “*Means defined land upon which informal settlements are established by the occupation of land and provision of residential accommodation in the form of self-help structures and some ancillary non-residential uses and regulated by the applicable Appendix (Appendix 9999)”*. However, there is no reference to Appendix 9999 or to the Transitional Residential Settlement Area in any of the ‘Zoning Tables’ or ‘General land development mechanisms’. The only possible section which one could assume it could be applied is under Part VII: Land Development Administration – section 45 Appendix 9999. Under this section clauses (1) and (2) specify:

*(1.) Special rights, conditions and restrictions, which may apply to any property / township / area within any Use Zone, may be indicated in an Appendix to this Land Use Scheme.*

*(2.) The special conditions and restrictions referred to in Sub-clause (1.) shall:*

*(a.) Be in addition to the general conditions, restrictions and other provisions of this Land Use Scheme,*

*(b.) Prevail should they conflict with any such other condition, restriction or provision in this Land Use Scheme.*

Other than under the definition no further mention of informal settlements or Appendix 9999 is made in the Land Use Scheme, which indicates it was inserted in a half-hearted manner providing no clear means of applying it if the reader of the scheme was not already familiar with Appendix 9999.

With regards to the Johannesburg Planning By-law of 2016, it defines:

“informal settlement” - means the informal occupation of land by persons none of whom are the registered owner of such land, which persons are using the land for primarily residential purposes, with or without the consent of the registered owner and established outside of the provisions of this By-law or any other applicable planning legislation. Land development application can only be made in terms of Chapter 5 of the by-law, and this chapter only refers to ‘landowners’ making applications.

The only other reference to informal settlement upgrading is under the content of an SDF which lists:

(k) identify the designation of areas in the city where incremental upgrading approaches to development and regulation will be applicable.

(l) identify the designation of areas in which -

(i) more detailed local plans must be developed; and

(ii) shortened land use development procedures may be applicable and land use schemes may be so amended.

Apart from the above definitions and clauses there is no mention of informal settlements or Appendix 9999 within the Planning by-laws. All clauses pertaining to Township Establishment refer to the landowner, which is currently the main issue blocking layout approval and commencement of the upgrading of Slovo Park, because some underlying property portions are privately owned and no permission has been granted for a Township Establishment over their land. So once again there is not a clear procedural path in either the Land Use Scheme or By-laws to undertake an upgrade project, despite the Appendix 9999 still being in legal existence (having not been repealed). Without some prior knowledge of the existence of this instrument there is no explicit set out procedure in the above documents to indicate how you would apply it. Given the significant existence of informal settlements in Johannesburg, it is extraordinary that there is not a dedicated section for them or even a mention, apart from a definition, in any of the chapters of the Planning By-laws.

Finally, in the case that a local authority cannot undertake the planning function, there is a clause in the UISP (as indicated in section 4.1.1) that the province can take over that role. However, the poor intergovernmental processes have meant that unnecessary delays occur in the changeover as is demonstrated in the Slovo case in 2022, in section 6.

## 6.4 Conclusion

This chapter has set out the conceptual tools and theoretical debates around informal settlement upgrading from global and local literature. Based on this literature, I covered debates around community-driven upgrading vs state led or top-down upgrading. Also covered were some theories on implementation processes, which I touched on briefly exploring a more radical approach to addressing informal settlement communities, to be reflected on in my final analysis. The chapter also set out the institutional context outlining the background to informal settlements in South Africa as well as the legislative and policy environment underpinning the case study which is presented in the following chapter.

# CHAPTER 7:
# THE SLOVO PARK INFORMAL SETTLEMENT UPGRADE PROJECT

## 7.1 Introduction

This chapter provides a description and analysis of the past seven years of proceedings of the upgrade project after the high court ruling. I provide a detailed narrative of the Task Team's proceedings over this period to give a sense of the toing and froing, replication of activities and sheer lack of responsiveness from the side of the local officials in their day-to-day practices around this process. The chapter begins with a recap of the methodology adopted followed by a brief history of the settlement. I then describe the actors involved and the activities undertaken during the research period of the upgrade project. Finally, I highlight the aspects pertaining to the key moments of disjuncture and progress within the Task Team meetings as well as the key actions around the attempts to prepare an in-situ layout plan for the settlement.

Note that my narrative of this process treats the City of Johannesburg (CoJ) as a monolithic organisation, based on how I observed officials reacting and responding – or not reacting and responding – in all our interactions. This is not to deny, though, that the CoJ is a multi-faceted entity, and I pay little attention to processes that ran in the background. I am aware that some decisions were taken by the Executive Director of Human Settlements (who mostly did not attend the Task Team meetings). Furthermore, I am also aware of the various CoJ officials, involved with the Slovo Park upgrade project, who expressed varying degrees of enthusiasm, progressive thinking and commitment. However, despite the efforts of these officials, the public response of the CoJ was as I have described.

## 7.2 Methodology

In exploring the question: Why, despite an apparently clear policy (the Upgrading of Informal Settlement programme – UISP), was there a failure in implementation of the policy instrument in the Case of Slovo Park? I examine what effects the complex multi-layered and multi-sectoral institutional and policy environment of government and its non-governmental service providers had on the implementation of the UISP. A further question is, what effects did the content of the UISP have on the ability of government officials and their non-governmental service providers, to implement the instrument?

As indicated earlier, I assisted the community as a technical advisor on the upgrading process from 2016 till 2022[39]. As detailed in Chapter 3 (of this thesis), this involved sitting on the Task Team and reviewing *techne* planning work undertaken mainly by the CoJ's consultants including various layouts, advocating for proper community engagement around layout planning and tenure options etc. To recap, I selected this case study for four reasons – firstly, the community's history of struggle for upgrading gave me significant scope to reflect on; secondly, the Slovo Park settlement characteristics make for an ideal in-situ-upgrade project; thirdly, there was a large body of recent primary empirical data available on the history of the process and on the community; and fourthly, my personal involvement as a technical advisor gave me personal insights into the project process. Primary empirical evidence was collected through documentation (minutes of meetings) and reports from the Socio-Economic Rights Institute of South Africa (SERI) pertaining to the Slovo Park project, personal notes and email correspondence with technical advisor colleagues on the project.

What should be noted here is that as an embedded participant primarily supporting one stakeholder in the process (namely the SPCDF), I decided not to undertake any interviews with any of the stakeholders including the municipal officials involved. On reflection, this decision certainly limited exploration of the perspectives of the project from the city official's point of view. This could have counterbalanced some of the potential bias in my analysis. However, as an embedded participant I considered it better to adopt an observational approach as I thought interviews would be counter-productive as they considered me an interested party.

Being embedded in the subject matter of the case study I adopted an inductive approach. The case focused on how the UISP was interpreted and engaged with (i.e. practices of) officials, NGOs and beneficiaries, within the context of resource inequalities between the various stakeholders. The case study also focused on the complexities of the policy and institutional environment and its limitations on

[39] 2022 was the cut-off of my research, the project and my involvement.

implementing a ‘progressive’ policy instrument, from the perspective of the city officials and their consultants and the end users/beneficiaries and their assisting NGO.

My role as a technical advisor was as a representative of the Centre for Urbanism and the Built Environment Studies (CUBES), the research and advocacy unit within our School of Architecture and Planning. I represented CUBES together with Professor Marie Huchzermeyer. We complemented each other on the Task Team with my practice experience and planning knowledge and her deep housing and informal settlement policy knowledge. Additional ethics clearance for this research was also obtained as part of an ethics application made by professor Huchzermeyer for a research project on informal settlements in Gauteng. As part of CUBES, we also conducted other activities related to the Slovo Park upgrade project. These included a reflective workshop titled: Just Imaginaries in 2018 where the various stakeholders presented their reflections. I addition, every year since 2017, Professor Huchzermeyer and I have hosted an annual student-stakeholder workshop that discussed Slovo Park and at times provided neutral ground for discussions between the community and state officials which were not possible in the official environment of then task team. Furthermore, several masters students doing their research on Slovo Park have been supervised by Professor Marie Huchzermeyer and me and we have facilitated the introduction of several foreign students to Slovo Park for their research.

In reflecting on the process, for analytical purposes I extracted 16 actions from the minutes of the Task Team meetings and explored their implications for whether they were in compliance with the UISP, on the project, and implications going forward for the UISP instrument itself. Finally, I analysed the findings according to a set of preconditions for scaling up upgrading of informal settlements set out in a South African/World Bank report in 2016 (World Bank Group, 2016) as well as against the seven ‘progressive’ potential paradigm shifting aspects of Huchzermeyer (2006) outlined in Chapter 6 section 6.3. of this thesis.

## 7.3 The Attempted Upgrading of Slovo Park Informal Settlement

### 7.3.1 Background

Slovo Park is an informal settlement located approximately 15km southwest of the Johannesburg CBD (Refer to Map 7.1). The Johannesburg Metropolitan Municipality has a population estimate of 5,05 million people (Stats SA, 2017), and some 211 informal settlements (News24, 2021) housing approximately 448 200 units (CoJ, 2020).

Map 7.1: Locality of Slovo Park


*Source: Google Earth, 2021*

Slovo Park is an informal settlement established in the early 1990s by Johannes Mthembu and several other people who moved to the site in search of land close to where they were working. The Slovo Park community has been trying to in-situ upgrade their settlement with the help of the state since the late 1990s. The late Frank Mapara was part of the early leaders of Slovo Park and is attributed to have designed the current grid pattern of roads and blocks of the settlement. He did this by visiting the neighbouring area of Eldorado Park and measuring the streets and blocks and replicating them in Slovo Park. The settlement covers approximately 47.4632 hectares (ha) and most of the occupied land is publicly owned, with much of the surrounding land owned by the Gauteng provincial government. In 1994 already the City of

Johannesburg (CoJ) promised to incorporate them into a housing project, the Harrington Valley Housing Project, initiated by private consortium, Condev, which never materialised (SERI, 2011).

**Map 7.2: Existing settlement layout**

*Source: SERI, 2011*

The settlement has approximately four communal standpipes per informal street, and 1 050 Ventilated Improved Pit Latrines (VIPs) and 34 flush toilets. One truck de-sludges the pit latrines once a month. According to the Slovo Park Community Development Forum (SPCDF), VIPs were installed in 2005 in each yard, with residents being told that they were temporary and would be converted to flush toilets when formal development occurred at the settlement (SERI, 2011).

In terms of the 2010/2011 Regional Spatial Development Framework (RSDF) for region G Slovo Park is categorised according to the CoJ's informal settlement formalisation programme as Category 1: Informal Settlement Upgrading, with the status quo as "Draft Layout Plan". This means that it was scheduled as an in-situ upgrade project. The RSDF further stated that “geotechnical studies have revealed dolomite in the area. Dolomite poses a threat of sink holes developing where there is standing water. Thus, “half of the informal settlement (Slovo Park) would have had to be relocated, as housing could only be provided for approximately 700 units on the developable land available” (Tissington, 2012:52). This remained the main contentious issue between the community and the CoJ, with the CoJ insisting that this fact constrained them from accommodating more than 700 units on the site. A study undertaken by Adegun (2015) compared two different stormwater management interventions in two informal settlements (one being Slovo Park). The intervention in Slovo Park was community initiated while the other in Elias Motsoaledi settlement was state led. His study showed the need for state-led and community-driven approaches towards co-producing stormwater infrastructure. Once more detailed geotechnical studies had been conducted between 2006 and 2017 it was established that the dolomite impact was less severe and that while the whole area was underlain with dolomite only one small portion of land could not be developed at all as shown on Map 7.3 under section 7.3.2 (SERI, 2020).

As indicated in section 7.2 above, the Slovo Park settlement should have been an ideal pilot project for the CoJ, in that it is relatively low density facilitating easier retrofitting of infrastructure, it has a well-established, capacitated and stable community leadership structure and had already been identified within the CoJ’s regional framework plan for in-situ upgrading back in 2010.

This case study only focuses on the post judgement period from 2016 till the end of 2022. For detailed events between 1994 and 2016 refer to SERI (2020). For ease of following the sequence of events, Figure 7.1 below sets out the main events in the history of the settlement since its formation in 1992. The focus of this case is the period from the high court ruling till the end of 2022. In so doing I identify key administrative decisions or actions that have contributed to the ongoing failure to implement the UISP in the case of Slovo Park.

### 7.3.2 Pre-high court judgement 1994–2016

The first community leadership structure was established in 2001 and was called the Community Development Forum (CDF). The current Slovo Park Community

Development Forum (SPCDF) was formed in 2007. The SPDCF were affiliated with the Informal Settlement Network (ISN) but were nonaligned in that the elected members came from different political parties. Melani was elected as chairperson in 2007 and served as an elected office-bearer in the Johannesburg structure of the ISN until he passed away in 2017.

Between 2001 and 2010 no less than five housing project proposals were put forward by the CoJ in response to community pressures. Each fell far short of accommodating the original 1076 households, with the predominant reason given by the CoJ being the presence of dolomite on the site (based on very broad generic geotechnical studies in the area). Between 2010 and 2014 the community suffered a number of tragedies and they put forward a further four initiatives from the SPCDF (as documented in Box 7.1 below) and received no responses from the provincial or from the CoJ administration, as further detailed in the Socio-economic Rights Institute of South Africa (SERI) reports of April 2011 and 2014.

**Box 7.1: Community Initiatives 2010–2013**

**2010:** A plan to provide 575 stands at Slovo Park, with the remaining 2 500 households to be relocated to Eldorado Park. The community was later informed that this proposal was abandoned due to opposition from Eldorado Park residents.

**2011:** SERI addressed a letter to the MEC for Local Government and Housing and the Executive Director for Housing at the city setting out the various undertakings by provincial and municipal office bearers that Slovo Park would be upgraded. No response was forthcoming, and a follow-up letter was sent.

**2012:** A Slovo Park resident died in a shack fire. The CoJ hosted two meetings with Slovo Park representatives and SERI. These meetings did not result in a decision to apply the Upgrading of Informal Settlements Programme (UISP) or even an undertaking to consider doing so.

**2013:** A family of four died in a shack fire at Slovo Park and a man was electrocuted. Slovo Park committee and residents produced their own proposals for upgrading Slovo Park and presented these plans to City officials. No response was received (SERI, 2011).

Back in 2012, Tissington (2012:8) reflected on the community participation around the upgrade of the Slovo Park settlement. Her findings were that there were “serious gaps and deficits in the official planning process”. The causes of these include poor coordination and alignment between provincial and local government; local government structures were not using resources, knowledge and expertise available within the settlement; promises by the local government were repeatedly broken without any explanations; and development targets continually shifted without any explanation.

As a result, the SPCDF approached SERI in 2014 to take the CoJ to the High Court to compel them to apply the UISP instrument to their settlement. Essentially the CoJ would make ad hoc plan proposals which would be either rejected by the community or by the surrounding community due to lack of consultation and inadequacies of the plans. In all instances the CoJ did not deem it necessary to make a formal UISP application to the province, rather thinking they could address the situation through an internal planning process through a CoJ budget or linked to another existing housing project. Between 2014 and 2015, SERI gathered evidence for the litigation which is reflected in their publication showing the timeline of developments in Slovo Park from 1994 to 2014 (SERI, 2011) on which I based my timeline and expanded upon.

In 2016 The Gauteng Local Division of the High Court in Melani and Others v City of Johannesburg and Others 2016 (5) SA 67 (GJ) ruled that the UISP was binding on the City of Johannesburg, as set out below. The unique element of the Slovo Park case study is that as a community they set a legal precedent in South Africa by obtaining a High Court judgement against the City of Johannesburg, the Gauteng Department of Human Settlements, and the national minister of Human Settlements for not applying the UISP in the case of Slovo Park (Huchzermeyer, 2016). Essentially the judge found the following:

> "I also find that the City's failure to apply the UISP is unlawful due to the following: This decision has been taken outside the legislative and policy framework intended to apply to informal settlements such as Slovo Park and on the facts of this case the decision is unreasonable and accordingly in breach of not only of the residents' right to just administration action, but also of the residents' rights to access to adequate housing in terms of Section 16(1) of the Constitution" (Melani Judgement, 2016).

As such the judge ruled that: the city's decision to fail to make a UISP application for Slovo Park would be reviewed and set aside. Furthermore, the CoJ had to make an application to the provincial MEC for UISP funding for Slovo Park within three months of the order, and senior officials of the CoJ listed in the court judgment had to submit reports under oath on their progress in meeting the court order within four months. From the province, the Human Settlements executive had to consider the application and provide a report under oath, within three months of receiving the application, on what they were going to do to upgrade Slovo Park in terms of the UISP. Finally, the CoJ was ordered to pay all the costs of the court case.

**Map 7.3: Existing layout of Slovo Park showing dolomite areas**


*Source: Slovo Park Project (2017)*

**Map 7.4: Example of Slovo park block layout**


*Source: Slovo Park Project (2017)*

**Figure 7.1: Slovo Park Summary Timeline**

*Source: SERI (2019) and updated jointly with Professor Huchzermeyer*

## 1994–2010

1994 – first housing project promised
**2001-2010 five development initiatives presented by City were contested** (centred around dolomite areas) and not followed through.
**2007 formation of Slovo Park Community Development Forum** (SPCDF)

## 2010 – 2012

Around 2010, Slovo Park Community Development Forum (SPCDF) decides to take a legal route, consults Socio-economic Rights Institute of South Africa (SERI).
2010 - Collaborative construction of a hall at Slovo Park, University of Pretoria and SPCDF.
2011 – SERI produces report in preparation of case highlighting:

- Reliance and high turnover of consultants
- High turnover of officials
- "Poor communication with community leadership"

(SERI, 2011:58)
2012 – University of Pretoria architecture studio in collaboration with SPCDF demonstrates feasibility of in situ upgrading.
**In 2012 – SPCDF informs CoJ of intention to litigate.**

## 2013–2015

The SPCDF continues to work with the city while preparing the court application.
A family of four are killed in a shack fire in the settlement
**2014 – On behalf of SPCDF, SERI applies to the High Court for an order that would compel CoJ to apply for funding under the UISP to upgrade Slovo Park**

## 2016

**2016 April – Melani judgment in South Gauteng High Court** includes an order to this effect (CoJ to apply for UISP funding within 3 months)

- CoJ's first attempt at UISP application (submitted after 4 months, in Aug 2016) is rejected by Province at SERI's advice –
- No consultation / participation in the process
- Did not minimise relocation – it rehashed a plan for relocation!
- In not having established who the residents were, it could not convincingly be inclusive of all residents

**End 2016, CoJ attempts to comply with judgement by setting up a consultative forum the 'Task team'.**

## 2017–2018

The appointed planning consultant does not understand UISP

- **September 2017 onwards: consultant plan is contested within the Task Team, yet plan is submitted for planning approval**
- Still no UISP application

In parallel, throughout 2017: In situ planning for and implementation of Electrification of unproclaimed Areas by City Power

- End 2017: Official heading up the task team resigns

2018 1to1 develops a road map tool for UISP implementation.

- April 2018, CUBES's critique of consultant's plan tabled at meeting with CoJ and is accepted.
- SERI raises funds for an alternative consultant to redo the plan in accordance with UISP.

**CoJ appoints new project manager who champions UISP.**

- Nov 2018 - CUBES brokers renewed discussion between City, its attorneys, SPCDF and SERI
- **CoJ agrees to shelve consultants' plan and redo the planning, following the UISP.**

## 2019–2020

2019 – Task Team meetings resume

- **Work towards UISP application inclusive of all 3 734 households – every step is taken through the Task Team**
- **Further consultants commissioned by NUSP** to prepare an upgrading plan which ignores the above, but it was a requirement for Treasury to release a grant transfer to CoJ. for UISP implementation

2020 - Covid-19 pandemic lockdown – stand still in CoJ.

- **August 2020 City refuses to use SERI funding and commits to spending R10 million of its grant funding on Slovo Park in 2020/21 financial year.**
- Task Team meetings set up the program for initiation of the project, subject to the **appointment of new consultants.**

## 2021–2022

The City experiences procurement challenges (legal panel could not be appointed, yet it was needed to procure all other services).

- As a result, **Province steps in and committed budget to the project in the 2021/22 financial year and agreed to procure consultants.**
- Protracted procurement process.
- Poor briefing by Province of the new planning consultants.
- Task Team in a slow process of negotiating and drafting a social compact to establish lines of responsibility for the upgrading of Slovo Park, - **Unresolved by end of 2022.**

### 7.3.3 Post-high court judgement attempts to apply the UISP in Slovo Park

The immediate response from the CoJ, some four months after the High Court order, was to prepare a UISP funding application for Phase 1 of the UISP in the form of a business plan to the MEC of Human Settlements in the Gauteng Province. The business plan was to build 399 freestanding houses in Slovo Park and to relocate the remaining 3335 households to Unaville, some 12km south of Slovo Park. This was effectively a reworked version of a previous plan rejected by the Slovo Park community. On instructions from the SPCDF, SERI sent a letter outlining six key points[40] to the MEC for Human Settlements to reject the business plan on the grounds that it would relocate the bulk of Slovo Park residents outside of the settlement and that no consultation had been undertaken around the business plan with the community. On 22 November 2016, the MEC called a meeting of all the stakeholders and confirmed that he had rejected the business plan. In response the SPCDF proposed that a multi-party Task Team (TT) be set up to assist the CoJ to prepare another funding application to the MEC to upgrade Slovo Park. This was agreed to by all parties (SERI, 2020).

*The inauguration of the Slovo Park Task Team*

At a meeting with the MEC on 6 December 2016, the Task Team and its Terms of Reference were formulated. The purpose of the task team was to ensure that stakeholder engagement and community participation processes take place in the implementation of the court order to produce and submit a funding application to the GDHS to upgrade Slovo Park through the UISP.

[40] The six points included:
1. The City has not demonstrated "effective interactive community participation" in the formulation of its application
2. The City intends to implement an unlawful relocation
3. The City envisages that only residents who qualify for subsidies in terms of the Housing Subsidy Scheme will benefit from the in-situ upgrade
4. The City has misconstrued the size of the area to be upgraded
5. The City has developed a layout plan prematurely, and with no input whatsoever from our clients
6. The City has selected a "freehold" tenure option without consulting with our clients.

**Table 7.1: Actors involved in the post-judgement Slovo Park upgrade project**

| Actor/Organisation | Period of Involvement | Comments |
|---|---|---|
| Task Team Members (TT) | | |
| City of Johannesburg officials | 2016 – present<br>Project managers<br>PM1 – 2016–2017<br>PM2 – 2017–2018<br>PM3 – 2018–2022<br>PM4 – 2022 – present | Meetings were always chaired by a CoJ project manager of which there were four over the period (PM's 1-4). There was also a secretary and an ever-changing mix of officials from various CoJ departments who would attend meeting sporadically. |
| City of Johannesburg Group Legal (an internal CoJ department that deals with legal matters) | 2016 – present | One representative who tended to organise the TT meeting dates. |
| City of Johannesburg's Legal Consultants (external legal service providers) | 2016 – present | One representative who would take minutes and advise the CoJ beyond the TT meetings. |
| Slovo Park Community Development Forum members | 2016 – present | This would be made up of a core of four representatives (including the chair of which there have been two as one died in 2017). Other members representing sub-committees within the SPCDF, sometimes up to ten representatives would attend meetings. |
| Socio-Economic Rights Institute of South Africa (SERI-Legal NGO) | 2016 – present | They were always represented by at least two people who changed over time as members left or were reassigned within the organisation. They also tended to take minutes of the TT meetings and shared them with the CoJ legal consultants to arrive at a common set of minutes. |
| Centre for the Urban and Built Environment Studies (CUBES) | 2016 – present | Represented by two people (Dr Marie Huchzermeyer and including myself). |
| 1 to 1 (Development NGO) | 2016 – present | Up to three representatives. |
| Provincial Department of Human Settlements (GDHS) | 2021 – present | One representative who changed after three months. These representatives attended meeting very occasionally. |
| National Department of Human Settlements (NDHS) | 2020 – present | One representative very occasionally. |
| Other Actors/Organisations | | |

| Actor/Organisation | Period of Involvement | Comments |
|---|---|---|
| Marikane (Alternative community representative group) | 2016 – present | Very sporadic attendance of TT meetings, more so since beginning of 2022. |
| CoJ Consultant A | 2016–2018 | Appointed by the CoJ - One or two representatives. |
| NUSP Consultant B | 2018–2019 | Appointed by NUSP - One or two representatives. |
| CoJ Consultant C | 2019–2020 | Appointed by CoJ - One or two representatives. |
| CoJ Consultant D | 2018 | Appointed by CoJ to undertake the layout plan for the electricity installation – Never attended Task Team Meetings. |
| Prov Consultant E | 2021 – present | Appointed by Gauteng Department of Human Settlements - One or two representatives. |
| Housing Development Agency | – | Never attended although were invited repeatedly. |
| National Upgrading Support Programme | – | Never attended although were invited repeatedly. |
| National Treasury | 2022 – present | One representative on one or two occasions. |

“The composition of this task team will consist of the SPDCF, a CoJ representative from the housing department in Region G, a representative from the Provincial department of Human Settlements, a representative from the National Department of Human Settlements, a representative from the National Upgrade Support Programme (NUSP), SERI and technical support experts required by the SPCDF and the CoJ. Should additional members with the necessary skills to develop Slovo Park be advised to join the task team, they may do so at a later stage”. CUBES were invited to be the technical support experts to the SPCDF.

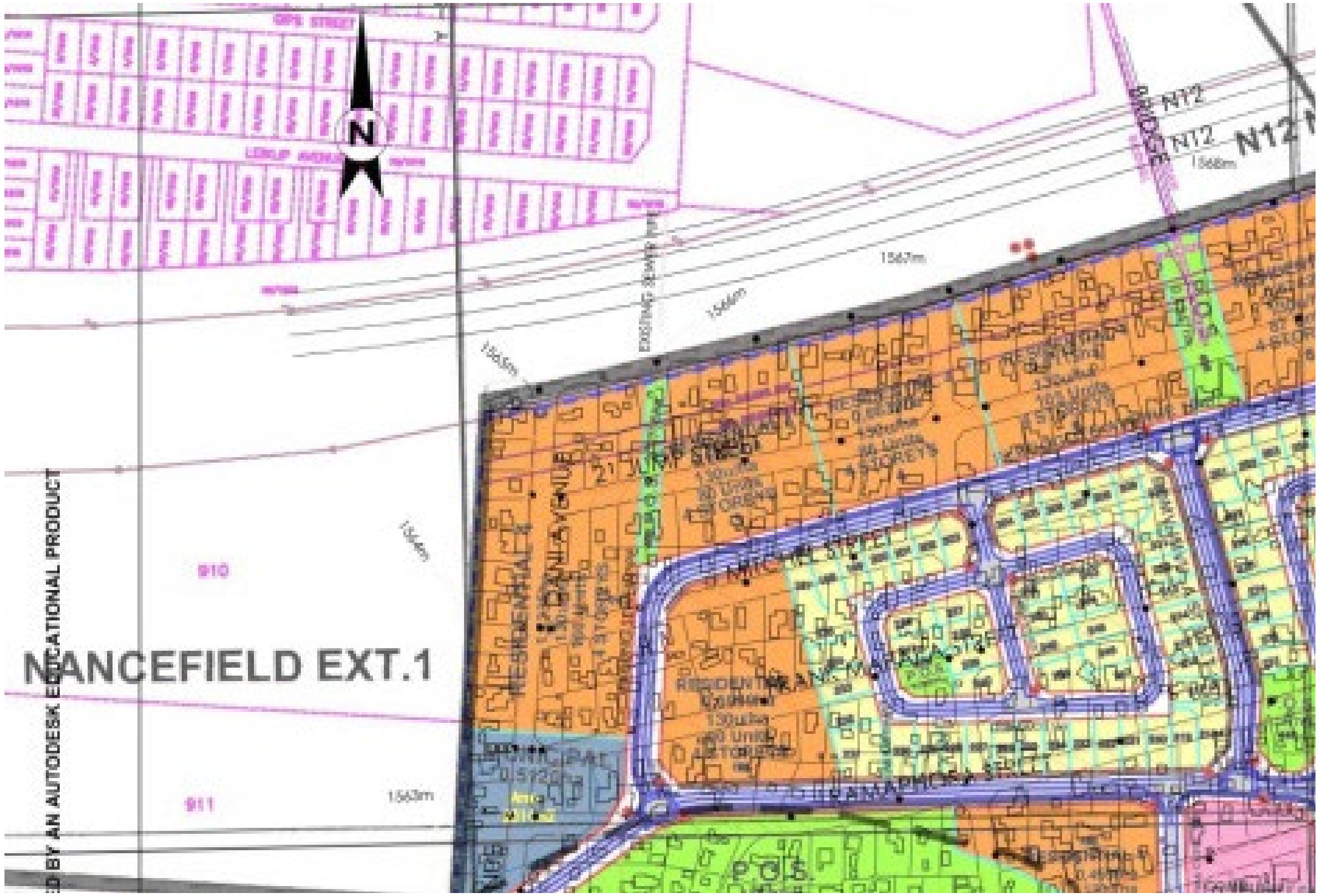
The inaugural meeting of the Slovo Park Task Team was on 6 December 2016, eight months after the high court order. The first action was the confirmation that the SPCDF were the legitimate representatives for the community, as this was challenged by an organisation called Marakane who maintained that the SPCDF were just another stakeholder within the community and not the leaders of the community. The SPCDF were confirmed in a community meeting.

*The first failed attempt to prepare an in-situ layout plan – 2016–2018*

The next significant action was the unilateral appointment of a consultant by the CoJ in early 2017 to undertake the planning for the upgrade. On notification of their appointment to undertake the reformulation of the application to the MEC for upgrading of Slovo Park, the consultants were reminded by the CUBES representative that the Slovo Park development should not be treated as a housing project but rather an in-situ upgrade project, and she spelt out the differences between the two (See **Appendix 7.1**). At the following Task Team meeting scheduled for the 24 January 2017 the consultants were scheduled to present a work plan to the Task Team (TT).

This meeting never materialised, rather the consultants proceeded to prepare their layout plan (with some community consultations mainly amongst members of the leadership) that took limited cognisance of the existing layout and structures on the site. This plan was submitted to the CoJ and only brought to the notice of the TT technical advisors in September of 2017 (Refer to Map 7.5). The example extract of Consultant A’s layout in Map 7.5 clearly shows how the proposed layout did not take cognisance of the existing underlying layout and dwelling structures. Furthermore, the orange areas on the map were proposed for higher density residential apartments which the community were not anticipating and would have resulted in extensive relocations. At this meeting the community on the advice of CUBES and SERI, relating to the implications of the plan, rejected the layout. However, controversy followed as it turned out that the SPDCF had approved the layout plan prior to getting advice from SERI and CUBES. It was established that the Consultant A had presented the plan to the community members in Slovo Park as the only alternative, stating that it was the only viable plan. On that basis, and with little understanding of the implications for them, residents approved the plan. The consulting planner attempted to justify their layout by maintaining that their layout was “creating a community through its configuration loop roads and plots”. This was alarming given the coherence of the existing community (mine and professor Huchzermeyer’s notes from the meeting).

**Map 7.5: Consultant A's proposed layout**



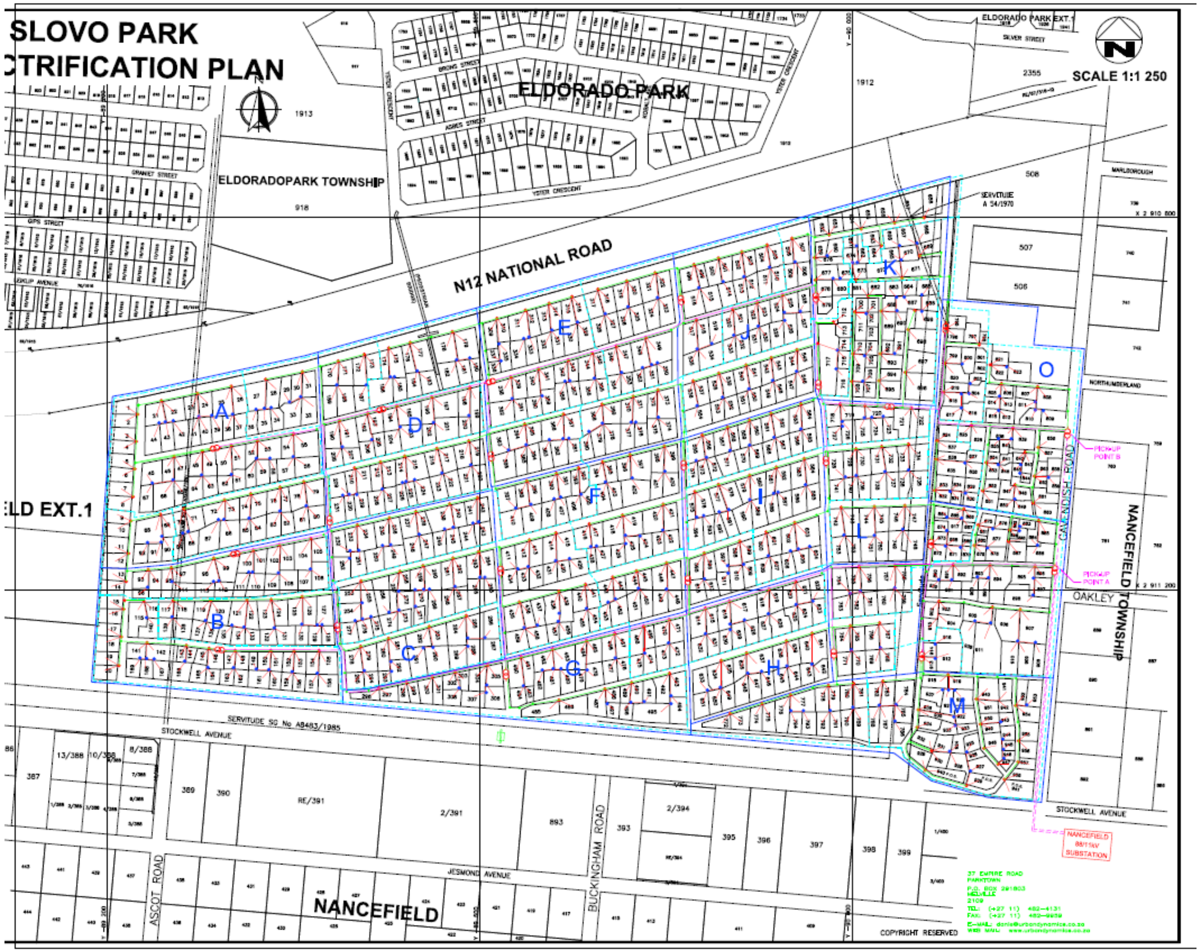

*Source: SERI (2018b)*

Despite the clear rejection of the plan by the SPCDF, it was quietly submitted to CoJ Planning Department by the consultants and possibly the CoJ officials for approval. Furthermore, after many requests in subsequent TT meetings (attended by – see Table 7.1 above), to clarify the status of the plan, it was only established some ten months later that the plan had been approved by the CoJ Planning Department. Between October 2017 and March 2018 there was much debate as to what to do about the layout debacle. The debate was that if it had to be redone it would delay the project vs could the layout just be amended and still achieve the in-situ objectives? During this period, at the end of 2017 the leader of SPCDF died from an illness and the city's project manager for Slovo Park resigned. The new Acting Regional Head for Region G, (PM2) was described by the new SPCDF chair as being less inclined to consult others than his predecessor was, and all meetings stopped. As a result, no overall meetings of the TT between September 2017 and March 2018, caused another six-month delay. There was what appeared to be a re-set meeting on 1 March 2018 in which all parties were reminded of their roles and responsibilities and the meeting was concluded with the agreements that: The CoJ would follow-up on the status of the alternative sites for relocations and there would be another public meeting in Slovo Park to reaffirm which bodies represented the interests of the people of Slovo Park.

*The electrification of Slovo Park – 2018*

Another consultancy (Consultant D) was appointed to work on the electricity installation plan in early 2018, based on the existing in situ settlement pattern, and an agreement was reached on 18 August 2018 to electrify 1076 plots and to provide them with another four connections each to service their tenants. However, even in this parallel process, City Power invited the Marakane organisation, despite not being TT members and not being endorsed by the Slovo Park community as legitimate representatives. This action continued to challenge the legitimacy of the SPCDF. Furthermore, the Marakane organisation objected to the agreement that only 1076 electricity subsidies would be utilised, assuming the remaining households would utilise their electrical subsidies once they were relocated to their final allocated plots.

**Map 7.6: Electrification plan of 2018**




Source: *City of Johannesburg, 2018*

The two disputes around the proposed layout for the business plan and the electrical subsidies to be allocated remained unresolved effectively until late 2018, even after the new project manager was appointed by the CoJ to the Slovo Park project in June 2018. CUBES met with the new CoJ project manager (PM3) on 18 November 2018 where we were informed that the National Department of Human Settlements through NUSP had appointed four consultants to the CoJ to assist them with preparing upgrade plans for the informal settlements in Johannesburg. He would appoint two of these consultants to work on the Slovo Park upgrade to prepare a revised layout plan.

*Attempts by SPCDF to self-fund upgrade and another layout attempt by consultants – 2018/2019*

At a meeting in November 2018, SERI suggested to the TT that they intended to raise funds for the Task Team to appoint independent consultants to undertake a revised in-situ layout for Slovo Park. The new project manager's initial response was that this would require a Power of Attorney from the CoJ to SERI which would be too complicated, and therefore the CoJ should do the revised layout (while agreeing that the existing layout plan be cancelled). He undertook to organise the appointment of yet new consultants to revise the layout plan to produce a proper in-situ layout by end of December 2018.

In the following TT meeting in February 2019, it became apparent that the agreed cancellation of the layout plan had still not happened. It was also decided that a finalised layout plan was not necessary for a Phase 1 UISP application to the MEC and that the TT would continue to prepare the application which would be finalised at a further meeting on 28 February 2019.

Also in February 2019, the new project manager (PM3) organised a workshop on the UISP for his housing project managers. CUBES representatives presented on the UISP policy and on tenure security. It was apparent at the workshop that most of the project managers were not familiar with the contents of the UISP, and that there was a large capacity deficit within the CoJ regarding upgrading of informal settlements, a concern given that we were now three years post the High Court ruling and that there were some 180 informal settlements in Johannesburg. No further TT meetings were held until 11 July 2019 when the nationally appointed consultants presented their completed layout plan. Once again it was found to be inadequate and rejected, because it was prepared without adequate consultation with the community and would result in significant relocations. By this meeting an application for Phase 1 UISP funding had been completed but was only finally submitted to the MEC on 6 November 2019, after waiting for the Acting Executive Director of Housing to sign it off.

At the first meeting of 2020 held on 13 February, SERI informed the TT that they had raised funds for an in-situ layout plan for Slovo Park and that the TT wanted assurance from the CoJ that they would accept such as the plan was to be implemented by the CoJ. To this end it was then imperative that information be obtained about the alternative land parcels which were still outstanding from the CoJ, and to confirm the status of the first layout and Township Establishment application submitted by Consultants A, which the new project manager had indicated would be cancelled back in December 2018. In response the CoJ said they would enquire from the Planning Department whether funds can be used to collaboratively work on a new layout plan with the CoJ. After three years of enquiring, on 20 February 2020? the TT received a letter from the Acting Executive Director of Housing providing information on the four alternative sites for possible relocation of those who could not be accommodated in-situ in Slovo Park. The information was vague and provided no clear time frames.

At the following meeting on 19 March 2020, and one of the most confusing meetings to date, the TT was informed by the CoJ that Consultants A had been reappointed to finalise the layout process at no additional cost, based on the explanation that there was a history with them and that it would reduce delays. Furthermore, the meeting was informed that the money that SERI had raised could be put in a kitty for later. It was also established that 1 to 1 sitting on the TT as technical advisors had done detailed work with one block of households in determining a methodology for preparing a legitimate in-situ layout plan. However, Consultants A would work collaboratively with 1 to 1 to finalise the layout with the alternative land parcels by 20 September 2020 in order to continue with the processing of the Township Establishment application submitted by Consultant A which was approved by the CoJ but was on hold. This was the first time that the TT had heard there was an approved Township Establishment application sitting with the CoJ and the TT had no knowledge of its contents. At the same time the CoJ suggested withdrawing the Township Establishment from the MEC's office in favour of an upgrade plan. Furthermore, it was resolved that the CoJ would meet 'privately' with Consultant A about the Township Application and request the ED to outline a work plan for Consultant A. Also, Southern Farms would be included as one of the alternative sites for Slovo Park residents, despite it being located some 5km away from Slovo Park. As members of the TT, we could not understand the reappointment of Consultant A but were aware that the SPCDF were not objecting and that they believed this would somehow expedite the development process.

Shortly after this meeting the nation went into lockdown due to the COVID 19 pandemic. The next meeting was held online on 19 August 2020. The meeting of 31 August was consumed with confusion around the newly proposed 'Informal Settlement Partnership Grant' and whether this was replacing the UISP instrument. At this meeting there was talk of the Johannesburg Water Department having made a R10 million commitment to repair and investigate alternatives to the pit-latrines. The meeting resolved to run a workshop with the national and provincial DHS to get clarity on the grant issue. There was still discussion on whether to withdraw the layout that had been rejected back in 2017 from the MEC's office. A workshop was held on 5 November 2020 involving the TT and the NDHS. The NDHS clarified the new grant instrument. The new project manager announced that a social facilitation consultant had been unilaterally appointed to the Slovo Park project, which came as a surprise to the SPCDF. The new project manager further informed the meeting that their lawyers had been instructed unilaterally on 1 September 2020 to appoint a social facilitator, a town planner and a civil engineer to the Slovo project, to be paid for with the R10 million mentioned in the meeting of 19 August. Concerns were raised by the SPCDF about these appointments and questions asked about the earnings of the various consultants to date. The new project manager (PM3) agreed with the concerns but indicated that it was the procurement process and offered to share information on what had been paid out, but the information was never provided. Another meeting was scheduled for 17 November to introduce the new consultants.

Although the next meeting was held on 17 November 2020, a new set of social consultants, engineering consultants and town planning Consultant C were introduced to the TT, but no programme of delivery was presented. On 1 December 2020, another TT meeting was held at which the town planning Consultants C presented known information but also appropriate intentions with regards to minimum relocations, compensation and working together with the TT NGO professionals.

On 25 February 2021, a member of the TT received a call from an official at province saying that the SPDCF UISP application to the MEC had not received any attention (15 months after submission) and that he wanted to know from whom he should obtain information on the project as he wanted to include it into the provincial business plan for 2012/22. The next TT meeting took place on 11 March 2021, where the responsible provincial official attended and informed the meeting that Slovo Park had been budgeted for implementation in the 2021/22 financial year.

The meeting was informed that town planning Consultants C were not yet appointed because all the CoJ's appointed legal teams were out of their five-year contractual periods and were therefore unable to appoint other consultants on behalf of the CoJ. They hoped to have a new panel of lawyers appointed by mid-April 2021. Members of the TT raised concerns around the existing legal team's ability to deliver given their record over the past five years as well as the potential of town planning Consultants C's ability to deliver, and it was then confirmed that the CoJ had in fact already terminated their appointment due to their lack of ability to deliver.

*The province takes over the implementation of the project – 2021-present*

The next meeting was on 12 May 2021, at which the provincial official informed the TT that they had accepted the Slovo Park Application into the 2021/22 budget and that R32 million would be allocated for planning work and interim services, although the MEC had still not formally signed off the application. It was also noted that the letter to the MEC of 2016 had still not been responded to. The provincial official also noted that, based on the studies undertaken by Consultant A, the project would not accommodate all 2400 households as there were significant numbers of foreign nationals residing in Slovo Park[41]. In response, as there was uncertainty as to whether the GDHS was taking over the project, the TT members stressed that a procurement strategy needed to be formulated so as not to repeat the procurement mistakes of the past and it was agreed that the TT would prepare an implementation plan. Furthermore, concerns were raised about the age of the information on which the

[41] It should be noted that all along the community/SPCDF have indicated that the foreign nationals are fully integrated into the community.

GDHS were basing their information, and that all those residing within an informal settlement would be serviced in terms of the UISP (only undocumented migrants may be excluded by the Department of Foreign Affairs). A date of 19 May 2021 was agreed to produce a project implementation plan. Again, the financial accountability issues were postponed until the 'Implementation plan workshop'. Who would make the appointments would be resolved by the end of April after Group Legal had appointed the legal appointment panels.

The implementation workshop was held on 20 May 2021; however, it began where the last meeting ended with a call to set out the key activities that needed to be done to implement the upgrade project, which was a repeat of previous processes undertaken in the project. The meeting was chaired by the provincial official who even suggested that we needed to decide whether we had to restart the layout process despite knowing that the layout referred to, had been rejected back in 2017. Once again, 1 to 1 presented their visual roadmap given the history and what still needed to be done. Firstly, the layout had to be redone, and a relocation strategy prepared. Alternative land had to be purchased urgently for relocations, as the relocation strategy could not be finalised before the alternative land was secured for Slovo Park usage. At this meeting the chair of the SPCDF very clearly asked why we were not setting clear milestones and whether the GDHS was coming into the project and how? In response the GDHS official maintained that they still needed to know why the previous layout had been rejected and to identify the alternative land. There was some discussion on what phase of the UISP the project was in and that it was agreed that it was still in phase 2. Also, one of the SPCDF members reminded the meeting that the province along with the HDA and NUSP should have been part of the TT from its inception in 2016, which would have mitigated the many delays around appointments, phases of development etc. experienced in the project to date.

The provincial official confirmed that they would be budgeting for the preparation of a layout plan, Geotech investigations, EIA, land surveying, traffic assessment township establishment and additional professional services. Also, that they would add budget for land acquisition. The workshop concluded with CoJ PM3 and the provincial official committing to a meeting confirming the Terms of Reference for appointments and the budget from province which would be circulated amongst the TT members.

The next meeting was held on 21 September 2021, where it was reported that the professional resource teams (PRTS) would be appointed by the end of September 2021 and a list of tasks applicable to all informal settlement upgrades in Gauteng was listed as tasks for them to do. A member of the TT again cautioned that the appointed firms should need to demonstrate their ability to implement in-situ layouts to not repeat the mistakes already made. These concerns were echoed by the SPCDF leadership, stating that they wanted to avoid a situation where new professionals appointed set the process back again. Furthermore, it was questioned why the social compact was not signed and in place despite the social facilitators having been contracted for a year already. It was also noted that no visit to Slovo Park had been made by the provincial official as promised. The meeting closed with the agreement to have the new appointments finalised by 1 October 2021 when the next meeting would be held.

On 1 October 2021 the CoJ PM3 ran the meeting from his car on the way to another meeting. The provincial official did not attend the meeting. After much discussion on how disappointed the SPCDF were with the province and process it was agreed that the appointments would be done by 25 October followed by a public meeting on 30 October and that the CoJ PM3 would continue to engage the National Department and Treasury for their inputs. When the next meeting took place on 29 October, province indicated that there had been a further delay of four to five days in the appointments. The CoJ PM3 informed the meeting that it was his last day in the acting position and that we may not see him again. No consultants were introduced nor did any meeting with the community by the provincial official take place for the remainder of 2021.

The next meeting was on 8 February 2022, at which the new professional team made up of project managers, planners and civil engineers was introduced (Consultants D). The GDHS official informed the meeting that the contract was for 36 months at a value of R18 million. It was then made apparent by the SPCDF that posters had already appeared in the community that work would begin at a certain date but to date there had been no engagement with the community or its leadership. The CoJ PM3 then requested the Provincial Consultants E to apologise and cease work, until they had engaged the community. It was then agreed that the professional team would meet with the community on 11 February and the meeting was closed.

Meetings were held again on 11 and 25 February 2022, which were mainly spent informing the new professional team (Consultants D) on the background to the project and on what studies had already been undertaken. The CoJ PM3 reminded the new professional team that all the information was available on the 9th floor of the CoJ Municipal building. The Consultants D asked whether they could simply amend the first rejected layout to save time and submit an amendment to the existing Township Establishment application? The meeting agreed that the next step was to finalise a social compact to determine the precise roles and responsibilities of the multiple stakeholders involved in the project.

Given that the GDHS had effectively taken over the implementation of the project in terms of being the primary agent to the professional team as opposed to the CoJ (the local municipality is the developer according the UISP), roles and responsibilities had to be made clear within a social compact[42].

The social compact workshop was held on 4 March 2022, where various organisations presented on the UISP, the new partnership grant, the Slovo Park Road Map and how to compile a social compact. Thereafter the draft social compact document was distributed amongst all stakeholders for comments. This process went on until 17 June when the final TT meeting took place. To everyone's surprise there was a new CoJ Project Manager (CoJPM4) who knew nothing about the project. At this meeting the provincial official indicated that he had sent the scope of work for the new professional team to the CoJ over a month ago and received no response. He further reported back that the professional team had produced an Inception report which he could make available, which again the TT had never received. Also, it was reported by Consultant D that they were hoping to submit their layout plan within the month. This raised questions amongst the SPCDF as they had had no contact with the consultants and therefore it appeared as if the layout had been prepared without consultation with the community, despite all the many concerns raised previously. The Consultant D further expressed concern at the impending involvement of Johannesburg Water as everyone's roles needed to be clarified first, which is why a Memorandum of Agreement (MOU) between all stakeholders was required. Finally, he also expressed his frustration that the MOU remained unresolved. This elicited a sharp rebuke from

[42] A social compact is an agreement between the state and all stakeholders.

the CoJ which turned into a blame game between the two parties accusing each other of not having done various tasks.

At the same meeting, the SPCDF expressed surprise at the new project manager and further asked the CoJ and the GDHS to resolve their differences and if not, they threatened to prepare another report to the courts. The chair of the SPCDF further made the following statement, "Mayor Masondo (the first mayor the Slovo community dealt with) is now in Parliament – but their community is still without services". At this point the previous CoJ PM3 (who joined the meeting online) took over the meeting and undertook that within the following seven days the new professional team would liaise with the TT technical NGO, to clarify the situation with interim services and on the alternative land parcels. An agenda for a meeting was set for 24 June to clarify the role of the TT in the MOU, get an update on progress from the new professional team and to get feedback on interim services.

No further meetings or MOU materialised in 2022. Following the meeting of 17 June, SERI sent the CoJ's lawyers regular monthly emails inquiring about when the next TT meeting would be held. On 6 September 2022 the CoJ's lawyers distributed an agenda for a proposed meeting on 8 September, a draft layout plan and a project management workflow Gantt chart. However, they also indicated that the MOU was still not signed by the Acting City Manager and that the alternate faction in Slovo Park, the Marikane Employment Forum wanted to be a signatory in the MOU, despite having barely attended a TT meeting over the past seven years.

This was followed by an email on 7 September from the CoJ's lawyers informing us that the meeting had been cancelled due to the MOU not having been signed. The last correspondence received from the city was an email from the CoJ's lawyers on 23 September 2022, acknowledging receipt of an email from the CUBES representative on the TT. No explanation was received from any government agency as to the ceasing of communication with the TT or Slovo Park Community.

On examination of the documents received from the provincial official on 6 September, the layout plan appears to depict an in-situ layout in that the plot boundaries accommodate the existing structures (largely based on the electricity implementation layout). However, it remains unresolved in that 946 plots are designed as opposed to the basic requirement of 1076 sites, which would mean that some 130 of the original settlers would have to be relocated. The implementation Gantt chart listed December 2022 was the intended approval of the layout by the CoJ. Given the lack of consultation around the layout, the SPCDF and their technical support representatives felt this was potentially very problematic.

So as 2023 approached the SPCDF, SERI and CUBES on the TT could not help feeling that the project status was back in a similar position to the end of 2017, some five years back. My research narrative and analysis of the project ended at the end of 2022.

## 7.4 Conclusion

This chapter set out the background to the Slovo Park informal settlement community from their occupation of the land in 1992 until the high court ruling in 2016. Then between 2016 and the end of 2022 I detailed the actors involved and events around the attempted application of the UISP, largely drawing from the irregular Task Team meetings held during that time. I also described the various techne challenges and failures around the formulation of an in-situ layout plan and the associated attempts to obtain some form of tenure security and interim services for the community.

In the next chapter I select key actions and moments that I felt had a significant impact on the application of the UISP policy framework and its instruments and analyse them.

# CHAPTER 8:
# ANALYSIS OF SLOVO PARK UISP PROJECT IMPLEMENTATION

## 8.1 Introduction

Reflecting back on the application of the UISP in Slovo Park, it is clear that the UISP is a broad policy framework instrument made up of multiple planning implementation instruments, within each phase of the UISP Program set out in Chapter 6, section 6.3.4. For example, in Phase 2 of the UISP the agreement between the community and the municipality on the participation process is an instrument of implementation. In the case of Slovo Park that instrument is the Task Team. The township layout in phase 3 is also an implementation instrument as per the definitions set out by Lascoumes and Le Gales, 2007 and Lascoumes and Simmard, 2011). It is these two instruments that I focus on in this analysis. The Task Team instrument set up as part of a procedural consensus building process to ensure buy in from the community (given the initial conflict around the high court case). The second instrument is a more planning techne instrument in terms of a layout plan which is also linked to the potential tenure security options as they have to be demarcated by the layout, on which all further physical upgrading initiatives is based, such as services and land uses. In my analysis I examine their genealogy, their uses, how they were framed and the contestations around their application. The main reasons for the limited implementation of the UISP policy framework instrument in Slovo Park is a combination of two main factors, the problematic application of the task team instrument and the delays caused by the contestations over the nature of the various township layouts produced.

The first line of argument revolves around the Task Team consensus building instrument that it is being used for two purposes. Firstly, as a mechanism to retain control of the entire development process through the exclusive decision making around financial expenditure, appointment of service providers, approval processes and even setting the timeframe agenda for meetings. Secondly the Task Team has enabled the CoJ to string the community along for some seven years despite a high court ruling against them. To this end I argue that it was not a preconceived plan to use such an instrument as a delaying mechanism but has become a convenient instrument to hold off further litigation while going through the motions of in-situ upgrading Slovo Park. I further argue that 'going through the motions' is not an intentional obfuscation of implementing the UISP. Rather it is a result of a combination of multiple factors, some unintentional while others have more basis of intent. Those unintentional factors include poor intergovernmental and inter-department co-ordination, constant turn-over of senior personnel on the project, low levels of skills and experience amongst officials. More intentional factors include risk aversion by officials and the CoJ as an institution, which is largely underpinned by the CoJ's apparent reluctance to address access to land issues on behalf of the informal settlement communities. This is the single underlying factor blocking security of tenure and associated finalisation of the layout plan (due to the lack of alternative land to resettle residents currently in back yards and in undevelopable areas of the site).

The second line of argument, related to the above, revolves around the *techne* of planning - the layout plans which have been the crux of the project delays to date. Associated issues are that the CoJ Department of Human Settlements as well as the consultants they have appointed have been professionally unskilled (in terms of familiarity and experience) to meet the socio-technical demands of in-situ informal settlement upgrading. I argue that all of them have been incapable of preparing in-situ layout plans with the required engagement and co-production from the community. Furthermore, they are locked in traditional way of doing things that don't take into account conditions of informality and what needs to be done and how. They also adopted a more conventional township establishment instrument which involved getting a layout plan approved, then getting a formal township establishment promulgated for the area followed by plot surveying and free-hold tenure transfer of plots to qualifying beneficiaries.

In this chapter I firstly analyse what I saw as key activities, contestations and moments that caused delays of the Task Team that impacted on the implementation of the project. These activities, contestations and moments of delay were extracted from the minutes of the Task Team meetings as well as from meeting notes made by me and Marie Huchzermeyer as CUBES participants and set out in table 8.2.1, Actions A to P below. I then analyse the various contestations and technical flaws in the layout plans produced by the CoJ's various consultants, based on discussions within the TT meetings and Huchzermeyer's analysis of some of the plans, presented in annexure

8.1. The analysis of the Task Team actions, and the layout plan preparations provides supporting evidence for the above arguments. In addition to these two themes a broader analysis of the UISP including the seven potentially paradigm shifting instruments (in terms of achieving more progressive outcomes for the poor) listed by Huchzermeyer (2006), (refer to Chapter 6 section 6.3.4), is set out.

## 8.2 Deconstructing the Task Team Activities

The Slovo Park Task Team (TT) was established only after a business plan to build 399 freestanding houses in Slovo Park and to relocate the remaining residence to Unaville (as the CoJ's first response to the High Court Judgement) was rejected by the community. It was on the realisation that the CoJ would not be able to meet the requirements of the High Court judgement without the buy in of the community that it was decided between the CoJ and the SPCDF (representatives of the Slovo Park community) to establish the Task Team (Action A).

On reviewing seven years of minutes of the TT meetings, it reflects a story of broken promises, endlessly ignored deadlines, blatant contraventions, non-accountability, selection of inappropriate conventional instruments or negation of the UISP policy clauses.

At worst a process of constant delays while distributing financial resources to professional elites and at best mere ambivalence and incapacity from the CoJ politicians and officials towards the Slovo Park community. At the same time, the SPCDF is powerless even with the assistance of a legal NGO and technical support specialists, their leverage over the CoJ is limited. The only leverage the community has, has been the high court judgement and the threat of returning to the courts, which in theory could find the mayor and senior officials' liable of having contravened the original judgement. However, this route has proven to be incredibly time consuming (as demonstrated by the time taken to get the first judgement) and so the SPCDF has continued to participate in the process in the hope of a positive outcome.

The Slovo Park upgrading has not followed the prescribed phases of the UISP sequentially, due to the length of time the settlement has been in existence and through the various community, NGO and CoJ initiatives that have taken place, which produced some of the products envisaged in phase 2 such as interim services.

However, it must be stressed that to date the upgrade project has not progressed beyond Phases 1 and 2 (refer to chapter 6 section 6.3.4 above) and therefore the factors below can only be assessed accordingly. Table 8.1 below represents the key actions I have selected from the minutes either arrived at through consensus or contestation, in the first column of the table. The second column sets out whether the action was in compliance with the UISP clauses or not. The information in the third column reflects on what impact that action had on the implementation process. The fourth column reflects on the efficacy of the UISP instrument, itself in terms of the actions taken by the TT and how these actions undermine the implementation of the UISP. It is noted that the analysis below will only be in relation to the period post-high-court ruling as that is when the UISP was meant to be applied.

As indicated in table 7.1 in chapter 7, (indicating the actors involved the TT as well as those outside the TT), there were nine permanent organisations and CoJ departments and their service providers members and another nine non-permanent organisations from other levels of governments and service providers that participated for periods during the seven years. Task Team meetings could range in size from a dozen people to over thirty, depending on how many people were invited by the CoJ (in terms of other CoJ departments) or the SPCDF inviting additional community members. The non-permanent members were mainly CoJ consultants that contributed to the meeting during their contractual appointments.

What must be clarified is that although I refer to the TT as a single steering committee or consensus building body, as indicated above it is made up of representatives from the CoJ and their service providers and the community representatives their supporting agencies and the two groups have a broadly antagonistic relationship largely based on mistrust. Although the meetings were generally held in a cordial manner, the core members from the CoJ side would be the project manager, their secretary, and their outsourced legal advisor. The community would be represented by the SPCDF chairperson and some members of their committee as well as their legal representatives and technical advisors. No protocols around roles and responsibilities of members of the TT were ever established. As such roles and responsibilities were assumed. As such the average meeting would proceed with the CoJ project manager getting agreement on the agenda and then chairing the meetings. The general flow of the meeting was of the SPCDF asking the project manager on progress of whatever tasks had been agreed upon or the community expressing dissatisfaction with events and threatening further legal action.

### 8.2.1 Roles, Responsibilities and Actions of the State Stakeholders and their service providers in the Task Team

**Table 8.1: Key actions and movements of the Task Team**

| Actions | Date | Actions Taken in the Task Team process | UISP Compliance | Implications of the Actions on Upgrading process | Analysis – Implications for the UISP Policy Instrument |
|---|---|---|---|---|---|
| A | 12/2016 | Task Team formed by consensus to ensure stakeholder engagement | In accordance with UISP sections 2.2 policy principles, Section 3.9 in terms of Facilitating Community Participation – <br><br> "It is of the utmost importance that the community is involved in all aspects of the settlement upgrading process". <br><br> "Secondly, the community has deep routed knowledge of its development needs and preferences. This knowledge must be harnessed to ensure that a township design and services standards as well as | While the City's lawyers set out in a letter that a task team would be set up for community participation, the nature of that participation is never detailed and jointly agreed upon. <br><br> Resulted in an ongoing engagement between the CoJ and community. | The task Team has functioned at the discretion of the CoJ – who unilaterally decide when meetings are held and around service provider appointments and budgets. The TT members make decision about making a UISP application to the MEC, when and what workshops should be held and on approvals of products prepared by the service providers. No joint decision making on the major issues such as appointments and finance. Also, Task team members are powerless to |

| | | | | | |
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| | | | the housing solutions and the economic and social facilities opted for, are targeted at satisfying the actual needs and preferences". | | sanction or hold CoJ or service providers accountable.<br><br>*The Code itself is too vague on what participation constitutes with huge implications, leaving the community powerless.* |
| B | 02/2017 | Unilateral appointment of a consultant by the CoJ within the Task Team despite concerns raised by other members of the task team, in early 2017 to undertake the planning for the upgrade. | In compliance with section 2.6 institutional Arrangements - "Implement approved projects in accordance with agreements entered into with PDs;" Only talks about Public/public partnerships and the responsibilities of three spheres of government. Also, in compliance with section 3.6 – The Municipalities act as developers and in cases where a municipality lacks the capacity and expertise to undertake projects, the PD will | As the 'developer' they had the right to appoint unilaterally, however, the lack of transparency, given that there was a constituted task team with professional skills, in the appointment process demonstrated bad practice on behalf of the City. This resulted in a further one-year delay in the process. | Effectively due to the UISP specifying that the municipality is the developer and that only the state is responsible for delivery, it left the community and Task team powerless to intervene, other than to reject the service providers product. |

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| | | | assist and augment the abilities of the municipality | | |
| C | 09/2017 | Consultants proceeded to prepare their layout plan (with some community consultations mainly amongst members of the leadership) – layout rejected by SPCDF and Task Team as not an insitu layout, required bulk of community to be relocated. | Not in compliance with UISP Sections, 3.10A – "The township layout and design should be undertaken on the basis of the specific needs of the community and on the principle that relocations should be avoided as far as possible". | Again, consultants only engaged with the Task Team group once they had a finished product, which resulted in the wrong product and a one-year delay. | Only recourse the community had was to reject the plan. The UISP only refers to community participation and consultation rather than responsibilities to approve or reject aspects produced in the process. |
| D | 09/2017 | Change of CoJ project managers and new PM2 did not accept alternative suggestions – no further TT meetings – beyond the control of the Task Team | Not strictly in compliance with UISP Section 2.2 and 3.9, however, in compliance with section 2.6. | The attitude and behaviour of the Coj project manager resulted in another six months delay. | Again, due to SPCDF having no legal standing specified according to the UISP they had not recourse to hold the CoJ accountable for simply halting engagement. |
| | 03/2018 | Request by the Task team for the CoJ officials | N/A | The inability for the Coj to co-ordinate with other departments and spheres of | Critically the UISP does not acknowledge that other land |

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| E | | to follow-up on alternative land and SPCDF to reaffirm leadership | | government over the identification, acquisition, planning and servicing of additional land parcels still continues to delay the Slovo park upgrading project. | would need to be developed in parallel to facilitate relocations in almost every upgrading development. |
| F | 06-11/2018 | New PM3 appointed because PM 2 had disagreements with the Task team beyond the control of the Task Team | Not strictly in compliance with UISP Section 2.2 and 3.9, however, in compliance with section 2.6. | It took at least six months for this PM to become fully acquainted with the project during which there were many repeated issues raised and limited progress. | Again, due to SPCDF having no legal standing specified according to the UISP they had not recourse to select a new PM. |
| G | 06-11/2018 | Appointment of consultant and Installation of temporary electricity & and decision to make UISP Application with consensus of Task Team | Application in compliance with section 2.5 | While seen as real progress, the nature of the electricity installed, and exclusion of certain community members left unresolved issues. | The UISP assumes intergovernmental co-ordination, particularly within the same state entities, is organised. |
| H | 02/2019 | Municipal Workshop on UISP undertaken with consensus within the Task Team | N/A | Demonstrated the lack of knowledge most CoJ municipal housing officials had of the contents of the UISP. | N/A |

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| I | 11/2019 | Ph 1-UISP Application to MEC undertaken with consensus within the Task Team | Application in compliance with section 2.5 | It took a year to prepare a UISP application to the MEC | The UISP does not specify timeframes, which facilitates endless delays. |
| J | 02/2020 | SPCDF's NGO had raised funds for independent planning.<br><br>Letter from CoJ identifying four alternative sites for relocations | This could be a contribution to the municipalities Capital Counter Fund in terms of 2.5.4 of the UISP.<br><br>Also, could be done as part of a PPP between the SPCDF and City in terms of the MFMA | This action had the potential to expedite the upgrading project as the planners who would have been appointed had already proved (on risk) that they could undertake the required planning to the community's satisfaction. However, due to an apparent / reluctance on behalf of the CoJ to accommodate an outside co-developer it was rejected. | Effectively due to the UISP specifying that the municipality is the developer and that only the state is responsible for delivery, it left the community and Task team powerless to object. |
| K | 03/2020 | Original consultants reappointed to complete rejected layout with dealing for Sept 2020 and that the NGO could keep their money. | In compliance with section 3.6 – The Municipalities act as developers | This action was confusing and did not result in an additional outcome and contributed to further delays. | Again, due to SPCDF and task team having no legal standing specified according to the UISP they had no recourse to hold the CoJ accountable for undertaking a confusing decision. |
| | 08/2020 | Confusion over new Partnership grant only clarified in November | N/A In compliance with section 3.6 – The | This action resulted in further delays trying to clarify the new funding proposals. This indicated poor | Again, due to SPCDF and task team having no legal standing specified according |

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| L | | 2020. The Task Team were helpless as they had to wait for the intergovernmental processes to take place in order to clarify the changes in the funding instrument, from national to local government. | Municipalities act as developers | communication networks between state entities in different spheres of government. | to the UISP they had no recourse to pressure the CoJ to expedite clarity on the funding instrument. |
| M | 11/2020 | New set of consultants introduced to TT, again without any input from the task team, which raised contestations. | In compliance with Part A section 3.6 – The Municipalities act as developers | These consultants never produced any products and therefore contributed to another one-years delay. | Again, effectively due to the UISP specifying that the municipality is the developer and that only the state is responsible for delivery, it left the community and Task team powerless to intervene, other than to reject the service providers product. |
| N | 02/2021 | UISP application to MEC received no attention, much to the frustration of the Task Team. Also, | In compliance with Part A section 3.6 – The Municipalities act as developers | It took fourteen months for the application just to be noticed need alone actioned, causing further delays. | The UISP does not specify timeframes, which facilitates endless delays. Again, effectively due to the UISP specifying that the municipality is the developer |

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| | | CoJ officials never followed up. | | | and that only the state is responsible for delivery, it left the community and Task team powerless to put pressure on the CoJ. |
| O | 04/2021 | CoJ unable to appoint consultants as their legal panel had not yet been appointed. This left members of the Task Team frustrated but helpless to intervene. | In compliance with Part A section 3.6 – The Municipalities act as developers | The inability of the procurement office to procure legal consultants resulted in the inability for the housing department to appoint consultants contributing to further delays. | Again, effectively due to the UISP specifying that the municipality is the developer and that only the state is responsible for delivery, it left the community and Task team powerless to intervene. |
| P | 05/2021 | Despite concerns raised by the Task Team, the province was requested by the CoJ to take over the financing of the project . This meant that they would be budgeting for an entirely new planning team of consultants. | In accordance with UISP Part A, Section 2.5 and Part B 3.5. While a MOU is a requirement in the UISP in Part A Section 3.11, and Part B 3.5 it is only between the City and province, with no mention of community roles or responsibilities in its contents. Only lists that it must include: "Details of community participation plan and | This action added another seven months delay, as the province undertook the appointments as part of a province wide initiative – ignoring the specific requirements of the Melani high court Ruling. | Again, effectively due to the UISP specifying that the municipality is the developer and that only the state is responsible for delivery, it left the community and Task team powerless to intervene. |

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| | | | confirmation of the commitment to implement the agreement reached with the community". | | |
| Q | 09-2021 – 02/2022 | New professional team appointment process by the province with limited consultations. (only TOR for consultants consulted on). This now fell completely outside of the Task Team's influence as there was no agreement between the Task Team and the province. | In accordance with UISP Section 2.5, although due to no social compact the consultants once again prepared products without consultation, thus not being in compliance with 2.2 and 3.9 of the UISP. | Despite warnings from the Task Team members that a new professional team was risky, they have produced a draft layout that is broadly an in situ layout but with many unresolved issues which if approved and established as a township may cause further delays and conflicts within the community. | As above |
| R | 04/2022 | Social compact workshop to formulate a social compact between all parties, although initiated by the Task Team the timeframes for the preparation of the Social compact were dependent on | In accordance with UISP sections 2.2 policy principles, Section 3.9 in terms of community participation – "Hence, community participation should be undertaken within the context of a structured agreement | This Social compact had not been completed and signed by all parties by the end of this research – December 2022. | As above |

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| | | intergovernmental interactions between the CoJ and the province. | between the municipality and the community". | | |
| S | 06/2022 | New CoJ project manager appointed to TT by CoJ – last meeting held in 2022 | In compliance with Part A section 3.6 – The Municipalities act as developers | No further engagement with the Task team in 2022, due to MOU not having been signed by the CoJ, MMC. | As above |

As indicated in chapter 6 section 6.3.4 the UISP instrument places all responsibility on the state for delivery. As such only the state has the rights to implement under this policy instrument. This could be the case because the policy makers may have felt that they could not place responsibilities on non-governmental bodies as there would be no way in law to hold them to account. However, the policy instrument does not consider when the state cannot deliver or is unwilling to deliver (appropriately at any level even in the face of a high court ruling).

The project manager appointed unilaterally by the Human Settlements Department within the CoJ, is responsible for determining the dates of the actual meetings (despite next meeting dates agreed consensually at each meeting). The project manager is also responsible for driving the project as per the UISP clauses, through making unilateral appointments of consultants and spending of budgets. The Slovo Park project managers played a central role in the projects pace. Therefore, it is significant that there have been four project managers in seven years, each time requiring the new incumbent a few months to familiarise themselves with the history and dynamics of the project. Each new project manager and consultant appeared to begin with a clean slate. Each incumbent has had different levels of experience and skills around informal settlement upgrading, different levels of commitment to the project. Each had a different rapport and ways of engaging with the SPCDF. PM1 appeared to merely play a mediating role between the consultants and the community, while PM2 became hostile towards the SPCDF to the point of halting meetings. PM 3 was fully committed to the notion of insitu-upgrading but appeared to be opaque in his behaviour at times – meaning he could effectively speak for an hour without saying anything of substance regarding the project - see my reflective notes on Slovo Park in chapter 3 section 3.5. As an observer it appeared to be a form of deflection or delaying mechanism, as if the PM was delaying the process while seeing to be active, while some decision or process was unfolding beyond the project within the CoJ.

Generally, I observed during the entire six years there appeared to be an attitude of indifference or certainly a lack of respect for the community representatives by the officials, depicted through repeated instances where minutes of meetings recorded agreed tasks and deadlines to be undertaken by officials which were ignored. Many requests by the SPCDF within the TT meetings for further investigations around alternative land portions, budgets were ignored repeatedly. An example of this is demonstrated by the repeated requests to secure alternative land for the upgrade process, agreed as crucial by all stakeholders for the progression of the project. The first minute recording to investigate alternative portions of land was at the meeting of the 18 February 2019. It was noted that the CoJ would follow-up on the status of three additional portions. In July 2019, it was again noted that the SPCDF were awaiting a response to the land investigations. On the 17 February 2020 a letter addressed to the SPCDF from the CoJ's legal service providers (copied to the Executive Director of CoJ Human Settlements) set out two-to-four-line reports on four alternative pieces of land. Essentially, the first site was not available until private landowners agreed to sell their land. The second site was owned by the CoJ and was developable for some 7000 sites, however, no status as to its stage of development was provided. The third site has been investigated but no status on the stage of investigation was provided. The fourth site was owned by the CoJ but had zoning challenges and no further data was provided. At a meeting in August 2020, it was again noted that the SPCDF were still awaiting an update on the land portions. A TT meeting in December 2020, noted that planning Consultants C presented their work as between 95% and 100% completed and they reported that four sites had been identified for de-densification but that they needed to be investigated. The quote from the SPCDF chairperson at this meeting illustrates the community's frustrations at the delays:

> "I am concerned that we learned of appointments 4 weeks ago and we are still waiting for the formalisation of these appointments. We have consistently had to reiterate that we are sitting 4 years after the Melani judgment, but we still have to find out what is the delay in make these appointments formal? The SPCDF leadership has a few issues to raise regarding commitments made in past task team meetings and date back to well over a year. In February we met and discussed the outstanding households who still need to be electrified. They are facing another festive season still without electricity. We also requested that Joburg Road Agency be engaged regarding the poor roads in Slovo Park. We are still waiting. We also requested that Joburg Water do an assessment of Slovo Park's water and sanitation situation in order to mitigate against any further harm caused by such poor infrastructure".

2021 was preoccupied by the shift to Gauteng Province to appoint new planning consultants for the project and 2022 was taken up with the preparation of a social compact to determine how the new stakeholders would engage with each other. At the end of 2022 no further clarity had been obtained on the alternative sites.

On several occasions the SPCDF indicated at the TT meetings that they felt disrespected by CoJ and provincial officials, in response to their lack of responses to requests made at the TT meetings. Requests included some form of community office set up in Slovo Park and improvements to their sports field as part of the provision for the social and economic facilities as part of the UISP instrument deliverables. In addition, the SPCDF have been trying to negotiate for a formal employment appointment as community social facilitators to assist the planning process since 2020. Despite over two years of discussions within the TT nothing has materialised to date as the meetings to confirm such arrangements were constantly postponed. The only community facilities that have been built in Slovo Park was a community hall, constructed by student volunteers from the University of Pretoria in 2010.

### 8.2.2 Roles, Responsibilities and Actions of the Community Stakeholders and their Support Agencies in the Task Team

Without pre-determined protocols as indicated above, and due to the lack of dedicated full-time resources to focus on the Slovo Park project, the role assumed by the SPCDF, and their support agencies was of a monitoring and advice nature. Although the SPCDF committee members were extremely well informed on the procedures of the UISP, they were technically not qualified to do the planning work and furthermore, they were not receiving an income from the project and therefore had to spend most of their time making a living to survive. All the support agencies were voluntary with limited time capacity beyond the time spent preparation of the meetings and in the meetings. SERI, the legal agency only responded to specific legal requests from the SPCDF, i.e. letters indicating the SPCDF's dissatisfaction with progress to the CoJ, plus co-producing minutes of the TT meetings with the legal service providers of the CoJ. The CUBES representatives would offer advice at meetings and to the SPCDF as well as technically scrutinise technical products from the CoJ consultants. 1 to 1 the other technical agency was the only member doing ongoing work such as setting up a Timeline tool as an implementation monitoring tool and providing ad hoc layout design inputs in an attempt to guide the CoJ consultants on how to do an in-situ layout plan.

1 to 1 as an agency had limited resources and was hoping to get some financial support from the CoJ but to no avail.

Even when the community legal representatives (SERI) together with the SPCDF tried to be proactive and requested to pay for the planning of the layout of Slovo Park with funds raised from donors (Action J, K, M and S), the PM3 indicated that it would be too complicated. The reason given was that the Municipal Finance Management Act 56 of 2003 (MFMA) restricted SERI from financing the planning aspects of Slovo Park. The MFMA actually facilitates public private partnerships (PPP) in Chapter 2 Part 2, section 120 of the Act. It is therefore possible to set up a PPP with the SPCDF to undertake the planning. This was not challenged by SERI, either because they were not familiar with the MFMA possibilities, or they were wary of the responsibilities of managing consultants. From the CoJ's actions it appeared as if they were reluctant to give up control of the layout planning process or to co-produce the layout, as if SERI appointed their own consultants the CoJ would have limited powers to control them.

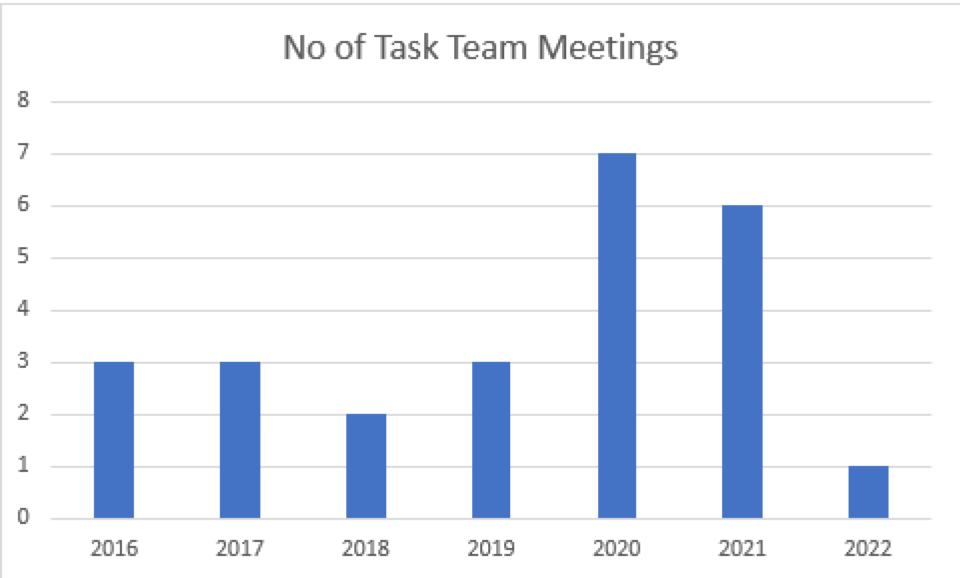
The above challenges are well documented by Amin and Cirolia (2017), in their analysis of non-state actors in a pluralist governance setting in the making and maintenance of informal settlements. They describe the limitations of NGO's and the fragile inputs from communities themselves being perilous from a sustainability perspective, due to their survivalist circumstance and technical lack of skills and experience.

### 8.2.3 Analysis of Actions within the Task Team

Having described the roles and responsibilities of the various members of the task team this section will analyse the selected actions from table 8.1 above as a means of explaining the dysfunctionality of the Task Team instrument established to implement the UISP policy framework within Slovo Park.

***Decision Making***

Unilateral decisions were taken by the CoJ officials, particularly around important issues like the appointments of consultants, often blaming the procurement procedures of the CoJ for the lack of consultation, (Actions B, F, G, K and M). This was despite many speeches by the chair of the SPCDF at the TT meetings expressing their dissatisfaction and disappointment with the CoJ's appointments and performance of consultants. On two occasions, in retrospect the CoJ appeared to suspend TT meetings for up to eight months after such speeches.




On almost every repeated occasion when new consultants were appointed without any consultation within the TT, there would be contestation from the SPCDF, but they did not halt the project as they wanted to see delivery. This behaviour from the CoJ demonstrated firstly that there were no consequences within the CoJ for non-performance of officials or alternatively that their Key Performance Indicators could be manipulated. Furthermore, there was no accountability from the officials to the community they were there to serve. Effectively there was no co-decision making only assumed consensus based on a continuation of the process. The following quote from the chairperson of the SPCDF expressing his frustration was recorded at the TT meeting of the 1 October 2021:

> “We know that, according to a capitalist mindset that the poor are viewed as a liability and a class of people who mean nothing and bring no value to the economy. And our experience is that we have been treated this way for a long time, with us being patient with hopes that things will improve. We would like PM3 (City) and PM (Province) to introspect and have us trade places. Would you really feel that we are moving forward or backwards in light of what had been presented in this meeting so far? An example of the disregard with which we are treated is Province arriving 45 minutes late to this meeting and could not even apologise for being late. For previous financial years, funds have been allocated to Slovo Park but we do not know how it has been allocated or spent. Social facilitation consultants have been appointed but what work is there that they can account for and at cost. What can they point to that they have contributed to improving the lives of people living in Slovo Park. Regarding the letter which has long been outstanding from Province, we are forced to ask our legal team to pursue a judicial review because this a legal issue and we can only hope that can hold the City and Province accountable. We have long been outside of the timeframes that were set by the Court, but even new timeframes set in this forum, none have been complied with and so we can only rely on the courts as the only way that the City and Province may be held accountable. Our efforts to be patient, and deal with this matter in line with the principles of uBuntu, but we have to admit that this has taken us nowhere”.

***Inter-departmental and Intergovernmental Communications***

Many of the delays were blamed on other departments within other spheres of government. One example given was the lack of response to the UISP application from the Gauteng MEC (Action N). In March 2021 delays were even blamed on other internal departments within the CoJ, such as the procurement department for not appointing a legal panel who in turn would appoint consultants for the Slovo Park project (Action O). The implications were that they were now on a month-to-month contract which meant that they could not make any consultant appointments on behalf of the CoJ until a new panel was appointed. In May 2021 it was decided by the CoJ to get the Gauteng Department of Human Settlements to appoint new consultants for Slovo Park. This process took until December 2021 for the consultants to be appointed, due to the complex Gauteng procurement procedures, (action, P,Q) and another entire year for the CoJ and Province to sign an MOU (Action R). Ongoing delays were also blamed on the HDA by the officials in the TT for not participating in meetings and not acquiring additional land, despite there being no records presented to the TT of any correspondence or communications between the organisations. This does not preclude the possibility that there may have been telephone communications.

***Personnel Capacity Issues and Outsourcing***

Another repetitive feature of the Slovo Park project has been the use of poorly skilled and inexperienced CoJ officials as well as their appointed consultants. These officials and consultants may have been skilled in other areas of planning and housing but in my observations not in the field of in-situ informal settlement upgrading. Their lack of skills and acknowledge lay in their grasp of the UISP policy instrument document; administrative processes such as record keeping and minute taking, in community engagement, intergovernmental liaison and particularly in the management of service providers. The poor service provider management was evidenced by the appointment of four consecutive consulting teams to undertake the same task, a layout plan for Slovo Park (Actions C, K, M and P).

The lack of community participation around the issues of the layout preparation and tenure security issues was confirmed in a study on participation in Slovo Park by Maganadisa et al, (2021:116), in which they attributed the poor community participation practises in Slovo Park to the “lack of technical skills and lack of adequately training personnel at local government level”, which reinforces my contention on capacity issues and outsourcing above.

The issue of capacity of local municipalities in South Africa is extensively covered in the planning and governance literature in chapter 5 of this thesis (Chipkin 2016; Ledger, 2020). From a procedural administrative aspect countless minutes demonstrated set deadlines surpassed from the CoJ’s side (almost as if no work had been done by officials between meetings). The workshop held in February 2019 (Action H), demonstrated to us how many of the housing managers had never acquainted themselves with the UISP policy instrument or many of the planning related requirements such as tenure options, ability to coordinate multiple site planning processes simultaneously within a region or to facilitate simultaneous relocations and upgrading of settlements and yet were managing informal upgrading in the various regions of the CoJ. This was demonstrated when the Slovo Park project Manager asked the officials at the workshop to indicate whether they had ever read the UISP through a show of hands. Only two of the eleven regional informal settlement project managers indicated that they had read the UISP. The most pronounced evidence for the lack of capacity within the CoJ housing Department was that despite clear tasks and deadlines been set between meetings in most cases they were simply not undertaken. A quote from the SPCDF chairperson from the records of the TT meeting of the 1 October 2021 illustrates this point:

> “We are very disappointed. Of all the resolutions taken in the last task team meeting, none of them have been met. We are learning today that Province will only finalise appointments a month after the agreed date. We get the sense that we are dealing with people who do not know what they are doing because we are confident that a scope of work was given in line with UISP guidelines”.

The precise reasons for this could have been other priorities, volume of work or merely not know how to proceed. However, whatever the reasons it demonstrates an inability of management within the CoJ Human Settlements department to manage its human resources.

Furthermore, the Project manager and the secretary were the only officials that were consistently present at the meetings, indicating that there were no other personal dedicated to the project to actually do the work.

These processes have resulted in endless prorogation and procrastination and ultimately very little progress in improving the lives of the residents of Slovo Park, as confirmed in the SERI publications on Slovo Park of 2014, 2018 and 2020.

### 8.2.4 Risk Aversion by the City of Johannesburg

The CoJ have demonstrated high levels of risk aversion, in that from the time of the High Court ruling in 2016 the CoJ appointed private lawyers to sit in on every task team meeting. The lawyers would take minutes and co-produce them with SERI.

Notably they never participate in the meetings, but clearly advise the CoJ officials in private. Additional evidence of the CoJ's officials' aversion to risk can be seen in their preference to select the conventional township establishment route. This is a lengthy process which always involves extensive pre-planning studies, approvals and registration of layouts in the Deeds Office prior to any security of tenure for residents or any permanent infrastructure investments. In the case of Slovo Park most of the existing services have been provided through the community's own initiatives with assistance from University of Pretoria students. Taps were provided by the community informally linking into surrounding bulk water pipes and laying their own distribution lines. The only interim services provided by the CoJ were 1050 pit latrines and chemical toilets prior to the High Court order. It was the lack of maintenance of one of these pit latrines that led to the tragic death of a child in 2020. After the High Court order only temporary electricity was installed by City Power through its own budget allocation. No interim services have been supplied through UISP instrument to date, due to there been no formal layout plan approved by the CoJ. The only interim services supplied post the High Court ruling was the interim electricity (Action G), where City Power made budget available for the services.

This ongoing lack of state recognised tenure security, the lack of investment in even interim pit-latrine maintenance and reliance on the conventional planning procedures suggests the CoJ is risk averse particularly around land issues, demonstrating a reluctance to challenge landowners (also evidenced in chapter 4 of this report).

### 8.2.5 Corruption and Malfeasance

There have been numerous allegations and suggestions of corruption made by the SPCDF in the TT meetings against the CoJ, regarding misappropriation of funds in relation to the 1994 Devland Extension 27 housing project (SERI, 2011), land sales and parties invited for nefarious reasons to the TT meetings. However, these are often verbal allegations made in the meetings, that are not recorded, and no evidence exists to support these allegations. Nevertheless, a recent example of alleged malfeasance shines a light on the challenges faced by officials in relation to the networked governance environment. The Daily Maverick (2 March 2023) alleged that an overpriced land sale to the Gauteng Department of Human Settlements Department (GHSD) took place in 2019. The excessive price of the land included servicing costs, however, four years after transfer the land has still not been serviced, leaving the land for potential relocations from informal settlements in limbo. Allegedly the HDA, responsible for land acquisition, recommended against the purchase but was overridden by the GHSD, which is beyond the control of the local officials in the CoJ.

## 8.3 Planning Instruments and the Techne of Planning in relation to Slovo Park

Having analysed the social instrument in terms of the Task Team this section examines the technical land development instruments selected for use in the project. I examine the township establishment process and particularly the preparation of the layout plan instrument which forms the basis of the township establishment. As succinctly articulated by SERI (2011:14), “the whole process of land identification, land release, land packaging is often very complicated. There are many issues that need to be resolved before land can be allocated successfully for housing. Things like environmental impact assessment, (re)zoning of land, the change of ownership, infrastructure and other services, township establishment are also many hurdles that lead to lengthy delays in the project development process, and often impacts negatively on development costs. Apart from these issues related to bureaucracy and its often seemingly incomprehensible rules and regulation, there are fewer tangible issues like misalignment of departments, and lack of coordination that hamper the process of land identification, land release and land packaging”.

The UISP instrument therefore attempts to simplify the land development process, given that there are already people occupying the land. As part of that intention the policy instrument sets out the following layout criteria: “In designing a township layout, at least the following may be considered:

- Community needs, current land use and densities;
- Designing to minimize relocation;
- The need for innovative township design where required; Not all residential properties will necessarily require vehicle access;
- Fire prevention measures;
- In areas where land is scarce the need for higher density rental developments (such as multi-level buildings) and also small stands where vertical extension of units is encouraged;

- The provision of social amenities and sites for economic activities; and
- The design requirements of the Department of Police to ensure adequate access for their services

With regards the township establishment:

- Normal township establishment processes should be followed even though
- township layout could differ substantially from the norm. At least the following
- should be achieved:
    - approval of the general plan of the settlement;
    - the surveying and pegging of stands;
    - the approval of the design and standards of engineering services by the municipality; and
    - the proclamation of the township.
- The above is essential for the application of funding under Phase 4, the Housing
- Consolidation Phase where houses are built". (RSA, 2009:)

The layout and land development instruments applied in Slovo Park to date are then examined and analysed in relation to the UISP criteria set out above.

### 8.3.1 Land availability or acquisition for in-situ upgrading

Underlying land ownership has been the single most significant blockage on the upgrading development as small portions of the underlying properties on the eastern edge of the settlement are privately owned and according to planning legislation, permission needs to be sought from the owners to make a planning rights application on the land. This ownership issue has been known to the Task Team from the very beginning of the UISP process in 2016 as indicated in the minutes of the and repeated requests for clarity on land acquisition issues mentioned in section 8.2.2 above. Also recorded in a TT preparation meeting of the 16 January 2017, was under the heading "Agreed Approach: Follow-up request to PM1, who previously assured the TT that she would provide maps of the Nancefield area for the TT to establish all pieces of vacant state-owned land that should be considered as areas to upgrade for Slovo Park". Also indicated above, additional land for necessary relocations has not been secured meaning people cannot be relocated to make space for infrastructure installations further delaying the project. The identified actions show that the land issues were raised repeatedly from 2017 with the CoJ and remained unresolved to date, with the CoJ officials simply not taking any action to either engage with the HDA who are responsible for land acquisition for informal settlements or to raise funds to purchase land (Action F).

No interim tenure security arrangements were ever made through interim recognition processes, throughout the project period. Rather there was a tendency by the CoJ to wait for a formal approval of a layout plan to determine who would be beneficiaries in terms of the BNG housing criteria, before given anyone some form of tenure security. As this has not happened to date for all the reasons described above, no residents have any form of tenure security.

Also given that the land has been occupied for almost 30 years even expropriation in the public interest would have been a viable option in terms of Chapter 2 Section 25 (2) of the South African Constitution. Alternatively, there is the common law of Acquisitive Prescription in terms of Section 2 of the Prescription Act 18 of 1943 – whereby continuous possession of land for 30 years can result in transfer of ownership if certain conditions are met. This is legislation that could have been explored. However, a further complexity is that the HDA does not have the powers to expropriate land and can only purchase land should the owner be willing to sell. Furthermore, a common refrain from the CoJ officials as well as evidence from minutes were that the HDA simply did not attend meetings although they were invited. However, no evidence of correspondence or pressure on the HDA to acquire the land from the CoJ has been forthcoming. Alternatively, nothing negates the CoJ from acquiring additional land, but the minutes reflect that despite frequent requests from the SPCDF over the years the officials did not explore those options. The ability to obtain funding from the provincial government for land acquisition under the UISP instrument was one of the paradigm shifts that Huchzermeyer (2006), thought would bring progressive change to informal settlement upgrading under the UISP.

Another funding instrument within the UISP to ensure the availability of land being occupied in the case of informal settlements was around funding for land rehabilitation. Unfortunately, one of the two key reasons for the extended delays in the upgrading of the Slovo Park settlement has been the issue of land rehabilitation. Between 2000 and 2010 most of the rejected layout plans from the CoJ were because the CoJ maintained that very little of the land could be developed due to the presence of dolomite. Only once more detailed geotechnical studies were conducted in 2017 was it established that there was only one relatively small area that could not be developed (refer to Map 7.3. in chapter 7. As indicated by Clark and Tissington (2016), the ambiguities in the UISP around the funding of this aspect appears to have been prevalent in the Slovo Park project, as funding appears to be determined as if the locational advantages offset the costs of land rehabilitation, which would be difficult to assess. The relevance of land rehabilitation is that an in-situ layout can be prepared on the rehabilitated land minimising the need for relocations. Another anticipated paradigm shift in the UISP policy instrument that Huchzermeyer (2006) thought would unlock informal settlement upgrading (refer to section 6.3.4 of this report).

### 8.3.2 The lack of a participatory co-produced layout planning approach

This technical exercise of producing an appropriate layout plan for Slovo Park has been the single largest stumbling block to date. Effectively, the CoJ and its consultants were unable to design an appropriate in-situ layout plan that would adequately accommodate the original 1076 households, provide the required security of tenure and livelihood opportunities. Action B setting up the Task Team was specifically to ensure compliance with Section 2.2 and 3.9 of the UISP. Despite this, none of the layouts produced after the high court ruling were based on community participation (Action A, C, D, E), beyond rudimentary consultations and presentations. This was the cause of most of the SPCDF's rejections of plans to date. The importance of community led approaches including proper partnerships and deep participation with communities is stressed universally within the literature, (Ziblin, 2013, Loggia et al, 2016, World Bank, 2016, Kitchen, 2016, Hendler and Fieuw, 2018; CTNGOCI, 2019, UNHabitat, 2022), and yet it was repeatedly ignored. The UISP criteria set out above specifically required detailed consultations with each household in the preparation of the layout plan.

One of the most potentially progressive interventions that a planning instrument could deliver to a poor community is a layout plan that best fits with the community's needs and aspirations. A layout plan is ultimately registered in the deeds office and is thereby fixed as a legal document. A layout plan determines how big the individual erven are, and thereby how many households could be accommodated within the area, in the case of an in-situ layout. Size of erven also has livelihood implications for households renting out backyard dwellings. A layout plan also determines how many existing structures would have to be demolished to make way for roads and services or even smaller erven, thereby having financial compensation issues for the affected households. Existing layouts also have institutional governance implications as in the case of Slovo Park where community committees are organised on a block-by-block basis.). Prior to determining erven boundaries, tenure options need to be determined and arrangements agreed upon together with the households occupying of each site. This will include determining whether the tenants on the site remain tenants or become future beneficiaries of a new state subsidised house. Consequently, it is critically important to prepare a layout plan in a co-productive manner with the residents, (Fieuw, 2015; Georgiadou et al, 2016, Misselhorn, 2017; Georgiadou and Loggia, 2021).

In the case of Slovo Park, Consultant A clearly produced a layout plan with limited community engagement. According to the SPCDF the consultants had a few community meetings where they presented their layout plan to the community. Effectively the consultants used aerial photographs to undertake a desk top exercise. As a consequence, Dr Marie Huchzermeyer formulated a critique of the layout plan (Refer to Annexure 8.1) which was submitted to the CoJ via the SPCDF in the Task Team. Essentially the layout would have meant the significant relocations of residence into multi-storey apartments on the edge of the settlement which is not what the residents had contemplated or agreed to. Furthermore, the proposed redesign of the road layout meant that the SPCDF's governance structures would have had to be reorganised to align with the new spatial configurations. None of these factors were discussed or negotiated with the community prior to submission of the layout for approval by the CoJ, which forms the grounds for the layout's rejection and consequent delays.

The second set of planning consultants, (Consultant B) worked on the layout for about a year (during 2020 the CoVID lockdown and produced no product and were fired from the project by the CoJ. According to the 1 to 1 NGO on the TT Consultants B had no experience in preparing informal settlement layouts and asked 1 to 1 to even assist them to prepare a basic project plan. The third set of Consultants C appointed late 2020 by the CoJ produced a presentation to the TT on what needed to be done and on the alternative pieces of land that may be available for relocation proposes. Both these consultancies having never consulted the community around their plans left the project with no product and no record of whether they had been paid for their unfinished services despite requests for this information from the TT.

Again, the above provides evidence of non-accountability from the CoJ officials and their planning consultants having been appointed for work they were incapable of delivering on due to their lack of experience. Despite these shortcomings, the USIP framework instrument enables the local and provincial state authorities to continue in this vein as it stipulates them as having sole responsibility for the upgrading.

### 8.3.3 Conventional inappropriate development procedures

With regard to the planning development rights instruments, in examining the CoJ Planning By-laws of 2016 and the Land Use Management Scheme of 2018 in section 4.1.3 above, it is evident that the innovative ‘Regularisation programme’ and its proclamations, Annexure 9999, (refer to Chapter 6 section 6.3.5.), have been implicitly excluded from these two central land development instruments, despite them still being legally available instruments ‘on the books’. The consequence of this, as mentioned above, is that the CoJ Human Settlement’s officials and their (supposed expert) consultants do not appear to be aware or at least familiar with these instruments. The implications for the upgrading of Slovo Park is that the CoJ officials and their consultants have insisted on following a conventional township establishment path set out in the CoJ Planning By-laws (2015), suited for greenfields land developments, and critiqued by authors such as Huchzermeyer (2011), and Cirolia et al, (2016) due to its inappropriateness for informal settlement upgrading purposes. Despite the UISP’s perceived flexibility as an upgrading policy instrument, its stipulations retain strong modernist linear planning approach with its three phases, in terms of the planning permissions required before significant material upgrading can take place. This constitutes a problem for informal settlement upgrading as pre-planning studies can take up to three years to prepare and get approvals on, then the formal layout plan needs to be registered before tenure security can be provided to occupants of the land as well as infrastructure investment from the state. As often happens there are delays in the layout process (now on seven years in the case of Slovo Park) which means some of the pre-planning studies become outdated and have to be redone. In all this time people are living in the settlement waiting for basic services.

Of greater concern is that there appears to have been a regression in terms of the application of progressive innovative instruments to address informal settlement upgrading, from the early DFA LFTEA instruments where their normative principles and intentions were taken through to SPLUMA but not explicitly translated into the local planning instruments such as Planning By-laws and LUMS. Also, the fact that the innovative Regularisation programme instruments appear to have been abandoned without actually testing them is concerning.

Why this is the case, takes me to question (a) set out in chapter 6 section, 6.1, in relation to the bureaucratic processes and individual stakeholders, possibly a combination of factors. Firstly, the literature indicates that there has always been ambivalence from the state on the subject of informal settlement upgrading through the mixed messages about the initial eradication narrative which then shifted to upgrading in line with international norms but still presented mixed messages (Huchzermeyer, 2010; Bradlow et al, 2011, Cirolia et al, 2016). Secondly, the need to remain in complete control of the process as argued in section 8.2.1 above by Huchzermeyer (2003; 2010). Thirdly, the issue of the lack of capacity, which is reflected in my case study 2 and is supported by the literature set out in chapter 7.

## 8.4 Conclusions

Essentially the Slovo Park upgrading project has been stuck in phases two and three of the UISP implementation phases for the past six years, due to the inability of the CoJ (despite the Task Team) to get a community and technically acceptable layout plan approved. Every layout plan presented by the CoJ consultants (of which there have been three sets) has meant significant relocations without alternative serviced land being available to accommodate the relocatees. This would not be such a disaster if the CoJ Housing Department and their consultants had explored innovative planning approaches well documented in literature as indicated in chapter 4 and in information presented to them by us (CUBES). These innovations included a closer and more thorough community engagement process, interim tenure security arrangements, and the CoJ's own regularisation process to facilitate other state investments into the area as indicated in chapter 4.

Going back to the main questions posed: why, despite an apparently clear policy instrument (the UISP), was there a failure in implementation of the policy instrument in the Case of Slovo Park? This question, after some analysis derived another two questions. (a), what lies behind the blockages in relation to the bureaucratic processes and stakeholder actions? And (b): What lies behind the blockages in terms of the UISP instrument's abilities to facilitate and guide implementation? I will first address (b), then (a) which will jointly address the main question.

In terms of question (b), ironically, this case study has shown that just as the state appears to be getting serious about in-situ upgrading informal settlements, with the introduction of a dedicated funding mechanism (CAHF, 2023), two dominant elements related to the UISP instrument have emerged, that appears to contribute to the stifling of its implementation abilities. Firstly, the local government's desire and ability to control the process through the UISP's clauses, linked to the state's inability to actually co-ordinate delivery is undermining the implementation of what is potentially a progressive policy instrument, to upgrade informal settlements. A question remains as to why the state at the national level are introducing new dedicated funding mechanisms to better apply the UISP instrument, while at the local level they are ignoring local planning instruments that could facilitate the implementation of the UISP such as Annexure 9999.

This case study has again reaffirmed the value of examining policy instruments, as in this case the UISP policy framework with its multiple instruments applied in the Slovo Park upgrade has revealed several problematic governance elements by the South African local state. Firstly, in relation to question (a), the ad hoc formulation of the Task Team procedural instrument as a vehicle of participation between the state and the community representatives, without proper rules, roles and responsibilities, proved to date ineffectual in advancing the implementation of the project. However, on the other hand it served to legitimise the functioning of the provincial and local human settlement departments, and their outsourcing procedures as well shielded the CoJ from further litigation. What lies behind the blockages in relation to the bureaucratic processes and stakeholder actions that contribute to the dysfunctionality of the Task Team instrument lies in the complex combinations of individual agency of officials, capacity and outsourcing constraints, risk aversion and possible malfeasance.

Secondly, the selection of conventional planning instruments such as a top-down layout design approach together with an inappropriate township establishment instrument best suited for greenfields housing developments and have also impeded the implementation of the upgrading project in Slovo Park. In this case the blockages of the UISP instrument's abilities to facilitate and guide implementation, have been due to the reluctance by officials to select and explore existing innovative progressive instruments and approaches to land acquisition (such as expropriation), co-production of layouts and the use of alternative land development mechanisms like Annexure 9999. This reluctance based on the above evidence can be attributed to poor skills and experience capacity and the consequent risk aversion of the individual officials and the CoJ as a whole.

The above behaviour by official's suggests that the UISP instruments whether funding mechanisms or the very procedural mechanism of the Task Team meetings are applied solely at the discretion of the officials. As indicated earlier the only reason that the SPCDF remains part of the process, despite their deep frustration, is the hope that something will eventually be delivered. The alternative, to approach the courts would guarantee the halting of the TT meetings and another long period of inactivity within the project.

## Appendix 8.1: Main points made by Huchzermeyer in the meeting at SERI on 27.2.18, expanded in parts for greater clarity

*(Meeting attended by Tiffany, Alana, Dan, others from SPCDF joined later, Marie)*

For purposes of this appendix, I am calling the two current plans which CONSULTANT A recently sent to Dan for Slovo Park as follows:

- UD Plan 1 (redevelopment)
- CONSULTANT A Plan 2 (in situ)

SPCDF's most important advances:

- City Power agreed that only 1047 connections would be made in Slovo Park, namely for 'stand owners', but that the normal supply to each of 20 Amps would be increased to something like 60 Amps so that tenants could be fed from that connection. This would use up only around R35 million of the secured R55 million or so, and the remainder, some 20 million would be used to supply electricity asap on adjacent relocation sites as soon as these become available. This means that tenants can move out of Slovo Park to these new sites as soon as they become available and will have electricity supply there.
- The City, HDA, and JPC are aware of the urgency of getting the various relocation parcels ready.

Points of uncertainty that remain in relation electrification:

- SPCDF believe that City Power has agreed that the 1047 households that will remain in Slovo Park and ultimately have permanent homes there, need not wait 3 years till road construction and other permanent development can take place in Slovo Park. However, Marie fears that this does seem very unlikely.
- SPCDF believe that the connections they will be given can easily be dismantled and reused when shacks need to move. However, Marie explains that it seems unlikely that City Power will agree to its electricity poles and lines to be taken down completely and put aside while the development of the UD Plan 1 (redevelopment) takes place, even if phased. This is because of the high cost of moving electricity poles ones installed. Neil in a previous meeting had mentioned a figure, from his experience in such projects. Therefore, this needs to be checked with City Power.

All need to be aware that CONSULTANT A Plan 1 (redevelopment) involves all of the following (even if done in phases):

- All households (in that phase) moved to a temporary relocation area or accommodated temporarily elsewhere
- All structures demolished
- Compensation budgeted for, for all structures, with high costs for brick and mortar houses.
- Entire area graded (i.e. earthworks)
- Land set aside for facilities etc.
- Road construction undertaken (on a completely different layout from the existing one)
- New plots demarcated (on a completely different layout from the existing one – no existing plots correspond in any way with the new plots)
- Slab foundations constructed
- Houses constructed
- Apartments built in relevant parts
- Only qualifying households allocated stand, others allocated apartments to rent

The following needs to be understood:

- Any phasing in the implementation of this plan will have to consider functionality of the layout of that phase. It can't just be one block of Slovo Park, as the street layout for the redevelopment does not follow the current block structure. At current the plan does not suggest any particular phasing. Phasing will be difficult to implement as the new layout does not correspond at all with the old layout.
- What is likely to delay the implementation of CONSULTANT A Plan 1-(redevelopment) is that it can only go ahead once there is funding for the full works. This means that a very large budget needs to be available. The budget needed for just one phase is also very large. It is very important to note that this plan cannot be implemented incrementally, meaning that as funds come available, aspects of the plan get implemented, for instance in year one the roads and storm water drainage, or even just the storm water drainage on the most important road, and in year two the next road. It would make no sense for instance to tar only one road in one year and waiting till the next year for the next road, as no people will benefit from the one road – the site, once cleared, will have to stand vacant until fully developed, including construction of apartments and of houses. The construction works for all of the listed items cannot be done in a few months, even if the funds are there.
- While there might be a promise that funds are available for the full project, we know these are often political statements. They will be restated before elections 2019 etc.

Problems with the layout of CONSULTANT A Plan 1-(redevelopment):

This plan is very wasteful of land. If one were to do a land audit and calculate what % of the land is used for road space alone, this would be a very high percentage. A more efficient layout (with less space dedicated to roads) can accommodate many more plots. The high percentage of space used up by roads in this layout is because of several reasons:

- Many plots have roads on either side of them. Often this is because the road on the one side is a higher order road which does not allow houses or driveways to front onto them, because it is expected that they will have high traffic, and cars driving out of driveways would disturb this traffic. This applies in areas like Sandton, where you have dual carriage ways with no houses, driveways or buildings fronting onto them. These roads are not attractive for pedestrians, often they don't' have pavements at all. These plots in the CONSULTANT A Plan 1-(redevelopment) layout will only be allowed to front (or have driveways) onto the lower order road (usually ring roads that loop off the main or higher order roads). It means the owners have to walk or drive a long way to get to that main road.
- There is another problem with this aspect of the layout. It is along the main roads where there will be higher pedestrian flows, that the commercial activity will want to locate. However, it will be disallowed. In reality, what happens where these layouts are applied, for instance in Cosmo City, is that commercial activity ends up locating along these roads informally and illegally. Despite a very well resource area management for Cosmo City, owners all constructed shops in the back of their yards, and these open up onto the higher order roads that have the pedestrian traffic. This makes perfect economic sense, means local investment and also creates jobs and conveniences. But it should be planned for from the start and not be the result of an inefficient plan.

Below are images of Africa Drive in Cosmo City, taken through Google Earth. The plan there is not quite as inefficient spatially as UD Plan 1-(redevelopment) for Cosmo City. It has Plots that back onto Africa Drive, which are not permitted to have driveways onto this road, but owners have built shops in the back of their yards and are renting these out very lucratively to owner of thriving shops.




- City of Joburg is moving in its proposed zoning scheme that applies to the entire city, to allow spaza shops in all areas. However, in the CONSULTANT A Plan 1-(redevelopment) layout, spaza shops (on people's plots) are confined to small looping streets that don't have through traffic. A grid layout, such as the current one in Slovo Park, makes far more sense for small commercial activity such as spazas. It also allows shops and other activities to emerge on street corners. This can all be managed well by SPCDF. The problem with the CONSULTANT A Plan 1-(redevelopment) layout is that it does not have what planners call the 'permeability', that means that the layout does not facilitate people conveniently move through the streets. A certain amount of passer-by pedestrian traffic is needed to make corner shops and spazas viable. SPCDF does need to think this through carefully, given the huge need for households in Slovo Park to be economically active for a livelihood.
- Also, on UD Plan 1-(redevelopment) there are roads that only have plots on one side, e.g. the road along the railway servitude. Spatially efficient plans have as far as possible plots on both sides of the street. It is only where the public needs access to an open space, for instance a park, that the road would front onto a park on one side. But it makes no sense to have a road running along a railway line.

Instead, a layout for a relatively small area such as Slovo Park needs to

- Be permeable and convenient – making it easy for pedestrians to reach their designations without having to walk along long loops.
- Create a concentration of pedestrian traffic around corners etc, and allow small scale commercial activity. This means all streets should have houses fronting on them.
- The development should allow and anticipate mixed use from the start, in line with the new Zoning Scheme that the City is about to adopt.

CONSULTANT A Plan 2-(in situ) does allow for this. However, CONSULTANT A have said it will take at least 3 additional months to get this plan approved in the way that the current CONSULTANT A Plan 1-(redevelopment) is currently approved.

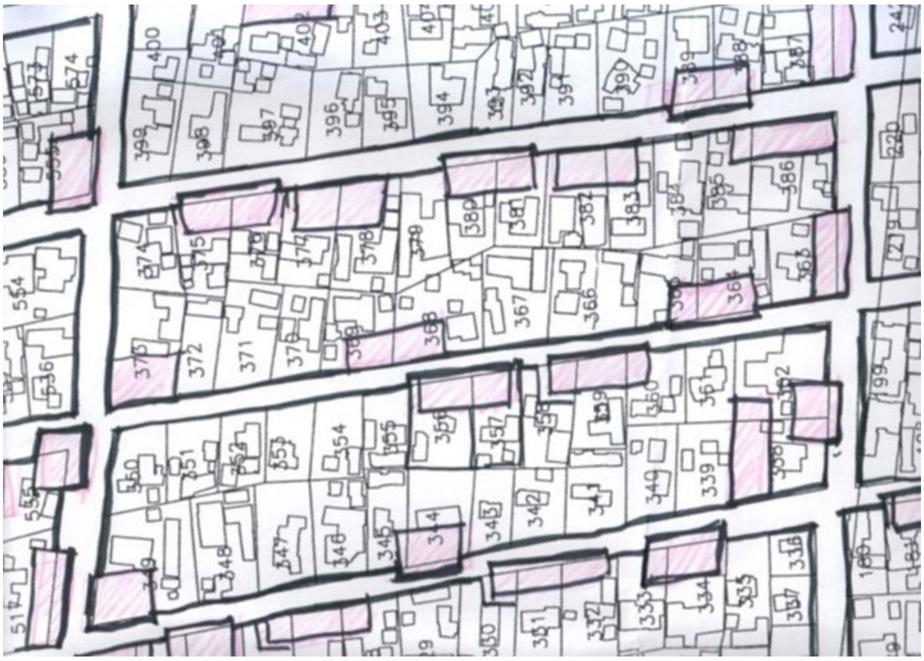
More detailed comments on why CONSULTANT A Plan 2-(in situ) is preferable:

- With the electrification going ahead on the existing layout, and given that CONSULTANT A Plan 1-(in situ) adheres to a large extent to the existing layout, the permanent layout in large parts can be implemented incrementally, as budgets become available. This means that all households can benefit from a road being tarred and storm water drainage being provided in one year, and other roads in the following year, or sewers being laid in one year and flushing toilets being installed.

- This is important not only for the convenience of the 1047 or so households that are to remain in Slovo Park. It is also important as it allows for something as critical as storm water and also grey water management to be resolved. This is a requirement in the geotechnical report, which mentions the risk of sinkholes as a result of water puddles and also as a result of washing water (so called 'grey water') being emptied into the streets and slowly seeping in the ground.
- The City Power expenditure on electrification will not be temporary, but in fact permanent. Connections can be changed when some shacks have to move to fit onto the new, slightly different plot layout, which in this plan is very regular.
- Houses, including brick structures, need not all be demolished, therefore the cost of compensation is much lower.

However, CONSULTANT A Plan 2- (in situ) also has to be interrogated as it is not an in situ plan in the real sense. This is for the following reasons:

- This plan straightens all the roads and gives them a uniform street width, which is unnecessarily wide. This is not necessary, and also it does not allow for incremental implementation for instance of the roads, as electricity poles will have to be moved.
- CONSULTANT A Plan 2-(in situ) has all plots exactly the same shape, whereas 3000m sq plots can come in many different shapes, for instance 5m x 60m, 6m x 50m, 7m x 42m, 8m x 37.5m (the plot that Marie lives on in Brixton is this shape and size), 9m x 33m, 10m x 30m, all the way to 15m x 20m, and also square plots of 17.3m x 17.3m. Plots also do not all need to have right angles, they can be narrow at one end and wider at the other, as long as it adds up to 33m sq. Instead, using this variety of plots shapes makes it possible to a far greater extent to do three important things:
    - Maintain existing structures as far as possible by dividing plots that are currently more than 300m sq, adding to plots that are currently less than 300m sq, inserting plots with panhandles etc.;
    - Minimise disruption to households as required by the UISP and the Court Order;
    - Accommodate more plots in the layout, at least as many as are currently there, and therefore do away with the need for apartments, which are still part of the CONSULTANT A Plan 2- (in situ).
- It must be noted that with the electrification going ahead across Slovo Park, electricity poles will be put up everywhere, including the areas where DU Plan 2- (in situ) suggests apartments. This means that the construction of the apartments will have to await three years, and therefore certain households (current stand owners) will have as bad a deal as with CONSULTANT A Plan 2-(redevelopment).
- It is important also to note that the UISP allows for a departure from a standardised layout, precisely for these reasons. CONSULTANT A Plan 2-(in situ) therefore, as it currently stands, is not compliant with the UISP or the Court Order.
- Below is a very crude example of how one may adjust plots, varying the street width to accommodate more plots, and also ensuring that over-sized plots be reduced. A fare more detailed spatial analysis would of course need to inform the real layout adjustment task. We must bear in mind that with tenants having agreed to move to adjacent relocation areas once these become available, the number of actual structures on the ground will be less than currently on the plan. One would have to establish which of these structures are occupied by the actual stand owners.



Developing a sensitive layout with different plot shapes which minimises relocation and disruption is not something that can be done only on a drawing board. The layout process requires a participatory process, involving the stand owners on a block-by-block basis. The layout planning process is a key element in participatory informal settlement upgrading and indeed in the USIP which requires participation and also allocates funds for this.

This relates to the workshop that Jhono Bennett, Neil Klug and Marie Huchzermeyer had proposed and offered to organise. It was to provide common understanding of the whole UISP process and within this develop a participatory layout with the residents of one street block. This offer remains but will have to be planned very carefully around available time and resources, as things have shifted since the initial workshop proposal which was for November 2017.

The imperative of the full layout task for Slovo Park must be to accommodate as many households as possible in Slovo Park. Given that some current plot owners will have to move away from the high-risk dolomite area and from the area under the flood line, there is need to find places within Slovo Park for these plots. An initial very basic analysis of Slovo Park does suggest that there are ample spatial opportunities for this, and these need to be carefully negotiated on the ground. They will also need to take account of where the electricity poles are provided, given that the implementation of the electrification must go ahead asap.

There are a few more important points about the layout:

- In response to the argument that public facilities need to be accommodated within the current Slovo Park area, it must be born in mind that there is vacant land on two sides of the existing settlement. It makes more sense financially and in terms of minimising disruption, to place facilities there, rather than to move households off the Slovo Park land into these adjacent areas to make space for facilities. It does make sense, however, to place an open space (whether park or urban agriculture in the area under the flood line and in the high-risk dolomite area.
- There are existing land parcels on the eastern side of Slovo Park, which functionally today form part of the Slovo Park settlement. Urban Dynamics has excluded these from their Plan 1 and Plan 2. This does not make sense, as an in situ upgrading plan is not a plan for one parcel of land. Informal settlements inevitably span more than one land parcel when boundaries are not visible on the ground. In this instance, we are told that several of these land parcels in the eastern part of Slovo Park are owned by organs of the state. Only one is owned by someone who is living on that parcel, and who has stated clearly that he is refusing to sell. This should not be a problem. His plot in the current size can be incorporated into the in-situ plan. In time

he might like to develop apartments on this plot, or commercial units. For this reason, this owner needs to be incorporated into the layout discussions. He needs to be given a chance to state his intentions and also wishes in terms of zoning and land use.

- For UD to exclude this land because of the uncertainty about it means that the remainder of Slovo Park is planned as if it were an island, unconnected to any broader spatial plan for the area. This must be avoided. SPLUMA requires municipalities to ensure informal settlements are integrated into the surrounding areas. Both the UD Plan 1 and 2 fall short of this.

Marie Huchzermeyer

Centre for Urbanism and Built Environment Studies,

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Wits University

## Appendix 8.2: Planning instruments for informal settlement upgrading





### LOCAL AUTHORITY NOTICE 1053

**CITY OF JOHANNESBURG**

**AMENDMENT SCHEME 9999**

It is hereby notified in terms of section 28 (1) (a) of the Town-planning and Townships Ordinance, 1986 (Ordinance 15 of 1986), that the City of Johannesburg approved the amendment of the following town-planning schemes:

1. Johannesburg Town-planning Scheme, 1979.
2. Peri-Urban Town-planning Scheme, 1975.
3. Lenasia South East Town-planning Scheme, 1998.
4. Roodepoort Town-planning Scheme, 1987.

By introducing a definition "Transitional Residential Settlement Area" into the above-mentioned town-planning schemes as defined and outlined in Annexure 9999. The following properties are included in the area included in the above-mentioned Annexure 9999.

**1. Johannesburg Town-planning Scheme, 1979**

1.1 Portion 137 of the farm Diepkloof 319-IQ.
1.2 Portion 138 of the farm Diepkloof 319 IQ.
1.3 Part of the Remaining Extent of Portion 139 of the farm Diepkloof 319 IQ.
1.4 Part of the Remaining Extent of Portion 151 of the farm Diepkloof 319 IQ.
1.5 Part of Portion 70 of the farm Klipspruit 298 IQ.
1.6 Part of Erf 1, Orlando Ekhaya.
1.7 Erf 1430, Erven 5100 to 5114, 5087 to 5099, 6614 to 6624 and 6626 to 6632, Orlando East.
1.8 Erf 574, Dhlamini.
1.9 Erf 1935, Molapo.
1.10 Erf 5943, Naledi Extension 2.
1.11 Part of Portion 113 of the farm Klipriviersoog 229 IQ.

**2. Lenasia South East Town-planning Scheme, 1998**

2.1 Part of the Remaining Extent of the farm Ennerdale 352 IQ.
2.2 Part of the Remaining Extent of Portion 129, Rietfontein 301 IQ.
2.3 Holdings 69, 71, 73, 75, 80, 81, 85 to 89 and Portion 1 of Holding 82, Unaville Agricultural Holdings.
2.4 Portions 49 and 50 of the farm Rietfontein 301 IQ.

**3. Peri Urban Town-planning Scheme, 1975**

3.1 Part of the Remaining Extent of Portion 9 of the farm Elandsfontein 308 IQ.
3.2 Parts of Portions 81, 88 and 94 and part of the Remaining Extent of Portion 20 of the farm Eikenhof 323 IQ.
3.3 Portions 139 to 141, Diepsloot 388 JR.

**4. Roodepoort Town-planning Scheme, 1987**

4.1 All erven in Matholesville.
4.2 All erven in Matholesville Extension 1.
4.3 All erven in Goudrand.
4.4 All erven in Goudrand Extension 1.
4.5 Part of Portion 14, Portions 102, 107 and 200 of the farm Roodepoort 237 IQ.
4.6 Erf 1251, Slovoville Extension 1.
4.7 Erf 1, Arena.

Copies of the application as approved are filed with the offices of the Executive Director: Development Planning and Urban Management, 158 Loveday Street, Braamfontein, 8th Floor, A Block, Metropolitan Centre, and are open for inspection at all reasonable times.

This amendment is known as Amendment Scheme 9999 and Annexure 9999 and come into operation on the date of publication hereof.

**P. HARRISON, Executive Director: Development Planning and Urban Management**

# ANNEXURE 9999

Conditions applicable to "Transitional Residential Settlement Areas"

1) The local authority shall prepare a draft layout plan. For the purposes of this condition a "layout plan" means a plan that indicates the sites upon which buildings / structures have been established and are used for human occupation and economic and other activities as depicted through the means and assistance of aerial photography and in consultation with the community.

2) Once the draft layout plan has been prepared, its occupier shall in consultation with City officials, identify each structure and the structure shall be numbered. Each occupier will be issued with an "occupant permit for a residential unit" that identifies him/her as the official occupant of the building / structure and indicates what activities may be permitted on the site. A register shall be kept by the appropriate department as designated by the City e.g. Housing or by the proposed Informal Settlement Unit (Such register may include information about dependants sharing the residential unit and uses existing on the site).

3) The compilation of the layout plan shall include the identification of social and community facilities, business services as well as access to the settlement and future services. Density and minimum sizes of sites for residential uses shall be determined as part of the layout plan. At this point the layout plan may proceed with additional formalization in respect of pegging and infrastructure provision.

4) For the purpose of these conditions "structure" means any building or construction or premise that is intended or used for human occupation and use, irrespective of the material from which it has been manufactured or built.

The construction and sitting of these structures shall be regulated by the application of the 'deemed to satisfy" rules in SABS 0400 and SABS 0401 whereby rules and standards have been formulated to address informal settlements. These aspects are detailed in Annexure SABS 0401 – Building Regulations for Informal Housing. The local authority shall have the discretion to supplement these to apply in specific settlements, bearing in mind the intention for the progressive formalization and upgrading of these settlements.

5) In those instances that the layout plan has progressed to the identification of individual stands the number of buildings / structures which may be erected on the identified residential stands shall be restricted to one main dwelling/structure and one subsidiary 'backyard' unit per stand unless the written permission of the local authority is requested on application.

The local authority reserves the right to decline or approve such application.

6) For any new structures on individually identified stands on the layout plan, a minimum of one metre wide on all boundaries shall remain free of any structures. No solid walls may be used to define boundaries. Permeable fencing may be used if an occupant wishes to secure the stand. This restriction may be relaxed on submission of a written request to the local authority.

7) The height of any structure on the residential sites shall not exceed one storey without the permission of the local authority, which permission may be declined, granted or approved subject to such conditions relating to the submission of a building plan as defined in Annexure SABS 0401 – Building Regulations for Informal Housing.

8) The coverage on individually identified stands on the layout plan may not exceed 60% without the permission of the local authority, which permission may be declined, granted or approved subject to such conditions as the local authority may impose.

9) After the layout plan is accepted (has been approved by the local authority), the occupier of a residential structure may apply in writing, to the local authority to permit a new alternative land use on the site. The identified occupier of the structure as per approved register must submit such application in writing to the local authority. The application must be accompanied by written confirmation from all registered occupants of all adjacent structures or stands that they have been notified and indicate their support or no support for such application.

The local authority may decline or approve such application subject to conditions. The local authority shall keep a register recording the decisions of such applications. If the application is granted, the layout plan shall be endorsed accordingly to reflect the land use change.

10) If any site is used in contravention of these conditions the local authority may give the occupier notice in writing requiring him/her to rectify such condition or contrary use within a period of 30 days from such notification, failing which further legal action shall be instituted in terms of the relevant legislation.

11) The provisions and conditions as set out above shall prevail on the identified and demarcated "Transitional Residential Settlement Area" as indicated on the layout plan, notwithstanding whether a zoning is applicable or not.

**PART E**

# CHAPTER 9:
# CONCLUSION

## 9.1 Introduction

In this chapter, I present an overall view and conclusions based on my various case studies and the reading of the literature. In the first section, I examine how my understanding of planning policy instruments changed over the course of my research and reflect briefly on the applicability of the literature to my research. After reflecting on the instrument's literature, I reflect on the networked, plural- and multi-level governance literature that forms the context to all forms of instrumentality, in relation to its implications for planning instruments in the South African context. In the following section, I narrow down to a brief recap of each case study followed by their collective response to each of my sub-questions of the thesis and main question through the analysis of key themes derived from the case studies and discussed in relation to the relevant literature in chapter 2. Finally, I draw out some key considerations for those planners who are grappling with practical ways for improving planning instrumentality in South Africa, before setting out some of my personal reflections on the study itself.

## 9.2 Reflections on Policy Instruments and the Literature on Policy Instruments

When I began my doctorate on planning policy instruments, I assumed it would be relatively easy to define and examine these instruments. It soon became clear to me how difficult it is to pinpoint a definition of a planning policy instrument, because of the range of practices often concealed behind the term. Even the housing instruments I had initially assumed to be single instruments were in fact loose frameworks. They can be defined as planning instruments because they represent urban planners' mechanisms to change urban environments (Ney, 2009 in Legacy and Leshinsky, 2016). In this way, planning instruments include any procedural mechanism that is used to institute an urban intervention of some sort, which could range from a material policy document to an institutional organisation (as defined by Hood, 2007;

Lascoumes and Le Gales, 2007, 2011). In my case studies, planning instruments have ranged from a formulation of a single policy document in the case of the SPRE/TEAP policy Instrument with its associated implementation guidelines, to a basket of policy programmes each containing multiple instruments, the National Housing Code, in the second, to focusing on just one of the policy programmes within the NHC - the UISP - forming a framework for a range of both specified and unspecified implementation instruments.

There are three broad strains of policy instruments analysis. The first two strains view instruments as forms of institutions, the second of which expands the notion of an institution to take account of the socio-political context of the policy instruments. The third strain of analysis examines the instruments in categories, comparing them to select the best instrument to apply in each situation, ignoring the socio-political context within which they are operating. In Legacy and Leshinsky's edited book (2016) on planning instruments (which inspired this research), the case studies presented described and evaluated different planning instruments in terms of how effective they were in addressing specific challenges, such as confronting neoliberal city-building agendas, serving narrow economic interests. In their conclusion, they acknowledged the centrality of politics in the application of planning instruments, but they still took a functionalist approach in advocating the technical components of instruments in designing innovative instruments. What their case studies did not do is examine how instruments are applied from the bottom-up perspective, in relation to state and non-state politics and practices on the ground and how this affects their efficacy. The literature by Krummholz and Clavel (1994) went further in terms of case studies describing progressive strategies and technical instruments used by city planners to achieve more equitable outcomes but also showed how difficult it was to sustain such gains.

My three case studies examined housing-oriented planning instruments through the detailed practices of both state and non-state stakeholders, as they negotiated their political, and institutional environments (see section 9.3 below). The first case examined the formulation of an instrument, the second case, the practices of a wide range of state officials in their application of a suite of housing instruments. In the third case the practices of state officials and their service providers together with the beneficiary community and their support agencies were studied, in how they were attempting to apply a specific policy instrument framework with its range of implementation instruments. Some of the literature that resonated with my findings and analysis included Bénit-Gbaffou's (2018a and forthcoming) edited book of case studies on state practices as well as De Stage and Watsons (2018) work on housing projects and the competing rationalities encountered by the various stakeholders. My findings resonate with these works in the following areas, firstly in wrestling with the notions of political choice and associated policy choice as well as official's "intentions" in the formulation and implementation of policy instruments processes. In all my case studies there were instances where there appeared to be competing rationalities between the state officials and between some of those officials and their outsourced service providers in how they interpreted the collective problems, and how they selected or applied certain implementation instruments. Another area of resonance was the role that 'intermediate' officials played in policy instrument implementation, whether in a progressive or retrogressive manner, through their discretionary powers. My case studies demonstrated that individual officials within the bureaucracy can drive a progressive process, as in the case of the SPRE formulation, despite limited support and direction from their managers. The other cases illustrated how individual initiatives can be constrained by limited skills and material capacity, and even how potentially progressive instruments can be ignored in favour of less risky options, due to a combination of capacity issues and misalignment of institutional incentive instruments. With regards to governance and policy instrument implementation my findings resonate with those of Cachalia (2022), in that the complexities of the overall governance institutional architecture had negative impacts on the ability to implement policy instruments particularly progressive instruments that are contested and challenge existing norms.

In my research I adopted a broad definition of planning policy instruments, as per the following more functionalist approaches in the literature (Tiesdell and Allmendiger, 2005 and Legacy and Lechinsky, 2016), whereby I considered instruments from material policy documents to procedural engagement processes. For example, in my third case I included an ad hoc instrument of a consultative or consensus building forum. I also used a broad analytical perspective, drawing where helpful on a Foucauldian genealogical approach and associated political sociological approach

(Lascoumes and Le Gales, 2007; Lascoumes and Simard, 2011), the latter viewing instruments as institutions. In viewing policy instruments as institutions, I could identify the actors involved, the resources applied and explore the political or other interests implicated in their formulation or implementation. Furthermore, their examination gave insights into the changes in governance policy approaches. The functionalist literature on the study of policy instruments assumes a higher level of coherence and intentionality in the formulation, selection, and implementation processes of the policy instruments than my study found. In my case studies, based on grounded detailed research of practices involving specific policy instruments encountered significant ad hoc, unintentional, or pragmatic actions and decisions around their formulation and implementation.  Each of my cases provided insights into why and how those planning and housing instruments being formulated and implemented within the current political, governance and social milieu are constraining the implementation of ‘progressive’ planning outcomes, thus reinforcing the literature on political sociological approaches.

While my research concerned planning instruments, it was also informed by a more general conceptual framing. I was interested in the engagement between the institutional architecture of the various levels of the state (Lindell, 2008; Visser, 2009; Klug 2010; Palmer et al, 2017; SACN, 2019) and specifically the local state, as well as between the local state and private and NGO entities. This interest included a focus on state officials, given the state’s supposed central role on steering the governance network.

My findings as shown in the examples above also showed alignment and correlation with some recent and local studies on governance and public administration (Brunette, 2014, Chipkin, 2016; Ledger, 2020); and practices of the state (Benit-Gbaffou, forthcoming), particularly around the issues of low skills levels and experience amongst intermediate officials. While my cases confirmed the high levels of outsourcing of professional services, what was novel in my findings from the literature was that many outsourced professional services in the fields of construction and project management and in planning for informal settlements also lacked skills and experience to undertake those tasks. Furthermore, my cases revealed some of the complex relationships outsourced professionals have with their clients as well as the intended beneficiaries of their work. In the SPRE case as well as in the training of officials, anecdotal evidence indicated that officials no longer working for the state were now consulting back to their old departments. This meant that these organizations did not adopt any new approaches, and the influence of these officials ensured a path dependency in the solution of issues while also in some cases involving personal relationships with previous colleagues which could facilitate malfeasant behaviour.

## 9.3 Overview of Individual Case Study Findings

This section provides a summary of the nature, findings and analysis of each case study in relation to the questions posed in each case. The following section will then synthesise the key themes extracted from the case studies to answer the main and sub-questions of the overall thesis.

### 9.3.1 Case Study One: Special Program for the Relocation of Evictees to the Temporary Emergency Accommodation Program

The first case study involved the formulation of a policy instrument to deal with evictions after a constitutional court ruling in 2011 that obliged the state to rehouse evictees, rather than putting them out onto the street. This policy instrument had the potential to be a progressive instrument. It could have led to a more equitable balance between property owners and occupiers in the provision of alternative accommodation. Instead, the CoJ's final policy instrument, titled the Temporary Emergency Accommodation Programme, took a narrow interpretation of the Constitutional Court's obligations ruling. While the eventual policy instrument met the immediate requirements of the constitutional court judgement, it fell short of its potential progressive impacts on evictees due to how it was problematised and formulated. Because it was conceptualised in the instrument policy as a purely housing matter, it considered that evictions were an emergency that could be 'fixed' by the provision of emergency housing funding from the NHC's Emergency Housing Programme.

Another issue the case raised was how the eventual policy instrument excluded private sector obligations because of converging logics, including the avoidance on the part of the CoJ to engage in the huge political battle required to constrain private property owners. Furthermore, the CoJ were afraid that private landlords would take them to court to fight the policy obligations, and those in favour of making them share responsibility were in a minority in the City; on the other hand, the CoJ lawyers and group legal were biased towards getting a quick win based on existing legislation and state housing obligations, rather than challenging established case law property rights.

The case study also demonstrated the significant role that individual agency played in state officials' expanding their discretionary actions to produce more progressive outcomes for the more vulnerable members of our society, such as evictees, as well as the roles of private consultants as well as the reluctance of the local state to challenge property hegemonies with their policy instruments.

### 9.3.2 Case Study Two - Impacts of a Policy Context on the Application of the suite of Housing Policy Instruments

The second case study involved the reflections from six years of facilitating the training of housing officials on the national housing policy, as well as follow-up research with the participants. The case study considered whether the policy environment had an impact on the housing official's abilities to implement the policy instrument; and secondly, whether the NHC (the policy instrument itself) was an appropriate instrument to achieve progressive more equitable outcomes given the policy environment and capacity of the tasked officials.

The main findings from this case were that the policy environment i.e., the political, social, cultural and institutional context within which the state officials worked impacted on their individual agency to apply the applicable policy instruments, a not surprising finding. At a broad scale, the very structure of the South African governance system of three spheres of government and their co-dependent roles especially around the implementation of housing policies and programs results in a complex intergovernmental regime that makes the application of policy implementation instruments difficult under even favourable socio-economic and political conditions. These required intergovernmental relations with their associated institutional structures, norms and rules – making collaboration and coordination between different spheres of government as well as between departments within the same levels of government difficult to coordinate and align efforts to implement instruments. This contributed to delays and gaps in implementation. To make matters more complex, at a local scale within the individual institutions, issues of capacity, pertaining to both available material in some cases and skilled and experienced personnel on the other hand, combined with the complexity required for different government departments to communicate effectively. While in most cases material resources seemed to have been available, most staff were under-qualified for the complex tasks required of them. In-house capacitation processes were non-systematic and largely ad hoc. In addition to these complexities was extensive outsourcing of professional services, involving interdepartmental and sometimes intergovernmental procurement processes, extensive project management requirements and the difficulties of managing other's outputs.

Within the official's immediate institutional environment findings were that political interference played a significant role in the daily lives of bureaucrats and affected their responses to the interference. These responses varied widely from participating in maleficence to appeasing political-ideological commitments. Finally linked to this was the role of personal agency in how they applied their discretionary powers and actions influenced by ideologies, personal resentments, and personal belief systems, such as xenophobia, paternalism, justice etc.

### 9.3.3 Case Study Three - Implementation of the UISP in Slovo Park

The third case study tracked the processes of an in-situ upgrade project of an informal settlement over a six-year period after a constitutional court ruling. The case focused on the implementation process of the Upgrading of Informal Settlements Program (UISP), in Slovo Park informal settlement in Johannesburg and secondly, the limitations of implementing the UISP policy instrument itself. I explored the possible underlying reasons for this failure, from the perspective of the non-state stakeholders involved in the process (from the outside of the state looking in). The case focused on two of the core planning instruments applied in the implementation of the project, but also made references to other interrelated instruments that impacted upon their application. These two instruments were the Task Team as a procedural consensus instrument and the layout plan as a technical instrument applied in implementing the UISP policy instrument framework.

The key findings in this case were that the local metropolitan municipality insisted on controlling the development process despite not having the human and knowledge resources to lead and implement the upgrading project. This municipal domination of the process was facilitated by clauses stipulating thus in the very UISP instrument. Other key findings emerged from the analysis of the Task Team and from the repeated attempts at preparing the in-situ layout plan for the settlement by private consultants appointed by the CoJ. Regarding the Task Team instrument, no protocols were put in place to guide the role and responsibilities of the role players. Therefore, stakeholders fell into assumed roles and functions. These included the CoJ implementing the project, through its service providers and the community and its support agencies playing an oversight and advisory role. This resulted in unilateral decisions by the CoJ, unaccounted-for delays in meetings being called; intergovernmental procedures delaying tasks, largely attributed to a lack of skilled and experienced staff allocated to the project from the CoJ. Another apparent observation was high levels of risk aversion demonstrated by the CoJ as a whole, in their appointment of lawyers to be present at every point in the project given the high court ruling, and from individual officials.

With regards to the techne of preparing an in-situ layout plan, the CoJ repeatedly appointed consultants who undertook conventional top-down layout plans with no co-production and minimal consultation with the community. Accordingly, the layout plans were technically not in accordance with the layout planning criteria set out in the UISP, particularly around the need for innovation in plot boundaries, vehicle access, and the road alignments. This always left the community leadership rejecting the plan due to the high levels of relocation required. Adding to this was the lack of land rehabilitation and new land acquisition, where the clauses in the instrument are ambiguous about precisely what land rehabilitation involves and how much money can be made available for it. The policy is also not clear on who is ultimately responsible for acquiring additional land. This lack of clarity has knock on effects because it means in-situ upgrading cannot commence for dedensification and servicing requirements, due to the lack of additional land.

Finally, an important finding was the choice of township establishment instrument, although the UISP states, “Normal township establishment processes should be followed even though township layout could differ substantially from the norm”, (RSA, 2009), the wording is ‘should’ not must. As indicated in chapter 6 section 6.3.5, Johannesburg developed a ‘regularisation’ approach whereby an informal settlement was zoned as ‘transitional Residential Settlement Area’ and would be subject to the rules of Annexure, 9999 that would provide incremental tenure security through the recognition all existing occupiers through an in-situ layout plan. The officials and their consultants chose the ‘normal township establishment’ route, despite being made aware of Annexure 9999 at the workshop in February 2019. Personal communications with Harrison, (2023) and Abrahams (2023) revealed that the Human Settlements Department had taken over the ‘Regularisation’ program in 2011 but apart from a pilot project that was never completed, never applied the program. According to Harrison, (2023), the human settlements incentive scheme of KPI only counted formal housing plots registered under the normal township establishment process and therefore it was not in officials’ interests to pursue the regularisation route.

All these findings mitigated against the application of progressive instruments as will be discussed in the next section.

## 9.4 Consolidated Findings from the Three Case Studies

In this section, I reflect on how the findings of each case study and the studies as a whole answer my overall research questions. To recap my main question is: Why do equity-oriented, ‘progressive’ planning policies fail to redress the apartheid city? An examination of Planning Instrumentality in South Africa, together with the sub-questions of

a) What factors (socio-economic, political; cultural and administrative) affect the ‘formulation’ of ‘progressive’ planning policy instruments in a city?
b) What factors influence the implementation of ‘progressive’ policy instruments from the implementer’s perspective considering their institutional context? And
c) What are the kinds of factors that affect the efficacy of policy instruments themselves in terms of their content and implementability?

My three case studies, although each reflecting on a planning instrument in various stages of the policy cycle framework, were all very diverse in terms of instrument types, stakeholders, timeframes, scales and geographic areas, had findings with many key consistencies between them, as is discussed below.

### 9.4.1 Diverse ideologies and complex state governance structures

I contend that the South African governance architecture is a networked (Schmidt, 2008) as defined by Enroth, (2011), pluralist and multi-levelled structure (Cubitt, 2014) with respect to its spheres of government, para-statal agencies, and non-state actors such as NGO's, CBO's (Amin and Cirolia, 2017) and the growing private outsourcing taking place by the state (Brunette, 2014). This governance structure has had many interrelated implications on the formulation and implementation of 'progressive' policy instruments. Here I argue, as alluded to in my chapter 1 section 1.5.3, the South African ruling party and therefore the state has changed since the 1990s in respect of, "the old discourses that have dominated thinking within the ANC as central political movement in South Africa – such as state-managed socialism, nationalistic economic policies, fiscal populism, etc. – now lack traction and legitimacy as driving policy ideas, as do watered down equivalents at the local level, like equity" (Schmidt, 2008:128). This was apparent in all three case studies, demonstrated in the difference in approaches to addressing evictees and property owners in the formulation of the SPRE policy. In the second and third case studies it was more a pervasive attitude amongst officials of a neo-liberal attitude to preserving existing property rights at the expense of upgrading existing informal settlements or in the third case a reluctance to acquire via purchase or expropriation of private property for informal residents. In these cases, it is apparent that officials based on their ideological positions, use their discretionary powers to formulate or select instruments that do not transform or challenge the status quo, especially if they do not align with their performance management indicators.

Although as argued above the state's dominant ideologies are no longer as coherent, this situation within an expanding networked governance system is leaving greater room for ambiguity in policy instrument formulation and implementation with respect to how the existing instruments are selected and interpreted in implementation. As a core player in the governance network, the state sets the rules, including the legal and organisational frameworks, for all other players. However, as my evidence from all three cases shows, the state, certainly at the local level, assumes a unilateral steering role, but is not always or is hardly able to steer and manage the various actors to achieve ‘progressive’ outcomes.

As an example, in the first case study, the way that local municipality departments are organised as silos, separate from each other, meant that when evictions were equated with housing, it meant that other departments felt absolved from any responsibility in addressing the evictions issue. Furthermore, the various housing programme funding instruments (provided from other spheres of government) constrained officials’ scope of imagination in relation to solutions, much along the lines of the garbage can model of decision-making (Cohen et al, 1972). The officials uncoupled the perceived problem, from the choices of responses to solve the problem, by adopting the set of policy instruments that already exist (what is within the “garbage can”). In this case, the officials chose to view the problem narrowly as an emergency housing problem so that they could acquire funding to ‘solve it’. In both the other cases officials also tended to exhibit the garbage can model of decision-making in favouring the conventional redevelopment and new housing approaches addressing informal settlements due to their familiarity with the Project Linked Program as an instrument over the UISP. Also shown in this case that despite the ‘progressive objectives’ of the ‘intermediary bureaucrats’ (Bénit-Gbaffou, forthcoming), and their strategy of appointing human rights-oriented service providers to formulate a progressive evictions policy, they were ultimately thwarted by the factors related to their own complex multi-level, and networked governance structure, i.e. having two sets of private consultants representing two different departments (one set for the housing department and the other legal consultants for the CoJ’s legal department) both working at odds.

### 9.4.2 Limited Capacity, Outsourcing and the Desire to Control

Related to the above arguments, I make an argument here that the three aspects of limited capacity, complicated by increased outsourcing and a continued desire by state institutions to control all processes have had a detrimental impact on the implementation of ‘progressive’ instruments.

I argue here that another major factor working in conjunction with the structural institutional issues raised above is the issue of capacity within the state. All the case studies provided different pieces of evidence around the capacity challenges faced at mainly the local level of government. In the first case, the ten-year formulation of the SPRE which became the TEAP instrument, there was extensive staff turnover in the CoJ housing department. The very staff member who facilitated the appointment of human rights-oriented lawyers and progressive planners to formulate a more progressive version of the draft SPRE policy left the CoJ leaving the process in limbo without a sponsor/driver before being taken up by other officials during which the draft changed substantially as outlined in the case study. In case study two the issue of the loss of institutional history (Chipkin, 2016) through frequent changes in personnel was a common refrain amongst training workshop attendees. This was reinforced through our research with regard to the relatively low average time spent in their jobs, low qualification rates, and unsystematic training processes to introduce staff into their jobs. The third case study demonstrated huge capacity constraints. The CoJ's capacity constraints stemmed from several issues, including repeated turnover of key project personnel, with the loss of project institutional history on each occasion. This is easily visible in the lack of preparedness for meetings and lack of context, demonstrated by the project managers and the lack of apparent detailed recording and documentation of the project process.

The lack of record keeping, and distribution also reflects poor institutional capacity, this included the absence of progress reports, and consistent and systematic records of decisions taken. Four sets of consultants doing the same job sequentially, each demonstrated a lack of experience in engaging with communities and formulating in-situ upgrade layout plans. Even the community organisation (although having significant broad developmental and leadership experience) did not have the technical and strategic capacity to effectively hold the CoJ to account and relied too heavily on the supporting NGOs to record and correspond with the CoJ. Even the supporting NGOs did not have the dedicated human resources to focus on Slovo Park to effectively challenge the CoJ.

Another finding from the case studies was the extent to which "the institutional capacities of the local state are insufficient to address the most salient problems facing the city such as economic development, public service delivery, welfare and infrastructural modernisation" (Peters and Pierre, 2012:870), which applies to Johannesburg. Because of a lack of capacity, amongst other reasons the CoJ along with many other organs of the state, has turned to alliances with other actors. These include private sector service providers, lobby groups, NGOs and community organisations, who join in as stakeholders/players in the human settlements, low-income housing sector in South Africa. This is seen as part of the emerging plurality of local governance, particularly the extensive outsourcing of a variety of private professional service providers. This was a dominant feature in each of the case studies. As illustrated by the first case, in preparing the SPRE policy instrument, each external service provider as well as different actors within the local state had what the literature refers to as conflicting rationalities and objectives (De Stage and Watson, 2018). In the SPRE case, there were three principal actors. The planners involved in the project wanted to use the process to formulate a normative 'progressive' policy instrument that could challenge the predominant property rights of the property owners to achieve a better balance between owners and tenants. The lawyers were more concerned with meeting the requirements of the Constitutional Court ruling. Furthermore, the CoJ's private lawyers were also concerned with protecting their client from future litigation and took a very narrow legalistic approach. Their approach ultimately prevailed, and the functionalist interpretation of the instrument prevailed. As a result, in the removals, evictees were only provided with emergency housing funded by the province, and with none of the range of more supportive measures that using other instruments would have allowed. Ultimately, the case demonstrated how the structure of multiple networks of actors holding different levels of power and influence within the local state contributed to a more conservative policy instrument that fed the fears of the local government political leaders of potential financial burdens and additional legislation in taking on the private property owners.

The impact of outsourcing to planning consultants also had a major impact on the lack of implementation of the layout instrument in the Slovo Park case, with three sets of consultants unable to produce an acceptable in-situ layout plan. From my personal experience of being a planning consultant, the issue of time and cost are central factors in the sustained operation of a private consultancy. Consulting each household as required in the layout criteria of the UISP can be very time-consuming and thereby increase costs and reduce profit margins. As a result, time allocated to consulting with the community is often minimised and layout plans are produced through more top-down methods, as critiqued in the Slovo Park case. As voluntary external actors representing CUBES for the community, we were also constrained for time given our other commitments however, we could strategically choose which areas of the project to focus our time. However, there are also accountability issues in that as voluntary actors the community is reluctant to hold us accountable for actions we failed to perform (refer to my reflections in chapter 3 for elaboration).

Despite the above capacity issues and the increased outsourcing of state functions the state still plays a dominant role as described in the section above, by dominant role I mean having sole responsibility and discretion over budgeting, project identification, project timing and execution, and monitoring and evaluation in the respect of the case studies. In many cases, this dominant role is determined through the content of the legislative and policy instruments. State control in the provision of housing was particularly evident in the case study on the contextual policy environment and the NHC. By state control I mean having control of the processes of housing delivery, from the overall institutional perspective down to the practises of the officials, in that the processes align with their interests, whether in relation to their performance management criteria or how the resources that go along with the state housing delivery processes are allocated. In this study, it was clear that the NHC in all but one (The People Housing Process) of the sixteen programs and mechanisms placed the sole responsibility for the delivery of housing for the poor on the state. In response, state officials developed an associated patronising mentality. In all three case studies a common narrative emerged, that of the local state wishing to control processes and deliverables which they were unable or unwilling to deliver on (i.e., within reasonable timeframes) and on the other hand constraining other actors from undertaking the delivery of collective goals. The state's ability to solely control these processes was largely enabled by the legislative and policy instruments in place around housing and land development. For instance, the SPLUMA legislation and the NHC policy instrument give the state at its various spheres of operation sole responsibility for delivery, on the assumption that the state is willing and capable to deliver on its mandates.

In the case study on the UISP implementation, the instance by the local state to control the process in the context of limited human resources and experience to implement the UISP instrument had a severely detrimental impact on the upgrade project. From my observations in the Slovo Park project, the assumption from the CoJ officials was that they had complete control of the process, it was almost ingrained in all the project manager’s behaviours. The notion that they may have only been one of the stakeholders in the process seemed beyond their comprehension when considering how decisions were made. This was illustrated in the Slovo Park case when the Municipal Finance Management Act of 2003 was used as an excuse to deny the SPCDF and SERI the opportunity to finance and manage the planning layout instrument of the Slovo Park upgrade themselves. Public Private Partnership agreements have been established between the CoJ and private property developers in the past in accordance with the provisions in the MFMA. This could have been an option explored between the SPCDF and the CoJ in the Slovo Park case.

In this case, it could also be argued that the state’s dominant role has been applied in an uneven and inequitable manner between various interest parties. In the housing sector, at the local level, some of the policy instrument formulation and most of the execution is undertaken by private service providers. For example, in all three case studies, the issue of private property and the interests of private property owners are favoured over the non-property occupiers. In some instances, in the first and third case studies, this bias is supported by the private sector service providers, who mostly serve the property-owning interests. This can be seen in officials’ reluctance to impose responsibilities on the property owners with regards to evictees (see also section 9.4.4 below) or to even explore expropriation of private land portions to facilitate the Slovo Park upgrade.

Related to the above is that despite the government’s continued rhetoric on addressing inequality and progressively transforming the built environment to cater for the most marginalised, certainly the land development and housing instruments are reflecting a decline in their ability to produce progressive transformations of our built environment. The nature and reasons for the above will be discussed below.

### 9.4.3 Practices and Attitudes of State Officials and Other Network Actors Affecting the Implementation of Progressive Policy Instruments

Having argued how diverse ideologies, the overall governance architecture, as well as the administrative capacity issues within institutions, have negatively impacted the formulation and implementation of progressive instruments, I now argue what role practices on the ground are contributing to the above.

Individual agency of state officials as well as other stakeholders in a networked governance environment has also played a significant role in the formulation of policy instruments (including the formulation of procedural instruments such as task teams) in attempts to achieve more equitable outcomes. Individual agency, as outlined earlier in my thesis, includes the discretionary powers that local bureaucrats wield, influenced by their official, professional, and moral norms. In my case studies, I mainly focus on those whom Bénit-Gbaffou (forthcoming) referred to as 'intermediary' officials in a city hierarchy, i.e., those who are still accountable to higher-level officials but also manage staff. These officials can be either forces of progressive change, 'state activists', resistance, maleficence or 'inactivists' (those who choose not to take decisions and delay processes to minimise risk to themselves, i.e fear of contravening a policy or legislation).

In all case studies, I found some 'intermediary' officials as well as some political leadership harbour attitudes detrimental to progressive planning outcomes. In the first case study, some of the officials behaved as if evictees posed a financial threat to the city. While some of this was a result of officials' own attitudes, it was also attributed to the case that the evicted residents brought against the CoJ. This resulted in some of the officials, those in the legal department favouring a less progressive instrument option. In the second case study, some officials clearly held negative attitudes towards informal settlement dwellers, who were seen as 'queue jumpers' of the housing subsidy process. An implicit result was that officials were generally critical of elements of the UISP policy instrument, especially the clauses stipulating that all occupants of an informal settlement would benefit from the program in the first three phases. This notion was repeatedly questioned in the workshops. Another implicit impact was that most officials were generally poorly informed on the UISP policy instrument which has surely contributed to the poor rollout of the in-situ upgrading projects, as indicated in chapter 6, section 6.1.

Other stakeholders, such as service providers to the state, can sometimes play an influential role in determining outcomes or policy instruments as alluded to in section 9.4.1 above. Sometimes they remain invisible, never actively engaging with other parties in the process, but rather providing advice to the decision-makers behind the scenes, as was the case in the SPRE/TEAP formulation. The legal service providers to the CoJ remained in the background with the only material evidence of their involvement being their comments on the first draft of the SPRE policy. Thereafter I could only surmise their involvement through the changes made to the policy drafts once we, as the one set of service providers, submitted our draft to the CoJ. The changes were generally consistent with the tone of the comments seen in the first draft. As such, they form 'fuzzy' invisible networks within the networked, multi-level pluralist structures of government which enable more resourced and influential interest groups to implicitly maintain their interests. These types of invisible networks were also alluded to by the SPCDF in the Slovo Park case when they alleged that Consultants A, despite their layout being rejected were reappointed and therefore there were some nefarious interests at play.

Linked to the above argument the unique legacy of apartheid and post-apartheid responses have generated extreme inequities, rampant mistrust between racial and ethnic groupings, and institutional malfeasance. The legacy has also spawned prejudgements, or what Benjamin, (2004) refers to as "porous bureaucracies" relating to how low-level municipal officials were particularly permeable to the societies they were administering due to social and spatial proximity. This has had several implications for the selection and implementation of instruments. I contend that human settlement officials are obviously also subject to dominant mores and perceptions around the poor, informal settlers as well as of property owners, and it reflects in how they engage with certain instruments as indicated in arguments above. For example, poor people on the housing waiting list are perceived as deserving of housing subsidies whereas those in informal settlements are often perceived as queue jumpers as indicated above. Furthermore, the socio-economic context of the legacy of apartheid and the huge inequalities has meant that the historic elite (still holding the bulk of asset capital in the cities) are able to have a disproportionate influence (Bradlow, 2021). This was apparent in the first case study in how alliances between the local state and private service providers, in that case, legal service providers, contributed to the non-progressive outcome of the TEA Policy. This was despite the initial efforts of the Constitutional Court ruling and of individual progressive officials within the state who sought to advance the rights-based agenda set up by the constitution, to the most vulnerable – evictees. The dominant land constraints highlighted by the officials in the second case as well as the constraints around obtaining additional land in the Slovo Park case all reinforce the power of the land-owning fraternity and the implicit constraints they impose on the materialisation of ‘progressive’ planning instruments.

#### 9.4.4 Content and Choices of Policy Instruments Alignments with other relevant policy instruments

Finally, while alluded to in the arguments above I argue that it is important to highlight that the contents or framing of the ‘progressive’ policy instruments examined in the case studies impact on whether they can achieve ‘progressive’ outcomes. Clearly how instruments are framed or what existing alternative instruments are available for selection determines the range of possible implementation outcomes. Furthermore, whether those outcomes contribute to the improvement of the equitable nature of people’s living conditions is yet another issue. Also, I argue that factors such as risk aversion by officials and state institutions contribute to these aspects.

In the case of the SPRE case study, although the above analyses have informed how the TEAP policy instrument came to be so limited in its framing, it is the actual material wording of the instrument that will guide its implementation. In this case, it was the limited scope set out in the document of who would qualify, how they could qualify and finally the limited options available to the potential beneficiaries of the Temporary Housing. With a more generous framing in terms of increasing the ways of qualifying, the range of qualifiers could have had a slightly more ‘progressive’ outcome despite not nearly achieving truly transformative realms of challenging and getting more balanced property rights.

The Slovo Park case study reveals how the misalignment between a more 'progressive' land development procedure (the 'CoJ's Regularisation program) and the incentive scheme for the Human settlement department resulted in a negation of the instrument in favour of a more conventional township establishment instrument that aligned with performance management incentives linked to the number of registered properties. The implications of this choice were that residents of Slovo Park can only get tenure security once the layout plan is approved and registered with the Deeds Office. This cannot happen until the registered landowners of some of the underlying privately owned land portions have given permission for the development as stipulated in the planning development legislation -SPLUMA, and planning By-laws.

Another reason for the choice of the conventional township establishment approach was the perceived increased risk of using the alternative instruments as indicated in chapter 6. Risk aversion by state officials was also a consistent finding throughout all the case studies. This was from the choice of framing the SPRE to TEAP, to the choices made around the layout and land development instruments in the Slovo Park case indicated above.

## 9.5 Some Key Considerations for improving planning Instrumentality in South Africa

On reflecting on my findings, I draw out a few key considerations that may contribute to improving the possibilities for more progressive formulation and implementation of planning instruments. These considerations include:

(i) the need for open, honest and critical reflections (in facilitated safe spaces) with local state practitioners about the impact of ideological positions on the poor and what this means for planning practice,

(ii) the value of the local state recognising its weakness in terms of its inability to play a leading role in many development instances and giving up the space to other non-state actors,

(iii) the value of bringing greater attention to the need to enhance not just capacity but practitioner capability not only within the local state itself (as shown in case study two with major skills deficits of public sector housing practitioners) but also within the private sector, as shown in the third case study, which highlighted particular layout skills deficits on the part of consultants. This is an issue that SAPI and SACTRP would do well to give greater attention to,

(iv) the need for planners to better understand legal approaches as opposed to policy approaches to achieving interventions, i.e knowing when to rely on a legalistic approach as opposed to alternative incentive or persuasive approaches to implementing instruments and,

(v) finally, the need for planning practitioners to reflect critically on how predominant economic power relations (property rights) and institutional structures (complex interrelated spheres of government) impact the ability to implement their planning instruments, with the aim of formulating new ways of negotiating these obstacles.

## 9.6 Conclusion

Very succinctly my findings, based on just three case studies suggest that equity-oriented, ‘progressive’ planning policies fail to redress the apartheid city because they are either not being selected for use or, if they are being applied, they are being applied in a such a pragmatic or watered-down fashion that they have limited impact. Some of the main attributing factors from a broad range of findings, were the complex multi-level and networked governance structures, conflicting rationalities within the state institutions, high levels of outsourcing to professional service providers, the hegemony of property rights, capacity issues including the frequent turn-over of key staff, low levels of required skills and experience and general risk aversion.

While a significant amount of my findings has been critical of state practices, I still support the view that the state needs to play a key role in the formulation and implementation of policy instruments, as the representative institution of a democratic governance system and sole custodian of the collective interests. This is a keyway by which a state undertakes its democratic and constitutional obligations. However, the question arises as to how this should happen in the case of severe state capacity constraints, and diverse and often incoherent ideological positions as well as elite capture.

Applying Lascoumes and Le Gales' (2007) sociological approach to analysing instruments in the three case studies examined it is clear that there has been a change over the past decade at least in how the South African state has begun to intervene in the planning and housing terrain. Despite their rhetoric of addressing the needs of the poor, evidence shows that the state has become more risk-averse and conservative in its instrument's formulation and choices. The state has also become less innovative in terms of challenging current hegemony around property rights, as seen in the case of the SPRE formulation. At the implementation end, the examination of a UISP identified serious shortcomings in the way the intergovernmental multi-level as well as the networked governance system is operating without the state's ability to steer and the manage the process. This again has resulted in an over-reliance on external service providers, who often take a risk-averse approach.

### 9.6.1 Academic Contributions

This PhD thesis makes several academic contributions and some insights into policy and practice.

*Trans-disciplinary Contribution*
At a broad level, the thesis contributes to the fuzzy field of governance, in findings that draw out the messy intersection of grounded practises and governance. This thesis contributes to the local literature in the fields of governance and public administration by providing detailed case studies of policy instrument formulation in practice, showing how the networked, multi-levelled and pluralist governance structures contribute to the complexities of instrument formulation and implementation.

*Planning and Housing Instrumentation*
This thesis contributes to the field of planning and housing instrumentation literature through grounded research. It shows how a range of specific planning and housing instruments were formulated and how broad institutional environments affect the ability of planning and housing professionals to apply them. It also demonstrates the value of examining planning policy instruments through their implementation, to determine the real intentions of the state policymakers. By this, it is possible to reveal the actual actions of the state, shaped by its capacity and constraints rather than the state's narrated intentions behind any particular policy instrument.

*Planning and housing research methodology*

Its further contribution is to planning and housing methodology, through the demonstrated value of detailed semi-ethnographic case study research in revealing the day-to-day practices of formulating and implementing policy instruments. The research methods applied have highlighted the benefits of having active involvement in a research subject, while at the same time identifying the challenges of this involvement, with respect to clarity on my positionality, ethical approach, and so on. The processes of policy formulation and implementation were also presented as a narrative of the actual practises undertaken. I found writing up the research particularly challenging because of needing to distinguish critical findings from my deep knowledge of the circumstances due to my long-standing involvement with them. This was the case in two of the case studies as at the time I was not aware that I would reflect on them as part of my studies. Therefore, it is advisable to decide to incorporate such projects into one's research plans prior to the project commencement, to enable one to take the required research notes throughout the project.

*Policymaking and Implementation*

This thesis also contributes to policymaking in practice in that it highlights potential shortcomings in the formulation process as well as the types of influences confronted by policymakers and implementers in the South African local government environment. It also highlights the complexities in utilising outside professional sources within the existing multi-level and expanding emerging networked local governance terrain. My research will allow those working on policy instrument formulation to have a more realistic understanding of implementation constraints, to enable them to formulate more effective policy instruments.

### 9.6.2 Limitations

One of my disappointments with this research was my inability to really pierce the 'black box' of state practices, to get a more rigorous understanding of the actual dynamics playing themselves out in the corridors of the local municipalities around the allocation of work tasks, accountability and decision making, around the policy instruments we were engaging with.

The nature of my semi-embedded research status in all three case studies was that I was exposed to a significant amount of anecdotal information about what transpired behind the scenes but given my role at the time in the various processes, was unable to conduct proper research into those spaces. In several instances I was able to establish what decisions or practices were followed in relation to a particular instrument but was unable to answer the follow-on question of ‘why’.

The other significant limitation was obviously the wide scope of this research given the multitude of instruments at play. Hopefully, this research has at least begun to shine a light on them, in order to provide some detailed knowledge of how some of them are formulated and implemented in the current institutional context in South Africa, in the hope of improving their content and processes to better match their context.

### 9.6.3 Final reflections

Over the long journey of this research study, I have encountered complexities from the meanings of what I initially considered a universal term of ‘progressive’ through the myriad of reasons why the existing planning policy instruments are failing to have a significant impact on transforming South African cities. The journey took me through new disciplinary fields such as governance theories, public administration, policymaking, and law.

Despite my clear disappointment, as reflected in this research report, with the application of planning and housing instruments linked to state practices, particularly what appears to be a retraction of innovative and progressive planning and housing instruments over the past decade, my hope is that we are still in the early stages in the evolution of the fully inclusive democratic developmental local government.

According to Cronin, (2014:54), “the yawning gap between progressive ‘intent’ (expressed in ‘policy and rhetoric) is a consequence of the post-1994 SA being ‘stalled in a passive revolution’, i.e. ‘conserving and defending the status quo’ while simultaneously attempting to cure; incurable structural contradictions”.

With the above points in mind, going forward, it will be crucial to keep a focus on the formulation, selection and implementation of policy instruments, analysing them within their political and social contexts as our local government's institutional fluidity hopefully moulds into a more effective institutional architecture.

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# Appendix A: Signed consent forms – Ethics documentation annexure

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

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10 April 2018

Research proposal

**Understanding shifts in informal settlements, policies and programmes in South Africa**

**Background**
This research is a continuation of research on informal settlement policy and practice in South Africa over the past two decades. This has involved a team primarily in the School of Architecture and Planning at Wits University, based also in part in the Centre for Urban and Built Environment Studies (CUBES) and the NRF Chair for Spatial Analysis and City Planning (SA&CP), both within the school. Academically this research has led to output in the form of books and journal articles (the more recent outputs are listed under references below) and also involved supervision of masters and PhD research and collaboration with colleagues within and beyond the School. This research has also interacted directly with policy making, has been translated into op eds and other popular outputs, has been used for lobbying positions and in its close cooperation with pro bono legal units has informed the legal strategies of some cases that have reached rulings in the Constitutional Court (the Nokotyana and Abahlali cases in 2009 in particular).

This kind of engagement with ongoing policy processes and challenges at the level of cases, cities/municipalities, provinces and the national government never leads to an end point or conclusion. As political leadership and dynamics shift, or at times when departmental leadership vested with agency changes, processes shift, often in unanticipated ways, without necessarily progress in a particular direction. This calls for constant informed engagement with policy, with policy-makers and decision-makers, as well as with implementers and affected communities, and this in turn must be backed by ongoing critical research in this field.

This proposal is for ongoing work within a team of colleagues who have built and shared expertise in this area over the past decade and more.

**Aims**
The research sets out to understand the changing landscape of informal settlement policy and practice, the interactions between these, and reasons for different iterations of informal settlement practice in various regions or localities of South Africa. Through this improved

understanding, it seeks to inform policy review towards an approach that is more uniformly responsive to dynamics such as growing inequality and the accompanying social distress experienced in informal settlements. It seeks to provide an evidence base that can assist with curtailment of unconstitutional practices and approaches and the enforcement of policy where relevant. More broadly the research hopes to contribute constructively towards a critical and reflective discourse on informal settlement interventions in South Africa and beyond. In this sense, it intends on the one hand to build on theoretical contributions from within the team (Huchzermeyer, forthcoming; 2014; Kornienko, 2017), and on the other to give meaning to commitments in Sustainable Development Goal 11 of 2015, as well as the New Urban Agenda of 2016.

**Research method**

This research is not funded as such. It draws where needed on the researchers' RINC funds. The research is possible through the base that researchers have in the School of Architecture and Planning, and also in the Centre for Urban and Built Environment Studies (CUBES) in that School. This base allows participation in policy dialogues, and through pro bono collaboration with NGOs such as the Socio-Economic Rights Institute (SERI) it enables access to and engagement with relevant informal settlement cases. Researchers in the team are also networked with grassroots formations such as independent civic organisations, the Landless People's Movement, the Informal Settlement Network and Abahlali baseMjondolo. This allows access to bottom-up processes that are not driven by NGOs. The detailed unfolding of the research depends in part on the informal settlement processes, policy dialogues and reviews that unfold over the coming two years, as these provide entry points for case studies as well as generating cutting edge themes for in depth interviews. This open-endedness is consistent with a qualitative approach.

The two year period of the research includes periods in which the researchers are able to dedicate concentrated time. For Marie Huchzermeyer, this includes a sabbatical up to end June 2018, the teaching of a closely related masters course in July and August 2018 which allows for student field visits and stakeholder engagements and the end of year research break in 2018 and 2019. Kristen Kornienko, a formally appointed visiting scholar in the School of Architecture and Planning and based in Canada will be travelling to Johannesburg for a dedicated research period from late July to early September 2018. A similar period may be possible in 2019 depending on availability of RINC and other ad hoc research funds. Neil Klug, a senior lecturer in the School of Architecture and Planning has a sabbatical for the entire 2018 but will only be available for interviewing in the second half of 2018.. Others engage in this research in the weeks that their teaching and other schedules allow.

The research involves ongoing document review, key informant interviews at all tiers of government, city level case studies, as well as individual informal settlement case studies. The informal settlements earmarked for case studies in 2018 are Slovo Park in Johannesburg and Harry Gwala in Ekurhuleni, both of which researchers in the team have longstanding relationships with. When additional informal settlements projects or processes arise for investigation, an addendum to this ethics application will be submitted.

The key informants to be interviewed are:

- Government officials with professional expertise. These officials will be in municipal, provincial and national housing/human settlements departments, as well as departments of cooperative governance and traditional affairs under which town and regional planning falls, and land affairs departments.

- Officials in municipal utility companies and relevant state owned agencies and parastatals whose functions interface with informal settlements.
- Politicians at different levels in relevant positions of insight. This would be ward councilors, proportional representation councilors, MMCs (Members of Mayoral Committee), MECs, Deputy Director Generals and Director Generals, and also opposition leaders shadowing these positions.
- Grassroots leadership in particular informal settlements and in social movements that mobilise around issues affecting informal settlement dwellers.
- Planning and human settlements consultants working directly on informal settlement intervention and policy.
- Staff of relevant NGOs involved in informal settlement intervention or in policy dialogues.

**Research team**

| | **Name** | **Affiliation** | **Area of investigation in the research** |
|---|---|---|---|
| Principal investigator/ researcher | Professor Marie Huchzermeyer | School of Architecture and Planning, CUBES | - Broad informal settlement policy shifts in South Africa and variations across the country;<br>- Role of the National Upgrading Support Programme (NUSP) and the Housing Development Agency (HDA);<br>- Informal settlement policy in Ekurhulenni Metropolitan Municipality, City of Johannesburg and Gauteng Province;<br>- Upgrading processes in the Harry Gwala case, Ekurhuleni;<br>- Upgrading Processes in the Joe Slovo case, Johannesburg. |
| Researcher | Prof Aly Karam | School of Architecture and Planning, CUBES | - Broad informal settlement policy shifts in South Africa and variations across the country. |
| Researcher | Taki Sitaghu | School of Architecture and Planning (previously an official in the National Upgrading Support Programme) | - Broad informal settlement policy shifts in South Africa and variations across the country. |
| Researcher | Neil Klug | School of Architecture and Planning, CUBES | - Role of NUSP and HDA;<br>- Upgrading processes in the Slovo Park case, Johannesburg. |

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| Researcher | Professor Sarah Charlton | School of Architecture and planning, CUBES | - Role of the NUSP and HDA. |
| Researcher | Dr Margot Rubin | School of Architecture and Planning, SA&CP | - Informal settlement policy and processes in City of Johannesburg and Gauteng Province. |
| Researcher | Miriam Maina | School of Architecture and Planning, SA&CP (currently PhD student, but work on this project will be outside of the PhD and building on her masters research which is listed among the publication below). | - Informal settlement policy and processes in City of Johannesburg and Gauteng Province. |
| Researcher | Dr Kristen Kornienko | Visiting Fellow, School of Architecture and Planning, CUBES | - Informal settlement policy in Ekurhuleni;<br>- Upgrading processes in the Harry Gwala case, Ekurhuleni. |
| Researcher | Dr Hloniphile Simelane | Visiting fellow, School of Architecture and Planning | - Upgrading processes in the Harry Gwala case, Ekurhuleni. |
| External Collaborator/ Researcher | Tiffany Ibrahim | Socio-Economic Rights Institute of South Africa (SERI) | - Role of the National Upgrading Support Programme (NUSP) and the Housing Development Agency (HDA);<br>- Informal settlement policy in Ekurhulenni Metropolitan Municipality, City of Johannesburg and Gauteng Province;<br>- Upgrading processes in the Slovo Park case, Johannesburg. |
| External Collaborator/ Researcher | Edward Molopi | Socio-Economic Rights Institute of South Africa (SERI) | - Role of the National Upgrading Support Programme (NUSP) and the Housing Development Agency (HDA);<br>- Informal settlement policy in Ekurhulenni Metropolitan Municipality, City of Johannesburg and Gauteng Province;<br>- Informal settlement policy and processes in City of Johannesburg and Gauteng Province. |

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| | | | - Upgrading processes in the Slovo Park case, Johannesburg. |
| External Collaborator/ Researcher | Jhono Bennett | One to One Agency of Engagement (1to1.org.za) | - Upgrading processes in the Slovo Park case, Johannesburg. |
| Research Assistant/ Intern | Ntabiseng Mohale | CUBES intern, School of Architecture and Planning | - Upgrading processes in the Slovo Park case, Johannesburg. |

**Outputs**
Single and co-authored journal articles, book chapters when the opportunity arises, and opinion pieces for the media when the opportunity arises.

**Timeframe** (March 2018-March 2020)

Literature review and policy commentary with occur throughout this time period. Interviews will be scheduled as per availability of the researchers and of the respondents. The broad anticipated timeframes are set out below:

Broad informal settlement policy shifts in South Africa and variations across the country;
- July 2018 to March 2020 (Marie Huchzermeyer, Aly Karam, Taki Sithagu, Miriam Maina, Tiffany Ibrahim, Edward Molopi)

Role of the NUSP and HDA;
- March 2018 to end 2019 (Sarah Charlton, Neil Klug, Marie Huchzermeyer)

Informal settlement policy in Ekurhulenni Metropolitan Municipality, City of Johannesburg and Gauteng Province;
- March 2018 to March 2020 (Marie Huchzermeyer, Kristen Kornienko, Miriam Maina, Margot Rubin, Tiffany Ibrahim, Edward Molopi)

Upgrading processes in the Harry Gwala case, Ekurhuleni;
- July 2018 to end 2019 (Marie Huchzermeyer, Kristen Kornienko, Hloniphile Simelane)

Upgrading Processes in the Joe Slovo case, Johannesburg.
- March 2018 to March 2020 (Marie Huchzermeyer, Neil Klug, Jhono Bennett, Tiffany Ibrahim, Edward Molopi)

Should timeframes change and additional informal settlement cases be added, an addendum to this application will be submitted to the University Ethics Committee.

**References and recent outputs of the team, relating to this proposal**

Charlton, S. and Klug, N. (2016) How 'RDP housing' and other factors have shaped informal settlement upgrading in eThekwini municipality. In Cirolia, L., Goergens, T., van Donk, M., Smit,

W. and Drimmie, S. (eds), *Upgrading Informal Settlements in South Africa: A Partnership-based Approach.* UCT Press, Cape Town.

Combinck, C and Bennett, J. (2016) Navigating hostile territory? Where participation and design converge in the upgrade debate. In Cirolia, L., Goergens, T., van Donk, M., Smit, W. and Drimmie, S. (eds), *Upgrading Informal Settlements in South Africa: A Partnership-based Approach.* UCT Press, Cape Town.

Huchzermeyer, M. (forthcoming) Informal settlements and shantytowns as differential space. In Leary-Owhin, M. and McCarthy, J. (eds) *Routledge Handbook of Henri Lefebvre, the City and Urban Society*, Routledge, London. (in press)

Huchzermeyer, M. (2014) Humanism, creativity and rights: invoking Henri Lefebvre's right to the city in the tension presented by informal settlements in South Africa today. *Transformation.* 85, 64-89.

Huchzermeyer, M. (2011) Cities *With* 'Slums': From Slum Eradication to a Right to the City in Africa. Juta/UCT Press, Cape Town.

Huchzermeyer, M. (2010) Pounding the tip of the iceberg: the dominant politics of informal settlement eradication in South Africa. *Politikon: The South African Journal of Political Science.* 37(1), 129-148. [SA]

Huchzermeyer, M. (2009) The struggle for in situ upgrading of informal settlements: A reflection on cases in Gauteng. *Development Southern Africa*, 26(1), 59-74. [SA]

Huchzermeyer, M. (2006) The new instrument for upgrading informal settlement in South Africa: contributions and constraints. In Huchzermeyer, M. and Karam, A. (eds.) *Informal Settlements – A Perpetual Challenge?* Juta/UCT Press, Cape Town. [SA]

Huchzermeyer, M., Karam, A. and Maina, M. (2014) Informal Settlements. In Harrison, P., Gotz, G., Todes, A. and Wray, C. (eds), *Changing Space, Changing City: Johannesburg after Apartheid.* Pp. 154-175. Wits University Press, Johannesburg. [SA]

Kornienko, K. (2017) Waiting, hope, democracy, and space: how expectations and socio-economic rights shape two South African urban informal settlements. *Journal of Asian and African Studies*, 52(1), 34-49.

Kornienko, K. (2016) Bottom-up "Slum" Upgrading: Defamiliarising the Global Neighbourhood Aesthetic. In Attia, S., Shabaka, S., Shafik, Z. and Abdel Aty, A. (eds.) *Dynamics and Resilience of Informal Areas: International Perspectives.* Springer, New York.

Kornienko, K. (2013) *Engaging informal settlements as landscapes of place: reconceptualising urban communities in the struggle for in situ upgrading.* PhD Thesis, School or Architecture and Planning, University of the Witwatersrand, Johannesburg.

Maina, M. (2016) Adopting an incremental approach to informal settlement upgrading: The Johannesburg experience. In Cirolia, L., Goergens, T., van Donk, M., Smit, W. and Drimmie, S.

(eds), *Upgrading Informal Settlements in South Africa: A Partnership-based Approach.* UCT Press, Cape Town.

Maina, M. (2013) *Implementation Challenges in Policy Transition: In-Situ Upgrading in Johannesburg and Nairobi.* Masters in Town and Regional Planning by Research, School of Architecture and Planning, University of the Witwatersrand, Johannesburg.

Rubin, M. and Harrison, P. (2016) An uneasy symbiosis: Mining and informal settlement in South Africa, with particular reference to the Platinum Belt in North West Province. In Cirolia, L., Goergens, T., van Donk, M., Smit, W. and Drimmie, S. (eds), *Upgrading Informal Settlements in South Africa: A Partnership-based Approach.* UCT Press, Cape Town.

Shisaka
DEVELOPMENT MANAGEMENT SERVICES

05 November 2018

**To whom it may concern,**

**RE: NEIL KLUG AND MARGOT RUBIN'S RESEARCH**

This letter serves to confirm that Shisaka Management Services, has been informed of and is in principal in support of the research that Neil Klug and Margot Rubin want to carry out regarding the impact of the Housing Policy Course, which Shisaka administered.

While Shisaka holds all of the records and in order for the research to be carried out, there are some preliminary steps that need to be taken so as to protect the respondents' privacy. Thus it has been agreed that the researchers will provide administrative support on behalf of Shisaka Development Consultants as follows:

i. Consolidate the Housing Policy training Course data-base of participant's particulars.
ii. Secure respondents' approval to contact them and for Shisaka to release their details to the researchers. This would require sending all the participants an email or cellphone communication, in Shisaka's name, requesting whether they would be willing to participate in the survey and authorising Shisaka Development Consultants to provide Neil Klug and Margot Rubin with their contact particulars so as to enable them to receive the electronic survey.
iii. Once the participants have provided their permission to release their contact details for the research project, Shisaka will make these contact details available to Neil Klug and Margot Rubin to conduct their on-line survey.

If there are any concerns of queries, please do not hesitate to get in touch.

Yours sincerely,

Matthew Nell
Director
*Shisaka Development Management Services (Pty) Ltd*
*2nd Floor, 158 Jan Smuts Avenue*
*West Wing, Cnr Walters Street, Rosebank*
*Co. Reg. 2002/018833/07*
*VAT Reg. 448 020 4827*
*t / +27 11 447 6388*
*f / +27 086 560 1098*
*c / +27 83 251 2441*
*e / matthew@shisaka.co.za*

UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

Research Office

**HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)**
R14/49 Huchzermeyer

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|---|---|
| **CLEARANCE CERTIFICATE** | **PROTOCOL NUMBER: H18/02/12** |
| **PROJECT TITLE** | Understanding shifts in informal settlements, policies and programmes in South Africa |
| **INVESTIGATOR(S)** | Professor M Huchzermeyer |
| **SCHOOL/DEPARTMENT** | Architecture and Planning/ |
| **DATE CONSIDERED** | 16 February 2018 |
| **DECISION OF THE COMMITTEE** | Approved<br>Two year extension only |
| **EXPIRY DATE** | 15 April 2023 |

**DATE** 16 April 2018 **CHAIRPERSON** J. Knight
(Professor J Knight)

cc: Supervisor : N/A

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**DECLARATION OF INVESTIGATOR(S)**

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10004, 10th Floor, Senate House, University. Unreported changes to the application may invalidate the clearance given by the HREC (Non-Medical)

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to submit an amendment of the protocol to the Committee. **I agree to completion of a regular progress report. For Minimal and Low studies, this is due annually on 31 December. For Medium and High Risk studies, this is due twice annually on 30 June and 31 December.**

**Signature** **Date** 12 / 03 / 2021

**PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES**

Research Office

**HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)**
R14/49 Klug

| | |
|---|---|
| **CLEARANCE CERTIFICATE** | **PROTOCOL NUMBER: H18/10/15** |
| **PROJECT TITLE** | Why do equity oriented, 'progressive' planning policies fail to redress the apartheid city? An examination of planning instrumentality in South Africa |
| **INVESTIGATOR(S)** | Mr N Klug |
| **SCHOOL/DEPARTMENT** | School of Architecture and Urban Planning / |
| **DATE CONSIDERED** | 19 October 2018 |
| **DECISION OF THE COMMITTEE** | Approved<br>Permission letters required before data collection can commence |
| **EXPIRY DATE** | 10 December 2021 |

**DATE** 11 December 2018 **CHAIRPERSON** ______________ (Professor J Knight)

cc: Supervisor : Professor A Todes

**DECLARATION OF INVESTIGATOR(S)**

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10004, 10th Floor, Senate House, University. Unreported changes to the application may invalidate the clearance given by the HREC (Non-Medical)

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure 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. **I agree to completion of a yearly progress report.**

______________ Signature

_____/_____/_____ Date

**PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES**

Research Office

**HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)**
R14/49 Huchzermeyer

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|---|---|
| **CLEARANCE CERTIFICATE** | **PROTOCOL NUMBER: H18/02/12** |
| **PROJECT TITLE** | Understanding shifts in informal settlements, policies and programmes in South Africa |
| **INVESTIGATOR(S)** | Professor M Huchzermeyer |
| **SCHOOL/DEPARTMENT** | Architecture and Planning/ |
| **DATE CONSIDERED** | 16 February 2018 |
| **DECISION OF THE COMMITTEE** | Approved |
| **EXPIRY DATE** | 15 April 2021 |

**DATE** 16 April 2018 **CHAIRPERSON** J Knight
(Professor J Knight)

cc: Supervisor : N/A

**DECLARATION OF INVESTIGATOR(S)**

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10004, 10th Floor, Senate House, University. Unreported changes to the application may invalidate the clearance given by the HREC (Non-Medical)

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure 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. **I agree to completion of a yearly progress report.**

Signature ______________________ Date ____/____/____

**PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES**

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG


1. School of Architecture and Planning

Private Bag 3, Wits 2050, South Africa. Telephone: +27 11 717-77688/727. Fax +27 11 717-7649. Cell ph: +27 83 424 2457. E-mail: marie.huchzermeyer@wits.ac.za


**Understanding shifts in informal settlements, policies and programmes in South Africa**

Date.....

Dear .........

Given your role in relation to informal settlement policy / practice in South Africa, I would like to request an interview with you. This is in connection with ongoing research on the interaction between policy that relates to informal settlements and practice in different provinces and municipalities, in relation to different programmes and how this manifests in particular informal settlements.

I am conducting this research in my capacity as Professor (lecturing in the field of housing) in the School of Architecture and Planning Wits University [to be filled in appropriately by each team member]. I am currently working on a journal article [or book chapter, as appropriate, mentioning co-author if relevant] on this topic. Such research also assists in enriching the teaching and supervision in the School of Architecture and Planning.

I envisage an interview to last one hour. If a respondent is available only for 30 minutes, I will take up the opportunity for a shorter interview. I will conduct all the interviews myself. I will take hand-written notes, but would like to use a tape recorder as back-up, should you be comfortable with this. The interviews will be conducted at a location chosen by yourself. Where a face-to-face interview is not feasible, and where Skype is an option, it can also take place on Skype.

Participation in this research is voluntary, and your refusal to participate, your refusal to answer any of my questions, or your subsequent decision to have your interview withdrawn from this study will not have any implications. There will be no direct benefits (such as payment) for participating in this study. I am aware that I might not fully understand the sensitivity of some of the questions I intend asking, and will appreciate this being pointed out to me in the course of the interview.

Your insights will be treated confidentially, meaning the notes, recordings and transcripts will be safely stored and will not be shared with any third party. Given your expertise and standing, I would like to attribute your insights to your name, but will only do so with your permission. If you prefer anonymity, I will ask you to indicate whether I may mention the name of your organisation. I will make available a report on the research findings, for your comment.

I look forward to interviewing you, should you be available and willing. Please contact me with questions about the research before or after the interview via the contact details above. For any queries, 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/ Shaun.Schoeman@wits.ac.za

Yours sincerely,
Marie Huchzermeyer (Professor, School of Architecture and Planning) [or name and position of other team member]
Marie.huchzermeyer@wits.ac.za, +27-11-7177688 / +27-83 424 2458 [or contact details of the other team member]

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

School of Architecture and Planning

Private Bag 3, Wits 2050, South Africa. Telephone: +27 11 717-77688/727. Fax +27 11 717-7649.
Cell ph. +27-83 424 2457. E-mail: marie.huchzermeyer@wits.ac.za

**Understanding shifts in informal settlements, policies and programmes in South Africa**

## CONSENT FORM

The research for which I will be interviewed has been explained to me.

I understand that the research is for academic purposes.

I understand that my participation is voluntary, therefore I may refuse to be interviewed, may refuse to answer any of the questions and I may withdraw from the research process at any point. Should I consent to my name being used in citations of the interview, I also understand that I may request that certain statements be cited as anonymous (without my name being associated with them).

- I hereby agree / disagree to be interviewed [cross through the option that does not apply]
- I hereby agree / disagree for a voice recording device to be used [cross through the option that does not apply]
- I hereby agree / disagree to direct quotes to be used from this interview [cross through the option that does not apply]
- I hereby agree / disagree to my name being used in citations of the interview, except where otherwise requested in the course of the interview [cross through the option that does not apply]
- If I disagree to my name being used, I hereby agree / disagree to the name of my organisation to be mentioned in citations of the interview.

Full name and title of participant:

______________________________________________________________________

Position/designation of the participant:

______________________________________________________________________

Institution/department/section in which the participants works:

______________________________________________________________________

Signed: ___________________________ Date: ___________________________________

**Email Covering letter for On-line survey Participants –**

**REQUEST TO PARTICIPATE IN A RESEARCH SURVEY OF PAST PARTICIPANTS TO THE INTRODUCTION TO HOUSING POLICY SHORT COURSE FOR ADMINISTRATORS**

**Dear Madam/Sir**

Given your participation in the Introduction to Housing Policy Short Course for Housing Officials sometime between 2010 and 2016, we would like to invite you to participate in a research project. As indicated in the attached information sheet, this research is being undertaken by Neil Klug and Dr Margot Rubin and is to establish what the longer-term changes the training has had on your working lives and implementation of the housing policies.

Participation in this research is voluntary, and your refusal to participate, will not have any implications. There will be no direct benefits (such as payment) for participating in this study. The survey is anonymous, and if you are uncomfortable with answering any question, you may skip it. The survey results will form part of my PhD and other academic papers which and will be available to the public on-line. The base data will be stored on a password protected computer.

We would be grateful if you would be prepared to complete our survey within three weeks of receipt of this email. If you consent to participate please click on the link: https://www.surveymonkey.com/...........

By completing and submitting the survey form, we assume that you agree to our use of the data in the way described.

Should you have queries about the survey, you are welcome to contact me or Dr Margot Rubin (Margot.rubin@wits.ac.za). We appreciate you taking the time to complete our survey, and look forward to your responses.

Neil Klug and Dr Margot Rubin
School of Architecture and Planning
University of the Witwatersrand
Neil.Klug@wits.ac.za, Tel. +27-11-7177729 / +27-82 4617343 and
Margot.Rubin@wits.ac.za, Tel. Tel: 011 717 7637 (until 14.30) Cell: 082 739 0243