



## SCOPING STUDY

# Local Land Registration Practices in South Africa

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**Urban LandMark**

MAKING URBAN LAND MARKETS WORK FOR THE POOR

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## Abbreviations and Acronyms

ABM	Abahlali Base Mjondolo
BCM	Buffalo City Municipality
CALS	Centre for Applied Legal Studies
CoCT	City of Cape Town
CoJ	City of Johannesburg
COO	Chief Operating Officer
DAG	Development Action Committee
DFA	Development Facilitation Act
DO	<i>Designated Officer</i>
DoG	Deeds of Grant
DVDU	Duncan Village Development Unit
ESTA	Extension of Security of Tenure Act
GPG	Gauteng Provincial Government
HiDA	Hangberg insitu Development Association
KZN	KwaZulu Natal
KRDC	Kennedy Road Development Committee
LFTEA	Less Formal Township Establishment Act
LRC	Legal Resources Centre
MDG	Millennium Development Goals
PIE Act	Prevention of Illegal Evictions and Unlawful Occupation of Land Act
PSC	Project Steering Committee
PTO	Permission to Occupy
Sanparks	South African National Park
UISP	Upgrading Informal Settlement Programme
UF	Urban Foundation
ULM	Urban Land Mark
ULTRA	Upgrading of Land Tenure Rights Act



# 1. Introduction

This report is the result of an initial scoping study in Urban LandMark's tenure theme area to provide documented evidence of local practices in registering land claims and rights. It is intended to inform the work in the tenure theme area on securing and managing land rights in informal settlement upgrading processes in ways that build on existing practices. One of the starting points of Urban LandMark's approach in this theme area is to work with already exists, and where possible to build on it in ways that gradually secure people's tenure rights. Recognition of what exists in informal settlement upgrading is particularly important in comparison with greenfields development. This report is thus intended as a resource in subsequent phases of work.

The scoping study found evidence that communities and community structures have created their own land registration practices and that few, if any, are untouched by the hand of the state. The state has also initiated land registration practices primarily in opening municipal registers of informal settlement occupants. The land management arrangements that arise from these community/state interactions and interfaces are best characterised as hybridised forms. They have created sets of claims and rights with varying degrees of social legitimacy with which any informal settlement upgrading initiative must engage. While acknowledging the complexity and plurality that underpins these practices, Urban LandMark's advocacy for recognition of existing practise in subsequent work in this area will be to recommend practical ways of securing land rights as simply as possible.

The report describes and characterises local registration practices in selected cases, and identifies common elements in these practices, as a basis further work in the theme area. In the course of the research a range of existing and past practices were identified. The research captured practise at a variety of scales and through an assortment of actors and agents. This report presents 5 examples of local practice introduced in the Table I below. It characterises practice according to the following framework:

**Background:** In this section each case is introduced and background is provided on the registration practice, especially the nature of the register.

**Land access:** The manner in which households and individuals are able to gain entry into a community and obtain permission to use land is described. The assumption was that practices which are either closed or static will block newcomers from entry (or may permit access on certain terms) and will not be updated to reflect changes over time.

**Land tenure:** The ways in which land is held and occupied is documented in this section, on the understanding that ownership and rental, while commonly understood as the most prevalent forms of tenure, are only a part of the picture. Households also share, occupy, look after and sub-let units.

**Land use:** Most land and property is used for residential purposes in these settlements but at the micro-scale many homes have productive uses as well. This section documents how households utilise their land for income generating purposes such as letting or sub-letting, or operate home-based industries from their units. Services and retail activities often take place within the familial home, which also sometimes serve as a base of operations, such as food preparation. Many units are multi-use and multi-purposes spaces. At the scale of the community, portions of land are reserved for communal functions, such as meeting spaces,



sports grounds, markets or religious areas. Monitoring and enforcement is the responsibility of local land managers.

**Land transactions and costs:** In this section land, and where applicable shack, purchase, sale and exchange is documented, as is the extent to which registration practices track these changes and differentiate between a variety of transactions. Expensive registration and transfer systems are often out of reach for the vast majority of people and will most likely be ignored as the transacting individuals will simply not be able to afford the costs. In addition registration practices that are inaccessible make updating unlikely.

**Land managers:** The identification of land managers assists in understanding who controls the register, where it is held and how it is used. Attempts were made to identify the accessibility and accountability of land managers, on the assumption that land managers can use the register and their position as a means of control, exclusion and segregation, rather than to resolve conflicts and defend rights and claims, depending on how "attackable", open and transparent the system is.

**Content of land rights and claims:** The intention was to capture the substantive elements of people's claims and rights, i.e. what they are entitled to, as well as the procedural dimensions captured in other categories, and to understand how clear these rights were to local land managers as well as people who had them, as increasing clarity about the nature of rights is an indicator that tenure security is increasing. The converse would also apply.

**Evidence of rights:** The background section addresses the registers, whether community, state or hybridised in nature. In this section the intention was to capture the household scale evidence that people can use to back up, defend or prove their claims.

**Recognition of rights:** Here the concern was to understand the status of the register, and the other forms of evidence, by investigating who recognises the register - state, community and individuals. The basic assumption is that increased recognition will increase tenure security.

**Conflict resolution measures:** Registers can provide evidence of claims and rights, as can the other forms of evidence, both oral and written. This section is also concerned with what other measures and processes exist to resolve conflict.

**Change or additions to practice:** The assumption is that an effective registration system should be "live", meaning that it should be easily updateable in order to capture changes that arise from household mobility and the transfer, or trade, of rights and claims. A static register runs the risk of locking people into locations and circumstances which may not align with their livelihood preferences. In addition a static register is unlikely, over time, to be an accurate one. Factors such as new regulations, legislation, demographics or local politics, can all mediate the way in which the register is kept as well as the rights and claims that the register confers to households.

The study was undertaken over a three month period during 2008. It began by identifying a series of potential sites, where local land registration practices were taking place, and documentation was gathered to see if they would be appropriate for the study. Once a short list for further investigation had been compiled a desk top study and literature survey was completed in order to develop an



understanding of the background of each site. A generic questionnaire was developed (Appendix 1), which was intended to structure the discussions and to try and ensure some comparability across time and space between the various cases. Respondents were identified among people who were, or had been, involved in some way and 12 interviews were conducted and 2 focus group discussions were held (Appendix 2). The interviews were recorded and transcribed and were sent to the relevant people for verification and clarification<sup>1</sup>.

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<sup>1</sup> Although all of the respondents were given this opportunity to respond only, Annette van Riesen, Andre van der Walt, Gemey Abrahams and Helen MacGregor sent back comments and corrections. These were then included in the final report.



No.	Name/Location of Practice	Characteristics of registration practice
2.1	Folweni settlement, Amanzimtoti, Kwa-Zulu Natal	<ul style="list-style-type: none"> <li>▪ Initially the local authority kept a register of land for the tribal authority but this gradually fell into disuse and the local councillors took over as land managers.</li> <li>▪ Councillors witnessed land sales, changes of ownership and other transactions. Councillors also resolved conflicts.</li> <li>▪ Evidence of registration was supplied officially in the form of PTOs and unofficially through letters from the councillors and receipts of sale.</li> </ul>
2.2	Kennedy Road Informal settlement, eThekweni, Kwa-Zulu-Natal	<ul style="list-style-type: none"> <li>▪ The informal settlement development committee has adapted a municipal register, which it has consistently updated and kept "alive".</li> <li>▪ There were pre-existing registers, including a book in which changes were noted. Community witnessing plays an important role. Spray painted shack numbers are also used as evidence.</li> <li>▪ Conflicts are adjudicated by a "court" in the settlement, comprised of committee members.</li> </ul>
2.3	Mandela Informal Settlement, Delmas, Mpumalanga	<ul style="list-style-type: none"> <li>▪ The municipal housing department registers households. The register is evidence of which households will be relocated to two sites for greenfield RDP housing development.</li> <li>▪ A local "authority", who is a local resident and runs the initiation school, witnesses and signs sales agreements and affidavits. It is this "induna's" act of witnessing that legitimises the transaction in the eyes of the local community.</li> <li>▪ These two processes operate in parallel and are unrelated to each other.</li> </ul>
2.4	Motala Heights, eThekweni, KwaZulu-Natal	<ul style="list-style-type: none"> <li>▪ The community has been in danger of eviction and relocation by the city and by private land owners since the 1960s.</li> <li>▪ Although there have been several registers, the latest version, run by the municipality in discussion with the community, is being kept with the intention of controlling growth.</li> <li>▪ Evidence of being on the municipal register is provided in the form of spray painted numbers on the informal dwellings and receipts for rent by the private land owner.</li> <li>▪ There are also some formal lease agreements between the private landlord and his tenants.</li> </ul>
2.5	Hangberg Informal Settlement, Houtbay, Cape Town	<ul style="list-style-type: none"> <li>▪ Hangberg is located on some prime real estate in the exclusive Houtbay area in Cape Town.</li> <li>▪ The development committee have tracked changes of ownership and any changes of land use over the preceding years.</li> <li>▪ A Cape Town based NGO, Development Action Group, introduced a geospatially referenced registration system, which is being used to negotiate upgrading and tenure rights with the city.</li> <li>▪ Part of the agreement with the city was that the Hangberg register would confer who had rights and there is agreement that newcomers are considered illegal.</li> </ul>

Table 1: Summary of land registration case studies



## 2. Case Studies of Local Land Registration Practices in South Africa

This section of the report presents the land registration practices in five settlements in South Africa, using the framework described in the introduction. While variety exists between them, a fuller discussion of their common characteristics is provided in the conclusion. It is these commonalities which provide the basis for exploring an approach to securing rights that recognises what currently exists.

### 2.1 Folweni<sup>2</sup>

#### Background

Folweni is a settlement of 40 000 people located in Amanzimtoti south of Durban. The origin of the settlement lies in the forced removals of households from Umlazi township in 1981 by the KwaZulu Government. Married households from Umlazi were allocated plots in Folweni and the rest of the community was scattered across the province. According to Magni et al (2002) the motivation for establishing Folweni and moving the households was to provide a captive labour force for the nearby Durban South Industrial Basin and Durban proper.

The township had an officially recognised General Plan, but its history reveals a more complicated series of pre-existing land holdings, including original possession by the Amanzimtoti Mission Reserve and subsequently ownership being transferred to the local chieftain, Chief Sobonakona Makhanya. The tribal ownership of the land meant that Folweni was never established as an R293 township. Tribute was paid to the Chief by the residents of Folweni, and he allocated Permission to Occupy certificates (PTOs) and controlled access to land but the administration of the register worked through the local authority.

#### How land was accessed

In the 1980s a total of 1 653 plots were allocated to households that were forcibly removed from Umlazi. Residents were provided with PTOs, and plot sizes averaged 12mx16m. The new residents had to construct their own units out of wattle and daub and few homes had services. In the 1990s private sector concerns close to the settlement built a number of houses in the area. The companies employed developers to build bonded houses, and expected their employees to pay off the loan over a period of time. The scheme did not work out as planned for either residents, who expected title deeds but were provided with PTOs or for the employers who had not realised that the high cost of loans would force many of the households to informally sell their units. Practice changed sometime after 1994, when both the Induna and the private sector lost control and councillors stepped into the housing supply breach. They showed prospective residents properties and gave them permission to occupy, although whether an actual PTO document was supplied or not remains unclear. There are reports of incoming households taking over PTOs of previous tenants.

Although PTOS were officially non-transferable and rental was not permitted, land sales took place and rental arrangements occurred. This land market activity was

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<sup>2</sup> Most of the information regarding Folweni comes from Peter Magni's Masters Dissertation and an interview with Anette von Riesen, September 2008.



facilitated mainly by word of mouth and councillors. Councillors seemed to act as “modern” Indunas, controlling access to land and giving permission for people to settle, both of which came at a price.

#### How land was held

Despite some evidence of PTOs being taken over by incoming households, in general when property was sold, PTO certificates could not be officially transferred, and new occupiers received letters from councillors, receipts of sale or sales agreements, as evidence of their tenure and documented proof of the transaction, all of which were considered by locals to be as good as PTOs at providing evidence for defending claims. In the post -1990 period, Councillors were seen to have taken over the role of the Induna and the State and their witnessing and oversight was deemed by residents to be sufficient for secure tenure.

#### How land was used

Although official regulations, in the form of land use schemes and conditions set out in the PTOs, were in place restricting rental and commercial land use, households generally disregarded these rules. The land managers, originally the state and the Indunas and later the local councillors, were also lax in the enforcement of the rules, and most households used their properties as they needed to.

#### How land was transacted

The most common way of initiating a sale was through word of mouth, but it appears that councillors also facilitated sales and were often approached by people wanting to buy or sell housing, acting as a type of estate agent. Since houses could neither be sold nor bequeathed officially, witness by the councillor and some form of documentation was considered sufficient for transfer of ownership to be recognised by the local community.

#### Land managers

Initially the Tribal Authority and the state acted as the official land managers who controlled and managed access to the area. However in the post-1990 period, the councillors took over the management function and began to facilitate transactions and decide on access. All the while the community acted as witnesses and unofficial registrars and their testimony could be used to back up claims and defend rights.

#### Content of rights

Residential use	Yes
Productive use	No, but unofficially rental and commercial activities took place
Rent, sublet	No, but informal rental took place
Control access	Yes, households were able to determine who enters their properties and what took place within their homes
Sell/buy or inherit	No, not without a court order that rescinded ownership and then gave it out again. But unofficial transactions consistently took place off throughout the settlement’s history.
Develop or improve	Yes, residents could build on their designated plots and most households have built their own homes.



Realise benefit or return	No, official sale was not possible but households did sell and it is very likely that households either made enough to settle outstanding mortgages in the case of those with employee housing or to see some profit, although this research did not find any direct evidence of profit.
Access to services	Varied. Some of the sites had services, but most households utilised communal standpipes and ablutions. A project was underway to provide all households with waterborne sewerage.
Access to formal credit	No, households with PTOs could not use their documents to get bonds from the local banks as PTOs were not transferable.
Claims to future development	PTO holders had their rights upgraded to title using the DFA.

### Evidence provided

Two kinds of evidence were provided; initially official documents in the form of PTOs from the state and allocated by the Induna, and later unofficial papers such as letters from the Councillors, receipts or sales agreements. All of these documents had social legitimacy at local level but the state only recognised PTOs, which became problematic for residents without them when ULTRA and the DFA were applied to the settlement and it was found that a number of households did not have PTOs and were therefore excluded from gaining immediate ownership and having their tenure upgraded to full ownership with a formal title deed.

### Recognition of rights

Originally the PTOs provided by the state were not recognised by the pre-existing Tribal Authority and there were instances of houses that had been allocated being burnt down by tribal representatives, forcing the residents to relocate.<sup>3</sup> Between the 1980s and 1990s the local community recognised all of the various forms of evidence, provided by both state and the councillors and made no distinction within the local informal economy between the various documents. However, when the township was finally established in 2001 the state recognised and upgraded PTOs to title deeds using ULTRA but could not recognise the letters from the councillors, receipts or sales agreements as they held no official authority. As a result there has been a long drawn out process to get the authorities to recognise the claims of these residents, which is apparently still ongoing.

### Conflict resolution measures

There were no real conflict resolution measures put in place when the settlement was established and the original Tribal Authority seemed to take little interest in Folweni and by the 1990s no longer had any real control over the area. There was some community facilitation work within the settlement when development began but it was aimed at communication rather than conflict resolution. As such conflict

<sup>3</sup> Fourie, C., and Hillerman, R., 1998: The South African Cadastre and Indigenous Land Tenure, Paper presented at *Land Registration in South Africa and Rural Urban Linkages*, United Nations International Workshop, Curitiba, Brazil, 10<sup>th</sup>-13<sup>th</sup> March 1998.



resolution existed in two forms, through the witnessing and testimony of the councillors and the letters and documents that they provided and through communal memory, which could be called upon to resolve a dispute.

#### **Costs of transaction**

The state did not charge for the allocation of PTOs but residents did have to pay tribute to the chief, as a way of securing tenure and good relations, although the exact amount remains unspecified. In the informal market, however, councillors, who acted as facilitators and mediators, did sometimes take a percentage of the cost of the unit, possibly as some kind of administration or facilitation.

#### **Changes or addition to the existing land registration practice**

A number of different pieces of legislation were used to upgrade the township. Post 1992 many of the old R293 townships were incorporated into other jurisdictions and fell under their regulations, which allowed for the upgrading of tenure.<sup>4</sup> The problem in Folweni was simply that the township had never been gazetted and formally designated as an R293 township. It was only in negotiations with the province that there was agreement that Folweni could be deemed a R293 township. Different pieces of legislation were used for different purposes. Folweni residents with PTOs were given individual title under the DFA, which was used for the first time in the province. ULTRA was also used to upgrade rights.

#### **General comments**

The restrictions on transfer of PTOs meant that people devised local rules for transactions, using the councillors as important agents in the land market operation. Initially socially recognised sales and rentals were sufficient to allow households to feel secure and to provide them with equal rights and claims as those who had PTOs or other official documents. However when title became available, only those in possession of first generation PTOs were eligible and those with informal documentation were not immediately recognised.

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<sup>4</sup> Province of KwaZulu-Natal, 2003: Discussion Document of the Provincial Housing Development Board with respect to land release areas, Directorate of Housing, 8<sup>th</sup> July 2003.



## 2.2 Kennedy Road<sup>5</sup>

### Background

The informal settlement is relatively old and the area was first settled by 53 families fleeing political violence in the late 1970s and early 1980s. It is located in one of eThekweni's industrial areas, close to a landfill, on a steep hillside, and adjacent to what is now a middle-class residential area. The oldest residents claim that originally the land was given to the new settlers by the land owner on the condition that they used the land themselves and did not rent it out. Attracted by its good location, more people joined the settlement over the next few decades, close to the dump and to the growing industrial area nearby. There have been a number of attempts to remove the community from the area and relocate them to new housing projects. As part of these plans, the community has been registered by the municipality and their shacks have been numbered several times. The last registration programme was completed in 2000/2001. The most recent set of plans involved extensive relocation of the residents and met with violent opposition from the Kennedy Road community. This resistance gave rise to the social movement known as Abahlali Base Mjondolo (ABM), which is now an umbrella shack-dwellers organization with a growing national presence. Kennedy Road is still seen as a key site of opposition to state oppression by ABM. Recent estimates put the population at 9 000 people and the households at 2 600.

The site was vacant land when the first settlers arrived and set up their shacks and plots as they wished but it was without services or any form of infrastructure. In 1987 the Urban Foundation, in conjunction with the Durban Municipality, began an upgrading project. The site was laid out and a general plan was devised, and 106 resident households were provided with a designated plot and a shared pit latrine. Cement walkways and staircases were installed in order to aid pedestrian movement through the settlement and six standpipes in total were provided to the community.

After the initial upgrade the settlement saw little state intervention until 2000/1 when, as previously indicated, the eThekweni Municipality took a register of the settlement and spray-painted numbers on the doors of the existing shacks. However, nothing came of this initiative. The Kennedy Road Development Committee (KRDC) which is the settlement's elected representative body now use this register as the basis for the community database that they keep up to date with new households, transactions and deaths. A new registration process is currently underway following a recent period of conflict between the City and the community over the proposed relocation of the settlement and residents are now being registered, as part of the larger upgrading negotiation. Residents are being registered in three categories; (i) original settlers, considered to be the elders and the founders of the settlement, as well as the people who will have first refusal of any housing offered, (ii) residents from 2000/2001 who are on the municipal register of 2000/1 and are next in line in terms of choice, and (iii) newcomers, who have the least say in what housing they can access.

The local community is opposed to the City's plans to relocate the settlement. As a result the two sides are now in mediated conversation over the future of the settlement, with the KRDC arguing that the site is feasible for settlement and in situ upgrade presumably. They cite the purported existence of the Urban

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<sup>5</sup> Most of the information regarding Kennedy Road comes from two interviews: Sbu Zikode and Zama Ndlovu, 21<sup>st</sup> August 2008



Foundation plan as evidence that the City once considered *in situ* upgrade. However the KRDC cannot find a copy of the plan to support their case. The KRDC also argue that the new Chapter 13 of the Housing Code makes provision for feasible *in situ* upgrade and are demanding that the City considers both of the old Urban Foundation Plan and Chapter 13 before it relocates the settlement.

#### **How is land accessed**

Land is extremely scarce in what is a very densely inhabited settlement. Newcomers generally approach shack owners and request either a room or shack to rent or buy. Very rarely do newcomers request or find a small piece of land for sale due to the extremely overcrowded and densely settled nature of the settlement. The cost of renting a room is between R150-R200 per month depending on what services the room has and about R500 to buy a shack. Many of the households share and sub-divide their homes for family, friends and kin.

#### **How is land held**

Land is held in a variety of ways. Length of stay and evidence of having been around during the first register e.g. having a pit-latrine, conveys the status of elders and original settlers of Kennedy Road. These residents hold their homes by virtue of the length of their residence and the outward signs of their stay. Later comers rely on either the 2000/2001 register or the KRDC updated version, which records their transactions and is used as evidence of buying, selling, looking after and inheriting.

#### **How is land used**

Land is mostly used for residential purposes but households do build shacks to rent out, generating an income. This practice is frowned upon and the KRDC is trying to stop it, mainly because of the KRDC's belief that newcomers should not be paying anything if shack owners are not. According to the respondents this disapproval is not having much impact on the rental practice. Households can and do set up commercial enterprises particularly in the form of the many spaza shops evident in the settlement. Communal public space is maintained for sport and as a place to meet and discuss issues of concern to the wider community. There are also spaces set aside for a community centre and a church, as well as open space reserved for prayer for people who belong to the Shemba church and require an outdoor prayer space. Their "church" is designated by a series of white stones and the space is respected and kept open by the rest of the community.

#### **How is land transacted**

The study identified a number of different ways in which transactions take place. Firstly, new renters are introduced to the KRDC, which appears to be less about seeking permission and more about keeping the KRDC informed of changes. Secondly, a book is kept by the KRDC member with the housing portfolio who notes down non-permanent changes, so that if a person is letting a family member use his/her shack for a period while the owner is away, then that might be noted so that on the person's return there is no dispute about ownership. The portfolio committee member seems to apply his discretion about book entries, so the practice is inconsistent. The entries also capture that the KRDC has witnessed the changes on a specified date and note the nature of the transaction i.e. sale, agreement to look after or some other arrangement. Thirdly, use is being made of the 2001/2002 register. The KRDC has a copy of the register and when a shack is sold or inherited, the KRDC acts as a witness to the transaction and encourages the transacting parties to provide a receipt as proof. They then update the register



with the name and details of the new owner and confirm that the transaction did take place.

### Land Managers

The primary land manager in the area is the KRDC, who does not control entry per se but requests that it be kept informed by the community. The KRDC registers changes and acts as the interface between the community and the City. They are an elected body, with annual re-elections. At present newcomers have been allowed to come and settle in the area because the KRDC and ABM realise that the newcomers can be mobilised and support them demonstrate their authority in the settlement. The KRDC is open about the strategic nature of this intention - more residents will give them more leverage in negotiations with the City.

The City is also involved in land management through repeated shack registrations and housing development and upgrading plans but, according to the KRDC, their engagement with most residents is limited.

### Content of rights

Residential use	Yes, and to share with whomever needs shelter. But newcomers do not have as strong a claim to choose between in situ upgrading or relocation as households who have been there for longer.
Productive use	Yes, and spaza shops, among other things, are evident in the community
Rent, sublet	Yes, prospective landlords will keep the KRDC informed, although their permission is not required. Levying rent payments is frowned upon by the KRDC but the practice continues to some extent anyway.
Control access	Yes, some households have even fenced off some of the surrounding area and claimed it.
Sell/buy or inherit	Yes, selling and buying as well as bequeathing are considered to be at the owner's discretion but all transactions are registered in one way or another.
Develop or improve	Yes, households are able to improve their units, but this generally comes in the form of service provision rather than investing in the actual structure.
Realise benefit or return	Yes, able to sell shack with improvements or rent out shack with access to services for a slightly higher price than a shack without services. But the practice of charging rent is frowned upon.
Access to services	Yes, all residents have equal access to standpipes and portable chemical toilets. They pipe water to their shacks, at a cost of R450, or get illegally hooked up to the electricity at a cost R1 500.



	Payments are made to artisans in the settlement who specialise in illegal connections. Households who were part of the 1987 UF initiative do have pit-latrines and can and do choose to lock them and to restrict their use.
<b>Access to formal credit</b>	No, shack ownership is not leverageable
<b>Claim to future development</b>	Principle of first come first served applies - those with the longest residence will have more choice as to whether they want to stay or chose to be relocated. Newcomers will not be offered the same privilege.

### **Evidence provided**

An updated version of the municipal register is kept by the KRDC, which records people's names and shack numbers. A book is maintained by the housing portfolio member of the KRDC, which also identifies uses, names, dates, a record of the transaction, and the shack number. The memories of the KRDC is considered important as it witnesses transactions. The memory of the community is also considered to provide evidence.

### **Recognition of rights**

The community recognises all three kinds of evidence and is quite confident that the role of the KRDC and housing portfolio member are sufficient evidence. The state on the other hand does not recognise any of the original claims and as such is now engaging in a collaborative registration process with the community in order to devise a register that conveys rights and claims that both the City and the community have agreed to.

### **Conflict resolution measures**

The KRDC has established a "court" to manage disputes in the settlement. The court is constituted by the Chairperson, the vice Chairperson and the secretary as well as some respected men from the community. Anyone can bring a case to the court, which decides on all issues relating to disputes in the settlement including land and housing issues. In these cases the book and the register, as well as the community memory can be called on to provide evidence. If someone does not wish to attend the trial they are "summonsed" by elected community marshals who are empowered to use minimum force to bring an unco-operative person to trial. The Court will make a decision but the winner will then decide what acceptable compensation might be, although the court will mediate unreasonable demands. Should a person feel that they have been victimised they can take their case to the wider community and to ABM for further adjudication.

### **Costs of transactions**

There are no costs associated with registering rental or sale, but dispute resolution at the court costs R20, which is the standard fee for all court cases in the settlement and is intended to stop nuisance cases wasting the court's time.

### **Changes or additions to the existing land registration practice**

The City is now attempting a further housing plan in the area and as one of its first steps has been to update the 2001/2002 register. KRDC agreed to this but with some conditions, including that the register must be updated by local residents, they have had a hand in preparing the actual registration sheet, and they have also



decided, as mentioned earlier, to register people in three categories: Senior Citizens, who are original dwellers or have been in residence since at least 1987; residents who are on the 2001/2002 registration list, newcomers who have arrived post 2001/2002, and people who have RDP houses elsewhere but who have returned to the informal settlement. They are also being interviewed to find out why they left their homes and will not just be dismissed because they have housing elsewhere. The actual plan for the area has still to be finalised, which is very difficult due to the high levels of mistrust between the City and the KRDC.

#### **General comments**

The practice is highly localised, updatable and can be used by any community member but has very little recognition from the City. There are some advantages to this tiered system, which allow for the recognition of a range of different kinds of claims. The conflict resolution system is also local and very accessible and has useful safeguards in the sense that there are other authorities who can be appealed to. On the other hand, books, and physical lists can be easily destroyed or disfigured and information can be lost or corrupted quite easily. At the same time leaving some of the decisions as to what is and is not recorded can result in inconsistent recording and registration of activities, although the community memory can be used as a safe-guard if there is a dispute.



## 2.3 Mandela Informal settlement<sup>6</sup>

### Background

The informal settlement was first established in 1990 on the buffer strip between the Botleng township and the town of Delmas in Mpumalanga. The area was originally settled by two groups with different but complementary agendas. The first group was constituted of ANC activists who invaded the land as a form of protest against the local municipality, who they felt were ignoring the needs of the poor Black community. The second group was made up of young families and single people who had been renting shacks and backyards in the township and who were either frustrated with their landlord-tenant relationships or felt that they needed larger plots or homes to accommodate their requirements. Oral evidence plays an important role in tenure security in the settlement. A local authority figure, who is referred to as a “cultural chief” or Induna<sup>7</sup> witnesses transactions for a fee. He runs the local Ndebele initiation school and is not considered to have any real authority, beyond the role of witnessing. The process of witnessing is used mainly as a way of defending rights and claims to the land that households have transacted on the informal market, should disputes arise.

Currently there are between 2000-2500 individuals or 480 households living on the municipally owned buffer strip, which was a typical apartheid era land use for segregating the White town and the Black township. The municipality has decided that the settlement needs to be relocated and has plans for two sites within the municipality. In preparation for the relocation, the municipality has developed its own register which is used to identify households that need to be relocated and provided with RDP units.

### How is land accessed

Land is accessed in three different ways. The vast majority of households identify pick an open space and occupy it by initially demarcating the boundaries of their property and then constructing a shack on the site. The second method of accessing land is to receive “a gift” from a friend or family member, who is already living in the settlement. The pre-existing household then sub-divides its plot and offers a piece of land to the newcomers. Households who occupy land or receive a gift do not require permission from anyone to set up their homes, and simply go ahead with occupation. The last and least common method is to buy a shack from an existing household and then to move in to the unit when the original tenant has moved out, but it is expected that this transaction is witnessed by the local authority figure in order to legitimate the sale.

### How is land held

The settlement is now almost 20 years old and is fairly stable, households accordingly recognise each other and their rights to stay. There is no formal development committee or any kind of representation, which means the community is dependent on each other in order to help support claims to land and property.

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<sup>6</sup> Most of the information in this section is taken from Mahlangu, B.P., 2007: An exploratory study of the ways in which the poor access, transfer and use urban land in South Africa: case study of Mandela informal settlement, unpublished Masters Research Report, School of Architecture and planning, University of the Witwatersrand, Johannesburg.

<sup>7</sup> The cultural Induna runs the local Ndebele initiation school and is not considered to have any real implementable authority.



### How is land used

Land is generally occupied for residential purposes but some households do rent out shacks to generate a small income. Otherwise households operate spaza shops from their homes and prophets, traditional healers and shoe repairers operate from their shacks. On the streets, informal traders sell sweets, snacks and fruit and vegetables to passers-by.

### How is land transacted

Mandela informal settlement does have an informal property market, but this market is considered to be in shacks, not in the land itself. There is a clear understanding that the land is not owned but the shack is. Prices for shacks in the settlement average about R500. The sale of a shack is advertised through word of mouth and is an unmediated process, where the shack owner and the prospective buyer negotiate a price between them. The transaction is written on a piece of paper and the sale is then taken to the Induna. He witnesses the sale and signs his name on the piece of paper and charges a percentage for his services. Once the transaction has been witnessed, the transaction is considered to be legitimate by the rest of the community.

### Land managers

There is very little land management and the closest thing to a land manager is the "cultural authority" but in reality there is no organized body or individual with any control over land and to a large extent it seems as if on an every day basis residents simply do as they please. The municipality does have plans for the land and the community and it seems as if they intend to clear the area and relocate the settlement.

### Content of rights:

Occupy	Yes, generally without permission, aside from the Induna witnessing transactions, but with the ability to sub-divide the property it and share it with friends, family or tenants.
Control access	Yes, plots are designated by stones and can be fenced off and there is a clear sense of where a plot begins and ends and who has rights over it.
Sell/buy or inherit	Yes, there is a functional local system of sale.
Develop or improve	Yes, it is possible to improve the structure but seems highly unlikely in light of the income level of the community and the intended relocation.
Use for production	Yes, there are a number of productive uses that shacks are put to including retail, rental, and service provision. Street trade is also taking place.
Rent/sublet	Yes, it is however more likely for a new household to just set up their own shack and pay nothing than to sublet a unit and pay rent.



Realise benefit / return	Yes, it is possible as shacks are sold and let.
Access services	Yes, there are communal standpipes and toilets, which all members of the community have access to irrespective of tenure form or the manner in which they accessed their homes.
Access formal credit	No, shacks are not leverageable.
Claims to future development	Households with numbers spray painted on their dwellings will be considered as part of the relocation project.

### Evidence provided

Households that buy property obtain a document or a receipt witnessed by the Induna or very occasionally an affidavit from the police, which is used as proof of purchase and right to remain. The witnessed document is also supported by community recognition of ownership and the legitimacy of the "cultural authority". In parallel a municipal register identifies which households have been registered for relocation and are on the municipal housing database. It is accompanied by shack numbering. Numbers spray painted onto shacks are seen as proof that the shack and the household have been registered.

### Recognition of Rights

The state does not recognise the shack sales at all although the shack numbering exercise and registration process appear to confer some level of recognition of existing households' claim to a relocation site. The residents recognise shack sales, and feel that they have some claim to stay in the area but do not see any transactions involving the land itself. The Induna's witnessing role is unconnected to the municipal registration process.

### Conflict resolution measures

There was no evidence of any conflict resolution measures in place, although it could be assumed that the cultural authority could potentially play some kind of role, in defending one set of claims that he has witnessed, over another.

### Costs of transaction

If households want their sales to be witnessed then an additional percentage is paid to the "cultural chief" to make sure that he witnesses the sale and adds his signature. People sell their shacks, and charge for their rental, but the land itself is not transacted.

### Changes or additions to the existing land registration practice

The existing settlement is to be relocated entirely to two new sites - 360 households will go to Witklip and 120 will go to Delmas Extension four. In both cases households will be supplied with housing but will have to wait for the provision of services and amenities, which do not fall under the provincial housing department.

### General Comments

The community does not appear to be particularly well organised, and little resistance to relocation was identified in the primary research on which this case is based. Local land management practices are thin on the ground, although people



appear to be in line for RDP houses. The only management role is performed by the cultural Induna, who acts as a witness and has a very generalised, unorganised oversight or testimonial function. However, witnessed receipts of sale, backed up by the cultural authority of the Induna, confers a degree of social legitimacy, and are examples of evidence that could be used to defend claims, although overall these methods do not appear to be particularly strong.



## 2.4 Motala Heights<sup>8</sup>

### Background

Motala Heights is located in the Durban-Pinetown industrial area and constitutes three communities who share the settlement; i) a working-middle class Indian community situated in the valley, most of whom are living in formal houses with individual ownership, ii) a poor and generally unemployed sector who share the valley but live in informal housing, mostly large iron and timber shacks and rent from the local land owner and (iii) an informal Black community of about 900, living in shacks on the slopes of the surrounding hillsides, who are technically occupying municipal land. About 2000 households live in the valley. Originally the valley was settled in the 1920s and 1930s, mainly due to the philanthropy of the landowner, a Mr Motala from India. He bought the land, sub-divided and sold it to people of Indian extraction origin at very reasonable rates, and at a time when it was difficult for low income Indian families to access land. Motala also helped these households to help them develop market gardens. The Black community arrived later, attracted by opportunities in the nearby industrial area and was already firmly established by the 1960s.

The residents have faced numerous threats, particularly people living on the hillside. The informal community living on the hillside recall that several demolitions have been attempted since the 1970s. Informal residents recall that in 1978, police raided the settlement and evicted about 100 people, whilst knocking down most of the informal dwellings. This was followed by a period of relative calm and in 1986 the community entered into discussions with the municipality and requested basic services and housing. The land was privately owned but the landowner was in arrears, refusing to pay rates and taxes as long as there were squatters on his property. The Municipality then bought the land for a nominal sum of R100 in settlement of the arrears, and initially considered developing the land as the community requested. In 1987, however, for reasons unknown to the residents, the Municipality again sent in the bulldozers and flattened the entire settlement. As a result many of the original squatters left and those that stayed moved from the top of the hillside, where they had been residing, to the current location on the slopes. In 1998 there was again talk of developing the area and the eThekweni municipality numbered shacks and created a register of residents, promising housing but nothing happened.

In the mid-2000s, the local councillor created a list of all of the informal dwellers living on the slopes of Motala Heights settlement with the intention and promise of providing housing but there was apparently a cost to having ones name on the list and only people who had been in the settlement before 2001 could register. The Councillor was also in complete control of the register and there were rumours that households who did not live in the area could also pay to be registered. The promised housing never appeared and the entire process created enormous resentment and distrust of the councillor. In 2006 the municipality once again decided to eradicate the settlement and began eviction procedures of the hillside settlement. A number of households were relocated to Nazareth Island Housing Project<sup>9</sup>, but not all households were willing to move and went to court with the

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<sup>8</sup> Most of the information in this section was taken from a focus group that was conducted with members of the Motala Heights Development Committee 21.08.09 and a document on the area, whose bibliographic details still need to be confirmed.

<sup>9</sup> Some controversy does seem to exist over the Nazareth Island Housing Project concerning who the houses had been allocated to and there are anecdotes of government officials having to break open the doors of the units to allow Motala Heights residents entry.



help of the LRC and the ABM to protest. The court ordered a stop to the evictions and the informal households living on the slopes were allowed to stay. eThekweni municipality did, however, try and demolish and evict again but the residents showed the City representatives the court order, which apparently resulted in a violent confrontation between the police and the residents.

At present the Court case has not been finalised but the community does have an injunction against their eviction in the meantime. Currently a new list of residents of people living on the hillside has been compiled in conjunction with the City and the remaining households. The list has the details of 65 shacks and their residents who are considered the households that need to be planned for by the municipality and who cannot be moved because of the court order. They now have new numbers sprayed on their doors as evidence of their claim against eviction and for some kind of development. There is, however, an understanding that there will be development for those who are registered and in the housing plan, and that newcomers will not be accommodated and may even jeopardise any chance of formal housing for the settlement.

A distinction is emerging in the City's registration process and the claims to future development that are associated with it, between black and Indian residents. Indian residents who have also applied for housing find that their names are not on the list. When the residents have gone to check registration the municipality tells them that they have no record of application and they are not keen to re-register these residents. There is an assumption from all of the committee members that the reason is because they are Indian rather than African.

The community living in the valley who reside in informal structures but have official rental agreements with the land owner recently applied to local government to have the valley where the shacks are located declared an informal settlement and upgraded in terms of Chapter 13. This request is in direct contravention with the desires of the private land owner, on whose property much of the settlement is located. The land owner intends to develop the land for high income housing and wants to evict the sitting tenants and re-develop the area. He argues that the rental agreements that were in place have now expired and under the PIE Act he has the right to evict. The Centre for Applied Legal Studies CALS which was brought in to help defend the residents, advises that PIE does not apply in this case as it is actually farmland and as such ESTA is the appropriate legislation, which does not allow for the eviction of tenants on farmland.<sup>10</sup> The case is presently underway and no decision has yet been taken.

#### **How is land accessed**

At present land is accessed in the valley through sale and rental of shacks and land. Most of the land belongs to the private land owner and he is the key person who decides on who may or may not access land in the valley. On the hillside, there is strict community control of land since the agreement with the City. Newcomers are not accepted into the settlement and the community now has to police its own land as they have been told that any expansion of the settlement will threaten their chances of new housing. New shacks are built or existing shacks are extended but only for family members, kin or people that are known to the community and are in good standing. Alternatively people who were evicted at an earlier point in time, but who are known to the community, are perceived to have the right to return. These returnees either move in with friends or family, which causes much

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<sup>10</sup> The legal advice discussed in this section is taken from a discussion with Stuart Wilson of CALS, 27.08.08.



overcrowding or build their own units with permission from the Development Committee. Applications for extensions and new shacks can be made to the Development Committee who requires a clear motivation for the increase, which they can then use to justify the increase to the municipality.

#### How is land held

In the valley land is leased using rental agreements or is individually owned with title deeds but there are backyarders informally renting or subletting. In the informal settlement on the hillside, a form of witnessing by the community and the Development Committee is used. Because the hillside settlement is relatively small, everyone knows each other and can testify in support of each other's rights.

#### How is land used

The land is mainly used for residential purposes, with a few households engaged in supplemental garden farming. There are a small number of backyarders who rent from the formal property owners and some home-based enterprises such as gardening services, catering and dress-making, but unemployment in the area is quite high. The area boasts few commercial activities with just one complex with a general store, butchery and bottle store, all owned by the landowner. There are three community facilities in the settlement; i.e. a mosque, a temple and a library/community centre and one informal meeting area, which is a large shack on the hillside with benches and tables. It is used for meetings of the development committee.

#### How is land transacted

Land in the valley is transacted largely through formal sale and lease agreements, although backyard sub-letting arrangements exist (on a small scale?). However, up on the hillside there is very little sale as households have fought for the right to stay and know that there is a good chance of being housed by the municipality, provided that the settlement does not grow.

#### Land managers

The private land owner, the Motala Heights Development Committee, and eThekweni Municipality have all played a role in land management. Little unrestrained land use for either commercial or residential purposes occurs and both the committee and the landowner/landlord control and monitor activity within the settlement.

#### Content of rights:

Occupy	Yes
Control access	Yes, the committee does now in agreement with City regarding future development, provided that the settlement does not grow in size. The landowner has been known to wander through the settlement.
Sell/buy or inherit	Not in the informal dwellings, and sale is unlikely at this point due to the negotiations with the City for upgrading.
Develop or improve	Yes, but extensions need approval of the committee or the City, depending on location.
Use for production	Yes, but limited in practice.



Rent/sublet	Informal dwellings are generally not sublete although there is evidence of backyard rental in the individually owned houses in the valley.
Realise benefit / return	Not likely as sale is unlikely.
Access services	Yes, eThekweni Municipality did provide some communal services a few years ago. These consisted of some stand pipes and a communal toilet with some shower facilities. Anyone in the settlement is welcome to use them, but the toilets do not seem to work very well and many of the residents use the river and wetland for their ablutions and sanitation requirements. In the valley the shacks have self-provided pit latrines and bucket systems, and access water through standpipes and illegal connections. Electricity is provided through pre-paid meters, which are considered dangerous and have the tendency to start fires and as such are not considered desirable.
Access formal credit	No, although possible in the titled houses
Claims to future development	Registered households will be able to access housing in future.

#### Evidence provided

Households who rent their units in the valley have a lease agreement and are generally given a monthly receipt for rent payments. Owners in the valley have title deeds to their properties. Shacks on the hillside informal settlement are numbered with spray paint and households have their names in the municipal data base.

#### Recognition of Rights

Individual ownership has legal recognition. The private rental arrangements are recognised by the committee, and arguably by the law, tenants on agricultural land under ESTA. On the other hand, the private land owner disputes the rights of the tenants on his land, claiming the PIE act is applicable. The court order has forced the municipality to recognise the rights of the informal settlement residents to stay.

#### Conflict resolution measures

In the informal settlement the development committee resolves conflicts but has no authority over the landlord in the valley. In both the valley and on the hillside the residents have resorted to litigation as a way of defending their claims. In the case of the valley the defense is against the land owner, whereas on the hillside the City has been taken to court.



### **Costs of transaction**

In the individual title market, the normal stamp duties and transfer costs apply. There are, however no costs associated with the process of establishing either formal or informal rental agreements and municipal registration is also free.

### **Changes or additions to the existing land registration practice**

Looking back over the history of Motala Heights the situation has been very fluid, from the initial purchase and development of the land and the subsequent development of rental arrangements on part of it, to the occupation of the hillside slope. The municipality considered development in the mid to late eighties and again in the late nineties, at which point a register was opened. Subsequently, in the mid-2000s a councillor promised development, and opened a new register. In 2006 City led eviction procedures began, followed by successful legal defence. Litigation is currently underway again with regard to the private land owner's attempts to evict people under PIE and their defence under ESTA. A new register is currently being compiled. There may be a new threat to the residents' tenure security if a current contestation by the land owner who sold to the municipality for R100 is successful.

### **General comments**

The highly uncertain, and at times dynamic, situation in Motala Heights has rendered residents' tenure very vulnerable and the opportunities for an entrenched land management practice have been limited.

The courts have come to play an important role in securing people's rights against eviction in a highly, and sometimes violently, contested situation with a variety of different interests over time ranging from public, to private property owners and private individual interests and different community interests. There is a strong sense of distrust of the municipality. The state has made a number of housing commitments to them, most of which have never come to fruition. Promises were also made by a councillor. A great deal of scepticism about the state and its ability to protect shack dwellers exists in the community, arising from perceptions that the police and councillors are slow, even unwilling, to react to reports of incidents of intimidation, and the long history of demolition, eviction and attempted eviction.



## 2.5 Hangberg<sup>11</sup>

### Background

Hangberg, similar to Motala Heights, consists of three main groups of households; (i) a wealthy, mostly white, community who live in the valley; (ii) a poorer, mostly Coloured, community living in hostels and rental housing on the slopes of the mountains surrounding the formal town, and (iii) an informal settlement located at the foot of the Sentinel Mountain. In total the informal community, which is the focus of this case study, consists of 302 family units and approximately 1200 people. The settlement is roughly 3.7 hectares in extent and the residents are slightly better off than other informal settlement dwellers across the country, earning about R2 700 per month per household.

Each of three communities has its own history. The hostels, on the slopes of the mountain, were built in the 1970s to accommodate households who were employed by the local fishing industry. In the 1980s the Council built 25 flats for the local community. Neither the hostels nor the flats were sufficient and the units became overcrowded. In response, households began to build informal dwellings behind the hostels and at the foot of the Sentinel Mountain. These units were developed with the consent of the local authority which provided each household with a letter of permission to occupy the land. Most of the households understood the letter as proof of secure tenure. There were, however, conditions attached to the permission to occupy, and residents were only allowed to build two-room structures, using non-permanent materials i.e. corrugated iron, rock and timber.

In 2007 the CoCT in conjunction with the Hangberg in situ Development Association (HiDA) established a moratorium on the development of new bungalows in the settlement, in order to curb further densification of what is an extremely densely occupied settlement of about 120 units per hectare. Between the CoCT and HiDA, it was agreed that 302 households would be included in the in situ upgrade and any other units would either be dealt with at a later stage or, if newly erected, would be demolished.

At about this time HiDA and DAG developed a community register, to establish the details of the 302 units agreed as beneficiaries of the in situ upgrade, as well as the status quo of the rest of the settlement. The register is geo-spatially referenced and provides data on who owns what, as well as the size and precise location of each unit. The register was seen as the first step in the upgrading process and as a means of securing tenure. It has also been used to keep track of changes of ownership or inheritance within the settlement.

Currently an in-principle Mayoral agreement is in place to upgrade the settlement and a business plan for Phase I and Phase II of the Upgrading Informal Settlement Programme (UISP) has been approved by the Provincial Department of Local Government and Housing. A full plan for the area has yet to be developed<sup>12</sup> and tenure form both immediately and into the future are yet to be resolved.

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<sup>11</sup> Most of the information in this section is taken from two interviews, with Helen Macgregor of DAG and Donovan van der Heyden, Chairperson of the Hangberg In Situ Development Association (HiDA), 08.09.08.

<sup>12</sup> Tenders recently went out looking for tenure and feasibility experts to help with the town planning and tenure aspects of the settlement.



Some of the issues that are complicating the situation include the fact that the settlement is on land owned by a variety of bodies, some municipal and provincial, with claims by a private land owner to part of the settlement. The border with South African National Parks (Sanparks) land is unclear. Fortunately, most of the area is zoned as general residential (GR2), which is useful for future development as the land will not have to go through a re-zoning process in order to allow for residential and associated activities.

#### **How is land accessed**

In the period before the register was established, households accessed land in one of two ways, either permission was gained from the local council representative or households occupied vacant sites and built their homes. The community is tight knit and many of the households are related and their houses are located in close proximity to each other. Extended families or kin groups have historically provided space for friends or family members to set up their own bungalows but there are instances of households setting up homes on available land without having a relationship with their neighbours.

Currently sale is still very much in evidence. Land and bungalows are constantly being bought and sold but HiDA now requires that the changes of ownership or occupation are recorded on the community register. When ownership changes HiDA requests that people fill out forms, which are kept in their files, but not everyone obliges. Land occupation is no longer possible as any new bungalows are immediately demolished by the CoCT. If a bungalow is bought and sold through the community register then what in fact is considered to be transferred is the geo-spatially referenced number on the register, which provides current and future rights. If, however, a bungalow is sold without using the current system then there is a great deal of uncertainty as to what the new owner thinks he/she has actually bought.

#### **How is land held**

Previously the community simply knew who lived where and who owned what property, but the community register has now superceded this less organised approach. The register is geo-spatially referenced and uses a series of aerial photographs and GIS technology to identify legitimate land holders in the settlement. The settlement is divided into six blocks and each bungalow is numbered and matched with demographic information about the tenants, i.e. age, years of residence, income level, number of dependents. The bungalows have also been photographed and the images are attached to the register. All of the households who are on the register are considered to be legitimate residents, have an expectant right and are considered part of the in situ upgrade programme. Households and units who do not appear on the register are considered unauthorised and illegal and their rights are unclear.

#### **How is land used**

Land is mostly used for residential purposes but there is some commercial activity, which operates without control. Specifically there are spaza shops and small commercial enterprises. Households can apply to the HiDA to extend their properties for whatever use they deem necessary and the HiDA will inspect the site and make sure that there is enough room on the designated plot for extension and that the change does not infringe on public space. Land is also kept aside for a community garden, footpaths that wind between the bungalows, and for storm water channels, which are kept clear by the locals. There is also the problem of



bungalows being used as drug dens and the HiDA has been unable to rid the settlement of substance sale and abuse, which is extremely prevalent in the area.

#### How is land transacted

Previously there were no rules regarding land transactions and households bought and sold as they pleased but now sale forms and police affidavits are requested by HiDA and are kept by the committee - they are filed and used as proof of ownership and access to rights. At the moment the cost of a shack or bungalow can be anything between R3000-R40 000 but with the promise of future development and the Mayoral commitment to upgrading, there are reports of properties fetching up to R50 000. It is also important to note that what is actually being sold is not the land *per se* but rather the number on the register, which provides access to future housing and development rights and potentially formal ownership in the future.

#### Land Managers:

There were previously two civic organizations in the settlement. Both have been dissolved, in one case due to the suspicion of collusion with land speculators to buy up land in the Hangberg area. Currently Hangberg in situ Development Association (HiDA) (also known as the Project Steering Committee or PSC) and the City of Cape Town (CoCT) with the support of Development Action Group are managing the land and the registration process. HiDA attempts to control land use, land transactions and illegal bungalow growth. The City is responsible for the demolition of new units and maintaining the size of the settlement and DAG is supporting the tenure programme and the land register.

#### Content of rights:

Occupy	Yes
Control access	Yes, fences, walls and vegetation are used to mark off the extent of properties and invasion of someone's space is considered offensive
Sell/buy or inherit	Yes, but it is expected that the HiDA is informed and the register is updated.
Develop or improve	Yes, but on application and with the approval of the HiDA. The settlement is densely occupied and anything that increases density has to be carefully considered.
Use for production	Yes, productive and commercial use is common and acceptable although there are a number of illegal activities which the HiDA and CoCT are trying to get rid of.
Rent/sublet	Yes, it is possible and certainly does take place.
Realise benefit / return	Yes, particularly at the moment when the promise of development seems to have sparked off some land speculation.
Access services	Yes, but services are mostly self-provided or the very few publicly provided port-a-loos and stand pipes are equally accessible to all residents.



<b>Access formal credit</b>	No, although the units are registered on the community register, they are not formally recognised and as such cannot be leveraged.
<b>Claims to future development</b>	Current registration provides secure tenure and the right to be a part of the in situ upgrading scheme but only for the 302 registered households.

### **Evidence provided**

The register is used as evidence of rights and informal ownership and each household has a registration number attached to their profiles. The households, however, do not receive any written documentation directly, although the beneficiaries are very clear as to who is and who is not on the register. The police affidavits and HiDA forms are also considered to be evidence of ownership and provide proof of transactions.

### **Recognition of rights**

The rights in terms of the register are still not clear and a legal opinion is being obtained in order to ascertain exactly what rights the households have in the eyes of the law. According to DAG and the HiDA the rights are recognised by the community but the Western Cape does not utilise the DFA, which means that the rights given to households who have had uncontested residence for more than 5 years, which is a claim most Hangberg residents can make, may not be possible in this settlement. The 302 households who are on the register are recognised as having expectant rights and far more rights to stay and to any upgrading, as opposed to newcomers, who are seen as invaders and whose units are demolished.

### **Conflict resolution measures**

Previously conflicts were taken to the civic organization and now to the HIDA where the register could act as evidence in conflicts but has not been called upon in that capacity.

### **Costs of transactions**

There were no costs associated with registration, sale or rental or even conflict resolution, all of these transactions are free, but at the moment the sale of bungalows is increasing and there are reports of sale of up to R50 000.

### **Changes or addition to the existing Land registration practice**

The regularisation process is new and decisions have yet to be made on tenure form, settlement layout as well as de-densification procedures.

### **General comments**

Hangberg is located on some prime real-estate. It is half-way up the Sentinel Peak, overlooking Houtbay harbour and just off the main road through the area. Considering the scarcity of land, particularly well-located land with commercial potential within the City of Cape Town, the project has land and market dimensions that are not always apparent in other settlements. The original community of 302 is tightly knit and there is a great deal of reluctance by the committee and various members of the community to sell the property to people who are not from Hangberg. Social prescription is high but not enforceable. Tensions exist between the temptation to sell property and land at inflated prices and the sense of community.



The register is both community-developed and -managed. It is fairly technically sophisticated and held by the community. A municipally led review of the register was being planned at the time of writing which envisaged community participation as a key guiding principle. The review is intended to include the design of procedures and criteria to review, amend and update the community register now and in the future; facilitate the establishment of a dispute resolution committee; provide a synopsis report on the current social relationships between tenants/second families and care takers in the settlement and coordinate the public review of the register with the Hangberg informal settlement community.



### 3. Findings and Discussion

The study found evidence of the registration of local land rights and claims that exist over, or on top of, the official system of title deed registration applicable to the underlying land. These registration practices are developed and managed at a local level, by the state, community organisations or, most often, in ways that can best be characterised as dynamic and hybridised versions in which both state and community have a role to play. New informal settlement upgrading interventions need to take these existing, *de facto* rights, and the processes and practices attendant on managing them, into account. This section of the report discusses some of the main findings and in particular, the implications for upgrading, in order to inform the approach being developed by Urban LandMark in subsequent phases of work to incrementally securing rights in informal settlements.

The registration practices that have been described in this report arose in a variety of different circumstances. The objective of the study was to focus on local practice and in this regard both municipal and community registration practices were identified in the five cases. Some registers are held by community organisations, such as the housing portfolio member's book in Kennedy Road and the community register in Hangberg. Other registers are held by the municipality, like the Nelson Mandela housing register and, initially, the Folweni register. There are also instances of registers, or lists, being drawn up collaboratively by municipality and community organisation, in the cases of Motala Heights and Kennedy Road, with the most recent registrations.

Registers are seldom static documents and changes and adaptations over time have led, in many cases, to hybridised registers. In Kennedy Road for example, a register initially devised by the municipality was adapted by the community organisation to reflect changes arising from properties being transferred through either inheritance or sale. Although the Hangberg register is held by the community, the community organisation and the municipality are co-operating around its review and verification. In Nelson Mandela, a community based practice of land administration seems to be in operation, under the leadership of a local authority figure who operates much like an induna does in communal areas. In parallel the municipality has constructed a register of households eligible for housing in two relocation sites, and spray painted numbers on shacks. Similarly in Folweni, councillors took on the role of land allocation, in what appeared to be a vacuum left by the traditional authority and unfilled by the state in a context of administrative ambiguity as the area was not officially declared an R293 town, although it was treated like one, for a long period of time.

Although municipal registration initiatives do not begin as rights registration processes, they quickly become so. Starting out as population data bases, municipal registers are primarily planning tools intended to identify and quantify households and curtail the growth of settlements so that development plans can be undertaken for a known quantity and, important to municipalities, in order to avoid rapid influx of newcomers once a settlement has been identified for development. A municipal register indicates that the settlement has been recognised by the municipality, sending a signal that tenure is substantially more secure, in the sense that the threat of eviction has been removed in the immediate term, although the municipality's plans most often seem to involve relocation elsewhere. At the same time a new set of claims to future development are created, for those households on the register. In this sense, municipal registration practices should not be seen purely as urban management functions, as they enhance people's security of



tenure and create claims to future development for registered households whose stake in a specific future becomes clearer.

In several settlements the state's upgrade intervention is contested terrain, especially where the intention is relocation, rather than *in situ* upgrade. This is especially the case in the Abahlali-mobilised settlements in this selection of sites, Kennedy Road and parts of Motala Heights. Population stabilisation requires co-operation from the community and the community representative body, which, in turn, depends on the nature of the relationship with the state, particularly the extent to which consensus exists, on the future plans for the area. In Hangberg a far higher degree of consensus was evident than in either Kennedy Road, where relocation is being contested by the community organisation, or in Motala Heights, where a history of demolition and attempted eviction, and a litigation context, has created high levels of distrust between community and municipality. In Hangberg, for example, agreement was reached that no new dwellings could be built. In comparison, in Kennedy Road the community organisation updates the register with new names resulting from transactions, inheritance and new entry and also utilises the occupation of land around the existing settlement as leverage in its negotiations with the city. Common purpose, or a sufficiently shared vision of the future, appears to be a pre-condition for successful state/community collaboration on settlement stabilisation and curtailing population growth. Meaningful engagement with community organisations, in structured processes of participation, is essential to achieve this common purpose. Trust and goodwill on both sides are additional critical ingredients, rather than broken promises and unmet commitments on both sides.

However, a static register, borne of an intention to avoid rapid settlement growth once an area has been earmarked for development, is unlikely to serve the needs of dynamic informal settlement communities. Neither is it likely to remain accurate. Upgrading interventions need to attend to how registers will be managed over time. In preference to repeated rounds of registration, observed in Motala Heights and Kennedy Road, a more flexible and adaptive approach is required which accommodates both the need to plan for a known quantity and to accommodate reasonable changes, such as those arising from transferring rights and claims under agreed conditions. Successive re-registration has the tendency to multiply different forms of evidence and create confusion. It can also undermine community organisation and community/state relationships and exacerbate vulnerability to abuse, especially in a fairly widespread context of long delays in development. The location of the register, and who controls it, and the extent to which people have recourse to an external authority, or a recognised community structure rather than an individual, are additional aspects of what needs to be considered in upgrading interventions that work with what currently exists. Authority for land management is a powerful tool in communities and it is the vulnerable whose tenure is most at risk from state, community and family, and even market pressures, as in Hangberg.

In several cases evidence was found of differentiated rights. In Kennedy Road the differentiation is most stark in three distinct categories of households with claims to future development that vary based on length of stay. Newcomers have the weakest claim and founders are first in line for housing options. It appears that this hierarchy of claims is being entrenched in a new registration being undertaken in cooperation between community organisation and municipality. In Folweni, the upgrade initiative introduced a kind of *de jure* differentiation which was overlaid onto what appeared to be a functional local practice. The upgrading and



regularisation process was not able to upgrade the rights of those households with local forms of evidence to title, even although these appeared to have social legitimacy and mimicked PTOs in most respects, save the official certificate.

The *de facto* rights and claims of households should be identified in upgrading interventions, and accommodated, where possible. These tenure arrangements go beyond what ownership and rental are conventionally considered to be. This is best achieved in consultation with communities and community organisations which are, in many cases, the existing land managers. Incremental upgrading approaches secure rights on a more gradual basis, and at first on a less individualised basis, which better accommodates what already exists.

Tenure security increases when people have evidence to defend their claims. The study found examples of oral and written evidence. Oral evidence occurs mainly in the form of local figures in authority bearing witness or giving testimony, such as the councillors in Folweni, the local leader in Nelson Mandela or the KRDC in Kennedy Road, where community memory also plays a role. People also possess documented evidence to defend their claims, ranging from official documents like the letters giving permission to occupy in Hangberg, the PTO certificates in Folweni and the lease agreements in Motala Heights, to the receipts of sale and letters from councillors in Folweni, the sales agreements and affidavits in Nelson Mandela and the affidavits and committee forms in Hangberg. Shack numbering is another form of evidence found in Nelson Mandela and Motala Heights where numbers, which correlate with the register, have been spray painted onto shacks.

The impact of the state's presence (or renewed presence) on these existing forms of evidence can undermine tenure security. Intervention can be as "light" as a signal about the intention to develop at some point (such as numbers spray painted onto shacks in Motala Heights or the opening of a relocation register in Nelson Mandela) to something as "heavy" as the upgrading of land rights through the application of legislation, as was the case in Folweni with ULTRA and the DFA. In Kennedy Road and Motala Heights a new register is being developed, while in Hangberg a review of the community register is being planned by the city with the cooperation of the community structure. In Folweni, upgrading confirmed the validity of the original PTOs but not the unofficial documents that had been part of *de facto* land administration at the time of upgrading. The existence and status of local forms of evidence, and the claims that underpin them, need to be identified when upgrading commences, and either verified or adapted, taking likely consequences for tenure security into account. Potential for conflict and destabilisation exists, especially when the stakes are raised with the prospect of development. Cooperative community/state relationships and cohesive, organised communities are important. Interventions which fail to recognise what currently exists, run the risk of undermining both.

This section has briefly synthesised some of the key local registration practice findings, and emphasises the existence and characteristics of local registers and different forms of evidence which are used to defend claims and enhance tenure security. It begins to advance an incremental approach to upgrading which works gradually with what currently exists. Early steps might be the blanket recognition of settlements, in order to give residents security of tenure, through proclamation or announcement, or more formally, through incorporation into land use management schemes through zoning or re-zoning. Other examples of may include



the “de facto land analysis” method which was piloted in an informal settlement in 1991 in what was then KwaZulu<sup>13</sup> and the DFA’s initial ownership provision.

Once a basic tenure security is in place, the door can be opened to more collaborative state/community relationships for engaging on the more detailed and individualised aspects of tenure regularisation, including working with existing registers and forms of evidence, and the *de facto* rights and claims that underpin them.

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<sup>13</sup> The de facto land analysis approach was obtained from Annette von Riesen who was involved in its development and application. It is a registration technique that was applied to an informal settlement in 1991 in what was KwaZulu at the time. It is based on rural land registration methodologies and assumed that even in the absence of maps and plans, urban population would know their land and the extent of their properties.



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## Appendix I: Generic Questionnaire

1. Nature of settlement:	
a. Housing typology/type	
b. Infrastructure and services - what is in place?	
c. Age of settlement	
d. Tenure formulations - what is in operation?	
e. Official status i.e. township est, if so how?	
f. Land Management Scheme?	
2. Nature of community:	
a. Demographics - Age - Gender - Race -	
b. Social movements/civic organizations	
c. Who is "in charge"? - Officially - Unofficially	

d. Conflicts in the community	
<b>3. Relationship to the state:</b>	
a. What is happening/intending to happen in the settlement?	
<b>4. Access settlements/land:</b>	
<p>a. How do people gain access to the settlement?</p> <ul style="list-style-type: none"> <li>- How is "application" made?</li> <li>- How do people know who to ask?</li> <li>- Who decides?</li> <li>- Does everyone get the same thing?</li> <li>- If not who decides?</li> <li>- Are there any prejudices? Are there some people who are allowed in or kept out?</li> <li>- How is it recorded/made known that this family/person now lives in this place?</li> <li>- What methods of record are used? How are they kept and by whom?</li> <li>- What happens if the system isn't followed, what happens then</li> </ul> <p>(keeping mind that there might be different systems operating at the</p>	

<p>same time - be careful to ask the questions in a few different ways and cases)</p>	
<p><b>5. Once households/individuals are living in the settlement:</b></p>	
<p>a. What kinds of activities do they embark on? How is land used?</p>	
<p>b. Are there any restrictions about what people can/not do on their land?  - What are they?  Who decides/controls the land?</p>	
<p>c. How do people share land? In what ways?  - Are there primary tenants and sub-tenants?  - Are their rights different? Can they do different things on the land? What?  - How are rights actually expressed?</p>	
<p>d. Do all people "sharing" the properties benefit equally from services? How are these benefits dispersed/negotiated?</p>	
<p>e. Is the "sharing" recognised as legitimate? If so how? Are some</p>	

<p>kinds of records kept? Do people keep track? How?</p>	
<p>f. How do households/individuals prove their rights over time? Do they?</p>	
<p>g. What are the different ways in which rights are recorded?</p> <ul style="list-style-type: none"> <li>- Verbal</li> <li>- Communal memory</li> <li>- Written</li> <li>- Registers</li> </ul> <p>And what proof, if any do HHs/individuals have?</p>	
<p>h. Can these pieces of proof be ignored? Can the evidence be taken away and therefore rights taken away? If yes, how? If no, why not?</p>	
<p><b>6. Transactions:</b></p>	
<p>a. Can land be sold?</p> <ul style="list-style-type: none"> <li>- If so, how? What is the process?</li> <li>- How are the changes kept track of?</li> </ul>	
<p>b. Can shacks/use be sold? i.e. if sub-tenant uses a small piece of someone else's property as a</p>	

<p>Spaza shop but chooses to leave can he/she sell that right?</p> <p>c. Can land be inherited?</p> <ul style="list-style-type: none"> <li>- If so, how? What is the process?</li> <li>- How are the changes kept track of?</li> </ul>	
<p>d. Can shacks/use be inherited? i.e. if sub-tenant uses a small piece of someone else's property as a Spaza shop but dies can someone else inherit that right?</p> <ul style="list-style-type: none"> <li>- How is the change recognised?</li> </ul>	
<p><b>7. Conflicts:</b></p>	
<p>a. How are conflicts between different land users resolved?</p> <ul style="list-style-type: none"> <li>- In various cases i.e. tenants and sub-tenants; owners/users etc, who is appealed to?</li> <li>- What are the standing principles that are in place?</li> <li>- How are different claims defended? Is there a hierarchy?</li> <li>- In a decision is not approved of, is there further recourse?</li> </ul>	
<p><b>8. Changes:</b></p>	

<p>a. Have rights changed over time? If so, how?</p>	
<p>b. Is this because the registration system has changed? If so, how?</p>	
<p>c. As a result are rights clearer or less clear? - Do people now know what their rights are? Are they more/less defensible? How?/why?</p>	

## Appendix II: Respondents

Registration Practice	Respondents
Folweni	Annette van Riesen
Hangberg, Cape Town	Helen MacGregor DAG: Programme Manager  Donovan van der Heyden Hanberg: PSC Chairperson
Kennedy Road	Sbu Zikode Chairperson of Abahlali Base Mjondolo  Zama Ndlovu Resident of Kennedy Road  Faisal Seedat Director Planning: EThekweni Municipality  Mark Misselhorn Project Preparation Team
Motala Heights	Shamita Naidoo Chairperson: Motala Heights Residents Committee  Bheki Ngcobo Vice Chairperson: Motala Heights Residents Committee  Louisa Motha Secretary: Motala Heights Residents Committee  Sarah Knock Visiting researcher, current resident of Motala Heights

