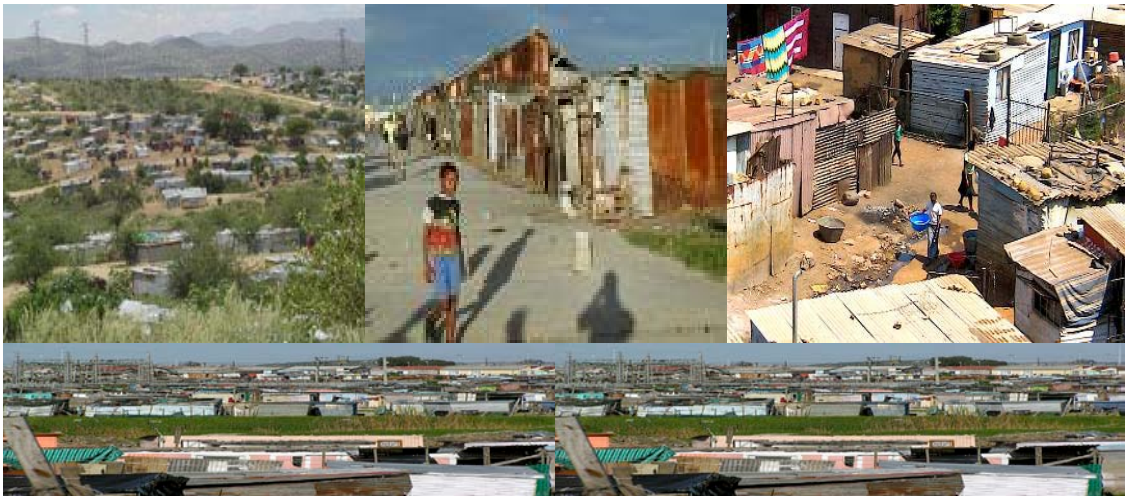
DEVELOPMENT OF AN APPROACH FOR THE RECOGNITION OF INFORMAL SETTLEMENTS AND TENURE SECURITY IN SOUTH AFRICA WITH THE POTENTIAL FOR REGIONAL APPLICABILITY



TECHNICAL PROPOSAL

DECEMBER 2010

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1.INTRODUCTION

In the past two years ordinary citizens living in informal settlements have began to show substantial impatience. We have seen an upsurge in xenophobic violence and service delivery protests (often violent) have become the order of the day. Whilst such violence and protest is not confined to informal settlements alone, there can little question that it is here that impatience is now almost palpable. People are demanding that government deliver on its promises. To date government has seen its response to informal settlements largely in terms of their replacement/eradication via the introduction of subsidy driven housing delivery. Linked to formal housing delivery has been the dominant vision of replacing informality with full-fledged township establishment processes and the delivery of individual freehold title. Whilst the delivery of houses and formal tenure remains a laudable goal (and a vision that is unlikely to change), it is clear that the time lag between the formation of informal settlements and the actual implementation of full-fledged subsidy-driven upgrading is a cause for serious concern. The average age of our informal settlements is more than 20 years. And the fiscal crisis that government faces further exacerbates the situation. If we rely on current thinking and approaches, things are likely for the foreseeable future to get slower rather than faster. We need a new way of thinking about informal settlements and our responses to them.

This report is about such new thinking. It does not claim to address all of the issues related to informal settlements. Instead it focuses on a component of a new approach-- the component that deals with tenure. However we are strongly of the view that the new approach to thinking about tenure advocated here should be incorporated into a wider and more all embracing new initiative for informal settlements, which places emphasis on incrementalism (rather than the up-front delivery of the final product). The important thing about an incremental initiative is that it must be designed in a way that it allows action that makes a difference now, rather than at some unspecified date in the future. The ultimate goals of the incremental programme should be the same. What will be different is the route to get there. As far as the need for a new route to tenure is concerned, we should stress that we are concerned that the long waiting period of the formal tenure and housing intervention process negatively impacts on urban land markets and their functionality in respect of the urban poor. Of course land markets do continue to operate in informal settlements anyway. But their lack of transparency reduces their efficiency and often reinforces problematic power relations in communities.

This report presents a Technical Proposal for the implementation of an incremental approach to the recognition of informal settlements and tenure security in South Africa (with potential applicability in the Region). Urban LandMark (ULM) has a

particular interest in incremental tenure approaches (to recognizing informal settlements and promoting tenure security) because of their potential to make urban land markets work better for the poor. . The emphasis in the Technical Proposal is on implementation and practicality. It is recognised at the outset that local circumstances vary quite substantially and that a single "one size fits all" approach is unlikely to work . There is however a need for a clear "generic approach" which allows for substantial variation in local application. Thus the Technical Proposal does present a "model", but this model is structured in such a way that it is about a range of choices in each of its four main steps.

It should be noted that the Technical Proposal presented here has been strongly influenced by an innovative approach that the City of Johannesburg (CoJ) is implementing and which aims to recognize and provide tenure security to a category of informal settlements. Whilst originally referred to as a "Special Zone" approach it is now referred to as the "Amendment Scheme" or Regularisation approach. In fact one of the reasons that ULM commissioned this project was because of the synergy between ULM's advocacy of incremental tenure and the direction that the CoJ initiative appeared to be taking. Hence, the brief requires that our team maintain links with this initiative and provide ongoing support and advice. The testing of the CoJ approach in other municipalities has also been an important part of the brief.

The Technical Proposal has also drawn on a range of other activities which have been part of an investigation process up-front. This process has included many input research papers, a considerable number of interviews and a number of testing processes.. This report includes summaries of all these inputs and draws out their application and implications. It is therefore a consolidation report in many respects and a number of input reports have been produced. It was not the intention from the outset to produce a range of stand-alone input papers although this has largely been achieved. The input reports that have been produced are available via ULM but have not been posted on the website because many are in an unpolished form).

As is typical of most implementation-design orientated processes, the approach followed in this assignment was to develop an initial (and very rough) conception of the main dimensions of the technical proposal early in the process, and to then trawl the literature and more particularly the world of practice for confirmation, elaboration or rejection of the emerging model or any of its dimensions. Of course this interactive process leads to changes in the model and sometimes generates entirely new questions that need to be followed up. Thus what the stand alone reports do not capture entirely are the many e-mail discussions or small pieces of *ad hoc* research that we made provision for in the methodology through what was referred to as "cameo research". There is a section of this report (Section 3) where a selection of the cameos is reported on.

This Technical Proposal is the centre-piece of a collection of outputs produced as part of this assignment. Other products include : a report on local land offices and

their relation to the processes outlined in the Technical Proposal; a strategy advice document targeted at ULM staff and strategists; and a set of Learning Materials targeted at National Upgrading Support Programme (which in turn is part of the National Department of Human Settlements).

2. CONTEXT WITHIN INTERNATIONAL AND LOCAL DEBATES

Contextualising the Technical Proposal within International and Local Debates.

1.1 Introduction

The orientation of this study is very much in the direction of the practical (rather than the academic). It is however important to contextualize the Technical Proposal that has been developed within broader debates about tenure and its relation to development. This is because the Technical Proposal draws ideas from the debate but will also hopefully make a contribution to it.

In the last decade tenure security has become one of the major issues in the international development arena. Indicative of this importance is the fact that in 1999, the UNCHS decided to focus its activities on two areas - a global campaign on security of tenure and a global campaign on governance (Durand-Lasserve and Royston 2002). In more contemporary debate, tenure security is cited as a fundamental component for addressing Millennium Development Goal 7 (Lewis 2008). Whilst wide-ranging, the debate about tenure has been very contentious particularly since the publishing of de Soto's seminal book – The Mystery of capital: why capitalism triumphs in the West and fails everywhere else (2000). Since then there have been hot, ideological and sometimes (rarely) empirically informed debates about the value that that formal titling adds in the developing world. This discourse has also widened into a debate about informality and more particularly about whether informal social relations lock communities and even nations into underdevelopment, or whether (and under what circumstances) such informal social relations (or their obverse) contribute positively.

1.2 South African Context

In South Africa, debates about tenure and informality have **not** been particularly high profile. In part this has been due to the fact that South Africa has, since 1994, implemented an aggressive and largely successful (in quantitative terms) housing delivery programme which has incorporated formal delivery of individual freehold title as an integral part of the "package". In short the assumption has been that there is

no room for debate because decisions have been taken and because of South Africa's political history (in terms of which Black people were denied access to formal individual freehold title, making it a highly valued transformation commodity). In the past few years however, this has been changing, partly because of reaction against government's post 2004 slum eradication programme and the relocations associated with it. This programme has been criticized in many quarters as being insufficiently sensitive to the survival strategies of the very poor notwithstanding the progressive intentions of delivering housing to the poor. Also contributing to the need to rethink, is the growing number of "non-South Africans" in informal settlements given the implosion of economies in neighbouring countries.

At present there appears to be a more flexible/amenable approach in government. Moreover there appears to be a growing recognition of time lag between earmarking a settlement for upgrading and the actual implementation of projects (anything between six months and 15 years), a point we will return to later. It is this reality that has led the City of Johannesburg to begin to explore newer approaches. The extent of greater flexibility in government will have to be tested and broadly speaking it is fair to say that there remains strong adherence amongst officials and politicians in government to the idea of delivering individual freehold title to all.

1.3 The Tenure Debate

Overall, responses to tenure vary widely according to, *inter alia*; government orientations, local contexts, types and prevalence of irregular settlements, and local politics and pressures from civil society organizations. This reality notwithstanding, it is possible to identify two main approaches (Lewis 2008; Garau et al 2005; Durand Lasserve and Royston 2002). The first emphasizes formal and legal tenure regularization based on individual freehold rights. This approach is often complex, costly and time consuming to implement. The second approach emphasizes tenure security rather than title *per se* and stresses that such security in informal settlements derives from many factors and circumstances. The form of tenure, be it title or some other form, is only one factor. Certainly, the second approach argues that it is quite possible to achieve substantial (and often sufficient) tenure security through other mechanisms which might include administrative recognition or localized community witnessing processes.

Inherent in the first view is the idea first popularised by John Turner (1969) that formal tenure contributes to the consolidation of informal settlements and to their integration into formal systems of servicing, financing and regulation. De Soto

(2000) takes the line of argument a lot further and elevates the importance of tenure to that of a key determinant of development. Claims about the value of tenure by others are generally more circumspect but widely held. Among the arguments made in favour of formal title are:

- It makes land a much safer investment insofar as it provides legal protection of tenure;
- it provides a basis against which the poor can raise loan finance;
- it promotes the formal inclusion of previously unrecognized informal settlements;
- it triggers the provision of formal services;
- it establishes effective cadastral systems for tax collection and is, as a consequence, central to establishing sustainable models of service delivery;
- it integrates informal housing into the formal land markets and helps equalize land prices between formal and informal land markets because standardized and reliable land records allow for more regulated purchase, sale and mortgaging of land (unit costs of land are often exorbitantly high in informal settlements) (Lewis 2008);
- it provides very substantial protection against summary eviction.

Critics (e.g. Varley 2002, De Souza 1999, Durand Lasserve 2006) question whether legal regularization is a necessary foundation for urban development. They point out that in many instances “uncritical” pursuit of titling can actually increase tenure insecurity rather than promote security of tenure. For example, there is evidence from Senegal that titling has often reduced the tenure security of tenants (even if their landlords did not have legal rights to the land prior to titling). Moreover titling often brings additional costs (e.g. taxation, service charges etc.) which make it difficult to remain on the land. Titling can also lead to “gentrification” and downward raiding insofar as land previously occupied by the poor now becomes more attractive to those with means. Moreover downward raiding reduces the stock of land available to the very poor. Garau et al (2005) also point to the pressure that formal titling systems can bring onto governments that do not have the capacity to sustain systems properly. Varley (2002) suggests that land tenure legalization can and often is used as a mechanism of exclusion insofar as it asserts the desirability of property ownership and the protection of property rights (as such legal tenure becomes a conservative tool the in the hands of political and professional elites). Moreover Varley (2002) suggest that land tenure legalization often does not

recognize multiple claims for property rights by the urban poor and the varying strategies through which the poor achieve access to resources.

The tenure security approach on the other hand does not require the provision of individual freehold title. Instead there is a reliance on simple administrative and legal mechanisms to provide protection against evictions. Many of these mechanisms constitute implicit recognition of informal settlements (e.g. provision of services, service bills, voter rolls, registers, layout plans, street and shack numbering, and the issuance of identity cards). Whilst the tenure security approach has many variants it tends to place greater emphasis on mechanisms that secure collective rights rather than individual rights (insofar as the award of individual rights to some can lead to greater tenure insecurity to the most vulnerable – e.g. tenants).

The approach also emphasizes an incremental approach to tenure in terms of which initial tenure is simple and affordable but may be upgraded later (Garau et al 2005). Such approaches give communities the chance to consolidate their settlements and to clarify conflicts via internal processes which may have substantial legitimacy. Moreover, incremental processes allow government to develop the technical capacity over time to properly institutionalize new approaches. In the same vein, incremental approaches allow the "sorting out" of many social dynamics and claims to land ahead of formal settlement upgrading. Such a process is not only sensitive to the needs of poor people, but also helps ensure that things go smoothly when formal upgrading occurs. Incremental processes also assist in making many social processes and transactions more transparent, thereby making the land market work better for the most vulnerable.

1.4 Implications of the Debates

The approach that we have taken in developing the technical proposal is one which attempts to avoid the polarization between the two approaches that the literature sometimes implies. In fact most adherents of the tenure security approach are not against legal/formal approaches in principle. What they are against is the insensitive shoe-horning of a uni-dimensional titling approach on all situations (which is very much the case in South Africa). There is acknowledgement that legal approaches generally do provide a superior level of tenure security in many (but not all) situations and that greater rather than less legal protection is desirable as long as it does not undermine the tenure security of more vulnerable members of informal settlements. As a consequence our Technical Proposal acknowledges the importance of legal recognition. Having said that, we should stress that the Technical Proposal also

places substantial emphasis on the need to acknowledge and build community tenure recognition and management approaches. In so doing the Technical Proposal places substantial emphasis on being respectful of and building off established processes within communities. The approach would however also require that in some instances social relations in communities may have to be confronted (where for example highly exploitative social relations dominate).

We are entirely persuaded that an incremental approach to tenure security has much to commend it. The Technical proposal is as a consequence developed as an essentially incremental model. As far as the applicability of incremental approaches to tenure in South Africa is concerned, we are aware that developing support for the approach will require much work and persuasion. Our starting point in this regard is that for the most part, the delivery of formal individual freehold titles will remain a national objective for some time. Thus we have designed our Technical Proposal in a way that connects to the "ultimate" delivery of individual freehold title. But it is important to stress that substantial (and often sufficient) tenure security will be achieved via a range of steps "on the way" to full title. Moreover the Technical Proposal also notes the importance of (and makes provision for) alternate forms of legal tenure such as short term leases, rental, servitudes of use and so on. It argues that in certain circumstances (such as in very poor locations or unusually good locations these alternative forms of tenure may be the instruments of choice – even in the long term). Whilst alternate legal tenure forms are important, the Technical Proposal places even more emphasis on non-legal mechanisms in contributing to tenure security. Moreover the Technical proposal stresses the importance of "tenure related processes" over "tenure forms" per se.

We are also of the view that in South Africa the "time lag" between the emergence of an informal settlement and the actual implementation of upgrading (or delivery of legal title to land), represents an important strategic gap into which incremental tenure can be inserted. As previously noted, the time lag referred to can be very long. The Cato Crest informal settlements in eThekwini were, for example, earmarked for formal upgrading in 1994. Fifteen years later little progress has been made in moving forward. In large part, this has been because of the complexity of the social relations (and more particularly the power relations between "informal" landlords and tenants) underpinning the settlement. There is little doubt that unravelling the complexity of Cato Crest will require an approach to tenure that takes account of existing social dynamics in the community. A "tenure" plan which is widely embraced by the community is a necessary prelude to any upgrading here.

An individual freehold titling approach cannot be assumed *a priori*. It might for example, be necessary to develop models which make the ongoing delivery of rental options an integral part of the "solution".

In any event, we are of the view that every informal settlement in South Africa should have an incremental tenure process, preferably within a developmental urban management approach, set in motion as soon as possible. Doing so will, in our view, serve as insurance against slow implementation processes. It will also contribute to ultimately making formal titling processes more sensitive and pro-poor and introduce management into previously neglected areas.

Research documented by Marx and Royston (2007) highlights the importance (particularly in South Africa with its capital subsidy approach) of considering tenure issues within a city-wide perspective . In this regard they stress the importance of not conflating people's "urban access" strategies with their longer term locational preferences and longer term accumulation strategies. Thus, it should not be assumed that just because people have settled somewhere that this is where they want to be (even in the medium term). The initiation of legal/formal tenure processes in poor locations can "lock" people into such locations particularly if the process is linked to government subsidies (as is the case in South Africa). Having said this, the international literature on tenure is replete with evidence of the low mobility of the very poor (which may reflect dysfunctionality of land markets as much it does propensity to stay put) (see for example Garau et al 2005).

In conclusion, we should state as this project has proceeded we have become increasingly aware that what is at stake is more than just a new approach to tenure security and its relation to land markets. What is at stake is a whole new way of thinking about *in situ* upgrading and what it is that the urban poor value and trade in what Marx and Royston (2007) call "socially dominated" land markets.

2. CAMEO RESEARCH INPUTS

2.1 Introduction

In response to the Terms of Reference, the team proposed that a series of 'cameo' research inputs would be prepared by members of the team, drawing largely on their experiences, with the main purpose of informing the Technical Proposal. The cameo

pieces were seen as short, concise inputs rather than stand alone reports. The pieces covered a wide terrain from theoretical approaches to regularisation, practical case studies of tenure mechanisms, country case studies, registers, land analyses and legal and planning instruments. The main purpose of the cameos has been to trawl for input information that would be useful in constructing the Technical proposal.

As previously noted some of the cameos can in fact be considered as stand alone documents and are available via ULM. Others were draft thinking and 'unpolished' inputs and cannot be seen as stand alone think pieces. A full list of all the inputs is listed in Section 11. In addition, many key documents were gathered, read and analysed to inform the Team's thinking. These can be made available and a list is attached in Section 12.

This section of the report will attempt to assemble key findings from the cameos in a structured way and show how these have informed the Technical Proposal.

2.2 Local Informal Settlement Experiences of the Team

The Team wrote up 4 case studies that were aimed at drawing out some of the experience of members in the team and covered aspects such as recognition of settlements, local registers and land investigations.

Name of Cameo Input	**Reference for Full text**
Recognition of Informal Settlement and Tenure Systems: Bhambayi Housing Experience	Refer to Annexure 3.1
De Facto Land Analysis in Mshayazafe	Refer to Annexure 3.2
Local Registers in Folweni	Refer to Annexure 3.3
Cato Crest Register	Refer to Annexure 3.4

The Bhambayi experience illustrates that:

- a well-organised settlement can push authorities for recognition through pressure to provide services and general planning
- communities want to be involved at all stages of development and working with communities can result in practical solutions to substantive issues like boundary definition;

- if structures are to be numbered and a record kept, there need to be arrangements for the active management of the records/registers especially in respect of transactions (rental, purchase, sale of claims).
- site numbering and recording have many objectives including settlement control (influx), minimization of disruptions during upgrading, and management of public engagement. It can also contribute to a greater sense of tenure security for individuals.

The de facto land analysis in Mshayazafe illustrated the importance of understanding the actual, 'on the ground' situation in informal settlements so that this can be reconciled with the formal legal status, all with community involvement and support. It illustrates a more developmental, socially responsible approach to information gathering that will influence tenure mechanisms. It informed the team's thinking on including a tenure report into the regularisation process and it also hints at what the contents of a basic layout plan could be (start with mapping the existing situation) in the Technical Proposal.

The Folweni cameo related to establishing a local land office and contained useful insights including:

- a local administration/land office is likely to be supported by local communities if it is well resourced and run
- communities are willing to pay a modest fee to execute transactions that are witnessed and recorded, but the transaction process must be convenient and affordable or else it is they will revert to extra-legal systems

However, the Cato Crest experience with local registers and registration processes is sobering in pointing out the unintended consequences of introducing a registration system that is not fully accepted by the community or embedded in achieving objectives not necessarily aligned to those of the community or factions within it. It highlights aspects such as:

- being clear about the purpose of the register – if it is to control settlements or is explicitly linked to the housing subsidy there can be unintended consequences;
- a registration process can create differentiation in the status of residents (housing beneficiaries, registered heads of household, tenants who are registered, unregistered) that can fuel conflict;

- registration can create an impression of a long term right to a formal house so occupation rights need to be clearly communicated;
- Who is indicated in the register has implications and needs careful consideration as registration can be a socially contested process;
- there needs to be clarity on the content of the rights conferred;
- A registered right has positive benefits such as providing proof of residence and thereby assisting households to open accounts or obtain welfare grants;
- A registered right is often used by holders to defend their claim against others (often family members or former partners);
- Registers can be used by certain “fractions” in communities to reinforce their control over resources (e.g. informal landlords will almost certainly use the process to expand their power and influence).
- Registers get outdated quickly where there is a high ‘churn’ of transactions

The Cato Crest cameo is considered important because it highlights the fact that (government) interventions (such as registers) are usually inserted into an existing set of social dynamics and power relations at community level and generate a set of responses which reflect, sometimes reinforce and sometimes change such relations (in directions which are not necessarily progressive). Moreover the Cato Crest experience demonstrates the importance of clearly discussing and articulating rights (on occupancy certificates for example) rather than leaving them open to interpretation—and particularly those rights that reinforce a progressive social agenda.

The above cameos were also supplemented by findings from two useful reports. The report, prepared for ULM by Lauren Royston and Margot Rubin and titled Local Land Registration Practices in South Africa, was instructive as was the Registration process of Informal Settlements in Gauteng by the Department of Housing.

The ULM report by Royston and Rubin investigated 5 local settlements and explored the land registration practices and drew out some useful lessons , including:

- registers can be held by communities, municipalities or jointly;
- registers might begin as a way to identify household and prevent influx in a settlement but they soon are seen as instruments of tenure security as they do confer higher levels of security;

- Registration processes can reveal differentiated (informal) rights within communities and undermine existing tenure relationships so a *de facto* land analysis is key to understanding these;
- Tenure security is increased when there is evidence to support a claim. Evidence can take many forms from oral, community backed assertions to documentary evidence or shack numbering.

Some thinking around registers was also gleaned from the report on Registration of Informal Settlements in Gauteng by the Department of Housing. This was a provincial-wide initiative to barcode all informal dwellings. What was interesting was the technology employed (hand held GPS tools, laptops with interactive survey forms) which resulted in a bar code for each shack and a list of occupants in each structure. The overarching objective of the programme was to locate settlements and record occupants for inclusion in housing subsidy programmes (and control influx into settlements). Unfortunately however the register/data base has not been maintained. More details of this programme are included in the Technical Proposal.

2.3 Forms of Tenure and rights with applicability in Informal Settlements

This collection of material does not comprise stand alone, polished documentation but is rather an assortment of input ideas and notes by team members. The intention was to scan through examples of tenure types that are used elsewhere in the world as well as some now-defunct forms that were used previously in South Africa. **Please refer to Annexure 3.5 for the draft input paper.** By exploring these forms of tenure it was hoped that a menu of options would be available to test for applicability in existing informal settlements.

Internationally it was found that there are a range of use rights, concessions or usufruct rights that have application in informal areas as an interim form of tenure. These apply on publicly held land and confer security of tenure in varying degrees depending on the extent of the rights associated with the licence, permit, certificate or concession. Some countries charge a small fee for the right (e.g. in Brazil for the *Concessao do derieto real de uso*), often paid into a Development Fund. Interestingly, some countries have strong laws that confer prescriptive rights over private land if it has been occupied by informal residents for a number of years. It is not dissimilar to the South African concept of ‘beneficial occupier’ and is an important way that informal dweller in Brazil and Venezuela obtain secure tenure.

The now largely defunct South African forms are instructive, especially the tenure type's conferred and administrative arrangements supporting the form of tenure in the former homeland areas. Proc R293 is interesting in respect of the the deed of grant and occupation permits (PTOs) associated with it and in respect of the parallel administrative registration arrangements. There are useful lessons to learn about PTOs even if they were conceived mostly for control purposes and to ensure dispossession of land rights or ensure that the rights in land were lesser than individual freehold title.

2.4 Implications for the Technical Proposal

- The largely defunct forms of tenure in South Africa were legally created by statute and were not 'administrative' forms of tenure;
- They were applicable on government owned land;
- The form and content of the permit and the administrative rules were all clearly set out in regulations and had a firm legal basis;
- A fee was payable and there were consequences for non compliance with the regulations;
- Legal forms of tenure can be very problematic if the administration of them is not kept up to date (as has been the case with PTO's) leaving a heritage of uncertainty, multiple claims to land and dispute (which is precisely what formal tenure is intended to avoid).
- In short there is a need to ensure that if formal systems of recording tenure agreements are introduced, there is substantial certainty about the likelihood of the systems being maintained in the longer run.

2.5 Various inputs relating to Housing Policies and Programmes

A number of short input papers were prepared by team members on experiences in certain policy and implementation programmes **(Refer to Annexure 3.6 for the full papers)** including:

- **Pilot projects focusing on alternative upgrade strategies:** experiences from Kenville and Abahlali settlements. This work illustrated the need for alternative strategies to upgrading that have thorough project preparation, settlement development plans, sound community participation and information gathering on the social dynamics
- **Defunct Tenure – deceased estates, deeds of grant and title:** illustrated the problems experienced with deceased estates and unregistered, unidentified and informally transacted Deeds of Grant. It also points to

problems with title deeds being informally transacted in RDP housing projects. All these factors complicate tenure arrangements in the upgrading process.

- **Rural Housing, PTO's and development approvals:** the point was stressed that rural housing does not require formal tenure as a prerequisite for a housing subsidy nor are formal development approvals needed which could set a precedent for development approaches in informal areas.

2.6 Implications for the Technical Proposal

Implications for the Technical Proposal can be summarised as:

- Tenure responses in informal areas must be flexible and responsive to community dynamics and processes. Ideally they should build off existing community processes (as long as these processes are not underpinned by pernicious social relations) ;
- Tenure responses should fit into and support wider developmental responses (for example in situ ugrading intentions). In fact thinking more critically about tenure and the introduction of incremental tenure processes may be key to the development of **new approaches to in situ upgrading.**
- Formal title deeds are not well understood within many communities and this often leads to systems falling into disuse (e.g. people transact without reference to the title and its transfer). An important way of ensuring that tenure arrangements (in whatever form) are well understood and supported by communities is to begin from the efforts of communities themselves to address, legitimize and manage tenure processes.
- The precedents set by rural housing programmes in respect of not making titling a goal of subsidy policy could apply in urban informal areas.

3. SUPPORT TO THE CITY OF JOHANNESBURG

Please refer to Annexure 4.1 for a full report on the CoJ Amendments Scheme Approach and their regularisation programme.

This section will briefly summarise the approach but more importantly, draw out the lessons learnt that have informed the technical proposal.

3.1 Summary of the Amendment Scheme Approach

The Department of Development Planning and Urban Management (DPUM) is the department responsible for the development of this novel approach to regularising

informal settlements. It therefore has its origins within town planning and the tools available to planners to manage cities. The evolution, influences and objectives of the approach are all set out in the full paper, but key considerations in the minds of the planners and the Mayor were that informal areas should be "included" within the City's developmental, servicing and regulatory frameworks. There has been a strong belief that informal settlements must be made 'legal' and that there should be an acknowledgement of the investment that residents have made in these areas and that residents in the city should live in dignity.

After some fine-tuning of the approach and through a consultation process in a Steering Committee, it was agreed that one category of informal settlements will be regularised using the new DPUM approach. The new approach is called the Amendment Scheme approach. It involves an amendment to certain town planning schemes in a blanket advertised amendment. Essentially, the amendment will create a legal basis for the following:

- the introduction of a concise definition of a "Transitional Residential Settlement Area" into 4 specified Town planning Schemes (*"land upon which informal settlements are established by the occupation of land and provision of residential accommodation in the form of self-help structures and some ancillary non-residential uses"*);
- the comprehensive listing of each affected property to which the definition of "Transitional Residential Settlement Area" will apply;
- the inclusion of conditions in an Annexure, setting out the obligations of the council and the manner in which the land and improvements within the defined area are to be developed, maintained, administered and managed (land use, building restrictions, layout plan, tenure and managing changes in land use provisions).

Through this mechanism, an informal settlement is granted a legal status as a Transitional Residential Settlement Area, notwithstanding the zoning applicable to the land. It is only being implemented on government-owned land for now while negotiations are underway with private landowners.

Key to the Amendment Scheme approach are the scheme conditions in Annexure 4.1. These set out the 'management rules' that will apply in the areas. These conditions make reference to issuing occupation permits and recording these in a

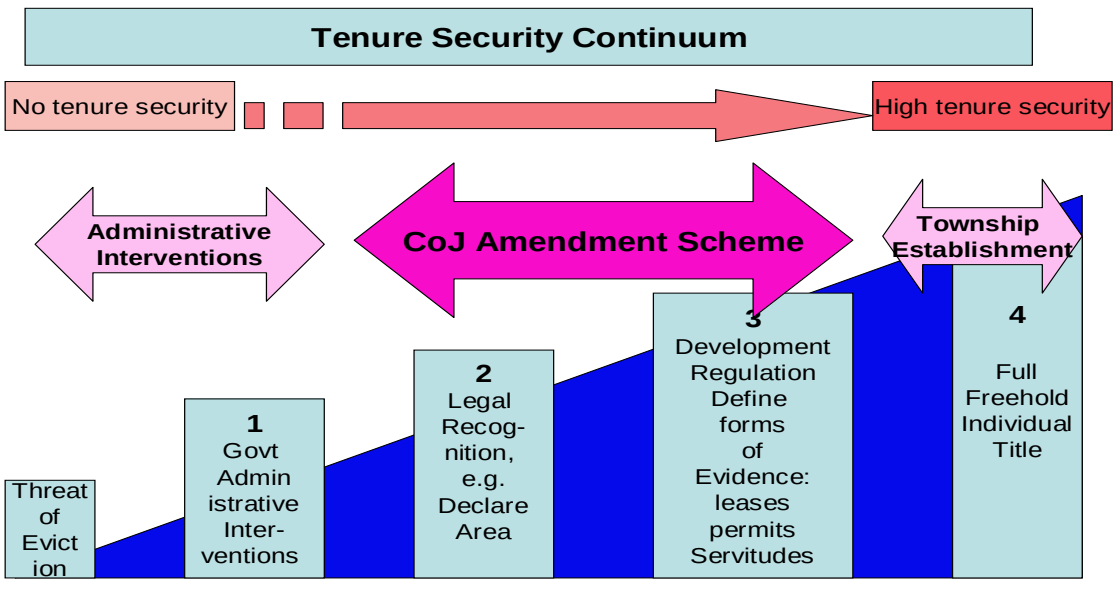
register, which will also keep abreast of any land use changes in the area. Furthermore they include the provision for a basic layout plan.

At the time of advertising the Amendment Scheme, the officials were still working out the details of these mechanisms. But what is very clear to the officials is their intention in these settlements. In short, they express their intentions as improving the life chances of the very poor by formally/legally recognizing them and then incrementally introducing increasing 'rights' to residents, including:

- a way to acknowledge their occupation and use of the land;
- finding a way to allow their infrastructure department to provide services, other than emergency services, within a legal framework;
- finding a way to give residents an address so that they can inter alia open bank accounts, enter into higher purchase arrangements and so on;
- a way to allow them to upgrade their dwelling structure and make improvements/investments;
- some way to allow residents to transact their properties even though they are not owned in the full sense of private ownership;
- managing the informal areas within a framework that is similar to any established suburb in the City.

It is important to note that the Amendment Scheme approach is conceptualised as an incremental approach and that it applies to a settlement up to the point where a full township establishment process can proceed to deliver individual freehold titles. Conceptually, its location in the spectrum from illegal, informal through to fully legal freehold title could be illustrated as:

CoJ Amendment Scheme Approach



3.2 Summary of the Informal Settlements Programme

The regularisation or Amendment Scheme approach forms part of an overall Informal Settlement Formalisation and Upgrading Programme, co-ordinated through an Informal Settlement Formalisation and Upgrading Steering Committee, chaired by the DPUM. It meets once a month and has all the key departments represented on it. All the 183 informal settlements in the City have been categorised[1] and the CoJ Housing Department is responsible for all settlements that are already the subject of some housing programme or need to be relocated. The DPUM has 23 settlements that fall under the regularisation category (Amendment Scheme approach) and another 44 that still need to be categorised.

The DPUM has advertised the Amendment Scheme to deal with a selection of the 23 in the regularisation category, and received no objections. It is now preparing to do the promulgation notice. The DPUM developed a communications strategy and has begun information meetings with internal stakeholders (Ward Councillors, MMC's and officials that do City and community communications).

In the new financial year (July 2009.June 2010) the DPUM will appoint consultants to undertake more detailed feasibility studies, to prepare the basic layout plans and do more intensive community consultation. They intend having basic layout plans completed for some settlements by October /November 2009. Work continues on the detailing of the tenure mechanisms. The CoJ Housing Department is currently developing a programme approach for the settlements in the categories they are responsible for.

3.3 Implications of the approach

As part of the Terms of Reference, the consultants were requested to test the demand for the Amendment Scheme approach with other municipalities and in the region. What soon became apparent is that the CoJ has developed and is implementing a unique approach to regularisation. There are no other examples of a

[1] A total of 1830 settlements fall under this programme: 63 settlements are already the subject of upgrading projects by the Housing Department, 17 have been earmarked for relocation, 23 are linked to programmes and 44 are still to be categorized. This leaves 23 settlements that will be the subject of the regularisation component of the overall programme, and regularized using this new innovative approach being development by the DP&UM Department of the City (as opposed to the Housing Department).

municipality that is attempting to implement a range of interventions within a legal framework, provided by the Amendment Scheme. There are also no other examples of similar initiatives, especially derived from town planning tools or from planning officials (with the exception of an emerging initiative in Cape Town).

A key implication is that this approach is incremental. It is entirely conceived as a mechanism that fits into the gap between illegality, with no government interventions and full township establishment. It therefore is positioned to take a settlement on a path from illegality to a point where township establishment laws can be applied and full title offered on individual plots.

This approach enables other actors to contribute/invest legally to/in the informal settlement. Prior to being declared a transitional residential settlement area, the settlement is illegal and this prevents authorities from investing in infrastructure and other community services (in terms of the Municipal Finance and Management Act (MFMA)). This is an important breakthrough for government interventions in informal areas.

The approach also implies urban management and regulation in informal areas. With its legal status, the settlement is treated similarly to other suburbs that have land use management and other controls.

The tools that the mechanism introduces will allow the settlement to be identified in space and for individuals living there to obtain an address. Residents will no longer be 'invisible' contributors to the City's economy and will have an additional mechanism which re-inforces a dignified life.

However, a new category of settlements will be created – transitional residential settlement areas – and it is not yet clear whether this will be well received by communities in a context of the mainstream upgrading approach through the housing subsidy. Tenure models will only extend occupation and use rights in the main and this may be perceived as a lesser option politically. We are however of the view that the administrative processes associated with the implementation of measures aimed at giving people an address will provide quite substantial tenure security. .

The intention of the City to introduce management systems with respect to tenure and land use through registers is admirable, but the ability to allocate sufficient human resources for effective implementation remains an unknown. The City is

aware that a whole new administrative system needs to be set up to record transactions but is not yet sure of the financial and personnel implications.

The introduction of permits for temporary occupation also introduces a new form of tenure, unless these are formulated as leases or servitudes of use which are more conventional ways to formalise use/occupation rights. How these will be received by residents in informal settlements and what the impact will be on the settlements and on households is not yet clear. We are not necessarily convinced that occupation permits are necessary . There may well be a case that the administrative processes associated with giving people an address will provide sufficient tenure in the short to medium term at least. Permits in our view should only be issued if there is substantial certainty about the ability of the municipality to continue administering what is in essence a new form of tenure. We have already noted the major problems that arose from the discontinuance of the administration of PTO's in R293 circumstances. Among the many questions under consideration at present in respects of permits in CoJ are :

- What form should the permit take?
- How would it relate to mechanisms like a register and a layout plan?
- To which member/s o a household should a permit be awarded.
- What rights will apply and how will they be communicated?
- What conditions will apply?
- Will transactions of permits be allowed and if so how will they be administered?
- How will existing community processes and dynamics in respect of tenure be acknowledged and built on

The introduction of basic layout plans also has implications. While they will bring spatial order to the settlements, how they are prepared will be important. There needs to be sensitivity to existing conditions and social relations. And it needs to be understood that the "processes" around the development of the layout plan and its management over time can themselves constitute important contributions to tenure security.

3.4 Lessons learnt to inform the Technical Proposal:

While the Terms of Reference saw the relationship between CoJ and the ULM consultants as a reciprocal one, where the research from the project would be

shared with the CoJ and support their process, it was also expected that lessons would be learnt from the CoJ process that would inform the development of a technical model to provide incremental tenure in informal areas. The CoJ approach has some important "learnings" for the development of a technical model, including:

- The importance of "blanket" legal recognition (using an existing law) in an incremental approach: Other countries in the region also use legislation to declare informal areas which then takes them out of their illegal status and results in a form of legally protected "collective" tenure. . The CoJ approach does this and also provides a clear set of 'rules' for managing the settlement thereafter. This brings certainty and consistency to the area. It takes the settlement beyond potentially ambiguous political and administrative 'promises' and provides a defensible right to the settlement.
- Government is generally conservative in adopting new approaches to informal settlement upgrading, especially in the context of the national housing subsidy providing finance for land, services and top structures. So, there are few alternative models to learn from. However, the CoJ approach shows that officials can be particularly innovative in bending existing legal and administrative frameworks to new and often more progressive ends.
- The combination of political will and experienced, intrepid officials can be a catalyst for innovation. The officials began the process unsure of how to solve the problem that the Mayor instructed them to resolve, but kept on a track of applying variations of existing systems they were familiar with until a novel and workable model emerged. They were also transparent about what they did not know but have adopted a positive approach in respect of their capacity to solve problems as they go along. This attitude remains strongly in place. One official captured this succinctly by saying they have "'n boer maak 'n plan" attitude.
- Introducing registers and basic layout plans through a land use management instrument, provides a number of mechanisms that support tenure security. , Having a register to record the occupant and the plot provides additional security as it firmly establishes the occupancy right within an (government) administration in procedural terms at least. A basic layout plan and the identification of structures and plot boundaries will lead to the creation of an address which further secures tenure. So, tenure security is best supported through a range of mechanisms (processes) during regularisation.
- The CoJ approach illustrates how an incremental model can mirror outcomes and tenure mechanisms of formal legal processes, but in a simpler way. Hence, in the CoJ model there is evidence of tenure (certificate), a record of

rights (register) a basic layout plan and intermediate services which mirrors title deeds, township registers, general plan and full services in the formal township establishment process. To upgrade from the lower content forms to the full content forms is likely to be less burdensome on communities and the concept and intention of each mechanism will be firmly established. Any further upgrade will represent higher levels of tenure security. But the tenure security value of the processes preceding such upgrading may be even more important.

- A founding principle of the CoJ approach is to extend city management, through regulation, into informal areas. What this means for the City is that they want similar 'rules' to apply in all areas of their city. They want a resident in an informal settlement to have the same protection against a nuisance land use as a wealthy person in an established suburb, for example. Many upgrading approaches, even those that are essentially developmental often do not consider extending land use regulation into such areas. Enforcement or community support in enforcing it remains to be tested.
- Related to the above point is a tentative (emerging) lesson that the planning profession and governmental planning officials may prove to be an important target for promoting alternative, incremental models. Housing officials(as opposed to planning and other officials), not just in the CoJ instance, but also in other municipalities tend to be less open to incremental models largely due to a stronger commitment to the conventional housing subsidy model of housing delivery.
- The incremental tenure process being pursued by DPUM is much more inclusive in intent as it incorporates a much wider constituency (e.g. the growing number of individuals and households who are not eligible for subsidies or wish to exercise them elsewhere). As such the DPUM approach is not instrumentally linked to housing waiting lists. This is particularly valuable because it allows for a variety of interventions to begin almost immediately (as opposed to the long time frames associated with housing subsidy processes). Moreover it helps prepare the way for an easier and more inclusive application of the subsidy process when it does happen.
- Institutionally, the new approach is being introduced as one component of an overall informal settlement programme (which also happens to be driven by DPUM even though most programmes will be implemented by the Housing Department). This is instructive as it underscores a programmatic approach which offers a range of solutions to different informal situations. It also brings (especially) both Housing and Planning Department officials (and others) into

one forum (Steering Committee) to exchange views, plan and implement. An inter-departmental approach may have more chance of being successfully planned, budgeted and implemented than one that nests within one department. The sheer complexity of co-ordinating all the necessary inputs from all departments during upgrading is evident in the Steering Committee meetings and it needs to be led by a strong department with a strong political mandate and accountability.

4. REGIONAL SCOPING

This section contains two parts. The first outlines the regional scoping exercise while the second addresses the findings from a desktop review of 5 Southern African countries in the region.

4.1 Regional Scoping

4.1.1 Introduction to the Regional Scoping

The Terms of Reference called for an initial regional scoping exercise to identify the potential applicability of special zones as a means of incrementally securing tenure rights in identified countries in the region. It asked for a review of existing initiatives that support the same, or similar, intentions and use existing literature reviews. The study was meant to entail largely desktop research with some telephonic interviews. The full report of findings and interviews is attached as **Annexure 5.1.**

4.1.2 Regional Scoping

The team, through brainstorming and with inputs from ULM, identified a range of key informants. Contact was made with them and a set of structured questions formed the basis of the discussions. Where the informant recommended additional experts to speak to, these were followed up. Emphasis was placed on trying to secure inputs from officials in DFID Southern African countries and from some key regional development experts. Up to 10 informants were interviewed (excluding the many networking calls to shortlist the main informants), often with great difficulty in securing an interview time. At the end of the day most of the interviews were conducted with consultants/academics or UN people who are knowledgeable about the Region rather than key officials in government in the countries themselves. This was unfortunate but our attempts to achieve the latter often led to cul-de-sacs.

Results were varied and overall the findings were disappointing in terms of the initial intention of exploring the applicability of special zones. Other findings were, however very positive and provided good insights into informal settlement upgrading.

In the main, the following applicable findings emerged:

- there are no successful, formally implemented incremental tenure processes in any of the Southern African (DFID) countries to learn from, however, Namibia comes close and there are lessons to learn from their pilot projects;
- there is no initiative similar to what the CoJ is intending to implement in the region but in South Africa Cape Town is exploring the idea of incremental tenure at the local level;
- there are examples of legislation in neighbouring countries that allow for incremental upgrading and incremental tenure forms within an overarching legal framework that we can learn from – Namibia (Flexible Land Tenure Bill, even though not promulgated) and Zambia are good examples. Follow through into action on the ground in these contexts has been poor;
- if a special zone with incremental tenure is to be used, the intentions of the authorities need to be well communicated to beneficiaries because what a technical model means to officials and how it is understood by a community can be very different things;
- lessons from Latin America and Brazil in particular around special zones will be instructive in Africa;
- there was not much in the way of a clear response to the Amendment Scheme/Special Zones approach of CoJ as such but more responses were explicitly around land titling and local registers. In the main responses to Special Zones and land use management were around needing to have flexible and appropriate standards that take into account people's need to accommodate sustainable livelihoods;
- responses to incremental tenure models spanned the spectrum from supportive to outright rejection as a waste of time. In the middle is the view that it is not suitable for everyone but that it does provide residents with choices. Importantly, it is a concept and term that could be interpreted differently and so understanding the expectations around it are important;
- tenure security responses also spanned the spectrum, mainly because of who was interviewed. Land surveyor informants stressed the importance of accuracy of the physical position of sites and of accurately identifying the

resident whereas others felt that de facto security is more important than the (legal) form of tenure.

- the most significant insights in the regional scoping exercise were in relation to registration and recording in local land offices. A key point made by informants who work globally and in the Region is that it is important to define a set of principles that underpin the implementation of a local register. Local systems need to be simple, affordable and accessible if they are to work. Importantly a number informants took the view that registers, if locally administered, need to be linked to a central record keeping system that also has checks and balances to prevent fraud and corruption. A local register should be developed within an enabling legal framework and be linked to the spatial information. When drawing up registers, consultation with the community is essential (to understand the social land record) and provision for mediation is necessary. Registers need to be updated and so are most appropriate at a local level.
- there are few examples in the sub-region of successful local registers and it was also not patently evident from the interviews what countries have the most optimistic conditions for the introduction of local registers. However, as previously noted, Namibia has piloted local registers in some towns and probably represent an option that ULM could consider for further support;
- introducing titling into informal settlements can also affect informal markets. Land values can increase and displace vulnerable groups. In general there was the feeling that we probably do not understand how informal markets work (why people transact, how they transact, etc) and this needs to form part of understanding existing community systems before introducing a 'legal', regulated form of tenure;

4.1.3 Implications and Conclusions

The implications of the regional scoping exercise include:

- that the CoJ approach is an 'outlier' and unique;
- neighbouring countries, especially Namibia, offer some lessons in terms of legal frameworks and local registers but there are few 'hard' examples to really learn from in the Region;
- it has been difficult, from the interviews conducted, to form a view on the potential for application of a variant (or variants) of the Technical Approach in the Region. Informants from UN Habitat expressed the view that if it was possible to demonstrate a working model in South Africa, the interest from the

Region and beyond would be substantial. Other informants expressed similar views but also expressed the view that capacity and political obstacles in the Region should not be underestimated;

- South Africa is perceived as a country that is grappling with alternative mechanisms for upgrading informal settlements and providing housing to the poor in a way that its neighbours have not (or cannot, resource-wise);
- more research on case studies of pilot local registers in Namibia could be pursued to draw out more practical application lessons;

In conclusion, despite the considerable energy that went into this regional scoping exercise, it did not fully meet the expectation of obtaining a solid understanding of conditions in our neighbouring countries and the prospect of finding a suitable place for ULM to extend their reach (in terms of supporting a local land office) into the sub-region. The other objective of testing the demand for an Amendment Scheme/ Special Zones approach was also disappointing. The response to the CoJ approach was positive and complimentary but there were no 'takers' as such. There did not seem to be a full appreciation of just how innovative the CoJ approach is and not any responses that directly said that it could or could not apply in their country.

What was instructive was learning of the many countries that have explicit laws that provide a sound legal basis to confer incremental tenure or deal with upgrading approaches. Namibia, Zambia, Mozambique and Angola and Tanzania are all examples of this. (Please also refer to the **Regional Case Studies report in Annexure 5.2** and the summary and implications of this in **Section 5.2 below).** The follow through into practice is however much less impressive. What this suggests is that high level policy assistance has been available in these countries but that major shortcomings in more local capacities have crippled actual implementation.

4.2 Regional Case Studies

4.2.1 Introduction and Summary

In addition to the Regional Scoping exercise that the Team undertook, examples of land reform/informal settlement upgrading approaches from neighbouring developing countries were explored through a desktop literature review. An independent report was prepared that also included case studies of Brazil and Tanzania (Refer to **Annexure 5.2** for the full report). However, this summary assessment will focus on our Southern Africa neighbours and draw out the lessons learned and implications for the Technical Proposal.

Case studies of 5 neighbouring countries were researched. This included Namibia, Zambia, Angola, Botswana and Mozambique. Issues that were addressed, depending on the availability of the literature included the enabling legal frameworks, land rights and forms of tenure offered, the operation of land markets, regularisation / upgrading programmes.

The table below provides a high level comparative summary of some of the key characteristics of tenure mechanisms and approaches in informal settlements used in each of the 5 countries:

	Mozambique	Angola	Botswana	Zambia	Namibia
Enabling Legal Framework	Land Law of 1997 Rural focus	Land Law of 2004	Tribal Land Amendment Act 1993	The Housing Statutory and Improvement Areas Act	Flexible Land Tenure Bill. Not enacted.
Legal provisions	Integrates customary systems into formal legal systems to secure land rights	Introduced Regularisation Schemes to regularise informal settlements	Allows for a certificate of occupation on Tribal land through Land Boards	Legalisation of informal settlements	Early settlement and upgrading of informal areas
Declaration of Informal Settlements	INA[2]	Regularisation Scheme	No special zone	Yes, Statutory Housing Areas = site and service Improvement Areas = for informal settlements	Yes, starter title areas (group ownership) and land hold title (individual) areas
Form of tenure	Leasehold Certificates – community holdings	Provisional Permission to Occupy certificates	Certificate of Occupation Tenurial agreement to remain	Improvement areas – occupancy licences = 30 year permits, renewable	Starter title – lease for block area with group rights and community rules

[2] Information Not Available

	Mozambique	Angola	Botswana	Zambia	Namibia
					Land title similar to freehold
Content of rights	Use and improvement	Occupation and use by implication	Occupation and use of the land in the first phase of upgrading	Use, transfer, mortgage	Starter title – occupancy, but not spatially defined Land holder – individual, registered, full ownership content
Form of evidence	Oral evidence accepted	certificates	INA	permits	Starter title – type of lease (must pay rental) Land holder title – registered 'deed'
Upgrading of right?	Yes, to individual title	INA	Yes		Yes – from starter to land holder when group consensus
Does law allow for 'rules' for the settlement	Yes, community derived in community / shared areas	INA	No	Yes – community rules	Yes for starter title must have group Constitution
Are there registers?	Yes	INA	No local registers	Yes – local Council obliged to have registers.	Yes, separate local registers for starter and land holder.
Are there layout plans?	Yes, sketch plan. Reference	INA	Yes in upgrading process	Yes, outline area surveyed and layout	Yes, required by law at declaration

	Mozambique	Angola	Botswana	Zambia	Namibia
	points are surveyed/ recorded			plan sent to SG. Requirements set out in the law	
Linked to the formal deeds system?	Yes, sketch plan is lodged at Land Registry	INA	No, not for tenurial agreement	Yes and to the SG for outside diagram only. Formal, national Deeds Registry Act does not apply – local registers	Yes - Outside diagram registered in national Deeds registry but internal area locally registered. Dual system of registration but linked
How and when are services provided	INA	INA	Current policy allows provision of services to informal settlements once upgrading commences	After declaration of Improvement Area	After declaration. Residents must pay to upgrade levels
Are there land use regulations	Yes, for natural resource use	INA	No	Normal town planning legislation suspended	Yes
Land markets?	Yes, in urban areas	Yes, informal	Yes both formal and informal – the latter in peri urban areas	Yes, tenure form allows transactions	Yes, designed to promote this
Other	Land owned by State	Land owned by State		Most land owned by state	Have some pilot projects

4.2.2 Implications for the Technical Proposal

Most Southern African countries have opted for national legislation that gives legal status to informal areas. The legislation allows an area to be declared (as an improvement area or a starter title area, etc), immediately removing it from its illegal status. Legal status also allows for a range of other government interventions to occur (legally), such as provision of services, spatial planning to develop layout plans, granting of legal forms of tenure (leases, permits, certificates) and opening of registers to record transactions.

The most common forms of tenure are leases, often renewable, and occupancy permits. These are seen as incremental and upgradeable later to full ownership rights. Some early, incremental rights are wide ranging and are formulated to extend to mortgaging rights while others are limited to occupation and use rights only.

Some upgrading approaches include new, innovative tenure systems that, while simplified and locally administered, still link into national Deeds and Survey Act provisions. This is usually through surveying and registering the outside diagram of the declared area in the formal national system, while allowing local administration of the internal areas through local registers.

Layout plans are common tenure instruments and in some laws there is the concept of a simple sketch plan to begin with and this can be more detailed when the rights need to be upgraded. Not all layout plans require detailed surveying of individual plots.

In instances where there is a strong incremental focus, security is initially given to the settlement, then to blocks within the settlement and then later to individuals and their defined plots. So, group tenure can precede individual tenure. In the group tenure stage, the community must work out its own rules, including land use regulation. Hence, more flexible, appropriate systems of regulation and management of informal areas can be introduced in these areas.

Legal forms of tenure that are conferred do have a currency and become tradeable. Support systems such as local registers allow transactions to be recorded, further supporting the land market.

The Zambian and Namibian examples have been most instructive as they contain a range of tenure instruments that explicitly accommodate incremental approaches, build in community involvement and while introducing parallel systems of titling, local registration and administration, these are still linked to the national system and are not intended to undermine the country's land legal systems.

5. TESTING DEMAND WITH MUNICIPALITIES

Please refer to Annexure 6.1 for a full report on the testing process with municipalities.

This section will briefly summarise the findings and outline the implications for the technical proposal

5.1 Introduction

The purpose of testing the CoJ 'Special Zones' approach with a range of municipalities in South Africa was to see if there was any demand for such an approach elsewhere and to proceed to assist 2 municipalities to embark on a process to apply it in their areas. After a number of interviews with 9 municipalities[3], only two (Nelson Mandela Metropolitan Municipality and City of Tshwane) actually proceeded to the next step of having a workshop with the ULM team. However a number (Rustenburg, Ethekwini, Ekurhuleni) did express interest in follow up interactions of various kinds. The workshops that were held were successful because a wide spectrum of officials attended both. This enabled a range of opinions to be tabled. Interestingly the housing officials tended to have a dominant view against the CoJ approach. However, planning officials tended to emphasise the merits of introducing land use management into informal areas. In the main, the prevailing view that informal settlements can be upgraded through conventional township establishment laws and procedures rather than introducing a temporary, confusing and untested approach, won the day in both workshops.

5.2 Lessons learnt from the engagement

- At present there does not seem to be great demand (from municipalities) for an interim/incremental approach to tenure such as the CoJ is implementing.

[3] Msundusi Local Municipality, Umhlatuze Municipality, Mangaung Municipality, Rustenburg Local Municipality, Ekurhuleni Metropolitan Municipality, City of Tshwane, City of Cape Town, Nelson Mandela Metropolitan Municipality.

However it is also our view that this is a situation which will change as the CoJ achieves success in its ground-breaking recognition and tenure security project and as increasing recognition of its importance at National and Provincial spheres increases. Moreover we anticipate that as pressure builds around the meeting of MDG goals increases, so demand will increase.

- **There does not seem to be a demand from officials for a tool which allows for "early recognition of informal settlements":** In their view such settlements are generally recognised even if such recognition is not explicit. Legal recognition is not considered necessary in part because it is binding of municipalities and possibly reduces their future room for manoeuvre. In part this reflects "a control" mentality amongst many officials at local level and a lack of understanding of pro-poor approaches to development. It also reflects optimism about their delivery capacity (in terms of the formal subsidy model) which is seldom supported by historical performance.
- **Local circumstances can be quite determining of demand.** Rustenburg is for example experiencing rapid growth of informal settlements many of which are occupied by a mix of South African and non-South Africans. Not surprisingly they have exhibited substantial interest even if their capacity to follow up is limited. Nelson Mandela on the other hand does not have urban growth pressure. Thus they have substantial confidence that they can deal with backlogs through conventional approaches.
- **Planners and Housing officials:** As a broad observation, planning officials were more receptive to the CoJ approach than the Housing officials.
- There is widespread belief in a linear, formal township establishment, freehold tenure product approach for all areas.

5.3 Implications for the Technical Proposal

- In South Africa it seems that any new approach to tenure security must nest within a longer term intention to deliver individual freehold title. It should comprise tenure mechanisms that can lead to the progressive realisation of the individual freehold title model. Many officials could not see the merit of introducing a new system which requires human resource capacity and use of budgets, when many of the activities may need to be repeated at township establishment;
- A planning / land use based approach such as the CoJ's has certain appeal in that it builds off existing laws and procedures familiar to planning officials in municipalities. Most had just not thought about it themselves. So, the

resistance that was evident was not against the specific mechanism, but more against a new system being introduced;

- Consideration should be given to how to strategically place the promotion of the technical proposal – housing officials will need some convincing whereas planning officials may be more receptive. Planners may be the appropriate point of entry;
- Officials quite often (and understandably) do not give much consideration to fundamental principles underlying upgrading and are more focussed on the immediate technical aspects of the programmes they are implementing. So, aspects such as providing informal residents with a dignified living environment and improving their rights to the city seldom inform their approach to upgrading;
- There is a very low level of understanding of informal tenure processes by officials including information on social processes within these communities. Therefore the technical proposal should build in steps that allow the tenure and land relationships to be understood and used to inform the specific model of recognition;
- The administrative burden of managing informal areas, especially through keeping records or registers are seen as onerous by officials, so the technical proposal must aim for simplicity of administration;
- Many municipal officials point to antipathy from local councillors to any proposals about what are seen as “lesser” forms of tenure.

6. LEGAL INFORMANTS

The Legal inputs to this project are found in two stand alone documents – Refer to **Annexure 7.1 for the full legal report and Annexure 7.2 for a summary report.** The inputs to this legal report had to deal with a moving target. Initially the legal input involved the collation and assessment of important background information which helped shape the early thinking around the Technical Proposal. However, as the Technical Proposal has evolved, so the legal input has become more focussed and *ad hoc*. In short, the development of the Technical Proposal has required a much more interactive process stemming from legal queries about what is possible and what is not in the Technical Proposal. It is therefore an extensive report that is difficult to summarise here. A summary report has been prepared – Refer to Annexure 7.2 – but that is also too substantial for inclusion here. However, the key legal aspects that informed the Technical Proposal will be explained below.

The legal input (full) paper examines the legal framework within which various options may be examined to enable people to acquire tenure rights short of full freehold tenure, in a form that will enable them to legitimately trade in such rights. It is divided into two parts. The first part is an overview of land law in South Africa and is intended to inform the reader of the legal context in which land markets may be said to operate and in which informal land markets may be aligned with the formal land market. The second part of the paper investigates the informal land market and suggests ways that the law may recognise transactions undertaken within that system. Moreover the second part of the paper focuses on legal routes towards incremental tenure.

One of the main debates in the Team was whether it is preferable to recognise informal settlements and lesser forms of tenure within legal frameworks or whether administrative, normative actions would suffice to provide tenure security. The report, through extracts from some court decisions, highlighted the important distinction between a municipality recognising a community that is illegally settled on their land (e.g. by not evicting them) compared to consenting to their settlement. Consent is tantamount to a legal contract and the right to evict using PIE is forfeited. Consent is a voluntary act. Consent can be further cemented through legal processes to legally recognise a settlement and enter into legally-based tenure arrangements. But it should be stressed that broad consent contributes substantially to tenure security.

However the legal advisors used in the study were highly sceptical of claims made in the literature that administrative mechanisms and processes and other normative interventions provided real tenure security. Rutsch (in Annexure 7.2) argues that in such circumstances tenure security is a “phantom”. Tenure security deriving from a place on a register for example may be real in the sense that it is perceived by informal settlers as conferring greater tenure security—but will be revealed as a phantom (to use Rutsch’s terminology) as soon as a municipality or other players decide that they have other plans for the land. The point was made in team discussions that some of the informal settlers in many centrally located settlements in Mumbai (India) thought that they had tenure security until an alliance of developers and local politicians pushed them out. Thus our legal advisors (as perhaps one might expect) strongly recommend that, wherever possible, tenure in informal settlements should be legally recognised. They acknowledge that the award of legal tenure can have unintended consequences (like the expulsion of

tenants, or downward raiding) but express the view that a socially informed application of legal rights is likely to reduce the likelihood of regressive consequences.

The team has not been entirely persuaded by this line of argument . There is general acceptance that legally acknowledged tenure can be a major advance if it crowns what has been a community sensitive and pro-poor process and if the possibility of unintended consequences have been carefully thought through and dealt with. What is rejected is the uncritical pursuit of legalism and individual freehold title for its own sake. The team is of the view that tenure legality should be pursued in a legally pluralist way (and should not assume uni-dimensional titling) and in a way that allows for incremental forms and early emphasis on collective rather than individual tenure. The way in which this consideration has affected our Technical Proposal will become evident in later sections. It should also be mentioned that we have tried to avoid being “driven” by legalism. To this end our Technical Proposal makes room for entirely administrative/procedural/normative approaches to improving tenure security.

The legal report however (Annexure 7.1) explores which existing legal instruments and processes can be applied to achieve incremental tenure and in what way they have to be adapted to apply in informal settlements. The report tries to unpack answers to these questions across a range of aspects including the legal responsibilities of local and provincial government, laws that enable land to be legally settled prior to full township establishment, conferring of rights less than individual freehold title, permitting buildings or structures to be erected and services to be provided and applying this to an incremental developmental approach to upgrading.

The report shows that it is possible to use a variety of existing laws and processes to achieve the objectives referred to above. For example, the Development Facilitation Act (DFA) and the Less Formal Township Establishment Act (LEFTEA) allow early blanket legal recognition of an informal settlement and make provision to proceed incrementally in the direction of awarding a range of individual tenure forms (rental, lease, servitudes of use, short and long term leases, title etc.). With a strong leaning towards exploring existing laws and mechanisms, but adapting them to circumstances where they would not normally apply, the Team has pursued the idea of using these national development laws in an innovative way to legally recognize informal settlements and set them on a trajectory to full township establishment, should this be desired. What makes these two laws particularly pertinent is that they

have provisions that allow other dilatory laws to be suspended or exempted, so that more appropriate standards and procedures can apply to fast track development. For example, development using the provisions of Chapter 1 of LEFTEA, while requiring MEC's consent for many of the decisions, does not necessarily imply that individual properties need to be registered, which provides flexibility in the tenure forms that can be conferred (leases, certificates, etc). The DFA can achieve similar, but even more flexible development standards and options to beneficiaries. It is the one development law that explicitly states the need to provide a range of tenure options.

The report explains the difference between personal rights and real rights. In the same spirit of adapting existing mechanisms to contemporary development objectives, it has become evident that personal rights can be explored as a means of conferring incremental tenure within or outside (e.g. an administrative approach) of a legal framework. However, these rights are generally more precarious than a real right – but do nonetheless provide substantial legal protection. Hence, the interrogation of the servitudes of use (in the Rutsch report) as a tenure mechanism provides an innovative way to secure some limited real rights in property, especially if they are registered. Leases were also provided as options that provide a contractual relationship between occupiers and the owner of the land. A municipality may wish to keep a register of parties that it is contracted to and may even be obliged to do so in terms of the MFMA, but a register, does not in a strict sense confer legal rights -- occupants (except to the extent that implies "consent" on the part of government). .

The legal report shows how a range of legal mechanisms can be applied in the incremental upgrading of a settlement and how basic instruments can be improved (made more secure) as the settlement moves along the formalisation continuum. In the case of tenure security this could include the use of simple certificates providing use rights. With higher levels of spatial certainty derived from layout planning, individual plots can be identified and the certificates could be endorsed to provide more ancillary rights. A record or register could record these certificates. With township establishment, more detailed layout plans and then general plans would be prepared and provide a basis for formal (long term) leases or even title deeds.

7. THE TECHNICAL PROPOSAL

7.1 Introduction to the Technical Proposal

The current focus in the tenure security theme of Urban LandMark is on securing land tenure in informal settlements, improving access to land and on the local recognition and management of land rights. The motivation for this is to find ways to open up more officially recognized channels of land supply that increase people's access to the economy, tenure security and access to infrastructure services, social facilities and micro finance. The idea is to emphasize practical instruments that allow land rights to be upgraded over time.

With some knowledge of the City of Johannesburg's Amendment Scheme approach, Urban LandMark saw the Technical Proposal focussing on the scheme instrument and widening its application to be used nationally. In the Team's exploration of a range of key issues, numerous inputs have influenced the development of the Technical Proposal and it has evolved into a more generic model of recognising and securing tenure in informal areas and is not specifically focussed on the Amendment Scheme approach developed by the City of Johannesburg.

7.2 Key Principles Underpinning the Technical Proposal

Given a primary focus on making the urban land market work better for the poor, key principles which should guide the design of the proposal have been abstracted from a number of sources: some from the literature; some from ULM research findings; some from review of experience elsewhere and some from key informants.

Perhaps the most important point of departure concerns the position taken on the primary distinction made in the literature between two main approaches to tenure – a "Tenure Security Approach" (which stresses incremental, administrative and procedural emphases in tenure) and a "Regulation Approach" (which stresses legal emphases and formal title). In developing the "Technical Proposal" an attempt has been made to avoid falsely dichotomising (or caricaturing) the two approaches. Adherents of the "Tenure Security Approach" for example, are not necessarily opposed to legal approaches *per se*, but rather to the "stubborn" insistence that there is only one way to deal with tenure and that is via a single formal title route.

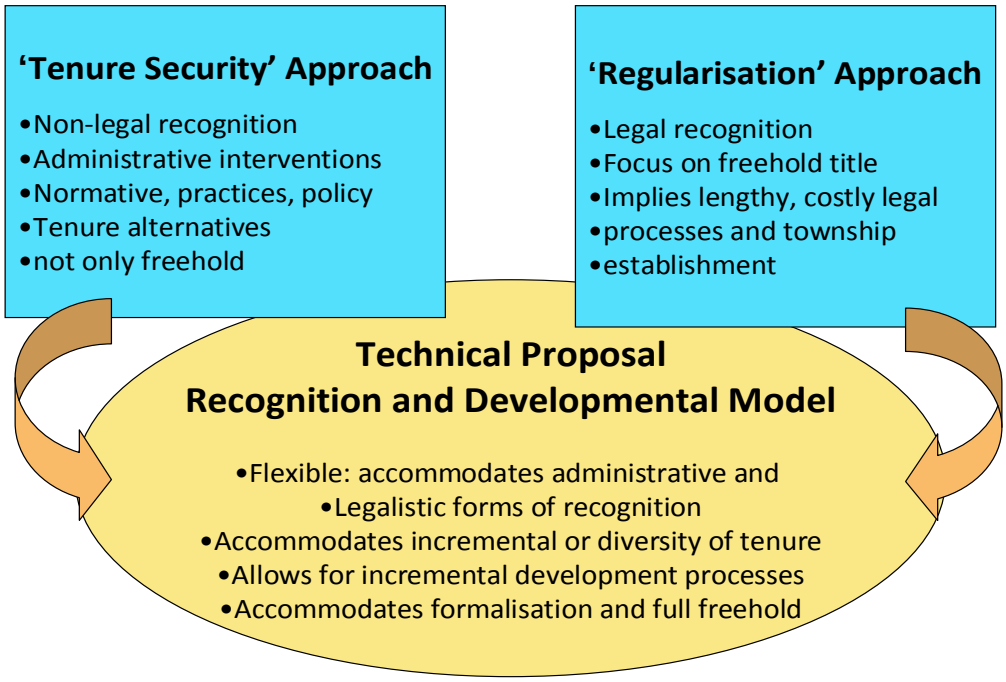
In any event, the approach that we develop incorporates insights from both the Tenure Security Approach and the Regulation Approach. However, the Technical

Proposal strongly supports the Tenure Security emphasis on incrementalism. This may appear inappropriate in South Africa where there is a strong pre-disposition of housing practitioners towards the linear delivery of formal title. However, we believe that in South Africa there is generally a very long period of time (anything between a few months and 15 years) between the informal settlement of an area and the granting of housing subsidies and the onset of formal township establishment processes.

Even in instances where housing subsidies are allocated to projects, it can be many years before implementation begins. In Cato Crest in Durban, for example, it has been nearly 14 years since the formal allocation of subsidies to the area. Yet the upgrading of the area has made little progress. In the meantime, tenure dynamics remain un-transparent and unmanaged. As a consequence, the (informal) urban land market does not operate as well as it could as far as the urban poor are concerned. In any event, we believe that incremental tenure management and support should be instituted for all informal settlements in South Africa, whether housing subsidies (and associated formal township establishment) have been allocated or not. The City of Johannesburg approach illustrates the importance of bringing urban management into informal areas in an incremental way, allowing informal residents to become part of the city (city citizens) and freeing the settlements from the constraints of illegality.

Returning to the two main approaches to addressing tenure, the overall conceptual approach adopted in formulating the Technical Approach is summarized in the diagram below:

Proposed Conceptual Model



In addition to the main conceptual informants of the approach described above, and the variety of lessons referred to in earlier sections of this document, the Technical Proposal has also attempted to take note of the following principles:

Access to the land market

- In thinking about the relationship between incremental tenure and making the land market work for the poor, there is a need for a city-wide perspective. In particular there is a need to avoid the tendency to conflate short-term access strategies of the poor with their longer term accumulation interests. Access points into the cities are often in poor locations. Tenure and housing responses should not lock the poor into bad locations (Marx and Royston 2007).
- It is important to recognize that some areas "function" relatively permanently as "access areas" or areas supporting periodic survival strategies (e.g. refuge in hard times). It is therefore important to avoid the assumption that every informal settlement needs to (or wants to) go through a linear development process that ends with a formal house and freehold tenure. Politically however,this may be a difficult thing to do.
- In South Africa it is important to de-link the process of accessing the city by moving into an informal settlement from a person's position in the queue for government housing subsidies. This relates to the principle mentioned earlier

of not conflating access strategies with long term futures (Marx and Royston 2007) or the desire for a housing subsidy. The principle also implies that housing subsidies should be de-linked from location and provided on the demand side.

- There is a need to create more diversity in land markets (increase the number of "rungs" on the housing ladder as well as the range of options at each rung). In this regard a variety of tenure forms, processes and options can increase the range of choices in the land market. Different entry points into the land market need to be recognized.

Informal transactions

- There needs to be recognition that for the urban poor, informal transactions dominate. However, variation from one locale to another ought to be expected.
- There needs to be recognition that many poor people will not transact via formal processes even if they have formal title. Much however, depends on perceptions of value of properties (e.g. well located versus poorly located settlements) (Payne 2000).
- Where informal transactions occur, there should be recognition that the issue is often ease of transacting weighed against the security/certainty of the tenure (particularly for buyers of claims on land). (Team 2009).
- Active, easily accessible and appropriate local management of transaction processes is far more likely to work than sophisticated, static and locationally distant systems (although variation from settlement to settlement ought to be expected). Moreover, there should be recognition that circumstances in settlements are seldom static (Team 2009, Von Riesen 2009).

Land Tenure

- The introduction of new forms of tenure ought to be carefully considered (to avoid unintended consequences). In general the focus should be on using existing forms more creatively (Team 2009).
- Incremental approaches to tenure should allow allow for:
    - consolidation of existing rights (including traditional practices);
    - communities to be involved in gradually building the tenure model (and thereby make it more sustainable);
    - communities to address underlying social relations; for the communities to consolidate resources;
    - government to develop appropriate approaches (Garau et al 2005).

- There should be recognition that existing administrative arrangements in respect of informal settlements (such as registers, layout plans and so on) do contribute to tenure security even if their intentions are to achieve control. Minor developmental additions or changes to such administrative relationships can make a substantial difference to tenure security and to the operation of the land market.
- Incremental tenure may be difficult to sell politically unless it emanates as a demand from below. It follows therefore that engagement with communities in designing tenure models is of crucial importance.

Settlement recognition

- Be careful with how "recognition" is handled. Recognition may or may not facilitate the operation of the land market. It can be negative if the form it takes implies a place in the formal development and housing queue or implies a right/claim that can only be exercised in a poorly located "point of access" settlement (can trap people into a location). In poor locations it is generally preferable that recognition occurs at a blanket level. Blanket recognition can of course, have a positive impact on the land market insofar as it provides some certainty that eviction/relocation will not occur summarily (Team 2009).
- Recognition can either be of a settlement or individuals (or both). This should be a tactical decision insofar as blanket recognition alone is probably appropriate in bad locations. However, it most likely can be a sequential step in an incremental approach which begins with settlement recognition and builds up to individual plot and household recognition as supporting interventions provide more tenure security to enable individual recognition.
- Blanket recognition can facilitate transactions between individuals, however individual recognition would provide more tenure security.
- Settlement recognition is crucial to incorporation into long term planning (and thus servicing) - which in turn improves the operation of the land market (Garau et al 2005).
- Settlement recognition and even more specifically individual recognition can provide an address to informal residents and open up access to a range of other services and support citizenship.

Social relations

- There needs to be acknowledgement that the approach to tenure can contribute to underdevelopment "lock-in" if exploitative social relations underpinning market processes remain unaddressed. This danger is more acute when the tenure approach builds uncritically off existing community

arrangements. However building off existing community arrangements should remain a point of departure.

- Making the social relations that underpin tenure dynamics more transparent should be an important goal of tenure arrangements.

Town Planning and urban management

- Land use management in recognized areas has the potential to bring urban governance and management into informal areas and contribute positively to the operation of the market (Team 2009);
- Externality (land use) management contributes positively to the operation of land market in informal areas– but management approaches need to be sensitive to impacts on livelihoods.

Service interventions

- Basic services are important to secure basic health and safety in "access" areas as well as in well located informal settlements. Recognition can trigger such provision but in SA it seems that this happens most typically through Council resolutions. Informal settlements on private land can be a problem when it comes to providing services because local authorities are not empowered to improve private land (ULM 2007);
- Increasing levels of service in informal settlements usually only follow on from settlement recognition measures.

7.3 Understanding the context of the Technical Proposal – Administrative and Legal Approaches

The proposed 'model' outlined in this technical proposal is essentially developmental and incremental. It links developmental interventions to tenure security mechanisms and forms that are appropriate for conditions in each settlement along a continuum to full upgrading and freehold title. The proposal that is described is our view the 'best case' derived from consideration of a number of options, which essentially fall into two broad categories. The first category is where a municipality or province may opt to recognise informal settlements in an administrative way, without providing an overarching legal framework.. The second category is where a form of legal recognition is provided early on in the developmental process and all interventions (including purely administrative ones) occur within this legal framework. Each is summarised briefly below:

7.3.1 Legal Recognition Approach

Legal mechanisms to support recognition of informal areas fall into 2 main categories. In the first category are those mechanisms that enable early recognition but do not place the settlement in a prodedural alignment in the direction of full township establishment and eventual freehold, individual title to properties (e.g. Amendment Scheme approaches, rezoning) while the second includes laws that do allow the full upgrading process to be undertaken within one legal route (e.g. using the DFA or LFTEA). In the first category, the settlement would need to proceed along an additional legal procedure (e.g. the Provincial Ordinance) to effect full township establishment.

Legal recognition is important for many reasons, including:

- Most importantly it allows municipalities to begin to undertake developmental (as opposed to control-orientated) regulation of the settlement. Without such recognition the local authority would be contravening many of its own legal provisions (such as town planning schemes and by-laws).
- it immediately makes the settlement legal, taking it out of its illegal status so that residents and their activities are no longer criminalised;
- it allows government to invest in the settlement legally– services can be provided which further entrenches security for residents;
- it allows the municipality or province to bring the settlement management into administrative systems of government (land information and billing systems for example) in an inclusionary way;
- if legal recognition allows for or requires a set of management rules, it immediately brings the settlement into a regulatory framework where land use and tenure can be effectively managed;
- it provides a much higher level of security than administrative mechanisms undertaken outside of a legal framework;
- it can set the settlement on a trajectory towards full formalisation and formalisation can be fast-tracked as many of the steps would have been undertaken during legal recognition;
- it allows residents to invest in their properties without fear of repercussions such as forced removals, changes in political leadership and other insecurities that might result if it was only under an administrative regime.

As pointed out in previous sections of the report, if tenure legalisation is pursued in an insensitive and uni-dimensional way, several unintended consequences may be evident which can undermine the tenure security of the most vulnerable groups. But if carefully considered and sensitively implemented, there are in our view, significant benefits to proceeding to legal recognition of a settlement as a key governmental intervention. South Africa has few commonly used laws that provide explicitly for early legal recognition and future upgrading of informal settlements. As a consequence, some creativity and "bending" of instruments originally designed for other purposes is required. The City of Johannesburg provides an innovative example of this by using Town Planning Schemes to regularise certain informal settlements thereby providing tenure security in a legally recognised settlement.

7.3.2 Administrative Recognition

Administrative mechanisms to secure tenure involve a range of governmental interventions that may result in additional tenure security for informal settlements. They are normative and may derive their authority from local procedures, policies or Council Resolutions, rather than any ' legislation. The following are examples of administrative interventions in informal settlements:

- a municipality or province may introduce home-grown permits, certificates, cards or letters to residents in informal settlements as evidence of occupation;
- it may set up and administer a local register or data base (of either structure owners or residents or both) as a purely control orientated intervention. The extent to which a municipality can "tweak" such administrative interventions in more developmental directions is often constrained by their own legal frameworks (by-laws, town planning schemes etc.). But even "control-based" administrative mechanisms can contribute to tenure security;
- it may allow and even support community-developed mechanisms for managing transactions of dwellings and plots in informal settlement as long as these interventions don't contravene both its own municipal by laws as well as other provincial and national laws;
- it may prepare simple layout plans and/or develop ways to identify site boundaries and shacks as long as these interventions can be related to meeting basic provisions of the constitution and cannot be construed as trying to subvert layout plan requirements in township establishment processes;
- it may set out management rules and procedures for the settlement relating to control and management of basic health and safety and for managing settlement processes (which measures can be more or less control-

orientated).. Attempts to make such management frameworks more developmental run the risk of being challenged as undermining of formal township establishment processes or local legal provisions.

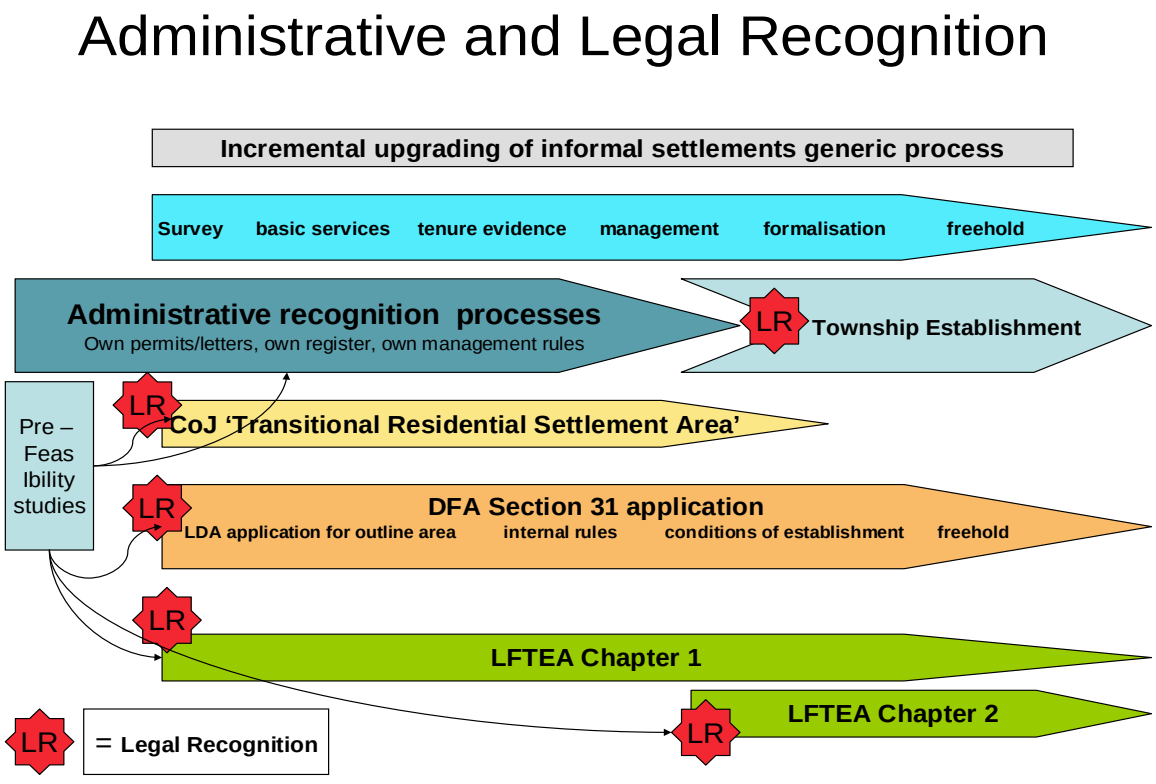
The introduction of all of these administrative instruments, however partial, will provide additional security of tenure to occupants in informal settlements and will begin to provide some acknowledgement of individualised tenure security. Very often such administrative interventions are very practical and may even be sufficient for tenure security (at least in the early stages. However, few of the implied tenure rights associated with administrative systems will be as legally defensible against the state or any third party with the same measure of legal clout that legally-derived mechanisms would. Also, governmental structures and representatives may change and new government representatives may not respect or continue previous administrative systems (perennial "good will on the part of government ought not to be assumed). Additionally, administrative systems can become neglected by officials over time and break down. Settlements that are only under administrative systems are therefore more vulnerable and hence, are less secure. Their long-term future is also less secure, discouraging investment by occupiers. Finally given that the administrative mechanisms do not confer legal status to settlements, there may be legal limitations on government investment.

However, in many instances, administrative mechanisms can be simpler and more cost effective and hence more accommodating of the needs of the poor who reside in informal settlements. Moreover, they can often be implemented without referral into cumbersome political approval processes. In our view administrative systems have their place, especially in an incremental approach.

Even in regularised or legally recognised settlements, administrative mechanisms, like those mentioned above, can be used more developmentally. And in some instances, it may be possible to tweak them in more developmental directions even if legal recognition of the settlement is not possible.

In many instances it will be possible for local authorities to address informal settlements via administrative mechanisms. In reality they are typically the de facto forms of intervention chosen by a municipality or province while the settlement waits to be allocated a housing subsidy and to enter a full upgrading process. But the potential to use these procedures more developmentally is seldom fulfilled (often

because of the mind-sets of officials). In many areas in South Africa municipalities have responded to informal settlements by instituting further settlement inhibiting controls like registers and policing and by providing emergency services (which are often expensive to operate). Thereafter the assumption is often that the settlements are “on hold” until formal settlement upgrading (linked to the housing subsidy) can be undertaken. Such a mindset often pre-empts other interventions which are implementable and which could substantially contribute to tenure security and development. For example the active and consultative management of the settlement register (as opposed to the typically once-off and passive approach) can make a significant difference. So too could actions like providing some sort of address or getting people into formal city processes (like billing) Even once legal recognition at a settlement level has been achieved, administrative mechanisms may still be the mechanisms of choice in a subsequent phase through which to achieve consciously developmental regulation. Thus, we focus quite substantially on developmental regulation via administrative mechanisms (as one option) in the third step of our four-step technical proposal. The diagram below illustrates the



relationship between administrative and legal mechanisms for recognition.

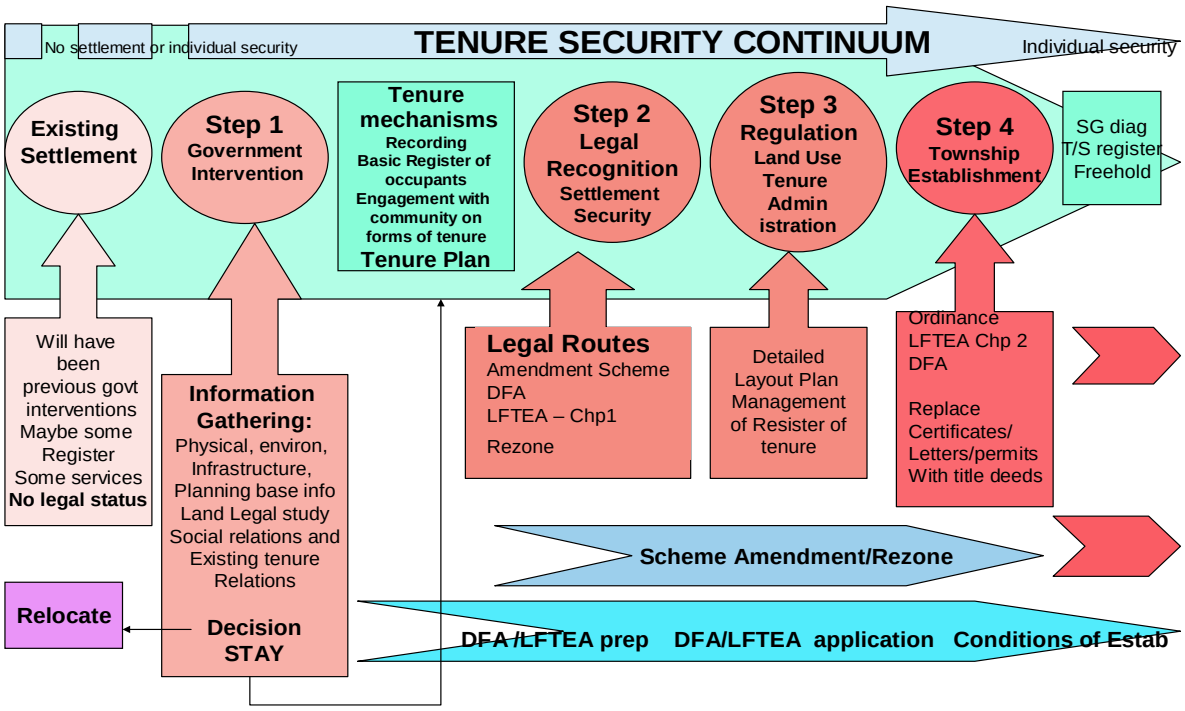
7.4 The Technical Proposal

The preferred technical proposal outlined below is one where legal recognition (at a blanket or collective level) is given to a settlement and administrative mechanisms for developmental regulation can be included within the legal framework. This allows for legally-derived developmental and tenure interventions to be undertaken in the settlement. However, it also does not preclude the introduction of administrative mechanisms to provide tenure security and in fact, makes many such interventions possible and supports them in the early stages of settlement upgrading within an incremental approach.

The technical proposal explained below comprises 4 steps, but this is only used for ease of explanation rather than being rigidly sequential:

1. **Step 1** involves making a decision about the long term future of the settlement. It also involves a review and possibly enhancement of current administrative regulation/control/recognition (emergency services, health and safety, control, registers). Furthermore, a review of community management and recognition/processes needs to undertaken in this step. The philosophy of the Technical Proposal is to acknowledge and build off the historical trajectory of the settlement.
2. **Step 2** involves the blanket legal recognition of the settlement. The reason that this step is necessary is because municipalities often cannot conduct more developmental (as opposed to control-orientated) regulation of the settlement without contravening their own laws. Blanket legal recognition also makes a huge difference to tenure security.
3. **Step 3** involves the developmental regulation of the settlement. This involves developing a system to actively and developmentally manage territorial and other social relations in the settlement and confer additional rights in respect of inter alia use, improvement, trading/transactions, and inheritance.
4. **Step 4** involves the implementation of formal township establishment processes and the award of title.

Technical Proposal



A starting assumption is that in South African cities, most informal settlements are not new and have been existence for some time. As a consequence, there will in all likelihood have been government interventions (usually more than one) of some description in the settlements as well community interventions aimed at managing local dynamics. In short, most informal settlements will have histories that need to be understood. For example, in many existing settlements government interventions may have involved the provision of emergency services and possibly registration of settlers and shack numbering and engagement with local councillors. Residents, however, will typically not have any legal (*de jure*) or evidence-based security of tenure, although they may have a sense of tenure security due to the fact that there have been prior governmental interventions as well as tacit consent to their existence.

The four steps are described in more detail below.

7.4.1 Step 1

Step 1 is in essence an assessment and decision-making step. The main decision to be made is whether the settlement has a long term future or not i.e. will the settlement remain and be upgraded in situ or will it be relocated.. If properly

handled the procedural aspects of the step can themselves contribute to tenure security. Community involvement in the assessment process will almost certainly make residents feel safer (for example). Of course the formal decision that a settlement will remain and be upgraded is a major contributor to tenure security and only in exceptional circumstances should settlements be relocated. But even settlements that are to be relocated need to be managed in a way which contributes to a sense of inclusion. As has been mentioned on several occasions there is often a lag of many years between the emergence of a settlement and implementation of an upgrading or relocation, so in all settlements arrangements for ongoing and active procedural management need to be put in place.

Key activities associated with the assessment are investigations into:

- physical conditions (topography, wetlands and other environmental considerations, geology);
- planning aspects (land zoning, land use, surrounding uses, conformity with SDF, etc);
- land legal aspects (deeds office search, title deeds, ownership, servitudes, other legal constraints);
- infrastructure (available services, bulk connections, capacity required, road infrastructure and public transportation);
- social relations / community dynamics (information on the residents, origins, economic status, employment, tenant relations, prior commitments and or engagements with authorities, etc)
- informal tenure and property transactions status (perceptions of ownership/security, how transfers are done, what is transacted, impact of previous interventions, etc). .

Many of the abovementioned investigations should be undertaken on a ‘desktop’ or “pre-feasibility” basis. On the one hand the emphasis of the assessment should be on the identification of any “crippling” reasons as to why a settlement may not remain where it is in the long run. On the other hand, because active ongoing management is envisaged, whether the settlement stays or is to be relocated, planning and management information also needs to be collected.

The outcome of this investigation step is a series of status quo reports which will inform the decision about whether the settlement stays or goes. Once a decision is

taken that the settlement will remain, the municipality or province may engage in further activities in the settlement as **preparation** for Steps 2 and 3. . Such steps could include:

- Further (or initial, if only desktop information was obtained in Step 1) engagement with the community to form a picture of the existing social relations in the settlement. It is imperative that any tenure mechanisms introduced should build on what already exists Hence, the investigation into the settlement dynamics should include aspects such as:
    - community leadership structures;
    - social movements active in the settlement;
    - community conflicts or lines of cleavage;
    - previous history of engagement with the state and its outcomes (outdated registers, shack numbering, councillor promises, Council resolutions, commitments to housing programmes, etc);
    - community processes and practices relating to tenure – how shacks are accessed and transacted, is there a community register, what evidence do residents use as proof of residence/occupation, what processes are followed to obtain the form of evidence, how are disputes settled in the community;
    - the nature of the relationships underpinning tenure: are there informal landlords, what are the prevailing relationships between landlords and tenants, relationships between occupants on any one plot – additional rooms rental;
    - understanding informal land uses in relation to economic activities and survival strategies employed: what activities are downright illegal, noxious, will not conform even if land use management is put in place;
    - the information referred to above should used to develop **Tenure Plans** for those settlements which will not be relocated. Such a Tenure Plan generally signals the culmination of Step1. The Tenure Plan should ideally be comprised of two parts - a **Short-Term Tenure Plan** and a **Long Term Tenure Plan** and arrangements for managing the interface between the two**.**
        - It should be noted that the Tenure Plans for any settlement ought to take locational issues into account. This is particularly the case in very bad locations and very good locations. Both very bad (e.g. very peripheral informal settlements like Winterveld) and unusually good locations (like Cato Crest in

Cato Manor, and informal settlements in Alexandra) will probably require tenure arrangements which allow for ongoing transitional settlement (probably rental tenure). It is important in bad locations not to embark on processes which lead inhabitants to conflate tenure arrangements with a place in the queue for housing benefits as this may effectively "trap" them in a poor location. In unusually good locations it is important to ensure that an emphasis on freehold tenure does not end up removing valuable rental stock from an environment that should be dominated by rental housing. Alexandra for example, has a preponderance of affordable rental stock for good reasons. The tenure plan should acknowledge the function that the settlement plays in the urban system and reinforce rather than undermine it.

- Installation of emergency services if not already provided.;
- Initiation of a process of "register management":The municipality or province may begin recording occupants or if there is already a register of some description, update or verify the existing register. This initial recording may comprise a simple list/data base of occupants and need not be linked to a spatial referencing system at this stage. However, by identifying blocks or sites and/or the structure and including this information on the data list/register and/or linking it to a basic layout plan with a GPS methodology or even by aerial photography, a mechanism is put in place to later secure either settlement (blanket security) or site tenure security.

. Ideally the administrative interventions undertaken in Step 1 need to link to the mechanisms that will be more formalised in Steps 2 and 3 (regulation of the settlement and land tenure after legal recognition). They can therefore be more modest, simplified forms of mechanisms to be further developed in Step 3. The following are examples of the incrementalism implied:

Tenure Mechanism	Step 1 Administrative Mechanisms	Step More Refined and sometimes Legal Mechanisms
Plot identification	Basic layout plan – no individual plot boundaries, neighbourhood	Detailed layout plan: individual plot boundaries, all roads, sites

Tenure Mechanism	Step 1 Administrative Mechanisms	Step More Refined and sometimes Legal Mechanisms
	blocks, main roads, areas for social and economic activities. Based on aerial photographs or single point gps	for facilities, pegging of sites
Recording of occupants	Data base list of occupants and dependents, either linked to a shack number with a single gps point or recorded per block using a polygon on the GIS system, not linked to individual shacks	Full register of all occupants, dependents, property description, tenant relationships, next of kin, etc
Tenure evidence	Knowledge that occupant is on a list or linked to the site plan through block and polygon definition;	Incorporation into formal billing system Formal address. Formal, simple lease with municipality/province Formal, simple servitude of use
Aspects supporting tenure security (non-traditional forms of evidence)	Shack number and settlement name Site plan linked to GIS system	Plot number Street address Municipal services account
Land use management	Probably very little but could include some basic health and safety rules	Through the Amendment Scheme or DFA conditions, set out responsibilities for managing land use – 'mini' town planning scheme, set up administrative systems to regulate (who to report things to, how to comply, rules for changing land use, etc)
Services provision	Basic services – communal level of services (LOS1)	Planned, upgraded services, block meters or even individual connections (LOS 2 - 3)

The last series of activities in this step revolve around initiating the process of legal recognition or declaration of the area: the level of activity required for this will depend on the legal recognition route chosen by the municipality or province:

- The City of Johannesburg is pioneering an innovative approach to this which really fast-tracks legal recognition. They are using a general Amendment to their Town Planning Schemes which incorporates the identified parcels of land with informal settlements into the Scheme Amendment along with a definition of the settlement areas and rules for the settlement. Upon promulgation of the Amendment Scheme, the identified settlements will no longer be illegal. The preparation work required for this approach is minimal and requires a blanket Scheme Amendment.
- The most legally secure and all embracing form of legal recognition is to undertake a DFA land development application for the settlement. This obviously requires considerably more preparation and so during this stage, all the necessary support documentation must be prepared, along with the application. The application should set out the conditions necessary to manage the settlement through the upgrading process and can include a range of administrative mechanisms. This Act also allows for early settlement and incremental tenure in the form of initial ownership. It also allows laws to be uplifted that may be impediments to the land development area;
- If the Less Formal Township Establishment Act is used as the legal recognition route, then that application(s) must be prepared. The Act has two chapters, with Chapter one being the way to recognise settlements without having to go the full township establishment route;
- An alternative route that a municipality may choose to use is to rezone the settlement. This can be done if the Town Planning Scheme includes a zone for informal settlements. Many new amalgamated schemes now include such zones, for example the City of Cape Town will introduce a Special Residential 2 zone for informal settlements, which could apply.

So, during Step 1 a range of preparatory activities are undertaken to understand the existing social relations in the settlements, to provide some emergency services and to ensure that the legal recognition procedures can proceed smoothly in Step 2. Administrative mechanisms to offer occupant and site security may be introduced or continued during this step.

7.4.2 Step 2: Legal Recognition of the Settlement

Based on the information obtained in Step 1, and the decision that the settlement **will not** be relocated, the municipality or provincial government will proceed to make an application using the most suitable legal route for legal recognition of the settlement. Legal recognition sets in place a legal/statutory framework for further governmental interventions/investments and immediately removes the settlement from its illegal status. Legal recognition, under existing mechanisms, can be implemented through:

- An Amendment Scheme provision that allows the settlement to be listed as an informal settlement area, provides a definition of such an area and sets out conditions for management, to be incorporated into a Town Planning Scheme applicable in the informal settlement;
- Obtaining approval for a land development area in terms of Section 31 of the DFA for the outer boundary area and setting out all the conditions for managing the internal rules of the settlement and how to get to full freehold title;
- Rezoning the settlement as an Informal Settlement in terms of a Town Planning Scheme;
- Obtaining approval for an area for less formal settlement in terms of Chapter 1 of the Less Formal Township Establishment Act;
- Declaration of the area in terms of a municipal by-law (not seen examples of this as most by-laws address the control of settlements rather than being a mechanism to secure tenure).

The proposed legal routes have different advantages and disadvantages:

	Advantages	Disadvantages
Designation of Transitional Residential Settlement	Gives legal recognition upfront – Area designated	Only applicable in certain settlements, not an overarching approach
	It can be a quick and easy	Does not necessarily involve

Areas in terms of an Amendment Scheme	process for a municipality to undertake	community consultation in the designation process
	It provides a set of management rules – legally enforceable	Seen as interim and settlements will need to go to full upgrading if want more secure legal based tenure – need to do township establishment in term of the Ordinance/LFTEA or DFA to achieve freehold
	It makes provision for certificates and a local register – administrative process and procedures (not linked to formal registration ito DRA)	Perceived as a 'lesser' option – political palatability
	It applies to land with any zoning	Tenure is not legally secure/defenceable
	Do not require EIA, not township establishment	Need to be in a Scheme area or get incorporated into one
	Allow service levels greater than basic	More a planning instrument and need Housing buy-in

The Development Facilitation Act (DFA)

	Advantages	Disadvantages
Application for a Land Development Area in terms of Section 31 of the Development Facilitation Act	Gives legal recognition upfront and a strong legal framework for the entire developmental process. The settlement becomes an approved Land Development Area	There is a perception that the DFA (as a law) undermines local, municipal decision-making – can address this through co-operation and consultation.
	It can apply in former 'homeland' areas	DFA not applicable in certain provinces – WC and FS
	It does not lock an area into a freehold tenure solution but can accommodate options, but also does not prevent a freehold solution either for whole area or part	

	Any community or municipally desired management provision can be crafted into the "rules". This includes land use management, tenure types and administration. Hence it marries the administrative aspects with a legal framework	Will need active management of the conditions and conditions of establishment, which can be quite complex
	The Act allows for fast-tracking and setting aside some legal provisions in other laws that could frustrate development and exemptions and condonations.	The first few applications could be legally complex but then a format will be developed
	Tackles the entire developmental process in one, upfront application. Do not need to do as separate township establishment process later	

The Less Formal Township Establishment Act (LFTEA) - Chp1

	Advantages	Disadvantages
Application for a less formal settlement area in terms of Chapter 1 of the Less Formal Township Establishment Act	Gives legal recognition upfront – area designated and a legal framework established	Not as robust or flexible as the DFA
	Nationally applicable	Reliant on MEC decision-making
	Chapter 1 can accommodate the entire developmental process – allows for exemptions and setting aside other legislation to fast track development	Will need active management of the conditions and conditions of establishment
	Chapter 1 need not register freehold, also simplified registration procedures – certificate of ownership	Unfamiliar: The first few applications could be legally complex but then a format will be developed

Town Planning Scheme / Rezoning Approach

	Advantages	Disadvantages
Rezoning in terms of a Town Planning	Locally controlled mechanism, (but may require provincial approval in some municipalities)	Need to have a such a zone in the TPS already and many may not have this

Scheme (TPS)	Provides legal framework for early recognition	May still need to do full township establishment when issue freehold
	Introduces strong land use management and regulation	Will need capacity to management and enforce land use

Upon legal declaration, the settlement as a whole has tenure security and a legal framework is established to begin a range of governmental interventions and investments. These activities comprise Step 3.

It should be noted that legal recognition involves an application in terms of which law is used. This then requires differing levels of pre-application preparation, depending on the legal route chosen. This preparation is also dependent on the law used and some requirements can be onerous, such as a Record of Decision from the environmental authorities or land claims clearance. Where these are likely to be unnecessarily burdensome, the DFA or LFTEA have provisions to cut through such constraints, whereas the Amendment Scheme approach avoids these requirements as it is not considered to be a rezoning. . Implicit in the decision regarding which route to use, is the need to assemble information on the settlement to assess the most applicable legal route to use.

Declaration of the area or approval of the Land Development Area confers settlement (or blanket) tenure security to occupants, but at this stage does not confer individualised tenure. Settlement tenure is an incremental step en-route to individual freehold tenure, should this be a desired end point. Most importantly, declaration or legal recognition allows the settlement to be incorporated into administrative systems of the municipality or province and opens up legal avenues for services to be budgeted for and installed.

7.4.3 Step 3 – Settlement Regulation and Developmental Management

After declaration or legal recognition of a settlement, a number of governmental actions are legitimised (legally compliant) and can proceed which will assist in delivering more individualised, secure tenure, services (infrastructure and social) and land use and tenure management. Given that the informal settlement may already have the benefit of a number of administrative interventions, it is important that these

Step 3 activities build on these existing interventions (See table in Step 1 above that outlines the progression from initial simple administrative mechanisms towards more detailed and more formal mechanisms).

It must be stressed a great deal can be done to improve tenure security simply by deepening administrative interventions and focusing on giving them greater progressive content. Moreover a focus on deepening the administrative mechanisms in Step 3 is likely to be quite practical for municipal authorities precisely because it builds off what would be required anyway as part of "control-orientated" interventions. .

Specific administrative governmental activities during Step 3 include:

- the preparation and incremental development of a layout plan;
- the identification of individual (or block) boundaries with residents (part of the layout plan exercise);
- the incremental improvement of services many of which would have been partly provided in Step 1. ;
- community consultation on forms of tenure (based on the Tenure Plan) and its management – education on leases, servitudes of use or permits;
- the introduction of land administration systems – recording and updating 'rights' through further developing registers / records which may have been partially addressed in Step 1;
- the introduction of land use management – agreeing on responsibilities of both the municipality and residents regarding use of their plots and whole settlement, contraventions and procedures for changing uses and erecting structures (building controls);

7. 4.3.1 Land Administration: Registers and Recording

The experience to date with many informal settlement registers or registration processes initiated by government, is that they are used primarily to control settlement growth by determining a baseline of existing occupants and to contain further growth. On occasion, the lists are used more progressively to identify beneficiaries for housing subsidies and to create a waiting list. These registers are generally static and not intended for active management and recording changes in status of occupants and the informal transactions they engage in. They therefore

are generally not associated with enabling and promoting tenure security, although the process of registration and the mechanisms of issuing bar codes to shacks, may create a stronger sense of security but it can also have unintended tenure consequences. The experience in Cato Crest in Cato Manor around creating registers is instructive in explaining a range of unintended consequences (Please refer to **Annexure 3.4)**.

However, opportunities do exist to use registers more creatively and developmentally. Relatively marginal changes in approach can potentially bring relatively major gains in developmental outcome. For example, if registers are used to actively record changes of occupancy and transactions, then the register may become quite developmental in the sense that it now contributes to greater transparency in such activities and enhances tenure security (for buyers of rights in and to property) and makes the land market function better. Moreover, because registers often already exist in settlements the opportunity exists to turn instruments that are already in place to more developmental ends without necessarily introducing major changes in policy or politics. This is what is often appealing to those who advocate an emphasis on augmenting existing administrative mechanisms as the key to achieving incremental tenure security.

During the process of support to the City of Johannesburg with their regularisation programme, officials grappled hard with the notion of registers and the processes of recording occupancy in informal settlements. City officials have approached the subject from a position of looking at what mechanisms already exist within their current administration processes of a “recording/registration type” that could potentially constitute a way of promoting the “recognition” of residents in informal settlements and in so doing contribute positively to tenure security. . From this perspective, they honed in on the property rates base, the municipal accounts data base and their GIS land spatial information system. While there were many considerations behind the need for a record of occupants, a key factor for officials was being able to supply an address to residents and to be able to have documentary proof of this. This was seen as as a potentially significant developmental response to informality. The planners were also mindful of creating a whole new parallel “land administration system” just for informal areas. The idea that a municipal account is sufficient proof of residence (used in FICA processes by banks), prompted the idea that this could also be a viable form of tenure evidence.

In Johannesburg, the data fields of information per structure can be linked to the GIS system in much the same way that it is done for sectional title properties. Each settlement that is regularised in terms of the Amendment Scheme, would need to have a recognised cadastral boundary (and some internal cadastral boundaries too if the area is large). The settlement could then be divided into smaller spatial 'pockets' for easy management and referencing. On the GIS, a polygon could be created "containing" a number of structures and the information relating to each structure could be compiled in a table, attached to the polygon area. Any additional information could be added to this table (currently it is possible to record : land uses, occupants, levels of services, planning information, socio-economic information, etc). A GPS point could also be allocated to each structure. Most importantly, each structure could be given an address (the level of detail of which can be incrementally improved with more detailed planning of the settlement).

This could all be recorded in the Land Information System (LIS) and could be accessible via maps-on-line. Importantly, Corporate GIS is a department within the broader Planning directorate, so there is close synergy between planning and geographic information systems and mapping officials.

Each registered shelter with a physical address could be incorporated into the City's billing system. The idea here is not to necessarily charge for services but to be able to issue an account (which could be a zero bill or a nominal amount) that would act as proof of occupancy (City Citizen) and tenure security.

City officials are of the view that this approach potentially has considerable potential for both the residents of informal settlements and the municipality (administration systems, services usage recording, planning for informal areas, etc).

This technical Proposal takes the view that the **objectives** of a register / record which promotes tenure security should be:

- to identify house occupants: including a differentiation between the head of household or recognised 'owner', his or her spouse or next of kin who s/he would bequeath the structure to, the dependents and the lodgers or renters of rooms or subsidiary shacks connected to the main structure, Bar coded identification documents can be use to obtain this identification information;

- to provide information about the spatial location of the structure: to give the structure and/or plot a reference number that is recorded, so that ultimately an address can be provided;
- to record the 'ownership' of shack structures. The shack ownership register may or may not correspond with the "residents" register;
- to gather developmental information relating to the household for planning purposes: this could include income, access to services, employment, length of residence, the way in which the shack was acquired, how occupants understand their relationship to the shack (are there tenants, renting from family, purchaser, landlord, etc);
- To record the form of tenure that has been given to occupants (e.g. administrative, rental, lease, servitude of use);
- to record and administer changes in occupancy so that there is transparency in the 'market';
- to bring settlements into the ambit of municipal administration so that they can be treated like other suburbs of the city/town: the record or register must therefore not sit "outside" of other administration systems (e.g. it should link to the GIS systems, billing systems, infrastructure plans, etc).

Hence, it is quite evident that this form of register or record is much more than a housing waiting list or a housing control mechanism.

Recording rights in and to property (other than occupation rights) and actively administering changes to such rights via the register might be difficult in circumstances where local politics and policies dictate an emphasis on control. However wherever possible, the register should be used to record and administer such rights.

This technical proposal supports registers as administrative mechanisms which can be used to help developmentally manage either administrative or legally recognised forms of tenure and transactions associated with them. The proposal does not see them as registers with the kind of rigour associated with the decentralised offices of existing Deeds Registry Offices in terms of the Deeds Registries Act. A model of that type of registry would imply a new form of "registered" tenure being developed and one that is legally 'lesser' than freehold, not unlike the colonial and apartheid registries that administered Permission to Occupy (PTOs) and Deed of Grant tenure forms in the former homelands.

Although more progressive forms of title were developed in Namibia through their Flexible Land Tenure Bill, to deal with informal settlements, this still has not been passed as an Act ten years since inception. The Bill allows for starter titles to be registered in local offices while the overarching settlement area is registered in the formal, national Deeds Office, creating parallel, but linked tenure registration systems. Hence, in Namibia, the purpose was to create a cast iron form of blanket recognition for settlements (and the recording of such recognition) and linking it to an administrative system of local registers that deal with individualised tenure in a pragmatic but simple way which also is consistent with longer run formal registration of individual title. In South Africa it seems that there are several other ways to legally achieve blanket recognition (that do not require involvement from the Deeds Registry). However the idea of following procedures for incremental tenure award and administration that are consistent with the longer term award of full title where appropriate, is very much part of the technical proposal (except where the location of the settlement mitigates against it).

What has become apparent through the experience with the City of Johannesburg is that tenure or title in the strict legal sense (of a lease or a title deed) need not be the basis of tenure security. It can be any other form of tenure recognition (such as a regular municipal account), most likely of an administrative nature (although an account is a form of contract between parties).

As far as the technical dimensions of registers are concerned the following considerations are worth noting. The starting point is to define the format, contents and technical requirements of the register, preferably with the community's involvement. There are computerised systems that can enable data to be captured electronically (e.g. from the bar coded identification documents) and formatted into data base programmes or excel spreadsheets. The fields of information agreed upon can also be developed into a bar code system to create a unique bar code for each structure which can then be attached to the structure. This is the approach that the Gauteng Department of Housing took when it did a Provincial-wide registration of all informal settlements in 2004/05. A decision must be made regarding geo-spatial information and how to link individuals to structures/defined plots. Portable GPS instruments can be used to identify co-ordinates for each structure and this can be linked to the data base and to digital aerial (satellite) photography to create maps of the settlements.

In the Gauteng Informal Settlement Registration process the following information was obtained (via an electronically formatted questionnaire administered through a palm top computer while interviewing each resident):

- personal details;
- number of dependents per family;
- average income per family;
- social disabilities;
- citizenship;
- reasons why people live in these settlements;
- access to water and problems experienced with water supply.

From this they were able to establish the following additional information:

- the number of informal settlements;
- the number of families living in informal settlements;
- the exact co-ordinates of where they live;
- the number of people that already appear on the HSS database (national housing subsidy);
- the number of people on the 1996/97 housing waiting list (Gauteng).

Hence, registers can provide useful information for broader analyses that a municipality or province may need for planning, developmental or budgeting purposes.

An important step in making registers developmental is to make such processes as transparent as possible. In this regard a methodology needs to be developed for how to **engage with the community** in order to communicate the intention and purpose of the register and how it will be implemented and administered. This will also involve assessing the human resources needed to undertake the registration process and manage the data.

In the Gauteng example, the registration project was launched by the MEC, then there were engagements with municipal officials and councillors, followed by identification of community leaders who went door to door to inform residents. Pamphlets, loudhailers and air time on community radio stations were also used to communicate the programme. In addition to Provincial housing officials, 100 people

from the Province's internship learnership programme were employed along with 392 people from local communities. However the registers are not actively managed, nor were they intended as instruments to manage informal areas, other than to discourage growth. As previously noted active management is central to developmental outcomes insofar as it increases tenure security and makes land markets work better for the poor.

During the development of the City of Johannesburg proposal for a registration mechanism, there was considerable debate on how best to ensure that the system "updates itself" by having an incentive for residents to engage with the system when there are changes. Requiring an accurate, updated municipal account (address) in order to contract with other parties (get a cell phone or register the sim card for example) would be one reason. Other incentives still need to be discussed.

Turning to the issue of active management, the municipality or province needs to develop a system of recording (with the participation and verification of the community) and a system for updating information (when there are changes) and a system for dealing with disputes (adjudication). Moreover a system for storing and holding records in respect of the above processes is needed. Human resources need to be allocated to these functions.

A local land office may prove to be a suitable vehicle to achieve all of the above. It need not be permanently located in the settlement and can be operated from a mobile office to serve a number of communities. A facility/office can be permanently located in a regional municipal office and all the administration should be co-ordinated at the main municipal offices. The local office should record all transactions, be involved in witnessing transactions or endorse the mode of witnessing discussed with local communities. It follows then that the idea of the active management of a register and the idea of local land offices, are notions which are closely linked.

A very important way in which tenure security (linked to the active management of a register) can be advanced, is via the deepening of processes of community participation both in the compilation of and the ongoing management of the register. Such deepening of community participation processes is our view an extremely important opportunity. If for example an existing community compiled register is used by the authorities as the starting point for local recording processes, the contribution

to a sense of greater tenure security is likely be very substantial. More typically however, much can be achieved by soliciting credible community involvement in the development , “confirmation” and ongoing management of the register by the municipality. In fact in many instances the fact that register is “held” by the local authority is seen as contributing to tenure security (in the sense that recognition by a powerful “outsider” is seen to enhance tenure security. But there are many possible models that could be applied here.

7.4.3.2 Layout Plans

A layout plan is a key instrument to further tenure security. It is the means by which tenure can move from a more precarious communal form to more individualised forms. This is because during the preparation of a layout plan, a specific site can be identified, described spatially and linked to an occupant. Moreover, layout plans can range from very simple to very detailed precursors of a General Plan. It should also be noted that in many instances existing “registers” are not linked to a layout plan. Where this is the case the drawing up of layout plan is an important step that will contribute to incremental and greater individual tenure security.

The most **basic** form of a layout plan is one based on an aerial or satellite photograph of the settlement, showing the boundaries of the settlement site and individual structures, pathways and any other physical features that are visible on the photo. It is an interpretation of what exists on the site physically and is probably best called a site plan. It does not identify individual plot boundaries. It often forms the base mapping for more detailed levels of layout plans and can be useful for identifying structures and even numbering them. It could be an administrative tenure mechanism and suitable for the early, incremental tenure security. In terms of identifying a settlement area, a cadastral definition of the outline of the settlement is important from a municipal administrative perspective. Most municipal land information systems are based on property entities (erven, farm portions) and so defining the outline cadastral boundary enables the settlement to become integrated into land information systems (and the basis for other recording mechanisms).

A site plan can be used in conjunction with a record or register, even if individual, internal sites are not identified. Using GIS technology, a polygon of any part of the settlement can be created and names of occupants recorded per that block polygon (as is being done in Johannesburg and cape Town).. It provides a reference for the site and links this into municipal administrative systems. Importantly, it provides a

reference for the provision of services (can locate a service meter, for example). A site plan is therefore a useful administrative way to give settlement (blanket) tenure security and can even give occupants an address, albeit, not an individual street address but a 'block address'.

As previously noted the City of Johannesburg is busy developing a proposal that is based on the above. And again as previously noted Johannesburg proposes having a cadastral outline for the settlement, parcelling the larger settlements into smaller blocks and assembling data on structures and occupants per hexagon in the block. It is not a foreign system as a similar approach is used for their sectional title properties. In these instances, especially if high rise, it is not possible to give a GPS point per unit but instead a series of hexagons equal to the number of units is used to attach data per unit. The land information system will show the cadastral entity and by clicking on each block and then each hexagon, information on each unit is accessed. The address would be the block address at this stage.

Very significantly in the case of Johannesburg , this approach enables services to be extended legally to informal settlements. In terms of municipal obligations, services up to the outside of a cadastral entity are the responsibility of the municipality. With the cadastral definition of the outline of the settlement, and a reference point per block, the municipality can create a service point (meters, ablution blocks, etc). Services can therefore be planned and budgeted for informal areas.

A more **detailed** level of layout plan is one that involves more detailed layout planning of the settlement for the provision of permanent services and smaller block and/or individual property boundaries. This level of detail requires more base information (geotechnical, environmental, etc) and engagement with the community as it may involve the re-location of some shelters or decreasing the size of the informal plots. Through community consultation, individual plot boundaries can be determined and shown with physical objects (white stones, fence poles, palings). This can be verified on site by municipal officials with the occupants and the corner points can be recorded by way of hand-held GPS instruments, linked to data programmes. The sites need not be pegged at this stage. Provision should be made during this process to set up participative adjudication structures to handle boundary disputes between neighbours. Elders and longstanding residents who have good standing with the community could for example be nominated to work with officials to resolve disputes (a joint committee). This level of layout plan can

confer an address to occupants and this is important in gaining access to a range of other citizenship benefits and more active participation in the economy of the city.

The **highest level** of layout plan is that required in terms of regulations (township establishment laws) and it should comply with all the provisions of those regulations and municipal and engineering standards. Often the municipal standards and engineering requirements are not appropriate for such settlements, especially if incremental upgrading approaches are adopted. These standards then need to be negotiated and agreed with all municipal departments and provincial service providers (fire and ambulance access).

It is possible to allocate erf numbers, street names and peg cadastral entities as part of this stage. In a way it is a 'draft' general plan and as such is given preliminary numbering from the SG's office. It is therefore cadastrally secure and a solid basis on which to provide more detailed services, actual street addresses and individualised billing.

7.4.3.3 Land use management

The introduction of land use management 'rules' into an informal settlement signals commitment (to administration, servicing and management) by a municipality and contributes positively to elevating tenure security levels. Traditionally, land use planning regulations are introduced through Town Planning Schemes (and title deeds prior to that) and township establishment legislation (e.g. Annexure F in former Black Communities Development Act). The nature of the land use management controls and the 'weight' they carry depends on how they are introduced into a settlement. The following options are possible:

- Administratively: by including some basic provisions in documentation linked to different forms of tenure (e.g. a lease agreement, a certificate/letter, a servitude of use). The provisions would need to be simple and preferably linked to the register. These simple administrative rules would generally relate to the use of the land (what can and cannot use it for) and what could happen if this is contravened;
- Legally through various means, including:
  - Amendment Scheme: The City of Johannesburg is a good example of this. They included a schedule of conditions for the declared Transitional Residential Settlement Areas, many of which relate to land

use (and building) management. (The detailed CoJ approach is set out in a report in **Annexure 4.1** where all the conditions are listed in full.). The conditions, in summary relate to aspects such as:

- density and minimum sizes of sites for residential uses;
- construction and siting of buildings;
- number of buildings per site;
- height of buildings;
- side spaces;
- coverage of the site with buildings;
- fines and contraventions.

o Rezoning: Where a specific zone has been created for informal settlements in a Town Planning Scheme, it will, by definition, include a range of land use management controls. In the example of the proposed City of Cape Town's Single Residential Zone 2 (SR2), the following land use planning aspects are included:

- primary use (e.g. dwelling house and second dwelling)of the site and additional use rights (e.g. informal trading, home child care) and consent uses (need permission, e.g. house tavern);
- coverage
- height
- building lines
- parking and access
- building plans approvals

o DFA conditions: When an application is made for a land development area in terms of section 31 of the DFA, the regulation of the area can be linked to an existing Town Planning Scheme or a set of tailor-made conditions can be developed. The DFA therefore provides flexibility to either use existing measures or create specific, appropriate and community-defined rules to manage settlements. The DFA also allows for tailor-made building regulations to be applied.

o LFTEA conditions: Like with the DFA, these can be linked to an existing scheme zoning or own rules developed for the specific settlement.

7.4.3.4 Provision of services

The installation of services to informal areas can signal tenure security. While a municipality is obliged to provide minimum basic services (even if the settlement may be relocated at a future date), anything higher than this level can create problems for a municipality. If the land is not owned by the municipality, it cannot invest in infrastructure without contravening the MFMA and even if it did own the land there would be budgeting problems and issues of investing in infrastructure in areas that are deemed illegal. Also, service departments need to provide services to defined cadastral entities. So, provision of higher levels of services is often reliant on some form of legal recognition of a settlement or cadastral and reference point definition. Cost recovery or contributions to services from users is also an issue for municipalities when providing higher levels of services.

Using the idea of service provision as a means of securing tenure, it is possible to link this to administrative mechanisms of tenure security. As previously noted the City of Johannesburg is testing the idea of issuing residents in their regularised settlements with service accounts. While the account can reflect a zero balance owning, it can reflect the land rental and basic services charges, the occupant's name and address (block address in the first instance). This account then becomes a form of tenure recognition and would be a proxy for a certificate of occupation or lease or any similar administrative tenure mechanism. It embeds the occupants into the municipal administrative mechanisms (the billing system) and provides them with a regular record of residency that can be used to open accounts, get social grants, , etc. It is another example of lateral thinking in applying conventional tools in an unconventional and developmental way to give informal settlement residents more tenure security. However, the City of Johannesburg proposal also provides a mechanism for installing services to blocks within a settlement, something that could not occur legally without it. As previously noted , parcelling the cadastrally defined settlement into referenced polygons, makes it possible to identify locations for service meters to service blocks of structures. These meters also provide the municipality with an administrative mechanism for monitoring usage and accounting for service delivery (good administrative practice and used for planning purposes too).

One of the key reasons that the City of Johannesburg cites for developing their regularisation mechanism is to give residents in informal settlements dignity by making them part of the city (City Citzens is the term they have coined). This involves bringing these areas into the administrative ambit of the City, so that they are no longer 'hidden' or treated differently. By extending land use frameworks into informal settlements, the City is treating the areas like any other part / suburb of the city. Hence, appropriate land use controls were developed for implementation. The

second main reason, also related to dignity, is to ensure minimum standards of health and safety in these settlements. Interestingly, very similar motives underpinned the creation of ZEISS in Brazil, possibly with a stronger social justice flavour.

Having a set of land use management rules and an authority that is responsible for its enforcement, re-inforces any administrative or legal tenure mechanisms that informal residents may already have. Tenure is further secured by knowing that, as a resident, you have some recourse and protection from any nuisance activities of your neighbour. Even if a resident does not have a legal, individual form of tenure in the settlement, the knowledge that the municipality has rules and procedures, can give a high degree of security to the occupants.

7.4.3.5 Administrative Certificates/Letters

In addition to a register and basic layout plan (site plan), a municipality can also contribute to further tenure security at an individual occupant level by issuing some sort of occupancy certificate to occupants of sites. Such certificates could take a number of forms and will generally be tied to a register and basic layout/site plan. Moreover, the decision to issue a certificate of some sort should usually be related to an intention on the part of the municipality to regulate the settlement developmentally. In short, it would generally represent a step up from the use of registers and a basic layout/site plan in developmental ways (as discussed above). Issuing a certificate of some kind is a significant step in the direction of individualized tenure. Moreover a certificate usually gives the holder benefits insofar as they can use it to prove residency (similar to “FICA”). A certificate is a form of administrative tenure mechanism.

Being able to present documentary proof of a verifiable address brings a variety of potential benefits that vary from being able to purchase goods on higher purchase to being eligible for certain government services/grants. The certificate/permit for an individual can of course take a number forms. In Cape Town for example, It has been proposed that the certificate will take the form of a laminated card containing the name, ID number, photograph, address (some of this information to be barcoded) of the holder. Furthermore, it is envisaged that these and other details will be registered on a database for that settlement, with a facility to consolidate data on informal settlements generally (Adlard 2009). The manner in which an address is defined in the Cape Town example is similar to the route being followed in

Johannesburg i.e. *"by the number of a polygon on the City's plan of the settlement, to which is ascribed a number or code that includes a reference to the informal settlement and to the neighbourhood within the settlement"*. The shape of the polygon may change from time to time as boundaries are fixed. It is also envisaged that the address to which the permit refers should be attached to a physical dwelling by the municipality.

The major disadvantages of certificates are that they are not formally recognized in law. Unlike lease / rental contracts and servitudes of use, certificates are not recognizable in our legal system. As a consequence, there are no tried and tested approaches for dealing with disputes or other issues arising. As a consequence, it is not clear how a court would react to a situation where, for example, the municipality wishes to run a servitude over informally occupied property and someone makes a claim to the property using a certificate as evidence. The certificate potentially creates an ambiguity between the underlying land owner and the occupant of land (in a way that leases and rental tenure forms do not). Another example of the difficulties that a certificate can create concerns a situation in which a municipality reaches a point where it and the community wish to upgrade the tenure of current occupants and challenges are made to the participation of some current occupants - on the basis of possession of certificate (issued some time in the past).

It follows therefore, that it is important that the rights that the certificate confers are made very explicit on the certificate itself and that the holder of a certificate can be positively identified. Technology offers a range of options in this regard, but once again it is probably prudent to also use community witnessing processes. At a most basic level the certificate could simply confirm that a person or a household is resident within a particular settlement or a recognizable block within a settlement. As previously noted such acknowledgement can make a significant difference developmentally.

The developmental impact of the certificate is enhanced further if it contributes to making transactions in the land/property market more transparent. However, the trading of the certificates themselves should not be allowed. Instead, when the right to be on a particular site is bought/sold, the original certificate should be surrendered and amended (probably via a local land office) mainly to now identify the new rights holder. It may prove easier to cancel and destroy old certificates and issue new ones to the new occupant. However such a process is potentially quite dangerous if record keeping is lax or corrupt. There is a real danger that certificates don't get

surrendered/cancelled and instead are sold in a marketplace (even if they are evidence of little other than false promises). Again, community witnessing processes can reduce the potential for this to happen.

In principle, a range of rights (and conditions/responsibilities) can be written into the certificates (e.g. use, alienation/sale, subletting, bequeathing, enjoyment of the fruits of use etc.). Likewise, third party rights and claims can be articulated on the certificates. Dispute resolution should be mainly managed via a local land office and community structures. Recourse to the courts may be difficult because of the lack of certainty of the legal status of certificates.

One way of addressing the legal issues in respect of certificates is to regard and draft certificates as contractual agreements. An agreement between a landowner and an occupier to permit the occupier to remain on the land and to carry on certain activities, be it residential, small business or whatever, is binding as a contract between them, and does not require registration anywhere. It is not always enforceable against third parties unless they (the third party) have prior knowledge of it, and this is where registration becomes important. The terms and conditions which attach to such contracts are determined in the contract document. So it is possible to give an occupier a certificate and say in the certificate that it is issued subject to terms and conditions contained in the (separate) document or which may be inspected at the municipal offices (important that they are very accessible to be binding). It is also possible to back them up by legislation, e.g. local by-laws. Contractual conditions in a contract are enforceable in a court of law which recourse may be beyond the means of poor people. By-laws are public and also would need court action to enforce, but the need to do so seems less likely.

It should be noted that from a tenure evidence and rights perspective there are a range of legally recognised tenure forms that can overcome many of the difficulties associated with certificates even if they may introduce other complexities. The key legally recognised forms of tenure that fall short of full title but which offer substantial tenure security include:

- a (short term) lease
- a servitude of use (used like a common law ‘contract’ between the municipality and the identified plot holder that need not be registered)
- a longer term unregistered lease

- a certificate of occupancy (AAA certificate in terms of LFTEA)
- initial registration certificate (in terms of the DFA)

From the point of view of legal forms discussed above, this Technical Proposal supports both the short term lease (three year lease, renewable annually thereafter) and the servitude of use during this step as preferred options. This is because a lease is a recognised legal instrument (contract), it is familiar to most and can be defended legally (albeit with difficulty for poor families). It can include a range of rights and responsibilities, some inherent to the form of tenure and some to be written into the lease (as special conditions). The negative aspects are that a lease/rental instalment must be paid (can be nominal) and that it cannot really be bequeathed, although rules can be included to ensure a new lease is entered into with an identified future lessee upon the death of the original lessee. While not tested, it may or may not be perceived as secure enough for longer term investments by occupants/lessees.

Similarly, the servitude of use has all the above advantages but does not require a lease/rental instalment to be paid. It also has the advantage that it could be legally registered against a municipality's title deed or not (depending on the perceived need for cast iron tenure security). Its contents could be the same as a rental agreement and it could be bequeathed. The duration of the servitude is written into the servitude of use documentation and can be varied according to specific circumstances and strategic considerations.

7.4.3.6 Lease and Rental Agreements – legal mechanism

Lease and rental agreements are useful mechanisms for securing tenure rights. To begin with, a rental or lease agreement is a recognised legal form of tenure and accords all of the rights inherent in the tenure form (e.g. in law a lease overrides ownership for the period of the lease). In addition to the rights inherent to the form of tenure, additional rights can be written into the agreement as long as they are consistent with the scope of rights associated with the tenure. For example there is no reason why a right to sub-let structures on the land for the duration of the principle rental agreement cannot be granted. On the other hand, the right to sell the land is a right which is inconsistent with rights inherent in the form of tenure. This consideration notwithstanding, it must be noted that very explicit rights can be

awarded (and legally recognised) via special provisions of a lease or rental agreement. For example, the rights of a third party to continue picking fruit from a tree on the land (a right that may have been identified in the detailed rights assessment process) can be incorporated as a special condition to be observed by the main renter/lessee.

The right to bequeath is perhaps another example of a right that is not consistent with the rights inherent in the form of the tenure. However it would be possible to write in a special condition in terms of which the rental agreement can be ceded to individuals identified in the agreement (should they wish to take it up). Whether or not a lease/rental form of tenure will discourage long term investment will depend on the way that lessees/renters perceive the long term intentions of the municipality. If such intentions are spelled out in a long term tenure plan, individuals can make informed decisions about the risks associated with further investment. Moreover it will also be possible to incorporate special conditions into the rent/lease agreement which spell out how the issue of improvements to land and structures are to be dealt with in the event that the lessee/renter wishes to (or is required to) move.

The overall legitimacy of the lease/rent agreements can be substantially boosted if the identification of lessees/renters responds to existing community processes and community understanding of rights. Moreover, if the writing of special conditions (affording rights to both the lessee and third parties) is also witnessed via community participation of some sort, legitimacy can be enhanced. There are of course some conundrums in this regard. Existing community legitimisation processes are underpinned by power relations that are not necessarily reflective of democracy or fairness. For example, a settlement may have shacklords who would want to enter into lease/rental arrangements on all of the land where they currently have lodgers renting structures or land space from them. The lodgers (and the community as a whole) on the other hand may wish to contest the rights of shacklords to do this, given that they don't own the underlying land. Dynamics of this nature will have to be sorted out via intelligent community engagement and it is clear that where such dynamics (or variants of them) do exist, it would probably be a major mistake to simply enter into lease/rental arrangements with whoever is on the land without community consultation. It is also apparent that the ongoing management of change will also require some kind of community legitimisation and witnessing.

The issue of the duration of the lease or rent agreement is an important consideration. Where there has been a decision that the settlement has a long term

future, the introduction of short term lease or rental agreements should be discussed with the community and it should be made clear that the agreements are an interim measure until more full-fledged upgrading and tenure arrangements can be implemented (and this should be written into the lease/rental agreement). Ideally this should be addressed via the "Tenure Plan" referred to earlier. In instances where it has been decided that the settlement must be moved, it would again be necessary to make it clear to the community that the duration of the rental agreement will only be for as long as it takes for the municipality to be ready to relocate the settlement (and again this should be written into the agreement). One of the advantages of the lease/rental approach (over certificates or registers for example) is that it is very clear about the relationship between the occupier and the owner of the underlying land and that legal precedent exists for addressing conflicts that may emerge in this regard.

As far as evidence and record keeping is concerned, it should be noted that the rental agreement is a strong and recognised form of evidence. Evidence and tenure security will be further advanced by community witnessing processes especially in relation to special conditions. Such community witnessing processes should probably be built off existing practices. But they could involve the establishment of a rental witnessing committee elected by the community and with rotating membership (to reduce the likelihood of corrupt practices). The municipality will also have to consider how records are to be kept. Established practice is for original copies to be kept by both lessor and lessee or by landlord and renter. Municipalities often have long established mechanisms for holding and actively managing rental agreements (including mechanisms for resolving disputes and dealing with non-compliance). For example, many municipal housing departments continue to manage rental housing projects inherited from the apartheid era. Others have established special purpose vehicles to handle rentals (e.g. Joshco in Johannesburg).

We are however, of the view that rental/lease agreements for informal settlements are a special case (in as much as they require great flexibility and community participation in administration) and should be treated as such. As a consequence, we are of the view that rental agreements should be managed by local land offices along with ongoing community input. Rental agreements should be formally linked to both the existing register (which now becomes a register of renters/lessees) and to the layout plan insofar as the agreement will relate to a spatially identified site or block in the settlement. Preferably, the layout plan will have to have evolved to the point where 4-point demarcation of land (i.e. identification of individual sites) is

possible since there is probably little legal experience with a single point if disputes are referred to the courts. Ideally, however, disputes should be handled by the local land office together with a community representative (such as the witnessing committee suggested above).

It should be noted also that rental/lease arrangements may well constitute very appropriate forms of tenure in informal settlements in very poor or unusually good locations. In very poor locations rental tenure prevents the conflation of access into the urban system with a place in the housing queue.

7.4.3.7 Servitudes of Use

A servitude of use is a legal instrument that generally accords a personal right to whoever it is awarded to, to use land for purposes identified in the servitude document. It is generally registered against the title deeds to be binding against all comers, but that is not necessary as between the parties and third parties with knowledge of the servitude. If I give you, as my neighbour, the right to traverse my property to go to yours, that is a servitude and if I sell my property to someone who knows of the servitude, you could enforce it. If I sell it and conceal the servitude, you may then have difficulty. So you would insist on registration to be safe in all circumstances, but it would not be essential. As the landowner in our exercise is a municipality and as such an organ of state, one would expect it to act responsibly and not sell the land we are concerned with to anyone with or without knowledge of the servitude / certificate / lease. Also, a municipality should not run up debts where its creditors attach municipal property in satisfaction of a judgement. In any event, any buyer of municipal land would do so under a public process and would see people living on the land which would induce that buyer to ask who they are and what their conditions of occupation are.

Interestingly, from a legal perspective there is no reason why one could not open a township register under the DFA and instead of giving transfer of erven, register leases over the erven or grant servitudes over the erven. Cessions of either could be facilitated by a simple administrative process not incurring major costs.

7.4.4 Step 4 – Township Establishment (freehold title)

Under the regime of management in Step 3, where residents have some form of tenure evidence, and where there are rules in place for tenure and land use changes as well as infrastructure and social service commitments, a settlement may remain in this Step 3 status, or it may proceed to full township establishment (Step 4). Additionally, the model proposed in this Technical Proposal also allows for an option where only parts (blocks) of the settlement may to proceed along the path to become fully registered and confer freehold title.

Levels of tenure security are fairly high during Step 3 and with urban management of the settlements, they can remain as a regularised settlement (vs a formalised settlement) for as long as necessary. In South Africa, the main impetus to move from Step 3 to Step 4 is the allocation of housing subsidies to the project. This would trigger the township establishment process as formal, individual freehold title is linked to the subsidy.

Depending on the route taken for legal declaration, the settlement will need to be legally formalised (a township register opened at the Deeds Office to enable individual title registration) if residents chose to obtain freehold title. If a housing subsidy is allocated for upgrading the settlement, then this will be a requirement.

There are a number of legal options to arriving at this formal status, depending on the Phase 2 status of the settlement:

Step 2 Status	Requirements to get to Step 3	Step 3 Legal Route Options
Amendment Scheme (Transitional Residential Settlement Area)	Need to do full township establishment	Ordinance LFTEA Chapter 2 DFA application
Rezoned Special Residential Area/Informal Settlement Area ito TPS	Need to do full township establishment	Ordinance LFTEA Chapter 2 DFA application
By Law	Need to do full township establishment	Ordinance

Step 2 Status	Requirements to get to Step 3	Step 3 Legal Route Options
		LFTEA Chapter 2 DFA application
Land Development Area (DFA)	Do not need another application but need to satisfy all approved conditions of establishment	DFA compliance with Conditions of Establishment, especially DRA and LSA legal requirements
Less Formal Settlement Areas ito LFTEA	Will need to comply with Land Survey and Deeds Registry Acts in order to open township registers	Conversion of settlement to a township

7.4.5 Choosing a Mix of Mechanisms and Testing the Performance of the Mix

It is clear from the proposal above that there are a range of mechanisms associated with each of the four steps of the model and an appropriate mix needs to be chosen for each settlement. As general rule we are of the view that the mix chosen by the City of Johannesburg (CoJ) is likely to also be appropriate in many settlements and municipalities in South Africa and recommend that this mix should be the starting point for municipal initiatives. However there are reasons why the approach cannot be followed in every circumstance. These reasons may be technical, substantive or purely contextual. For example in reaction to CoJ's proposed mix of mechanisms, officials from the Alexandra Renewal project argued that whilst a blanket legal recognition approach would add value in Alexandra , it provided protection largely against capricious action by the state or the formal private sector. However they argued further that the greatest threat to tenure security in Alexandra came not so much from the state or the formal private sector but from landlords (some formal and many informal). It follows then that in the specific circumstances of Alexandra, a more legalistic approach probably needs to be taken to individual tenure) in addition to blanket tenure. Thus the use of a short term lease mechanism may be appropriate here rather than a reliance on administrative mechanisms.

In any event it should be apparent that judgement needs to be exercised in choosing a mix of mechanisms As there are different avenues, it is important that there is a way to test the performance of a proposed mix of mechanisms. While any one mix may not meet all the performance tests, on balance it should meet most.

A set of performance measures is therefore proposed to guide and test the mechanisms. LEAP[4], as part of their conceptual framework for tenure security, developed a set of indicators to assess how effectively the tenure of groups and members of groups in communal property institutions is being secured. The team also brainstormed other (implied) performance measures in the process of developing the Technical Proposal. Also, as part of the basic foundations of the proposal a set of guiding principles was outlined.. Hence, what is proposed below is a combination of these inputs. t.

	Category	Performance measure/question
1.	**Market performance**	Does it build on existing established informal markets? Does it provide more transparency for transactions? Does it promote tradeability (facilitate transactions)? Does it promote personal investment in the structure and land? Will it take occupants towards a more formally operated market in the future? Does it provide occupants with information on the market? Does it move towards providing an address for occupants?
2.	**Administrative performance**	Is it part of the government administrative system? Do residents know what administrative mechanism are in place to assist with information, transactions and management of the area? Do residents engage with the administrative systems willingly? Are administrative systems easy to use, cost effective to the municipality and residents? Are administrative systems adequately staffed to be effective and render a service to occupants?
3.	**Legal Performance**	Does it remove (or at least reduce) the threat of illegality or eviction?

[4] See www.leap.org.za/concept/indicators.asp

	Category	Performance measure/question
		Is it legally defensible by the resident/occupant and the municipality? Is the legal mechanism simple to understand and communicate to residents? Does the legal mechanism increase tenure security? Will the legal mechanism trigger other positive interventions such as increasing service levels?
4.	**Economic performance**	Is the mix of mechanisms cost effective for the user and the municipality? Will the mix promote increased economic investment in the property or will it economically prejudice (marginalise) the occupant?
5.	**Social Performance**	Is the mix of mechanisms socially fair to the occupants? Does the mix respond to the social needs of the occupants and the area? Does it respond to existing community dynamics and practices? Does it build governance structures with the community (in partnership)? Does the mix of mechanisms enable investment by government in social facilities and services? Does it support greater levels of social capital accumulation for residents?
6.	**Physical Performance**	Will the mix lead to spatial planning of the settlement? Will the spatial planning contribute to spatial integration of the settlement and its surrounds? Will spatial planning enable improved services provision? Will spatial planning move the settlement towards a trajectory where a physical address for residents can be

	Category	Performance measure/question
		obtained? Will spatial planning lead to integration of the area into GIS systems of the municipality? Will physical planning of the settlement lead to mitigation of any hazardous health and safety issues?
7.	**Political Performance**	Does the approach take into account existing political relationships? Does the approach have mechanisms in place that will promote political engagement to test political 'palateability'?
8.	**State Performance**	Will the mix of mechanisms promote urban management by the state (municipality)? Will the mix acknowledge existing governance structures in the settlement and link these to those of the municipality? Will the intervention promote city / town citizenship for residents in informal settlements (improve dignity and opportunity)? Will the mix of mechanisms allow the state to invest in services in the settlement? Will the intervention begin to integrate occupants into the institutions of government to allow them access to other state benefits (indigent register, social security, etc)? Are governmental administration systems improved and accessible to and used by residents with increased frequency?
9.	**Tenure Performance**	Does the mix of mechanisms ensure that people's rights are made clearer to them?
		Does the tenure mechanism and form allow improved defence of their rights?
		Does the form of tenure enable occupants to 'unlock' access to other benefits of the city?

8. LIST OF ANNEXURES

SECTION	ANNEXURE NUMBER	NAME OF DOCUMENT
1.Introduction		
2. Methodology		
3. Cameos	ANNEXURE 3.1	Bhambayi Housing Experience
	ANNEXURE 3.2	De Facto Land Analysis in Mshayazafe
	ANNEXURE 3.3	Land Registers in Folweni
	ANNEXURE 3.4	Cato Crest Register
	ANNEXURE 3.5	Tenure Types – International and Historical
	ANNEXURE 3.6	Policy and Implementation lessons
4. Support to CoJ	ANNEXURE 4.1	CoJ Model
5. Regional Scoping	ANNEXURE 5.1	Regional Scoping Interviews
	ANNEXURE 5.2	Regional Case Studies
6. Testing Demand	ANNEXURE 6.1	Testing Demand with Municipalities
7. Legal Informants	ANNEXURE 7.1	Legal Report
	ANNEXURE 7.2	Summary Legal Report
8. Context of Debates		
9. The Technical Proposal		
10. The Way Forward		

9. LIST OF SUPPORT DOCUMENTS

The following documents were useful resources to the project and are available to readers

NAME OF DOCUMENT
LEGISLATION
The Development Facilitation Act, Act 67 of 1995 and its regulations
The Less Formal Township Establishment Act, Act x of 1991 and its regulations
Regulation for the Administration and Control of Townships in Bantu Areas, Proc R293/1962

NAME OF DOCUMENT
Bantu Areas Land Regulations, Proc R188/1969
The City Statute of Brazil
Flexible Land Tenure Bill, Namibia
The Housing Statutory and Improvement Areas Act, Zambia
COUNCIL REPORTS
Formalisation of Informal Settlements Programme. MAYCOM Report 17 April 2008
Securing Tenure in the City's Informal Settlements. MAYCOM Report 4 June 2009
OTHER
SABS 0401 – 1989 Code of Practice for the Construction of Dwelling Houses in accordance with the National Building Regulations. Gr 15
Position Paper on Informal Settlements – Part of a Strategy for the Second Economy for the Office of the Presidency compiled for Urban LandMark by Mark Misselhorn of the Project Preparation Trust. March 2008

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