Strategic literature assessment for informal rental research project

Report to the Social Housing Foundation

March 2009

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Contents

1. THE BRIEF

The brief was to review both international and local literature on informal rental activity, focussing on aspects of intervention, and to evaluate the potentials and drawbacks of these ideas in the current South African urban context.

This report builds on a workshop organised by the SHF and held in Gauteng in February 2009. The Powerpoint presentations prepared for this workshop set out the broad position of the author of this report. Feedback from participants at the workshop (particularly relating to the scope of 'informal rental') has fed into this literature assessment task.

2. SCOPE OF THE REPORT

From an initial focus on 'backyard' rentals, the scope of this exercise has been broadened to include all forms of informal rental wherever it might occur. The focus is on the physical form of the accommodation and includes shelter that is in some way inadequate, irregular[1] or not intended for habitation. In many of these situations the nature of the 'rental agreement' will also be 'informal' (ie will not involve a legal, signed lease) and may involve payment in kind (or services) as well as (or instead of) cash. But equally, in some cases where the built structure is informal, there may be a signed and documented lease agreement.

Situations where the accommodation is formal, but where the terms of the lease are informal, are also not uncommon. It often takes the form of a tenant signing a formal lease and then sub-letting informally to others. These situations are excluded from the scope of the report.

 For the purposes of this report, informal rental will include:

- Backyard rentals, of two kinds:

    o Structures built by the landlord or main lease-holder[2] for rental or occupation by tenants or extended family. These may be formal or informal.

    o Structures built by the tenant or extended family, on space rented (cash or kind) from the landlord or main lease-holder. These are usually informal.

- Rented rooms: the physical structure may be formal or informal, but part of the dwelling is rented informally (cash or kind) to tenants or extended family. Excluded from the definition of informal rental are the hostels and unsold public housing units currently being targeted by the Department of Housing's Community Residential Units (CRU) Programme for upgrade and conversion to public rental units and spaces.

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[1] The term irregular, rather than 'not conforming to building regulations' is used as a great deal of formal housing stock manages to bypass building regulations in various ways.

[2] Many tenants of public housing rental stock also sublet space or structures.

- Main dwelling rental: full rental of main dwelling, generally by absentee landlords.

- Rentals (cash or kind) in informal settlements. These may occur within the envelope of the original dwelling, as an addition to the dwelling, or as an outhouse or backyard dwelling in relation to the main dwelling.

- Rentals occurring in buildings originally designed and built for other purposes, often occurring in central city areas: warehouses, factory buildings and ex-office blocks[3]. The CRU Programme will be acquiring certain "dilapidated, derelict and dysfunctional buildings" in inner-city areas or townships and converting these to public rental, at which point they would no longer fall within the definition of informal rental.

The focus of this report is on rented space used for dwelling purposes. However, it sometimes happens that this space is converted to a business use. This issue will be considered given that the income-generating capacity of additional space (from whatever source) is an important concern.

3. SUMMARY OF EXISTING INFORMATION

3.1 The scale of informal rental

The 2001 census indicated that 29% (or 3,3 million) households in South Africa live in rented accommodation, of which 18% (or 600,000 households) lived in what they term 'household rental' (house, flat, room in backyard, informal dwelling, shack in backyard), although some under-reporting could be expected. A further 12% (or 1,4 million) households lived in informal settlements, but it is not clear if rental arrangements in these kinds of areas were captured. An estimate of urban households in backyard dwellings based on the October 1999 household survey suggested a total of 746,697 households (Gardner, 2003).

The Social Housing Foundation (2008) estimates are slightly lower:

Rented shack in backyard: 282,000 (CS 2007) – 397,000 households (GHS 2006)

Rented shack not in backyard: 139,000 (CS 2007) – 121,000 households (GHS 2006)

CS = Community Survey; GHS = General Household Survey

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[3]   It has been noted that property hijacking syndicates in Johannesburg's Inner Cities are making up to R10 million a month from taking over occupied or unoccupied buildings (Shisaka Development Management Services (Pty) Ltd, and CSIR, 2006).

This does not include rented rooms within a house (usually known as 'sharing'), or tenants within inner-city 'occupied' or hijacked buildings, which would add to the total for informal rental.

Bank (2007) estimates that between 30-50% of all urban township houses have shacks in their backyards, which would mean that a quarter to a third of the township population lives in backyards, mostly concentrated in better-located townships. Overall, the percentage of households renting is much higher in Gauteng than elsewhere.

Estimates of the scale of the sector therefore vary widely, but the exact numbers are not particularly important. All estimates show that it forms a significant sector of the housing market. Since it is a form of accommodation which is nearly always in violation of the law, there is also likely to be massive under-reporting in any official surveys or censuses.

In terms of projecting demand for informal rental housing, it is likely that households earning under R1 500 per month will be the fastest-growing sector[4]. This prediction was made prior to the onset of the economic recession in late 2008, and growth of those households earning very low or no incomes is likely to escalate as a consequence. These households are most likely to seek out informal rental, confirming the NURCHA (2003) suggestion that informal rental is the fastest-growing form of accommodation in SA urban areas.

3.2 Broad patterns

- Informal rental is a vitally important and growing part of the housing market for the poor in South African cities. In many cities in Africa and Asia over half the urban population rents and in Latin America it is a third[5]. It has achieved this status without government assistance or intervention[6].

- Although informal renters and landlords are not a homogenous group, there are broad patterns in South African cities which closely match patterns elsewhere[7]. Tenant households tend to be smaller and younger, but more likely to be employed. Especially when living in backyard dwellings, they are often from more vulnerable groups: women, foreigners, more recent urban migrants. Landlords are often older, poorer, female and have been in urban areas for longer.

- Although many renters are on housing waiting lists and state that they would like to own a house at some stage, many have been renters for a long time. Evidence in SA cities suggests that 80% of renters have been in their accommodation for 5 years or more and there are relatively few evictions. In contrast, SA housing policy has regarded

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[4] Social Housing Foundation (2008)

[5] Gilbert et al (1997)

[6] Nurcha (2003) describes the informal rental sub-market as perhaps the second-most successful functioning housing sub-market after the private, high-income housing market.

[7] Note that informal rental in Kenya (Nairobi) is very different to the South African pattern and different to rental in many other southern cities, due to particular historical factors.

informal rental as 'transitional' housing'[8], assuming that renters will move into new RDP ownership projects. However, renters often remain where they are even when new housing projects are delivered, as these new projects are usually poorly located and have cost implications which renters cannot meet. They may also be directing any surplus income to a rural family home where they hope to retire.

- Generally relations between owners and renters are good (although conflicts can certainly occur)[9]. Renters are very often extended family members or are part of broader social networks. Research shows a great deal of sharing and mutual support between landlord and renter families. When conflicts do occur, they are dealt with internally, rather than resorting to formal legal channels. Renting can therefore offer as much security as ownership.

- Informal renting is cheap and flexible payment is often arranged. Sometimes payment is in kind rather than cash: renters perform services for owners such as childcare, cooking, cleaning, help with a business etc. One survey[10] showed that most informal renters paid less than R 200 per month and would not be willing or able to pay much more. In many backyard situations, and most commonly in informal settlements, renters are paying for the use of land, and build their own shelters. In better located township areas it is likely that the competition for rental space will be more intense and rents higher.

- The stereotype of the greedy landlord, building rentable units and extracting maximum profit from them, is not common (either in SA or in many other southern cities). Most landlords have few units for rent and are not profit-maximisers. They do not view renting as a business, but rather as a way of supplementing income, supporting family members, or gaining some help at home. Renting is a low-risk and simple way to generate some income. They would be called 'subsistence landlords' in the international literature.

- Most owners and renters have little or no contact with the formal legal system or building regulation system. Very few have formal legal lease agreements and most rented units violate building and planning regulations in various ways. To conform to the demands of these formal systems would impose costs (in time and money) that would put renting beyond the means of most poorer households.

- There are some exceptions to the above picture of the small-scale landlord. In some informal settlements, 'shacklords' claim some form of right or authority over land and extract 'rent' or 'protection money' from households. Rental situations in abandoned or deteriorated inner city buildings can also be less benign, with whoever has managed to

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[8] Bank (2007)

[9] See Bank (2007) on the changing nature of this relationship and the greater power of tenants when they have built their own shelters. A 2005 survey in Duncan Village showed 70% of households reporting no conflict.

[10] Nurcha (2003)

gain control of these buildings (slumlords) charging high rents, sometimes for a sleeping space on a per-night basis.

Much of the empirical research now being carried out on both landlords and renters is self-reinforcing[11], and it may be safe to claim that enough is known about informal rental to move forward on aspects of intervention.

3.3 Policy implications of these trends and patterns

The reality of the informal rental sector in South Africa needs to inform policy responses, rather than an approach which simplistically borrows policies and strategies from elsewhere in the world, and from very different contexts. The nature of informal rental here suggests the following:

- It is notable that informal rental has become "the second-most successful functioning housing sub-market"[12] without government assistance and support, and often in the face of attempts to control or 'eradicate' it (particularly where shelters use non-conventional building materials). This suggests that what is required is not an extensive and over-complicated support or promotional strategy, but rather a 'light touch' facilitation of what is happening already and encouragement to address a few, key problem areas linked to health, safety and public services.

- The informal rental sector functions on the basis of highly complex, sensitive and often fragile social and economic relations – between owners and renters and between different renter households. These relations appear to be critical in sustaining the relatively low levels of conflict and the essentially non-exploitative nature of the sub-market[13]. However, policy intervention is a notoriously blunt instrument and there is a great danger that an invasive (if well-meaning) strategy will do more harm than good. This could occur through 'unintended consequences' of strategies, and suggests that a cautious and pilot-based approach is needed.

- There are important differences between intervening in existing townships and informal settlements, where the rental sector may be stable and represent the build-up of arrangements and relationships over a long period of time, and intervening in the planning and design of new areas. In the latter, intervention can be more far-reaching (although it still has to consider how the very poorest will be accommodated).

- The evidence above and in the literature indicates that informal rental is a critical source of accommodation for poor households and individuals (Figure 1). Numbers of poor urban households are set to increase *significantly* with the economic downturn. The

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[11] Case study research on particular local areas will always throw up variations from the generalisations listed above, but it is unlikely that anything significantly different would be found.
[12] Nurcha (2003)
[13] This excludes the case of inner city 'slum' landlordism, which is often highly exploitative.
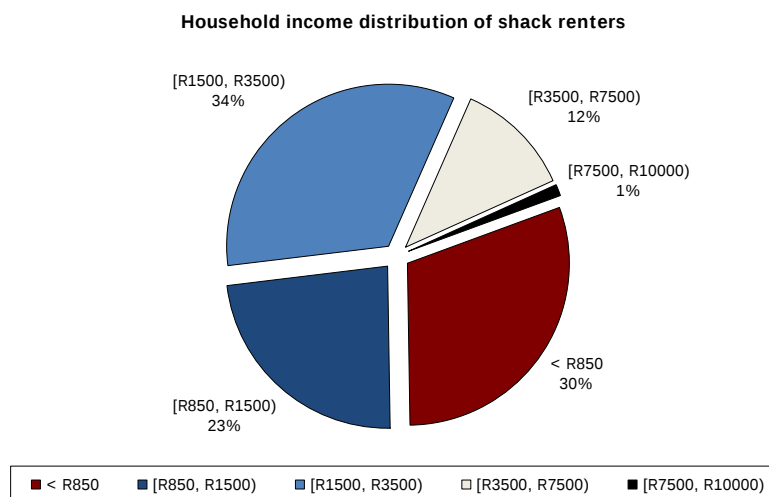
overriding goal of any informal rental policy must be to allow it to continue to play this very important function of providing shelter for the poorest. Any strategy which results in rents being raised, in making it more difficult to provide or gain access to accommodation, or encourages exploitative behaviour (through attempting to turn them into 'entrepreneurs') on the part of owners, will be disastrous for the poor and by implication all other urban dwellers.

Figure 1: income distribution of shack-renting households

53% of shack renters have a household income of less than R1500 [15]

Household income distribution of shack renters

[R1500, R3500)
34%

[R3500, R7500)
12%

[R7500, R10000)
1%

< R850
30%

[R850, R1500)
23%

| ■ < R850 | ■ [R850, R1500) | ■ [R1500, R3500) | ▫ [R3500, R7500) | ■ [R7500, R10000) |

Source: IES 2005/6

- The informal rental sector does not exist in isolation from other urban (and rural) housing sectors (although there are significant cost barriers between lower and middle-income markets – the 'gap' market). Individuals and households circulate between informal settlements, informal rentals, state housing (old and new), and other (hostel, inner city) options[14]. Remittances are often directed to a rural home as well. Interventions therefore need to consider the full range of cheaper housing options and how actions in one sector might impact on others.

In terms of tenure as well, rental can no longer be seen as part of a linear progression towards the ultimate goal of ownership. Internationally, policy-makers regard it as part

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[14] Spiegel, Watson and Wilkinson (1996)

of a socio-economic strategy on the part of both landlords and tenants to respond to the host of urban pressures they face. This indicates that the rental sector cannot be developed in isolation, but must rather be seen in a wider framework of urbanisation, urban development and management, and an overall housing strategy.

- Politicians in this country may often be reluctant to accept or support informal rental in case they are accused of holding back on government promises to provide 'houses for all' in 'dignified human settlements', or of condemning the poor to something that is 'second-best'. However, the delivery of formal houses has been declining and the numbers of people in informal settlements in urban areas has been steadily increasing. Many people are not eligible for a housing subsidy (examples include individuals who had a subsidy previously and sold or left their unit; foreigners; and adults without dependents). It is now quite obvious that state provision of an affordable and well-located house for each poor household is not possible and will not occur in the foreseeable future – but public admittance of that in an election year may be difficult. Accepting informal rental is a political issue as much as it is a legal or technical one.

4. Informal rental strategies

Strategies to support, encourage or cope with informal rental and the issues it gives rise to can be divided into *supply-side strategies* (focussing on the willingness of landlords to make rental accommodation available, the nature of the built stock, or other ways to encourage the provision of shelter in this sector of the housing market) or *demand-side strategies* (focussing on the abilities of renters to occupy and pay for rental accommodation).

Other kinds of strategies are *legal* (the settling of disputes between landowners and renters; lease agreements), related to *planning and design* (service and infrastructure capacity; plot and dwelling design), or *regulatory* (standards and requirements on dwelling densities; size; service access; building construction and materials; positioning on land; and use – residential, commercial etc).

This section will consider the full range of strategies which have been put forward, either in South Africa or in other parts of the world, and will assess the likely consequences (intended or otherwise) they might have. Strategies from other parts of the world will be drawn from contexts that are broadly comparable to the South African one.

4.1 Supply-side strategies

Research on informal rental in South Africa indicates that the primary source of supply of this form of accommodation is small-scale, 'subsistence' landlords, who are often older and poorer than their tenants and are often women. Rents are low and may comprise cash and services in kind. Where the landlord has provided the rental unit (backyard shack, shack extension in an informal settlement, or rented room in house) the quality of the structure and services is

usually low. Tenants also often provide their own structures on space rented from the landlord, and therefore may also be suppliers of accommodation.

Inner-city slumlords and building hijackers are also suppliers of rental accommodation, usually in deteriorated or abandoned buildings. The quality of these spaces is often very poor and relationships with landlords frequently exploitative.

A range of strategies has been put forward (in SA and internationally) to improve the **supply** (quantity and quality) of informal rental accommodation. The main approaches are:

- **Capital subsidies or loans** (including micro-finance) to landlords to encourage them to build or improve rental units. Capital subsidies can also be applied to the construction of new units which also have rentable backyard rooms and services. This is currently being piloted in Alex in Johannesburg, with a higher subsidy allocated to these plots to cover the higher costs of construction.

- **Tax incentives** or tax relief on rental incomes, targeted at individuals.

- **'Urban investment zones'** which incentivise landowners (via loans, grants or tax relief) within a defined area to construct or improve dwellings for commercial purposes. One proposal[15] has been for a 'household rental grant' programme in urban renewal zones. Owners would build backyard rental accommodation to meet certain standards (size and services), would have to submit a building plan for approval, the completed unit/s would be inspected, and then a capital grant would be paid out. Rentals would be VAT-able.

- **Availability of micro-finance.** There is a growing micro-finance sector in South Africa, although it has not yet been used at scale to support the construction of rental accommodation

- **Relaxing and revising building and planning controls** which hinder rental development: allowing more than one dwelling on a plot (extending the 'granny-flat' policy); allowing alternative building materials and more flexible standards; and allowing mixed-use zoning so that backyard or additional spaces can be used for rental or a home-business.

  A good example of how the regulation of building materials can prevent informal rental is occurring in the mayoral priority relocation project, Lehae, in Region G of Johannesburg (to the south of Soweto and Lenasia). Here the possession of corrugated iron sheets is strictly prohibited (City of Johannesburg Officials, Region G, personal communication, 19 July 2006). Preventing the use of corrugated iron or so-called 'zincs' for backyard letting or informal trade stalls means cutting off a lifeline for informal renters and traders[16].

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[15] Martin and Nel (2002)
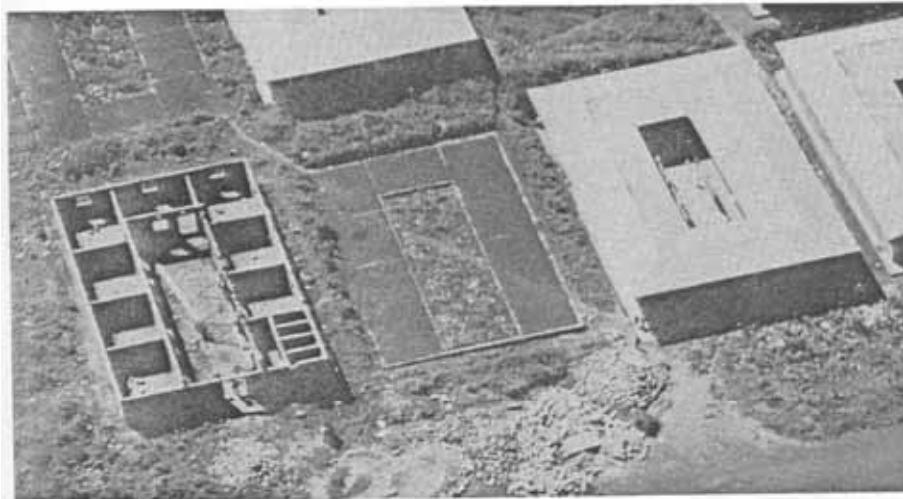
[16] Huchzermeyer (2009)

A key issue here is fire hazard from inflammable building materials, crowded shacks and use of fuels for cooking and heating. A minimum intervention would be to erect concrete walls dividing plots from each other to act as a fire-break. In-situ upgrade of informal settlements should include a solid plot boundary wall, which can also provide some support to a backyard shack.
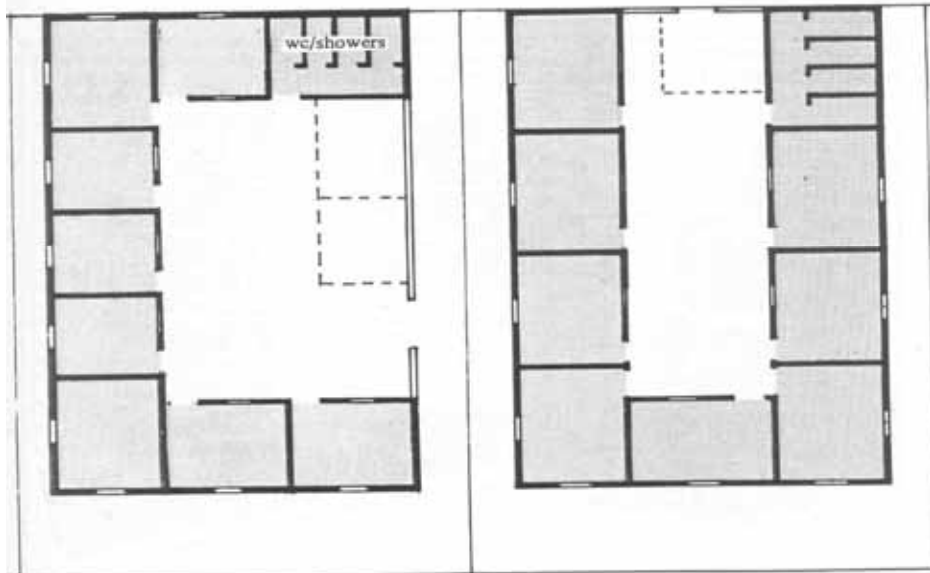
- **Design of new areas to facilitate informal rental**

  This strategy has significant potential as it avoids interfering in existing fragile landlord-tenant relations. Aspects of the design that are important are:

  o Design of service capacity to cope with growing densification

  o Demarcating plots large enough to hold more than one dwelling i.e. 300 square meters plus. Ideally a newly planned area should contain a mix of plot sizes.

  o Positioning of a main dwelling on the plot to allow for informal rental (particularly access to the back without the need to go through the main house). The usual practice of placing the house in the middle of the plot prevents efficient use of the site.

  o Design of units to facilitate rental e.g. the 'courtyard dwellings' found in Kenya (a series of rooms facing on to a communal courtyard which contains services). This arrangement also allows the use of front rooms for home businesses. See Figure 2.

49 MAKONGENI, AERIAL VIEW OF HOUSES, 1985.

50 MAKONGENI TYPE PLANS PROVIDED BY THE COUNCIL. 8 ROOMS TO BE COMPLETED
BEFORE OCCUPATION PERMIT COULD BE OBTAINED. Scale 1:200

Figure 2: Andreasen (1987)

- **State or NGO-initiated emergency or temporary shelter.** This could be considered semi-formal. An example is *Strollers*, funded by the city of Durban and using the transitional subsidy. It provides temporary (overnight or weekly) accommodation for migrants working in Durban markets. The physical design provides space for economic opportunities and storage rooms on the bottom storey with rooms above that cost from

R18 per night (multi-sleep) to R40 per night (single room). This includes beds, communal washing and kitchens.

The following general conclusions on supply-side strategies for rental accommodation have been made, drawing on both international[17] and local experience:

- International experience shows that production *inefficiency* is much more prevalent in projects that use supply-side subsidies.

- Supply-side subsidies are usually open-ended, very costly, and provide only a fraction of the real need due to limited resources and management expertise.

- Most supply-side subsidy schemes are not very effective in terms of achieving production for the lower end of the market on a sustainable basis. The proposed 'household rental grant' scheme (above) is very bureaucratic, would incur significant costs and effort, and would be unlikely to produce accommodation within the limits of poor renter households.

- Supply-side subsidies or incentives must be accompanied by other housing stock being made available to poor households which will be displaced.

- Middle-income rather than lower-income groups usually emerge as the major beneficiaries.

- Low rent-paying tenants are displaced in favour of higher rent-paying ones, family members are displaced in favour of paying tenants or in favour of use of the space for a business (see Gauteng pilot).

- Capital subsidies are less transparent and make accountability difficult.

- Units may be produced without a clear understanding of tenant needs, resulting in efficiency loss.

- Very difficult to 'hit' on the right incentives that leverage private involvement.

- Where the main dwelling is constructed via a capital subsidy, building additional rooms may require a second or larger subsidy. This can be viewed as inequitable[18].

- In the context of informal rental, subsidies or incentives are usually linked to conditions which stipulate minimum standards for the completed units, plan and building approval

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[17] Ahmad and Pikholz (1995)

[18] Current experiment in Alex township

processes, and inspections. These will all raise the cost of production. Surveys[19] show that many tenants believe upgrading a rental unit is a 'waste' and they would rather the funds were spent on new units (although they probably do not understand the higher costs involved in occupying a new unit under ownership).

- Surveys show that the *actual* constraints on supply in the SA context are likely to be the following:

    o Space and services (toilets, taps), in or around the landlord's dwelling.
    o Capital to construct a rental dwelling.
    o Laws and regulations (primarily planning and building regulations) preventing rental.
    o Pressures from existing renter families to protect their space[20].
    o Reluctance on the part of the primary occupant or owner to share space with renters and deal with the demands of renter relationships.

    Many of the supply-side strategies put forward so far do not, or cannot, address these issues, particularly where they are to be applied in existing areas. The capital subsidy is an exception, but this brings with it other problems (above). This is a gap which micro-finance might be able to fill.

Most supply-side strategies applied in existing areas would serve to raise the cost of provision of the rented space, or make its provision more difficult, and hence would serve to raise rents and/or displace lower-income families.

The advantages of supply-side interventions are that a smaller group of people is being dealt with (landlords rather than renters) and they may be more suitable for project-based interventions (new areas) especially where an NGO or community-based organisation is involved.

Relaxing building and planning controls will facilitate the supply of cheap rental accommodation, although in many township and informal areas there is little recognition of these anyway and hence their relaxation may not achieve a visible difference. In new developments, indicating that the construction of additional rooms for rental will be allowed could give significant encouragement to potential landlords – unless standards for these rooms are set too high.

4.2 Demand-side strategies

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[19] See Social Surveys Africa (2009)

[20] See Bank (2007) on how renter households in backyards control access to these spaces.

These strategies attempt to reduce the cost of rental, by giving subsidies or grants to renters or by regulating the level of rents charged. In the South African context the level of rents does not appear to be a major issue in township or informal settlement situations. However, in those parts of urban areas where rental space is scarce, exploitation has been occurring – mainly by slumlords and those controlling the illegal occupation of buildings.

The main demand-side strategies have been[21]:

- **Subsidies paid to households** as a part of or full contribution to rental, in the form of housing allowance, vouchers or rent supplements. Housing vouchers for renters have been used in Germany and the US, and to some extent in Chile. Another possibility is that renter households are given a capital grant which is then held until such time as they wish to draw on it for an owned property. In the meantime they are paid the interest on the grant to supplement rentals.

- **Free or subsidised building materials for renters.** Where it is common for renters to hire land and provide their own building materials (as in many SA townships and informal settlements), pre-fabricated units (eg Wendy-houses) can be given to renters or sold at subsidised rates. Similarly, building materials can be made available under these conditions as well.

- **Rent pooling.** Where tenants are given allowances or supplements, they could pool these to gain access to better services or structures. However, with vouchers and allowances there is no guarantee that tenants will use this money on rental, and it is possible that landlords raise rentals when they know that tenants are being subsidised.

- **Rent control**, in which rent levels are set through legislation, sometimes tied to the age or condition of the rented unit. These have widely recognised distortionary effects: they create a disincentive to produce or maintain rental accommodation, and there are many ways of avoiding the controls, such as landlords adding 'key money' to the rental to compensate for low rents[22].

- **State provision of rental housing or spaces** (as in converted hostels) at subsidised rents. This is a formal rather than an informal rental situation.

- **Public acceptance of informal settlements.** The 'shacklord' situation (in which certain individuals demand 'protection money' from households) is far less likely to be successful where informal settlements are legally recognised and in the process of in-situ upgrade and the establishment of tenure security.

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[21] Ahmad and Pikholz (1995)

[22] For an international summary of effects of rent control see Rakodi (1995)

- **Land sharing.** In Thailand[23] most informal occupiers have rental agreements with private owners of undeveloped sites. When an owner wishes to redevelop a site, land sharing has been successfully negotiated as an alternative to eviction. In order to obtain access to the site, the landowner leases or sells part of it to existing occupants, who redevelop their houses at higher densities, sometimes with a cross-subsidy. Land sharing is complex to negotiate and has been possible only with NGO support and well organised communities. In addition, some households may have to leave to make densification feasible, and some may be unable to afford the newly built accommodation.

- **Leaseholds in informal settlement upgrade.** Residents in *favelas* in Brazil[24], designated for upgrading, are generally opposed to freehold, because they are not interested in mortgaging their homes and do not wish to be liable for payment of property tax or enforced compliance with the building code. The *favela bairro* programme therefore concentrated on the right to adequate and affordable housing rather than absolute property rights, especially when regularising settlements on public land. A form of leasehold, the Concession of the Real Right to Use (CRRU), was adopted (typically 30 years, inheritable and registered in the names of both partners where appropriate).

- **Communal land arrangements and community land trusts.** This would involve the landowner (public or private) and an association of prospective occupiers who would hold intermediate tenure until titles are issued. This arrangement in Colombia[25] allowed the association to qualify for a subsidy on condition that it was non-profit and provided accommodation (which could be rental or ownership) in an affordable way. The Community Land Trust in District Six, Cape Town, is a local example of this, but has not yet been able to produce accommodation.

Subsidies and grants to renters can be problematic in that there is no guarantee that the funds will be directed to accommodation. Such subsidies would also be very likely to encourage landlords to raise rents. Free building materials or pre-fab units given (or sold cheaply) to tenants could assist but it would be necessary to keep a record of who benefits from these, otherwise certain individuals could simply sell these on as a business venture.

The strategy of rent control, widely used in the past in many countries including South Africa, is now generally discredited due to its distortionary effects, and is particularly inappropriate for informal rental. The level of informal rentals is very often personally negotiated and flexible, and payment may occur in various forms (cash and kind). It would be close to impossible to

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[23] Mohit (2002)

[24] Fernandes (2001)

[25] Aristizabal and Gomez (2002)

implement and police a policy of this kind in the informal rental sector. It would probably also dissuade many landlords from renting space (as it does in the formal rental sector) and would counter the objective of increasing the supply of rental accommodation.

Strategies which aim to create a more positive and flexible environment for informal renters are more likely to have potential. Official recognition of informal settlements and indications of future upgrades would remove the necessity for exploitative shacklords. Offering households a lease situation rather than full title in an informal upgrade is relatively simple to do and basically formalises an informal tenure arrangement.

Landsharing and community land trusts are far more complicated and time-consuming strategies, and municipalities would require relatively high levels of capacity to make them work. Both would be useful in specific situations but not applicable generally.

5.   Strategies relating to tenant-landlord relations

Research indicates that generally (not always) relations between landlords and renters in backyard and informal settlement situations are highly personalised and disputes are usually sorted out through discussions. However, open and more conflictual relations are common where landlords are absent, and in shacklord and hijacked building situations. Bank (2007) notes that the street committees in townships used to play an important role in managing landlord-tenant relations, and their collapse has left a void in this respect.

Surveys show that the percentage of informal renters who have written or formal lease agreements is very low, and formal legal mechanisms to resolve disputes are very rarely used. It is unlikely that most informal landlords or tenants would view these as useful tools to manage their relationships. Martin and Nel (2002) quote research from Latin America to indicate that where rental regulations were introduced, it increased the level of conflict between landlords and tenants, as personal dispute resolution was no longer applied.

Current proposals to extend formal regulation to cover tenant-landlord relations are as follows:

- Provision of standard (off-the-shelf) lease agreements which can be bought at retail outlets
- Extension of provisions of the Rental Housing Act to cover informal rental: these provisions include the Rental Housing Tribunal and the extension of statutory rights and obligations between landlords and tenants where lease agreements do not exist, to cover informal rental.

Drawbacks to extension of these provisions of the Rental Housing Act are that most tenants do not know their rights and are not aware of the Tribunals[26]. Landlords (formal) reportedly feel that since the Tribunals cannot effect evictions, they do not have 'teeth'.

While it is very unlikely that most informal tenants and landlords would even consider using the Rental Tribunals, there is no harm in making it available for those (probably few) cases that might require formal outside intervention, where personal relations have broken down. There may also be landlords (again probably few) in transition from an informal to a formal status, who want to begin using these types of institutions.

The extension of statutory rights and obligations where a lease does not exist may be negative if an attempt is made to enforce adherence to these in the face of a possibly different verbal agreement. Again, where relations break down irretrievably and cannot be personally resolved, it may be useful for one or other party to be able to invoke these rights and obligations should they so wish.

6. Some emerging policy positions

Two provinces have taken the initiative to develop an informal rental policy:

6.1 Gauteng Backyard Rental Programme[27]

The objectives of this programme were:

- To eradicate the informal backyard structures and replace them with structures that comply with the minimum norms and standards approved by the Gauteng Department of Housing.
- To upgrade and formalise informal backyard rental in Gauteng.
- To regulate and enhance the environment of the backyard rental.

This programme envisaged an Affordable Rental Accommodation Grant to be given to qualifying landlords to repair or rebuild backyard accommodation. The Department of Housing would have first right of refusal should the landlord wish to sell the property, but the beneficiary is required to stay in the property for five years before selling. No further shacks can be built in the backyard. The relationship between landlord and tenant is regulated in terms of the Rental Housing Act of 1999 as amended. Should the landlord cancel the lease, he/she will be obliged to enter into another lease agreement with a tenant relocated from another property.

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[26] Social Housing Foundation (2008)

[27] Information from a Powerpoint presentation from the Gauteng Dept of Housing, 2008.

Two pilot projects were run and the results were surveyed. The outcomes of this highly regulated and bureaucratic approach were predictable:

- In many cases those living in the backyards were family.
- Backyard upgrade encouraged landlords to raise the rents and poorer tenants were displaced.
- Agreements between landlords and tenants remained verbal.
- Some landlords converted their upgraded rooms to business premises.
- Tenants organised themselves into a Backyard Dwellers Association to motivate backyarders in other areas to reject the scheme.
- Upgrade reduced the number of rentable rooms per plot, which the landlords found problematic.
- Services and infrastructure were not coping with the densification (pre or post-upgrade).

In sum, this approach fails to understand the complex and precarious nature of informal rental and attempts to make it conform to rules appropriate for much larger-scale and formal landlords. The outcomes of the pilots could have been predicted in advance. Certain landlords benefitted from the grant and capitalised on this by raising rents (or converting to business uses) and hence displacing poorer tenants. The fact that the upgrade left them with fewer rentable units also required them to raise the rents.

It is very likely that many of the other onerous requirements of the scheme would simply be avoided by the landlord, hoping to escape detection. Additional shacks will probably be built, agreements with tenants will continue to be verbal, and houses will be sold informally should the landlord wish to move.

6.2 Western Cape Province 'support to backyard dwellers and informal landlords'[28]

The aim here has been to 'respond to the issue of backyards' rather than specifically attempting to increase rental supply. The emerging draft policy suggests:

- A substantial percentage of new housing is set aside for backyarders.
- A landlord subsidy to upgrade backyard rooms (a pilot in Athlone is proposed).
- Backyard structures are formalised or regularised ….to be compliant with minimum norms and standards.

This very brief statement of intent at least recognises both landlords and renters, and that the solution for many backyard and informal settlement dwellers will lie in new areas and upgraded settlements.

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[28] Department of Local Government and Housing, Western Cape Provincial Government, powerpoint 30/10/2009

However, the second idea for a supply-side subsidy to landlords may suffer from all the problems identified above under 4.1. The subsidy will without question lead to increased rents and hence displacement of those who cannot afford them. There are also questions as to whether landlords would go on 'waiting lists' to be given these subsidies, and how government would deal with the outcry from backyard tenants and shack dwellers who saw landlords getting a 'second subsidy' before they got a first one.

The third idea, to formalise backyard structures, ignores the capacity requirements which policing this would require. Should it be possible to enforce this 'formalisation' it would lead to massive displacement of tenants and pressure on municipalities to provide emergency accommodation.

The Western Cape strategy does at least recognise the interconnected nature of housing markets and areas, that informal rental should not be dealt with as an isolated phenomenon, and that the solution for many renters may well lie in provision of new developments elsewhere.

7. Policy approaches

There are two significantly different approaches to intervention:

- Approaches which aim to open up new opportunities (carrot approach)
- Approaches which aim to regulate and control (stick approach)

In the case of hijacked buildings, which verges on criminal activity, regulation and control needs to be brought to bear to reclaim these spaces. The fact that this kind of activity is happening in certain central city areas does, however, indicate the high levels of demand for space of a transient kind and the need for possibly hostel-type accommodation to be made available.

In the case of informal rental in existing backyards and informal settlements, the 'stick' approach will have a highly negative impact on the lives of the poorest, will displace their search for cheap shelter to other less visible (probably poorly located) areas, and will in any event be beyond the capacity of municipalities to enforce. Here the 'carrot' approach is essential.

In newly developed areas it will be far easier to use a combination of carrot and stick approaches, by opening up opportunities for informal rental (larger plots, more flexible and expandable houses, infrastructure and services with greater capacity) and at the same time making the take-up of these opportunities conditional on adhering to some minimal and enforceable standards.

8. Policy objectives

It is vitally important that the overall objectives of intervention in the informal rental sector are clarified. This is because different objectives related to the sector can very easily be in conflict and can cancel each other out.

For example, a strategy to promote and support landlords usually also aims to upgrade rental accommodation, and this inevitably impacts negatively on poor and vulnerable tenants when rents are raised. Strategies to support renters (rent controls, forums for tenant complaints) discourage landlordism. Strategies to promote health and safety usually incur costs for unit or service upgrades. These costs are covered through increased rental, and this impacts negatively on poor tenants.

In the two provincial strategies so far, the Gauteng strategy aimed only to support landlords, and succeeded in displacing tenants. The Western Cape strategy is a classic case of competing objectives which would cancel each other out. A capital subsidy to landlords as well as 'formalisation' and regularisation of renting would cancel out the objective of 'support to backyard dwellers'.

There is also the issue of social justification of strategy objectives. It is entirely unclear how the Gauteng Province justifies the allocation of a second subsidy to a household which already holds a subsidy at the expense of those still waiting for a first subsidy. It appears the subsidies were allocated to landlords already providing rental accommodation, so the argument that the strategy increased rental accommodation does not hold. Additional capital subsidies for landlords will inevitably raise accusations of injustice from those still without.

The argument that state intervention in the informal rental sector is justified in order to 'promote entrepreneurs' (an objective of the Gauteng strategy) is a very weak one. Given the state of the housing crisis in South Africa there is no justification for diverting housing funds to the support of landlords who are already providing accommodation. Encouraging people to become 'entrepreneurial' is a far more complex matter than simply giving them a capital grant.

The only justifiable objective for intervention in the informal rental sector is to remove the major blockages to the supply of rental accommodation which can provide basic levels of shelter and is affordable by the poorest households. This is the niche in the housing market which informal rental already fills. To adopt strategies which remove this often 'last resort' form of shelter from poor households (as both the Gauteng and Western Cape interventions might do) is entirely unjust.

The finding from NURCHA, that informal rental has become "the second-most successful functioning housing sub-market" without government assistance and support, and often in the

face of attempts to control or 'eradicate' it, is worth noting. This should be a signal to government to proceed in a cautious and low- key way, particularly in already settled areas.

9. Unintended outcomes

Well-intentioned interventions in the informal rental sector can have unintended outcomes. Given the extent to which informal rental has been researched in South Africa and in other parts of the world, it is reasonably possible to predict what these outcomes might be. The most obvious of these unintended outcomes are:

Intervention	Unintended outcomes
Minimum standards for rented units	• Compliance, and rents raised, poor tenants displaced • Tenants evicted to avoid prosecution • If family, crowd into main house • Existence of rented spaces disguised • Ignored, if policing capacity is low • Payment of bribes
Capital subsidy to landlord to improve rental accommodation	• Rents increase and displace poor tenants and non-paying family members • Main beneficiaries are not the poorest • Displaced tenants swell informal settlements • Rental units turned into business premises – rental accommodation decreases • No defensible way to prioritise and waitlist applicants – landlord objections • Tenants mobilise to voice objections
Building new units with rentable rooms	• Higher-quality accommodation will not be for the poorest • Maintenance enforcement over time will be very difficult • Landlord builds additional shacks as well
Capital subsidy to tenant (for Wendy-house or pre-fab) – cost estimate R 20,000	• Tenants see it as a waste and demand capital subsidy for a new house instead • Tenants sell-on pre-fabs for a profit • No defensible way to prioritise and waitlist applicants – tenant objections • Landlords raise land-rent due to extra space and service use
Housing vouchers/grants for tenants (could be interest paid from a capital subsidy	• Landlord raises rents as he/she knows tenants are being subsidised

which is banked)	• Cash grant is spent on other items
Rent control	• Disincentive for landlord to rent
	• Alternative ways of raising rents e.g. 'key' money
Rental Tribunals for disputes	• Most not eligible as no formal or written lease agreement
	• Seen as time-consuming and with 'no teeth'

10. Overall strategy assessment and proposals

The review of attempts to intervene in the informal rental housing sector in SA and in other parts of the world indicates the following:

- Generally, strategies which use 'carrot' rather than 'stick' methods have more potential.

- The overall objectives of intervention must be clear and non-conflictual, or they will cancel each other out. The only socially justifiable objective is to remove major obstacles to this form of shelter for the poor, in ways which attempt to avoid major health and safety impacts (realising that even here, there is a conflict of interests and trade-offs will have to be made).

- Intervention should take as a starting point the understanding that government policy is a blunt instrument and can do major damage to a well-functioning system of housing supply. Strategies suggested so far at the provincial level would probably kill the informal rental sector if governments had the capacity to apply them.

- Informal rental must be viewed as part of broader housing / settlement issues and linked to other state and private housing sectors. Addressing informal rental issues may need to take place in *other* housing sectors and areas.

- Intervention in existing townships and informal settlements needs to be very low-key and minimalist. It is also not possible to generalise about townships and informal settlements: they are highly varied and will present very different rental problems and issues. More extensive strategies are possible in newly developing areas.

- The most significant arena of intervention may lie in infrastructure, services and public spaces rather than in housing[29]. If infrastructure and service capacities and qualities are improved (and this needs to be done anyway to cope with densification brought about by informal rental) it is also likely that houses will be seen as more valuable and upgradable.

- Attempts to control and regulate (stick approach) will be very difficult to enforce or will have negative, unintended consequences. However, it may under some circumstances be necessary to introduce minimum and sensitive regulation (in the interests of broader health and safety), if enforcement is possible and if consequences can be dealt with.

- The biggest threat in existing townships is fire. Concrete walls on plot boundaries as firebreaks (where they do not exist already) and extension of electricity connections to backyard shacks would be the most effective minimal interventions.

- Supply-side capital subsidies for landlords are usually distortionary, benefit only a few and have negative consequences for poor tenants.

- Demand-side subsidies for tenants can also be distortionary, can also only benefit a few (due to resource constraints) and are open to abuse.

- Other demand-side strategies (land sharing, communal land arrangements, leaseholds in informal upgrade situations) may have more potential but require further investigation in this context.

- In newly developing areas the following strategies are possible:

  - Make available a mix of plot sizes, with some plots large enough to accommodate rented units (at least 350 m^2). These would be at higher cost.
  - Allocation of land parcels to groups of households on leasehold basis, upgradable to full tenure later on.
  - Formal units designed and positioned in ways which allow future additions to be built (e.g. courtyard design), or allows access to the back. Build a front façade and concrete boundary walls, and allow occupiers to fill in the rest over time.
  - Locate toilets and taps so that they can be accessed by several households on a plot.

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[29] Contribution from Cape Town workshop 13/3/2009

- o Advertise availability of micro-finance and tailor this instrument to the housing construction sector.
- o Ensure that backyard dwellers from nearby townships are on lists for new land/housing.
- o Services and infrastructure in new and in-situ upgrade areas to anticipate that densification will take place in the future.
- o Mixed use allowed (with certain minimal noise and pollution controls).

- Different kinds of existing informal rental contexts require different strategies

  - o *Informal rental in existing townships (i.e. backyards):* will have to be done on a case-by-case basis as conditions are highly variable. It is not possible to introduce strategies that attempt to apply nationally or even on a city-wide basis. Key areas will be:
    - Fire prevention interventions
    - Increase capacity of infrastructure and services and upgrade these where possible, i.e. use MIG finance rather than housing funds.
    - Availability of micro-finance to add and upgrade rental units.
    - Advertise availability of standard lease agreements and Rental Tribunal.
    - Opening up opportunities in new (well-located) areas for these households in order to encourage de-densification of existing townships.

  - o *Informal rental in informal settlements*: renters should be part of general in-situ upgrade, with the choice to continue the tenant relationship with existing landlord or apply for own plot.

  - o *Inner-city tenants in hijacked or abandoned buildings:*

    - Provide alternative accommodation (as in Strollers example) of a cheap and flexible kind.
    - Use of the Community Residential Units (CRU) programme at its most basic level to provide cheap, flexible rental accommodation.
    - Regain control of buildings and refurbish for cheap and short-stay rental or sell.

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